(1994) 12 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No''s. 14386 of 1988 etc.

Sri Balaji Rice Mill — APPELLANT

Vs

Agricultural Produce Market Committee — RESPONDENT

Date of Decision : 19-12-1994

Acts Referred:

Constitution of India, 1950 — Article 19 (g), 226, 227
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 132, 66, 67, 8

Citation : (1995) ILR (Kar) 2091 : (1994) 5 KarLJ 306

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M.R. Naik, N.S. Srinivasan and C.N. Kamath, N. Devadas, for the Appellant; B.G. Sridharan and H.K. Vasudeva Reddy for Kesvy and Co., for the Respondent

Judgement

Hari Nath Tilhari, J.—These are the Petitions under Articles 226 and 227 of the Constitution of India whereby the petitioners have claimed issuance of a declaration to the effect that the producers/agriculturists are entitled to process or decorticate their produce before effecting sale of their produce and that the respondent No. 1 has no manner any authority to prevent or obstruct the entry or business or bringing in of the produce within the premises of the petitioners for the purpose of processing of the paddy into rice. The petitioners have prayed for issuance of further direction to respondents that they should not interfere with the processing activity carried on by the petitioners, by preventing any producer or agriculturist from bringing their produce for the said purpose within the premises of the petitioners.

2. The petitioners'' case in the nutshell is that the petitioner in W.P.14386/88 is carrying on the processing unit which process the notified agricultural produce namely the paddy and dehusks the paddy into rice.

3. The petitioners in W.P.Nos. 16571, 16536-37, 5164, 4727, 4497 and 2312 to

2315 of 1988 claims to have undertaken the decorticating unit and the work of decorticating groundnuts into groundnut seeds on payment of nominal charges from the grower.

4. Petitioners'' case is that they have got the licence for the purpose of running the processing units which process the paddy or decorticate the groundnuts into groundnut seeds. Their case is that the growers of paddy in W.P. 14386/88 and the producers of groundnuts in other Writ Petitions bring the goods produced by them namely paddy and groundnuts for the purpose of processing or decorticating, and the petitioners do this service on nominal charges. It is their further case that in case of a sale of processed goods the producer gets more return by an average exceeding 25% more than that of the return from unprocessed goods. It has been the petitioners'' case that under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (for short, the Act), the market fee is chargeable on the transaction of sale or purchase of the goods held in the market area. The charging Section is 65(2) of the Act. Section 8 of the Act as it has been existing from 10th of August 1987 has been placed before me and has been quoted in paragraph 3 of the Writ Petition. The petitioner has also produced Section 8 of the Act as amended by Ordinance of 1987. Unamended Section did read as under:

"8. Control of marketing of agricultural produce-(1) After(the market is established).

a) No local authority shall, notwithstanding anything contained in any law for the time being in force establish, authorise or continue or allow to be established, authorised to continue any place in the market area for the marketing of any notified agricultural produce other than cattle, sheep and goats.

Provided that a local authority may establish or continue any place for retail sale of any notified agricultural produce subject to the condition that no market functionary shall operate in such place except in accordance with the provisions of this Act and the Rules and the bye-laws and standing orders of the market committee.

(b) No person shall, without or otherwise than in confirmity with the terms and conditions of a licence granted by the market committee on this behalf -

(i) use in any place in the market area for the marketing of the notified agricultural produce or-

operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, warehouseman, or in any other capacity in relation to the marketing of the notified agricultural produce.

Provided that nothing contained in Clause (b) shall apply-

(i) to the sale of such agricultural produce if the producer of such produce is himself its seller, or

(ii) to the purchase of such produce if the purchaser is a person who purchases such produce for his domestic consumption;

(a) who purchases such produce for his domestic consumption, or

(b) who purchases such produce in the market or sub-markets outside the market yard or sub-yard or the sub-market yards as the case may be from a trader for retail sale.

