

(1994) 11 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : CWP No's. 568 of 1988 and 16 of 1992

Sardar Singh and Sons and Another

APPELLANT

Vs

State of H.P. and Others
 Jiwan Singh, Joginder Singh
and Another Vs Market Committe and Another

RESPONDENT

Date of Decision : 30-11-1994

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Himachal Pradesh Agricultural Produce Markets Act, 1969 — Section 10, 2, 21, 24, 3

Punjab Agricultural Produce Markets Act, 1961 — Section 23, 23A

Citation : (1995) 1 ILR HP 51

Hon'ble Judges : Gulab C. Gupta, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : D.D. Sood, vice cls. in CWP No. 568 of 88, Ramakant Sharma and A.K. Goel, in CWP No. 38 of 89, Kapil Dev Sood, in CWP Nos. 238 and 333 of 89, Vijay Thakur, in CWP Nos. 16 of 92 and 558 of 93, for the Appellant; Inder Singh, A.G. for Respondent No. 1 in CWP Nos. 568 of 88 and 38, 238 and 333 of 89 and for Respondent No. 2 in CWP No. 558 of 93 Chhabil Dass, for Respondents No. 1 in CWP No. 558 of 93 and for Respondent Nos. 2 and 3 in CWP Nos. 568 of 88 and 38, 238 and 333 of 89 and K. B. Batish, in CWP No. 16 of 92, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, C.J.—The Petitioners, in these writ petitions, are dealers in agricultural produce, as defined u/s 2(a) of the Himachal Pradesh Agricultural Produce Markets Act 1969 (hereinafter referred to as the Act") and feel aggrieved by establishment of a notified market area for whole Mandi revenue district by notification dated 13th April, 1981 (Annexure P-I) and challenge the legal validity thereof by filing these writ petitions under Article 226, of the Constitution of India.

2. The particular grievance of the Petitioners appears to be that with the establishment of notified market area for the entire Mandi district, they will be

required to take licences u/s 4(3) of the Act and would further be required to pay market fee under- Section 21 thereof. This, according to the Petitioners, is illegal and unconstitutional and, therefore, deserves to be quashed. The Petitioners have however no objection if principal market or sub-market yards are established and provisions relating to license and market fee are confined to the said premises.

3. The Act was passed by the Himachal Pradesh Legislature in the year 1969 and received the assent of the Governor on 23rd March, 1970. It came into force on its publication in the Rajpatra on 6th April, 1970. The Act is intended to "consolidate and amend the law relating to .better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in Himachal Pradesh". Section 2(a) defines agricultural produce and reads as under:

2(a) "Agricultural produce" means all produce whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the schedule to this Act.

The Act seems to be dealing with the "producer" and "dealer" of the agricultural produce and define these terms in Section 2(h) and. 2(i), which read as under:

(h) "producer-means a person who, in his normal course of avocation, grows, manufactures, rears or produces, as the case may be, agricultural produce personally, through tenants or otherwise, but does not include a person who works as a dealer or a broker or who is a partner of a firm of dealers or brokers or is otherwise engaged in the business of disposal or storage of agricultural produce other than that grown, manufactured, reared or produced by himself, through his tenants or otherwise. If a question arises as to whether any person is a producer or not for the purposes of this Act, the decision of the Deputy Commissioner of the district in which the person carries on his business or profession shall be final.

Provided that no person shall be disqualified from being a producer merely on thee ground that he is a member of a Co-operative Society.

Explanation.-The term "producer shall also include tenant.

(i) "dealer" means any person who, within the notified market area, sets up, establishes or continues or allows to be contined any glace for the purchase, sale, storage or pocessing of agricultural produce notified under Sub-section (1) of Section 4 or purchases, sells, stores or processes such agricultural produce.

"Notified market area" for the purposes of this Act means an area notified u/s 4 of the Act. The Act constitutes Himachal Pradesh Marketing Board for exercising powers conferred on, and performing the functions, and duties assigned to the Board by or under this. Act. Section 4 of the Act permits the Board to declare by notification or in any other manner that may be prescribed, the area notified u/s 3 or any portion there of to be the notified market area for the purpose of this

