
(2003) 07 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1600 of 1979

The Market Committee

APPELLANT

Vs

Des Raj and Co.

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 23A, 23A(3)

Citation : (2004) 136 PLR 896 : (2004) 1 RCR(Civil) 530

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : S.C. Pathela, for the Appellant; R.S. Mittal and Atul Gaur, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This appeal is directed against judgment and decree dated 23.12.1978 passed by Sub Judge 1st Class, Jagraon in Civil Suit No. 269 of 1977-M/s Des Raj and Co. v. Market Committee, Jagraon for payment of Rs. 24,000/- to the plaintiff-respondent in lieu of excess market fee collected by the appellant.

2. The plaintiff-respondent is a registered partnership firm engaged in the business of sale and purchase of agricultural produce and other merchandise. It is licensed under the Punjab Agricultural Produce Markets Act, 1961 (for short, "the 1961 Act"), the scale of fee payable by the licensees was enhanced from Rs. 1.50 to Rs. 2.55 per hundred rupees by an amendment made in the 1961 Act vide Punjab Ordinance No. 4 of 1974. Later on, the Ordinance was replaced by Punjab Act No. 13 of 1974. Some of the licensees challenged the vires of the amendment. By an order dated 8.11.1974 in CWP No. 3274 of 1973 and connected writ petitions, the High Court struck down the amendment.

3. After the decision of the High Court, the respondent applied for refund of the amount of excess fee, but the appellant did not accept its claim. This led to the filing of the suit by the respondent for recovery of Rs. 24,000/- (Rs. 18125.50

towards principal amount and Rs. 5874.50 towards interest at the rate of 12% per annum).

4. On notice, the appellant filed written statement denying its liability to refund the amount of fee collected in pursuance of the amendment made in the 1961 Act vide Ordinance No. 4 of 1974 and Act No. 13 of 1974 by asserting that the plaintiff-respondent had voluntarily deposited the market fee after collecting the same from the purchasers of the produce.

5. On the pleadings of the parties, the trial Court framed the following issues;-

"1. Whether the plaintiff has the locus standi to file the present suit? OPP

2. Whether the plaintiff firm is registered partnership firm, if so whether plaintiff is its registered partner? OPP

3. If issue No. 2 is not proved, whether the registration was necessary for filing the present suit? OPD

4. Whether the suit is beyond limitation? OPD

5. Whether the plaintiff is estopped to bring the present suit as alleged by the defendant? OPD

6. To what amount if any the plaintiff is entitled including interest, if any? OPD

7. Whether any notice was necessary to be served upon, the defendant? If so its effect? OPD

8. Whether the suit is bad for non-joinder of necessary parties? OPD

9. What is the effect of Act No. 34 of 1977 on the fresh suit? OPD."

6. On a consideration of the pleadings and evidence of the parties, the learned Sub Judge decreed the suit. He held that the plaintiff-respondent was entitled to refund of the excess fee paid to the appellant. He over ruled the objection of limitation raised on behalf of the appellant by placing reliance on the judgment of the Supreme Court in *The Provincial Government of Madras Vs. J.S. Basappa*, and held that the suit was not time barred. The learned Sub Judge further held that the excess fee was paid by the plaintiff in accordance with the amended provisions which had been struck down by the High Court and, therefore, it was entitled to refund of the same.

7. Shri S.C. Pathela, learned counsel for the appellant argued that the decree passed by the learned trial Court is liable to be set aside because by virtue of Section 23-A of the 1961 Act, the same has been rendered unenforceable. He invoked the doctrine of unjust enrichment, and argued that the respondent is not entitled to the refund of the enhanced fee because it had passed on the burden thereof to the purchasers. Shri Pathela also referred to the judgment of the Supreme Court in *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, to show that constitutional validity of Section 23-A of the 1961 Act has

been upheld.

8. Shri R.S. Mittal, learned Senior Advocate appearing for the respondent fairly conceded that validity of Section 23-A has been upheld by the Supreme Court, but argued that the said section cannot be relied upon for setting aside the impugned judgment and decree. He then relied on Section 6 of the Punjab General Clauses Act, 1898 (for short, "the 1898 Act") and submitted that Section 23-A of the 1961 Act cannot be made basis for depriving the respondent of its legitimate right to enforce the decree passed by the trial Court.

9. I have thoughtfully considered the respective arguments and carefully perused the record. The main ground on which the learned Sub Judge decreed the Suit filed by the respondent is that the provisions under which enhanced fee was collected by the appellant had been struck down by the High Court. He held that once the provision under the enhanced fee was paid has been struck down, the appellant cannot retain the amount collected from the plaintiff-respondent. He also indirectly rejected the plea of unjust enrichment put forward on behalf of the appellant by observing that the defendant can not retain the excess fee collected from the plaintiff.