(2) No place in the market or the sub-market, except the market yard or the sub-market yard, as the case may be, shall be used for the purchase or sale of notified agricultural produce.

Provided that nothing in this sub-section shall be applicable to the purchase or sale of such agricultural produce by way of retail sale."

That by Clause 2 of Ordinance dated 10.8.87, Section 8 of the Act was particularly amended. That Clause 2 of the Ordinance reads as under:

"Amendment of Section 8: In Section 8 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act 27 of 1966) :-

(1) for sub-section (2), the following sub-section shall be substituted namely:-

''(2) Only the market yard, market sub-yard or sub-market yard shall used for purchase or sale of notified agricultural produce.''

(2) After sub-section (2), the following sub-section shall be inserted, namely:-

''(3) Sub-section (2) shall not apply to - (a) the purchase or sale of notified agricultural produce by:''-

(i) a Taluk Agricultural Produce Co-operative Marketing Society;

(ii) a Primary Agricultural Co-operative Credit Society; and

(iii) A Primary Agricultural Co-operative Credit Society; and

(iv) any other Co-operative Society permitted by the State Government.

(b) The sale of notified agricultural produce by retail trader."

The petitioners'' case is that what has been provided therein is that sale or purchase of the notified agricultural produce can be made only in the market yard, market sub-yard or sub market yard and nowhere else. Learned Counsel for the petitioner submitted that if the amended Sub-section (2) is read primarily and originally the same provision did stand under unamended Section 8(2) of the Act in accordance with which no place in the market yard or sub market yard shall be used for the purpose of purchase or sale of notified agricultural produce except the market yard or sub market yard. Sub-section (3) introduces certain exceptions in which case the main provision contained in Section 2 is not to apply. Earlier also Sub-section (2) was not applicable to retail sales of the agricultural produce. Petitioners'' case is that the unamended Section 8 of the Act did not prohibit the act of processing of any goods or decorticating of the groundnuts before the same is put to sale and therefore the producer had got a right to get the goods processed such as paddy processed into rice or groundnuts decorticated or processed into groundnut seeds. The prohibition only related to the transaction of sale or purchase of the commodity or the goods that has to be carried into the market yard or sub market yard or market sub yard and it is only in respect of the transaction of sate or purchase a market fee was leviable in accordance with the provisions of Section 65 of the Act and not otherwise. It has been stated in the Petitions that the opposite parties illegally interfered and imposed illegal restrictions on the petitioners functioning as a processing or decorticating unit by compelling the producers of the notified goods such as groundnuts or paddy, when those producers used to bring their paddy or groundnuts to the petitioners'' unit for the purpose of processing - to take those goods and the vehicles bringing those goods to market yard and to compel them to have the sale and to pay the market fee though really no transaction of sale or purchase was being done by the petitioner or producer when the goods were being brought by the producer for the purpose of processing. Petitioners'' case is that the vehicles were detained and were compelled to go to the market yard instead of coming to petitioners'' processing units and thus by their act the respondents have been interfering with the petitioners'' right to carry on their legitimate business of converting the paddy into rice on hire basis or their business of decorticating the groundnuts into the groundnut seeds. That by such act the opposite parties have been illegally interfering and even illegally violating the petitioners Fundamental Right of carrying on their business guaranteed under Article 19(g) of the Constitution. Petitioners'' case is that there is no provision under the Act or Rules or Bye-laws framed thereunder which can be said to contemplate compulsory sale of the produce in the market area without processing or decorticating of the produce of the producers-agriculturists. Petitioners'' case is that they made various representations and complaints but to no avail and therefore the petitioners have been compelled to file these Petitions under Article''s 226 and 227 of the Constitution of India for the reliefs claimed therein. The Petitions involve the common questions of law.