Act in respect of the agricultural produce notified u/s 3. Sub-section (3) of this "provision provides that no person shall, either for himself or on behalf of another person, or of the Government, within the notified market area, set up, establish or continue or allow to be set up, established or continued any place for the purchase, sale storage and processing of the agricultural produce so notified or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made thereunder and the conditions specified in the licence. The provision, however, has a proviso which indicates that a licence shall not be required by a producer, who sells himself or through a bonafide agent, not being a commission agent, his own agricultural produce or the. agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use. Since this provision will require our consideration, during the course of this judgment, it is necessary to reproduce the same as under:

(3) After the date of issue of such notification or from such later date, as may be specified therein, no person, unless exempted by- rules framed under this Act, shall, either for himself or on behalf of another person, or of the Government within the notified market area, set up, establish or continue or allow to be set up, established or continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store or process such agricultural produce, except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made there under and the conditions specified in the licence:

Provided that a licence shall not be required by a producer who sells himself or through a bonafide agent, not being a commission agent, his own agricultural produce or the agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use.

4. Section 5 of the Act provides that there shall be one principal market yard and one or more sub-market yards, as may be necessary, for each notified market area. Section 6 provides that on and after the date on which the Board has, by a notification u/s 5, declared a principal market yard or sub-market yard or yards for a notified market area, no person or Municipal Committee, District Board, panchayat or any local authority, notwithstanding anything contained in any enactment relating to such authorities, shall be competent to set up, establish or continue or allow to be continued any place within the limits of such market or within a distance thereof to be notified in the official Gazette in this behalf for purchase, sale, storage and processing agricultural produce. Proviso attached to this section lays down that a producer shall not be deemed to set up, establish or continue or allow to be continued a place as a market for the purpose of the purchase, sale, storage or processing of agricultural produce, if he sells his own agricultural produce outside the premises set apart by the committee for the purpose of purchase, sale, storage and, processing of agricultural produce. Since this provision will also require consideration, during the course of this judgment,

it is considered necessary to produce the same. It reads as under:

6. No private market to be opened in or near places declared to be markets.-

On and after the date on which the Board has, by a notification u/s 5, declared any place to be a principal or sub market yard no person or municipal committee, district board, panchayat or any local authority, notwithstanding anything contained in any enactment relating to such municipal committee, district board, panchayat or local authority shall be competent to set up, establish or continue or allow to be continued any place within the limits of such market or within a distance thereof to be notified in the Official Gazette in this behalf in each case by the Stat Government for the purchase, sale, storage and processing agricultural produce:

Provided that, a producer shall not be deemed to set up, establish or continue or allow to be continued a place as a market for the purpose of the purchase, sale, storage or processing of agricultural produce if he sells his own agricultural produce outside the premises set apart by the committee for the purpose of purchase, sale, storage and processing of agricultural produce.

5. Section 21 of the Act provides for levy of market fee on agricultural produce bought or sold by licensees in the notified market area at the rate prescribed therein but no fee is leviable in respect of transactions in which delivery of the agricultural produce bought or sold is not actually made. The provision reads as under:

21. Levy of fee.-The market committee shall levy, on an ad valorem basis, fees on agricultural produce bought, or sold by licensees in the notified market area at the rate not exceeding one rupee for every one hundred rupees as may be fixed by the Board:

Provided that:

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made.

All moneys Received by a market committee are credited to a fund called the market committee fund as provided u/s 24 of the Act. The said fund is spent for the acquisition of market site or sites, maintenance and improvement of markets and for providing facilities and comforts for persons and animals coming to the market. Some part of this money can also be spent for production and betterment of agricultural produce. Pursuance to the power given u/s 33 of the Act, the State Government has framed rules known as Himachal Pradesh Agricultural Produce Markets Rules, 1971. These rules provide for manner and method of obtaining licences and assessment and recovery of market fee, besides other relevant matters. Though the competence of the State Legislature

in enacting the Act is not under challenge, Sections 4(3) and 21 of the Act are specifically under challenge in these writ petitions.

6. Though the Petitioners in the writ petitions belong to different districts, such as, Mandi, Solan and Hamirpur. Notifications of the Himachal Pradesh Marketing Board establishing a market for the notified market area, which includes all revenue estates, including Municipal Committees and Notified Area Committees of the district, are issued in identical terms. Notifications under Sections 9 and 10 of the Act locating the headquarter of market committee and .determining the members of the committee are also identical. That is how these petitions raise common questions of law for consideration of this Court and have been heard together and are being decided by this common judgment.