10. In the back-drop of the above, it is to be seen whether Section 23-A of the 1961 Act can be relied upon for nullifying the impugned judgment and decree. The said section reads as under;-

"23. A. (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 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 Agriculture Produce Markets (Amendment and Validation) Act, 1976."

11. The Constitutional validity of the above reproduced provision was upheld by

this Court in *Wataiti Ram Mahabir Parshad Vs. State of Punjab and Others*, In *M/s Amar Nath Om Parkash's* case (supra), their Lordships of the Supreme Court also negated the challenge to the validity of Section 23-A and observed as under;-

15. "The submission of the learned counsel was that Section 23-A was a blatant attempt to validate a levy which had been declared invalid by this Court and this, according to the learned counsel, was not permissible. We entirely disagree with the submission that Section 23-A is an attempt at validating an illegal levy. Section 23-A does not permit any recovery of fee Rs. 3/- per 100 in respect of any sales of agricultural produce before or after the coming into force of that provision. There is no attempt at retrospective validation of excess collection nor any attempt at providing for future collection at the rate of Rs. 3/- per 100. All that Section 23-A does is to prevent unjust enrichment by those dealers who have already passed on the burden of the fee to the next purchaser and so reimbursed themselves by also claiming a refund from the Market Committees. We have already explained the true purpose of Section 23-A. It gives to the public through the market committee what it has taken from the public and is due to it. It renders unto Caesar what is Caesar's. We do not see any justification for characterising a provision like Section 23-A as one aimed at validating an illegal levy. The decision of this court in *A.V. Nachane and Others Vs. Union of India (UOI)* and Another, on which the counsel placed reliance has no application whatsoever. Section 23-A, in our view, is consistent with the spirit of *Kewal Krishan Kewal Krishan Puri and Others Vs. State of Punjab and Another*, and the letter of *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, .

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18. The present case is a case akin to *The Orient Paper Mills Ltd. Vs. The State of Orissa and Others*, . Section 23-A, as we have seen, disables a dealer from getting a refund of fee paid by him, the burden of which he has already passed on to the next purchaser. As we said all that Section 23-A does is to prevent unjust enrichment by means of a refund to which the person claiming it has no moral or equitable entitlement.

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20. The decision in *Orient Paper Mills* case expressly affirmed by a Bench of Seven Judges of this Court in *R.S. Joshi v. Ajit Mills* AIR 1971 S.C. 2279 and observations to the contrary in *Ashoka Marketing Ltd. Vs. State of Bihar and Another*, were expressly dissented from. We are, therefore, satisfied that Section 23-A of the Punjab Agricultural Produce Markets Act was within the competence of the Punjab Legislature and that it was not also otherwise invalid in any manner. The appeals are, therefore, dismissed with costs."

12. In my opinion, the ratio of *M/s Amar Nath Om Parkash's* case (supra) is directly applicable to the case in hand because it is an undisputed position that

the respondent had deposited the enhanced market fee after collecting the same from the purchasers. Section 23-A not only begins with non obstante clause and entitles the Committee to retain the excess fee levied and collected u/s 23 of the Act, but also introduces a rebuttable presumption that the burden of fee was passed on by the licensee to the purchaser and at the same time imposes a prohibition against the enforcement of any decree or order passed by the Court for refund of whole or any part of the fee retained by the Committee. Thus, the impugned judgment and decree will be deemed to have become unenforceable and on that ground alone, the same are liable to be set aside.

13. Before concluding, I consider it appropriate to mention that the plaintiff-respondent had neither pleaded nor any evidence was produced before the trial Court to show that the burden of enhanced fee had not been passed on the purchasers. Rather, it is an admitted case of the parties that the enhanced fee had been deposited by the respondent after collecting the same from the purchasers. Therefore, the presumption contemplated under Sub-section (3) of Section 23-A of the 1961 Act will get attracted and impugned judgment and decree are liable to be set aside by invoking the doctrine of unjust enrichment as interpreted by the Supreme Court in *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, .

14. Section 6 of the 1898 Act on which reliance has been placed by Shri Mittal has no bearing because Section 23-A of the 1961 Act does not result in repeal of any existing provision. Rather that section was introduced to give legal sanction to the doctrine of unjust enrichment.

15. In the result, the appeal is allowed. Judgment and decree dated 23.12.1978 passed by Sub Judge, Ist Class, Jagraon are set aside. Consequently, the suit filed by the respondent shall be treated as dismissed. Parties are left to bear their own costs through out.