5. A counter affidavit has been filed on behalf of respondent No. 1. The claim of the Petitioners has been contested hotly. In the counter affidavit it has been stated that the petitioners are not entitled to get the relief. It has no doubt been admitted that the petitioners are running the processing or decorticating units in the market area and are doing business of converting paddy into rice and decorticating groundnuts into groundnut seeds. According to the opposite parties the petitioners are doing the processing business and they are the processors and they are bound to obtain the licence for the purpose of transaction. Learned Counsel for the petitioner tried to make out that almost all the petitioners of these Petitions have at present got the licences. In the counter it has also been stated that the petitioners are not only doing the business of processing but they

are also buying and selling the paddy, rice, groundnuts, and groundnut seeds and those transactions of sale or purchase may be wholesale transaction in the notified agricultural produce which can be permitted to be done only in the market yard. The case of the opposite parties is that as admitted by the petitioners they have got both the traders licence as well as the processors licence but at times under the garb of processing licence they indulge in the activity of sale. It had been mentioned in the counter by the opposite parties that some of the petitioners had not obtained the necessary licence as the processor but the Counsel for the petitioners points out that at the present stage the petitioners in every case has got the processing licence. The case of the respondents further is that they never prevented the growers of the agricultural produce from taking their produce whether paddy or groundnuts for the purpose of processing the same to the mills and that the respondents denied that they ever prevented the agriculturists or producers from taking their produce for the purpose of processing. The case of the respondents is that they are empowered under Sections 66 and 67 of the Act to order production of accounts and power of entry and power to stop vehicles and as such they are rightly discharging their duties in the best interest of all concerned under the Act. The case of the respondents in W. P. 14386/88 further is that the petitioner of this case failed to submit the returns as per Section 81 read with Rule 87 of the Act and Rules and Bye-taws and as such according to the respondents the petitioner is not entitled to take the law into his own hand and as such petitioner is not entitled to the relief claimed and to invoke the jurisdiction of this Court under Article 226. The opposite parties further mentioned that petitioner has been purchasing the paddy from the producers directly and processing the same in his mill and then selling. The opposite parties further alleged that on being called upon to produce the documents as to the title of ownership of the alleged grower who has brought the commodities to the mill and the petitioners have been avoiding to produce the same. It has been asserted by the opposite parties that the vehicles carrying the notified produce for legitimate purpose of processing have not been prevented nor stopped from carrying the load to the mill. The opposite parties further asserted in the statement of objections that as the petitioner has been purchasing paddy from the producers directly and processing the same in his mill and has been selling the rice in his mill directly to the merchants in violation of Section 8(2) of the Act and as the petitioner failed to produce the documents of ownership of alleged grower who was alleged to have brought commodities and as they avoid producing the details demanded by the authorities, it is their case that officers of respondent were justified in inspecting the godown and mill premises and asking or calling the petitioner to produce the accounts. That respondents claimed to be entitled under Sections 66 and 67 of the Act to check the vehicles, they have alleged to have taken action in discharging of the duty in the best interest of all concerned to see that the purpose of the Act is not defeated. The respondents further assert that not a single agriculturist/producer has been harassed by the respondents nor has any been punished or subjected to penalty.

6.I have heard the petitioners'' Counsel Sri Madhusudan Naik and Sri B.G. Sridharan, Counsel for the Market Committee and Sri Devadas on behalf of State Government.