7. The Petitioners admit that the market committee has established principal/sub-market yards within the territory of market committee and is maintaining the same. The Petitioners, however, do not carry on their business within the market yard/sub-market yards. They are, on the contrary, engaged in dealing with the agricultural produce outside the principal makret yard or sub-market yard. Indeed, most of them carry on their business in their own premises situate with in the market area but outside the principal market yard or sub-market yard. They have been required by the Respondent Market committee to obtain licences and pay market fee in accordance with the provisions of the Act and rules; failing which they are liable to be prosecuted. This action, on the part of the market committee had prompted the Petitioners to approach this Court for relief m accordance with law.

8. The submissions of the learned Counsel for the Petitioners, in the main, are that the provision relating to taking licences for carrying on business and payment of market lee places unreasonable restrictions on their right to carry on their trade and hence Sections 4(3) and 21 are violative of Article 19 of the Constitution. It is further submitted that the market fee has a direct relationship with the services rendered and since the markt committee renders no service to the Petitioners or their class, realization of market fee u/s 21 of the Act is unconstitutional. It is also submitted, though in the alternative, that even if the provisions are held to be valid they cannot justify levy of market fee on persons tradin outside the principal market yard. The Respondents, however, have defended the action and submitted that the provisions of the Act are not only constitutionally valid but otherwise reasonable. Though, it is admitted that levy u/ s 21 is fee, the same is deemed valid as necesary services are being provided by the market committee in the market area It is also submitted that principal market yards and sub-market yards have been identified and the construction has already started according to the plan. The market yards, according to the Respondents, will consist of shops, auction platforms and public utilities like drinking water, sanitation, farmers rest houses etc. etc. The scheme, according to the Respondents, will cost little over crore of rupees to each of the market committee and for that reason cannot be immediately implemented. The work

according to the Respondents, is in progress and will take some time to complete. The income derived from the market fee is also utilised for providing aforesaid facilities and amenities. As regards places outside the market yard-, it is submitted that the inspecting staff has been appointed to ensure proper weighment and payment of price to the producers of agricultural produce. Thus, according to the Respondents, is sufficient nexus justifying the levy, and collection of fee.

9. The questions aforesaid have received consideration of the Supreme Court in the past and hence it is necessary to refer to those decisions. The learned Counsel for the Petitioners has relied upon the decision in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, . This was a case where market fee had been levied under the provisions of the Punjab Agricultural Produce Markets Act, 1961 and was found to be sufficient for meeting the requirements of the Market committee and for carrying out the objects and purposes for which the said fund was required to be spent. In spite of it an increase in the said fee was made with a view to divert the said fund for purposes other than those for which that fund could be spent under the Act. The said increase was under challenge in this decision. The Supreme Court did not doubt the correctness of the original imposition but held the increase to be unconstitutional. In so holding, the Supreme Court held that the fee must have direct nexus with the services provided by the market committee and since the increase was not intended to provide any additional service, the same could not be lawfully imposed. The Court, therefore, quashed the increase in market fee. Though this judgment does not deal with a case like the present, wherein the original levy of fee is itself under challenge, the learned Counsel had heavily relied upon some of the observations in this Court and hence it is necessary to refer to those observations. As far as principles of law governing the matter are concerned, the same have been on consideration of earlier decisions of the Court summarised in seven broad propositions in para 23 of the judgment, which reads as under:

(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for the this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale, of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensee it is permissible to render such service, in the market which may be in the general interest of all

concerned with transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturist is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefitting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned, above.

As regards particular provisions, the relevant observations of the Court are in para 31, which read as under:

It is further to be pointed out that the fee levied is not on the agricultural produce in the sense of imposing any kind of tax or duty on the agricultural produce. Nor is it a tax on the transaction of purchase or sale. The levy is an impost on the buyer of the agricultural produce in the market, in relation to transactions of his purchase. The agriculturists are not required to share any portion of the burden of this fee. In case the buyer is not a licensee then the responsibility of paying the fees is of the seller who may realise the same from the buyer. But such a contingency, cannot arise in respect of the transactions of sale by an agriculturist of his agricultural produce in the market to a dealer who must be a licensee. Nor was any such eventuality occurring in any of the cases before us was brought to our notice. Probably such an alternative provision was meant to be made for outside buyers who are-not licensees when they buy the agricultural produce from or through the licensees. Any way we are not concerned with that question.

