
(1995) 07 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1708 of 1979

The Market Committee

APPELLANT

Vs

Bakhtawar Mal Amin Chand

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 23A

Citation : (1996) 113 PLR 8

Hon'ble Judges : S.C. Malte, J

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.C. Malte, J.—By this appeal exception is taken to the order and decree by which it was directed that an amount of fee that was recovered by the present appellant should be refunded to the respondent-plaintiff.

2. Briefly stated the circumstances giving rise to this litigation are as follows:

The respondent-plaintiff deals in agricultural produce and its business is carried in the area of appellant, the Market Committee. Rampura Phul. The Market Committee recovered certain amount of fee calculated on the basis of a percentage on the amount of transactions. The said fee came to be enhanced from time to time. It is not necessary to go into the details as to the enhancement thus made from time to time. The point now raised pertains to a very limited issue in view of the subsequent developments to which I will make a reference at a later stage. The enhancement of the fee came to be challenged before the High Court of Punjab & Haryana by filing Civil Writ Petition No. 3274 of 1974. Another Writ Petition was also filed to challenge the enhancement of market fee. The said writ petition was No. 5005 of 1975. While disposing of those writ petitions, the Hon'ble High Court directed that the amount recovered in excess of Rs. 1.50 per 100 rupees shall be refunded to the petitioners in those

writ petitions. In view of that judgment, the respondent-plaintiff filed a suit for recovery of Rs. 10,089.56 paise on the ground that that was an excess fee which he was required to pay to the Market Committee and which he is entitled to refund on account of these judgments. In the trial Court as well as in the first appellate Court, the suit was decreed. The judgment of the trial Court was dated 15.6.1977, and that of the District Judge, Bhatinda, dated 15.2.1979. These dates are material because subsequent to these dates. Section 23A was introduced in the Punjab Agricultural Produce (Markets) Act, 1961. As per that amendment by Section 23-A, the recovery of amount of excess market fee obtained by the Market Committee prior to the amendment was subject to the condition that in a dispute regarding the refund of such fee retained by the Committee arises, it shall be presumed unless otherwise proved that the licensee has already recovered such fee from the persons concerned and thus the burden of the said fee was already passed on by the licensee and was not, therefore, entitled to the refund of fee.

3. The amendment introduced by Section 23-A* of the Punjab Agricultural Produce (Markets) Act, 1961, was again challenged by filing a writ petition in the Punjab & Haryana High Court. The decision in that matter is reported in (1984) 86 PLR 625 (Walaiti Ram Mahavir Parshad v. State of Punjab). In that ruling it was observed that the introduction of the amendment was in a larger prospective and was intended to prevent unjustified benefit to the licensee who had already passed on the burden of the fee to the persons in the transaction in question. In other words, the amendment in Section 23-A came to be upheld. While considering this aspect it would be beneficial to have a brief reference to Section 23-A itself. It is as follows :-

"23-A. Saving of excess fee charged" - (1) Notwithstanding anything contained in any judgment, decree or order of any court, it shall be lawful for a Committee to retain the fee levied and collected by it from a licensee in excess of that leviable u/s 23, if the burden of such fee was passed on by the licensee to the next purchaser of the agricultural produce in respect whereof such fee was levied and collected."

(2) No suit or other proceedings shall be instituted, maintained or continued in any court for the refund of whole or any part of the fee retained by a Committee under sub-section (1) and no court shall enforce any. decree or order directing the refund of whole or any part of such fee.

(3) If any dispute arises as to the refund of any fee., retained by a Committee by virtue of sub-section (1) and the question is whether the burden of such fee was passed "on by the licensee to the next purchaser of the concerned agricultural produce, it shall be presumed unless proved otherwise that such burden was so passed on by the-licensee.

(4) If any amount of fee retainable by a Committee under sub-section (1) has been refunded to any licensee, the same shall be recoverable by the Committee

in the manner indicated in sub-section (2) of Section 41:

(5) The provisions of this section shall not, affect the operation of Section 6 of the Punjab Agricultural Produce- Markets (Amendment and Validation) Act, 1976."

4. A perusal of Section 23-A would clearly indicate that it shall be lawful for Market Committee to retain the fee levied and collected by it from the licensee in excess of that leviable u/s 23 if the burden of such fee was passed on by the licensee to the next purchaser of the agricultural produce in respect whereof such fee was levied and collected. By Clause.(2) of the said Section, a further prohibition is imposed to the recovery of such amount by enforcing a decree or order, of the Court directing to refund such fee; and if the. question arises as to whether the burden of the fee was passed by the licensee to the next purchaser of the agricultural produce," it shall be presumed unless otherwise proved that such burden was passed on by the licensee. The rest of the clauses are not material for the present purpose. Clause (5) of the said Section carves "out an exception in respect of Section 6 of the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976, which pertained to an amendment to cover certain items of agricultural produce which are not specifically mentioned in the license of licensee. Presently we are not concerned with that.

5. The decision given by this Court in the case of Walaiti Ram Mahavir Parshad, (supra), came to be considered by the Hon"ble Supreme Court in a case reported in Amar Nath Om Prakash and Others Vs. State of Punjab and Others, , In para 14 of the said judgment, the correctness of the decision given in Wailaiti Ram Mahavir Parshad was also considered. Briefly stated by that judgment the Supreme Court upheld the decision given in the case of Wailaiti Ram Mahavir Parshad, and it was observed that the provision of Section 23-A was within the competence of Punjab Legislature. It was also observed that all that Section 23-A provided was that there should not be any undue enrichment of the licensee by getting a refund of the fee of which the burden has already been passed on by him on the purchaser of the agricultural produce, and there is nothing to indicate that he did not pass such a burden.

6. In this case when the suit was filed and when decisions were given in the trial Court and the first appellate Court, the provision of Section 23-A were not in existence because that provision was for the first time introduced by amendment by Punjab Act No. 7 of 1981. As such it was open to the plaintiff to make suitable amendment in the plaint in order to meet requirement of Section 23-A as regards the burden of proof as to the passing of the burden of the fee. Unless such a stand was taken and necessary proof in support of that stand was placed before the Court, it would be presumed that the licensee has passed such burden of fees to the purchaser of the agricultural produce, and thus he was disentitled from recovery of such amount in view of Section 23-A referred above. Since no such steps were taken and since there is a presumption against the plaintiff that he has passed the burden of fee on the purchaser of the agricultural produce: and in view of the provision of Section 23-A referred above, it follows that the

respondent- plaintiff is no more entitled to recover the amount in question. I, therefore, allow this appeal with costs. The judgment and decree passed by both the Courts below are set aside and the suit filed by the respondent-plaintiff stands dismissed with costs.