7. Learned Counsel for the petitioners contended before me that a reading of Section 8 of the Act whether amended or unamended does not provide that before putting to sale in market the notified agricultural produce, producer of that agricultural produce cannot decorticate the groundnuts into groundnut seeds or process the paddy into rice. Learned Counsel for the petitioners submitted that the petitioners have also got the right of carrying trade and business of dehusking of paddy into rice as well as that of decorticating the groundnuts into groundnut seeds and for that the licence is being granted in their favour. They contended that the taking those produces for the purpose of processing etc., without a transaction of sale before it being put to sale is not subject to nor to contrary to Section 8. In other words, it is not necessary that it should be taken to market yard instead it can be taken to the mill or unit for the purpose of processing and decorticating and the obstruction that is created by the opposite parties in the matter thereof by pressurising the drivers of the vehicles in which the produce are loaded and compelling them to go to the market yard and to make payment of the market fee therefore is an illegal act of interference with the business, of right of profession and a right of the petitioners to carry on business and trade and therefore the opposite parties be directed by an order or direction in the nature of Mandamus, not to interfere or intermeddle with the trade or business of the petitioners'' units. The contention made on behalf of the petitioners has been opposed by the Government Advocate as well as by Sri B.G. Sridharan, learned Counsel for the Market Committee. It may be mentioned that as a bare proposition of law it has been very fairly submitted by the Counsel for the respondent that every producer of an agricultural produce like paddy, groundnuts, etc., has got a right to get it processed before the same is to put for sale to the trader. In the same way, accordingly the producers of the notified goods namely the groundnut, is also entitled to get the groundnuts decorticated before the same is put to sale and if it is simple case like this there is no question of petitioners being interfered with, because Section 8, sub-section (2) is not applicable to the same and to that extent opposite parties may have no objection to the grant of relief in favour of the petitioners to the effect that the producer may bring their raw-produce in the units for processing or decorticating on payment of nominal charges and there is no question of any interference with the business of the petitioners as regards the processing of raw material in their units. Learned Counsel for the opposite parties further submitted that when there appears situation where there is reasonable apprehension of the activity of purchase and sale taking place of the raw materials under the garb of processing or decorticating, the opposite parties have been conferred right to examine and check that and to satisfy about the same that no act of purchase or sale is being carried on or done under the garb of processing i.e., dehusking or decorticating. Learned Counsel further submitted that in this view of the matter where

reasonable apprehension arises or did arise the powers under Sections 66 and 67 of the Act were exercised particularly in cases where the accounts or documents relating to title or ownership of the grower is not produced. My attention has been invited to Sections 66 & 67 of the Act and on the basis thereof it has been contended that u/s 67 of the Act power has been conferred on the authorities under the Act to stop vehicles and to examine the contents and the record. My attention has also been invited to Section 66 of the Act as well. The contention of the learned Counsel for the opposite parties has been that really no such act has been done by the respondents which may be said to be illegal or in breach of the provisions of the Act when for the purpose of inspection of the contents and to clear the doubts the vehicles were stopped or the petitioners were required to show the relevant documents or evidence that it was only a matter of processing and not a transaction of sale or purchase by the present petitioners. It has been submitted by the learned Counsel for the opposite parties that the Fundamental Right to trade and business is not absolute. The State has got power to impose reasonable restrictions under Article 19 of the Constitution as well. That under the Act various transactions have been classified and defined and the meaning of various expressions used in the Act such as marketing, sale or purchase, meaning of expression producer and trader has been given. The contentions of the learned Counsel for the opposite parties have been that even at the time when the vehicles were stopped, clear cut explanation was not given though petitioners assert in the Writ Petition that they had told that it has been indicated to the officers of the opposite parties that goods were being taken for processing. On the factual assessment of the matter there are only assertions on affidavits and on counter affidavits against each other making assertions and denials. Anyway there appears to be no dispute among the parties to this extent as it appears from the contentions made before me by the learned Counsel for the parties that Section 8(2) operates and controls the transactions of purchase and sate of notified agricultural produce. A reading of Section 8(2) in my opinion very clearly provides that no transaction of either purchase or sale of notified agricultural produce shall take place in or on any place other than the market yard or the sub market yard or in the sub-yard. In other words, it may be stated that transaction of purchase or sale of the notified agricultural produce can take place only in the market yard, sub market yard or sub yard in a market area and nowhere else. NO doubt Sub-section (3) of Section 8 as amended indicates certain exceptions where this general power will not apply. But that is not for our consideration at the present moment Retail transaction can take place even in place other than the market yard but it must be in the market area. A reading of Section 2, Sub-section 18(A) defines marketing as under:

''Marketing'' means buying and selling of agricultural produce and includes grading, processing, storage, transport, packaging, market information and channels of distribution.