The final decision of the Court, which is based on the provisions relating to the utilisation of market committee funds is expressed in paras 54 and 55 of the decision, which read as under:

"But taking a reasonable and practical view of the matter and on, appreciation of the true picture of justifiable and legal expenditure in relation to the market fee income, even though it had to be done on the basis of some reasonable guess work, we are not inclined to disturb the raising of an imposition of the rate of market fee upto Rs. 2/- per hundred rupees by the various Market Committees and the Boards both in the State of Punjab and Haryana. Afterall, considerable

development work seems to have been done by many Market Committees in their respective markets. The charging of fee @ Rs. 2/-, therefore, is justified and fit to be sustained. We accordingly do it. As pointed out earlier, the dealers of Haryana did not feel aggrieved when the High Court maintained the raising of market fee to the extent of Rs. 2/- per hundred rupees. We are however, not inclined to uphold the raising of the fee from Rs. 2/- to Rs. 3/- as on the materials placed before us it is clear that this has been done chiefly because of the wrong impression of law that the amount of market fee can be spent for any development work in the notified market area and specifically for the development of agriculture and the welfare of the agriculturists. On the basis of the facts and figures placed before us from the High Court records and also some new materials filed here we have come to the conclusion that there was no justification in law in raising the fee from "Rupees 2/- to Rs. 3/-. The High Court was wrong in maintaining this rise on an erroneous view of the matter. We, therefore, allow the appeals and the writ petitions to the extent and in the manner indicated above and direct the Market Committees and the State Marketing Boards not to realize market fee at the rate of Rs. 3/- per hundred rupees on the basis of their impugned decision and actions which have been found to be invalid by us. We leave the parties to bear their own costs throughout.

Before we part with these cases, we would like to observe that in future if the market fee is sought to be raised beyond the rate of Rs. 2/- per hundred rupees, proper budgets, estimates, balance-sheets showing the balance of the money in hand and in deposit the estimated income and expenditure, etc. should carefully be prepared in the light of this judgment. It may be, as was submitted before us, that it is not imperative either for the Market Committees or the Board to prepare balance-sheets because their accounts are audited by government auditors but for the purposes of raising the market fee any further, the balance-sheets will give a true picture of the position also with budgets and estimates. Then, and then only, there may be a legal justification for raising the rate of the market fee further to a reasonable extent. On drawing of the correct balance-sheets and framing of the correct estimates and budgets the authorities as also the State Government will be able to know the correct position and to decide reasonably as to what extent the raising of the market fee can be justified taking an overall picture of the matter and keeping in view the reason behind the restrictions of sales tax law concerning the transactions of foodgrains and the other agricultural produce.

10. It may at once be conceded that proposition No. 3 quoted above supports the submission that the market-fee realised from the licences like the Petitioners must have close and reasonable correlation between them and the transactions and in its total absence would render the fee illegal. This judgment was affirmed in *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, wherein also, applying the aforesaid principle, the Court had held that decoration of big areas as market areas does not offend any provision of law. As

regards the quid pro quo, the Court had emphasised proposition No. 6 called out in K.K. Puri's case (supra) and held that the same need not be established with mathematical exactitude but even a broad and reasonable connection between the fee charged and its being spent for rendering services to those on whom falls the burden of fee would be enough. Both these cases were rendered by the constitution Bench consisting five Judges of the Court and must be treated as having laid down the law on the subject. Application of the aforesaid law, however, does not justify the submission of the learned Counsel for the Petitioners that requiring licence from dealers doing business in agricultural produce outside the principal market yard or sub-market yard or requiring them to pay market fee is illegal or unreasonable. Indeed, both these judgments upheld the provisions for taking licence and payment of market fee by the licensees.

11. The matter received further consideration of a three Judges Bench of the Supreme Court in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, wherein the Court accepting seven broad principles culled out in K.K. Puri's case (supra) disagreed with them in so far as quid pro quo is concerned. According to the Court, establishment of a principal market yard or sub-market yard and provision for amenities and facilities to persons using the same is sufficient quid pro quo for the purpose. The Court, therefore, emphasised that the traditional view of quid pro quo for a fee has undergone a sea change. Though correlation between the fee collected and service rendered or intended to be rendered is still important. The true test is whether its primary and essential purpose is to render specific service to a specified area or class. It is of no consequence that the State may ultimately and indirectly be benefitted by it. The power of the legislature to levy a fee, according to the Court, is conditioned by the fact that it must be by and large a quid pro quo for the service rendered. Correlation is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of the fee and the services rendered. The difference between the view taken in this judgment and the view in K.K. Puri's case (supra), insofar as the present case is concerned, is not of much substance. Proposition No. 6 in K.K. Puri's case, if read in the context of this judgment would justify the conclusion that it is not necessary that the licensee paying the fee must be directly benefitted by the services rendered and it is sufficient if the interest of producers of agricultural produce is safeguarded by spending the amount collected by way of fee. The said interest, as stated earlier, is sufficiently served by establishing principal/sub-market yards, providing amenities and facilities for users of said yards and providing for general inspection and checking of weights and measurements in the notified market area. For this reason, it is not necessary for this Court to deal with, this case any further. The learned Counsel have also relied upon the decision of the Supreme Court in Amar Nath Om Prakash and Others Vs. State of Punjab and Others, Reading of this decision would indicate that pursuance to the decision of the