A reading of this definition ''Marketing'' shows that within its scope apart from buying and selling other process are also included that is grinding, processing etc. The expression ''process'' has been defined in Section 2(32) to mean that any one of a series of treatments to which raw agricultural produce is subjected to make it fit for (use or consumption). ''Processor'' has been defined in Section 2(33) to mean that a person who processes notified agricultural produce by mechanical means. ''Producer'' has been defined in Section 2(34) to mean that a person who produces notified agricultural produce on one''s own account (i) by one''s own labour, or (ii) by the labour of any member of one''s family, or (iii) under the personal supervision of oneself or any members of one''s family by hired labour or by servants on wages payable in cash or kind but not in share of the produce. The expression ''Seller'' has been defined in Section 2(40). The expression ''Seller'' has been defined to mean a person who sells or agrees to sell goods. The expression Trader'' has been defined in Section 2(48) to mean a person who buys notified agricultural produce either for himself as an agent of one or more persons for the purpose of selling, processing, manufacturing or for any other purpose, except for the purpose of domestic consumption. It also comes out from the reading of this expression that when a person buys a produce for the purpose of processing he can be termed to be a trader. But where he does not buy a produce for the purpose of processing but the produce is brought to him and it is received by him from the producer and ownership thereof continues with the producer even at the time the goods are placed with the processor for the purpose of being processed then he may not come within the definition of the trader. In case a processor falls under the category of a trader, it is no doubt true that his transactions may be liable to the restrictions and control of provisions of Section 8(2) i.e., transaction and purchase of the raw material by processor has to take place in the market yard and in that case he is liable to pay the market fee as the producer is not liable to pay the market fee.

8. In these circumstances, whether the processor is a simple processor or not and whether he is acting as a trader that is always a material question to be considered and decided by the respondents that is Marketing Committee and its officers. In case of doubt, it is, no doubt open to the Marketing Committee or its officers to call upon the person claiming to be a simple processor to show and to establish that the person who alleges to be owner of goods and that ownership of goods has not changed from that of the producer and in a case like this it is always open to the opposite parties on one hand to take the needful action for that purpose and the burden will definitely lie on the person who is alleged to be trader who claims to be a simple processor to prove and to show that he is not a trader but a processor, simplicitor because a person who carried on the business particularly as a processor as well as trader the best evidence that is accounts which is needed to be maintained by him are always with him and he cannot rely on the doctrine of burden of proof and say that it is for the department to prove that he is a trader. It is by principle of law that if a dispute arises with respect to certain factor the documentary evidence with regard thereto which could throw light on issue, is in possession of a party then that party cannot say that he is not bound to produce those documents on the sham ground of burden of proof.

It is well settled principle of law that when one of the parties to the dispute is possessed of the documents having an important bearing, but he does not produce the same then in that case adverse presumption can be drawn. In the case of T.S. MURUGESAM PILLAI vs. M.D. GNANA SAMBANADA PANDARA SANNADHI AND OTHERS AIR 1917 PC 6 which has been followed by their Lordships of the Supreme Court in the case of Hiralal and Others Vs. Badkulal and Others, it has been laid down by the Lordships of the Privy Council as under;

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof and failing accordingly to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough; they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

This Rule which had been laid down in 1917 Privy Council 6 in the case of T.S. Murugesham Pillai v. M.D. Gnana Sambandha Pandara Sannadhi and Ors. was followed by the Lordships of the Privy Council in the case of AIR 1929 95 (Privy Council) , and as mentioned earlier later on in the case of Hiralal and Ors. v. Badkulal and Ors., The Agricultural Produce Marketing (Regulation) Act is a socio economic legislation meant for the benefit of the producer of the produce from the land as well as to keep away intermeddlers and to provide opportunity to them of direct contact with the consumers. By it the welfare institutions have been created to provide facilities to the producers of having market and the market yard and the services rendered by the Market Committee. For rendering services they will require the resources. Therefore, such a law has got to be interpreted keeping pace with the object of the Act. When I consider and apply my mind to this aspect of the matter and to the question that in case where a doubt arises that where a person who carries on both processing as well as trading whether a particular transaction relating to agricultural produce has been for the purpose of processing or whether the produce had been acquired by him or is coming to him or to that person as a trader within the meaning of the Act or as a simple processor then in that case there is no doubt that the accounts being kept by him of the goods purchased by him for the purpose of processing as well as of the goods received from the producers for simple purpose of processing without transfer of ownership, light may be thrown by account books. So it is his duty to produce the documents or accounts maintained by him when the inspection or enquiry is made in such cases of doubt relating to the charging of the market fee or the like. The persons in possession of the documents which can throw light upon the question involved they should not be allowed to withhold those documents simply on the ground of burden of proof. I am unable to accept the submission, when they argue that levy is a tax and in taxation matter the burden should be on the authority to show and to prove that there has been a transaction which can be subjected to the provisions of the Act and authority of market fee. Such arguments have not got to be accepted. It means the burden is on them as well to prove that the goods or raw-materials in their possession or which are or have been coming to them are for the processing purpose and it is not at all for the purpose or as measure of trade or not in his possession as a trader.

9. Section 67 of the Act confers power on Officers or Servants of State Government. It specifically empowered them in this behalf to stop vehicles.

"67. Power to stop vehicles, etc.,- (1) At any time when so required by any officer or servant of (the State Government empowered by it in this behalf) the driver or any other person in charge of any vehicle, vessel or other conveyance, which is taken (out of the market area or moving in) the market area shall stop the vehicle, vessel or other conveyance, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow such officer or servant to examine the contents in the vehicle, vessel or other conveyance and inspect all records relating to the notified agricultural produce carried, and give his name and address and the name and address of the owner of the vehicle, vessel or other conveyance and of the owner of the notified agricultural produce carried in such vehicle, vessel or other conveyance. (2) If such officer or servant has reason to suspect that any fee or other amount due under this Act has not been paid in respect of the notified agricultural produce taken out of or being transported in, the market area in any vehicle, vessel or other conveyance, he may seize so much of the notified agricultural produce as in his opinion would be sufficient to meet the amount of fee or other amount due and retain the same with him until the fee or other amount due is paid or for ten days, whichever is earlier. After the expiry of the period of ten days, if the fee or other amount due is not paid, the officer or servant shall dispose of the notified agricultural produce in public auction and adjust the sale proceeds towards the fee or other amount due. If the sale proceeds are more than the fee or other amount due, the excess amount shall, after deducting the charges incurred by the market committee, be refunded in the prescribed manner;

Provided that in the case of perishable notified agricultural produce the officer or servant may dispose of the same before the expiry of the period of ten days if in his opinion such disposal is necessary."