Supreme Court in K.K. Puri's case (supra), which had nullified the enhancement of fee by holding the same illegal, the legislature amended the said provision and inserted Section 23A into the Punjab Agricultural Produce Markets Act, 1961. The said provision dealt with saving of excess fee already charged and provided that notwithstanding anything contained in any judgment, decree or order of any Court, it shall be lawful for a market committee to retain the fee levied and collected by it from a licensee in excess of that leviable u/s 23. The constitutional validity of this provision was challenged and decided by this judgment of the Supreme Court. Commenting on the judgment of the Court in K.K. Puri's case, the Court held that the observations contained in the said judgment are not to be read as Euclid's theorems nor as provisions of the statute. The observations must be read in the context in which they appear. The Court noticed that though some observations in K.K. Puri's case may be supporting the argument, those observations cannot be read out of context. The Court in the final analysis upheld the constitutional validity of Section 23A. This case again has nothing to do with the controversy, under consideration in the instant case and is, therefore, of no consequence.

12. The aforesaid decisions would sufficiently establish that requiring the Petitioners to obtain licences is a reasonable restriction, in the wider public interest and subserves the object and purpose of the Act. The licences would help identifying the persons dealing in agricultural produce and help the Inspectorate of market committee to supervise transactions and thus protect the interest of producers of agricultural produce. The fee charged for the purpose is very nominal and the money would not even be sufficient for meeting the cost of services rendered, that is, the salary of the inspecting staff or expenses involved in issuing licences. Since these services are necessary to protect the interest of producers of agricultural produce, they must also be considered reasonable and consequently legal and valid. In this connection, a decision of Full Bench of Punjab and Haryana High Court in Harnam Das Lakhi Ram Vs. The State of Punjab and Others, and a Division Bench of this Court in Khushi Ram v. State of Himachal Pradesh and Ors. ILR 1982 H.P. 101 may be referred to, wherein the same conclusion has been reached. As regards the levy of market fee on the licences carrying on business outside principal/sub-market yards, the fee cannot be held to be invalid as it has sufficient nexus with the services rendered. The services are directly beneficial to the producers of agricultural produce and are available within the notified market area. The Petitioners' claim that the services should benefit the licensees particularly, cannot be accepted. The fee under the provisions of the Act would be passed on to the buyers of goods and not the benefit of buyer of goods and not the Petitioners, should be of paramount importance. Interest of such persons is sufficiently served in the matter. This is also the view of the Supreme Court in K.K. Puri's case (supra).

13. In view of the discussions aforesaid these C.W.Ps. No. 562 of 88, 39 of 89, 333 of 89, 16 of 92 and 558 of 93 are held to be devoid of substance and dismissed. No costs.

C.W.P. No. 238 of 89:

14. This leaves C.W.P. No. 238 of 89 for decision. The Petitioners in the aforesaid writ petition manufacture Katha (Catechu) and Cutch (Tannin) which are admittedly notified forest produce under the Act. These articles are manufactured from KHAIR wood which, though agricultural produce, is not notified as agriculture produce and hence the provisions of the Act are not attracted. The Petitioners claim that they bring KHAIR wood from outside the market area within the market area and manufacture katha from the same. For this purpose they have set up a modern scientific plant. Long logs of Khair wood are first converted into small logs in saw-mill and thereafter their bark is removed by peeling it off through peeling machine. Peeled khair wood is known as heart-wood which again is converted, first into small pieces and thereafter into small chips in chipping machine. Chips are boiled in closed vats with steam and liquor so obtained is stored in a pan where it is allowed to ferment. Fermented material is thereafter cooled in a cold storage. The crystalized material so obtained is filtered through hydrolic press and/or vacuum filter press to obtain paste which ultimately is converted into small blocks and tablets. Small blocks and tablets are dried in drying chamber and are sold in market as Katha. The submission of the Petitioners is that Section 4(3) of the Act does not apply in their case and they are covered by the proviso to the aforesaid Act and there is, therefore, no necessity of taking any licence by them. It is further submitted that since Section 21 requires only licences in the notified market area to pay market fee, even that provision would not be attracted in their case. It is, therefore, submitted that the action of the Respondents in requiring them to obtain, licence and pay fee is illegal and deserves to be so declared. It is on the contrary, submitted by the Respondents that the proviso to Section 4(3) of the Act is not attracted in the instant case as the Petitioners are dealers in Katha which is an agricultural produce. Section 4(3) and its proviso have been quoted earlier and would indicate that no person is permitted within the notified market area to set up, establish or purchase sell store or process notified agricultural produce except under a licence granted in accordance with the provisions of the Act and Rules made thereunder. The provision however exempts a producer who sells himself or through a bonafide agent his own agricultural produce from taking licence. This proviso clearly is not attracted in the case of a dealer. The word "producer as defined in Section 2(h) means a person who in his normal course of avocation grows, manufactures, rears or produces agricultural produce but does not include a person who works as a dealer or is otherwise engaged in the business of disposal or storage of agricultural produce (sic) other than that grown, manufactured, reared or produced by himself. Clearly, therefore, manufacturer of agricultural produce is included within the definition of the producer but a person who works as a dealer or is otherwise engaged in the business of disposal, or storage of agricultural produce not manufactured by him is not included. The word "dealer" as defined in Section 2(i) of the Act means a person who sets up, establishes any place or places for the sale, storage or

processing of agricultural produce. The word "manufacturer" is missing from the definition of dealer. Under the circumstances, it is reasonable to hold that manufacturer of a forest producers not dealer within the meaning of Section 2(i) of the Act. Question requiring consideration of this Court under the circumstances is Whether the Petitioners are the manufacturer of katha winch is admittedly a notified agricultural produce. The Petitioners have in para-2 of the petition clearly alleged that they are engaged in manufacturing katha and for that purpose they use Acacia varieties of wood including khair wood. This allegation is admitted by the Respondents in their reply. Manufacturing process involved is stated in para-9 of the writ petition. Though the Respondents denied the contents of para-9, they have not stated the particular process of manufacturing which the Petitioners adopt for producing katha. In the absence of any statement in the alternative, and in view of the admitted position that the Petitioners are manufacturing katha which is a forest produce, it is reasonable to hold that the katha is produced by the Petitioners by adopting the process stated in the aforesaid para of the petition. Even otherwise, it is common knowledge that katha is not grown or produce in the forest or by any agricultural process, it is manufactured from the wood grown in the forest. It is also clear that but for the aforesaid manufacturing process, the Petitioners would not be able to produce katha. This, in the opinion of this Court, would reasonably lead to the conclusion that the Petitioners are producers of katha, a forest produce, and covered by the definition of 2(h), of the Act. As a necessary corollary, the Petitioners cannot be said to be a dealer in katha within the meaning of Section 2(i) of the Act. The necessary distinction between the producer and a dealer is that a producer also "grows, manufactures, rears or produces" the notified agricultural produce besides disposing it of but a dealer only sets or establishes a place for purchase, sale or storage, or processing of agricultural produce. A dealer does not produce agricultural produce. Clearly, therefore, the submission that the Petitioners are ""dealers" within the meaning of Section 2(i) of the Act, cannot be accepted. This is also the view of S.C. in State of Madhya Pradesh Vs. M/s. Hardeo Shrinath and others, Once it is held that the Petitioners are not dealer but are, in fact, producers, the proviso to Section 4(3) of the Act would be attracted and they will not be required to take licence only because they sell their own katha produced by them. In this view of the matter, order of the Respondents requiring the Petitioners in this petition to obtain licence is illegal and cannot be sustained. Once the Petitioners are not required to take licence, Section 21 of the Act would not be attracted and hence there would be no occasion for them to pay market fee under the said provision. The order requiting them to pay market fee must, therefore, be held to be illegal.

15. In view of the discussions aforesaid, C.W.P. No. 238 of 89 is allowed and Respondents restrained from requiring the Petitioners from taking licence or paying fee under the Act. The amount of fee, if collected, is directed to be refunded. No costs.

16. Petition allowed.