Reading of this Section clearly shows that if the power is conferred on the officer or servant of the Government specifically and the officer or servant so empowered in his behalf can enquire the driver or any other person in charge of the vehicle or any other conveyance which is taken out or taken in the market area to stop that vehicle and the driver of the vehicle has to stop the same. He is also required to keep that vehicle stationary as long as it may reasonably be necessary for the purpose of enabling the officer or servant to examine the contents of the vehicle or vessel and inspect the records relating to notified agricultural produce. It further ordains that the driver shall show that records and contents of the vehicle. It is also directed that he shall give his name and address as well as the name of the owner of the vehicle as well as the owner of the notified agricultural produce carried in such vehicle or other conveyance. Under Sub-section (2) of this Section if for some reasons the officer or servant suspects that any fee or other amount is due in respect of the notified agricultural produce which has been taken out of or which is being transported in the market area in a vehicle and that market fee has not been paid then that officer may seize the notified agricultural produce but it puts a rider as well, The rider is to the effect that not more than the extent to which the seizure is necessary to meet the amount of fee and of the other amount due. In other words, only that much quantum of agricultural produce is to be seized which in the opinion of the officer would be sufficient to meet out the amount of fee or other amount due. The further rider is that that he will not put that seized goods to sale, but he will retain the same until the fee amount due is paid. If that amount is paid within 10 days seized goods shall not be put to sale but if that amount is not paid and the period of 10 days also expires then the officer concerned may dispose of that seized agricultural produce in public auction and adjust the sale proceeds towards the fee or other amount due and in case the sale proceeds are in excess of the fee or the amount. It is further provided that after deducting the charges incurred by the Market Committee the amount in excess shall be refunded. This being the power of the officer it clearly comes out from the reading of this Section that there is no power in the officers of the Marketing Committee or Officers appointed by the Government to stop and to compel that the sale or transaction of sale of the goods should be done in the market yard. It is only in case where there is suspicion and reasonable suspicion that the sale really has taken place and the goods have entered for the sale or purchase and due market fee has not been paid, he has got the only limited right of seizing the goods limited to the extent of quantum of the agricultural produce for the purpose of realising the fee due or amount due and by the condition to the effect that if the amount due is not paid within 10 days, the realisation can be made by pressure that is mentioned in the Section. As mentioned earlier he cannot compel that a forcible transaction of sale or purchase should take place in the market area if there has been no intention of sale or purchase except at that time. There is Section 132 of the Act which provides that if illegal realisation have been made or excess realisation have been made which the authorities are not entitled to make, it is open to the persons concerned to make a claim u/s 132 and to prove and to show and establish that really the goods have been wrongly or wrongfully seized as there has been no transaction of sale or purchase and indeed there was merely an action in the process of the business as processor. That is goods were being brought to the unit or mill for the purpose of processing without there being any sale or purchase and in that case the person concerned or the unit concerned can claim if it proves its case the refund of the amount illegally charged. At this stage learned Counsel for the petitioner submitted that Section 132 is not applicable and he tried to submit that the scope of Sub-section (2) of Section 132 is only limited to the cases where the recovery is being made through the process of recovery of land revenue. Section

132 of the Act provides one of the modes for the recovery of sums due on account of any charge, cost, expenses, fees, rent or on any other account under the provisions of this Act or any Rules or any Regulations or Bye-law made thereunder shall be recoverable from the person from whom such sum is due, in the manner as arrears of the land revenue. Sub-section (2) further provides that if any question arises whether a sum is due to the Market Committee or the Board within the meaning of Sub-section (1) it shall be referred to the Director of Agricultural Marketing Committee and any Officer subordinate to him authorised by him i.e., the Director of Agricultural Marketing Area, or the authorised officer shall after making such enquiry as he deems fit and after giving to the person from whom the same is alleged to be due, an opportunity of being heard and decide the question and his decision shall be final and shall not be called in question in any Court or before any authority. A reading of this Section clearly shows that Section 132 primarily deals with the mode of recovering sums due to the Market Committee. Sub-section (1) further provides that sums due as mentioned in Sub-section (1) under Act or the provisions of the Act or Rules or Regulations are recoverable from the person from whom such sum is due. It further provides that they may be recovered even in the same manner as the recoveries done in the matter of arrears of land revenue. So, it provides an additional mode of recovery apart from other modes of recovery of arrears in addition to one available under general law of the land. It further provides that if a question arises in course of recovery as to whether any sum is due to the Marketing Committee or the Board within the meaning of sub-section (1) that is due as indicated in Sub-section (1) namely due on account of any charge, cost, expenses, dues of rent or any other amount under the provisions of the Act or any Rule or Regulation or Bye-law then such question shall be referred to the Director of Agricultural Marketing or any officer subordinate to him authorised by him and then further mode is prescribed that he shall conduct the enquiry. He shall give the person from whom the same is alleged to be due to an opportunity of being heard and then decide the question. When I read Sub-section (2) in the above context it means if any sum which is due under the provisions of the Act and if it is recovered or being recovered under the Act and a dispute arises whether such sum is really due on him or has been due on him at the time when the realisation is being or being made, be it under the process of law u/s 65 or Section 132(1), the question whether the same has been due a specific forum has been prescribed by Sub-section (2) of Section 132, that such a question has to be decided by the Director of Agricultural Marketing or an officer subordinate to him and authorised by him who shall decide the same in accordance with the process and procedure specifically provided in Sub-section (2) and who is further required to decide if the person from whom the amount is being realised or has been realised has been liable to pay the same and thereafter if necessary he has to direct the refund of the amount realised in excess because the intention of the legislation is that no illegal realisation should be made from any persons. This Section really in my opinion deals with the cases in the matter of recovery of sums due or alleged to be due and in those cases if dispute has arisen or arises

whether the recoveries are legal and whether the amount claimed to be due has been due or not it may question the liability of the person that if a particular person is liable to pay that amount either as charge or as cost or as fees etc., under the Act has to be decided by the authority and the decision is to be final. When I take this view I find further support from the latter part that such questions cannot be agitated in the Court or Board or any other authority which has power when specifically put it means a specific forum for decision of particular question has been prescribed and specific authority has only got jurisdiction to decide such questions which may involve questions of fact of law and the jurisdiction of other Court is barred in the eye of law. The jurisdiction of other Court appears to be excluded as it prima facie appears to be. In this view of the matter when the realisations are made u/s 66 by the authority then dispute can be raised by the person whose goods are confiscated. Thus, considered in my opinion the petitioners as processors have got a right to carry on the business of processing, the petitioners in course of business of processing are entitled to receive the goods or purchase the raw-material or raw-produce for the purpose of processing from the purchasers. It is not necessary that they would receive those produces in the market yard. Further the opposite parties cannot compel either the petitioner in the matter of only taking goods or sending goods for process that such transaction should be carried in the market yard nor can the processor be compelled to put their goods or raw-material in the market yard unless and until there has been a case of purchase. In this view of the matter, the Writ Petitions are allowed only to this extent that the opposite parties are directed to allow the petitioners to function and to carry on the business of processing after having obtained the necessary licence as they used to do in accordance with law and that as regards the pure functioning of the business of a processor as a processor they cannot be compelled to get the goods in the market area from the producers. It will be open to them to receive the raw-material in their mills. But in case the authorities have reasonable doubt about the nature of transaction it will be open to them to act according to law and not otherwise. The Interim Order if any shall automatically come to an end.

10. As regards the relief of refund claimed in W.Ps.2312-2315 of 1988 of the amounts alleged to have been illegally collected as fee or as compounding charges, as this involves a question of fact to be decided, refund of the fee and other amounts as contended or admitted to have been realised, whether those amounts had been realised illegally will depend on the decision of the question whether the petitioners 1 and 2 had been receiving the goods in question or produce in question as a trader or as a processor and if they had been receiving simply as a processor then in that case there would have been no case of compounding or the tike as there was no question of violation of provision of the Act nor there would be any question of either impounding of even notified goods or compounding thereof under the Act, but then question is closely connected with the principal question. As such it will be open to the petitioner to raise the dispute u/s 132 to the effect that petitioners were not liable to pay any fee as

claimed from them and the same would not be amount due on them and therefore the amount realised under the compounding provision is also illegal and it may be refunded, In case the petitioners in W.Ps.2312-2315 of 1988 prove that the goods were taken to them for the purpose of processing only and it is so they were not liable to pay any market fee etc., and sums illegally charged from them are liable to be refunded to them. Thus, the Writ Petitions are disposed off.

