(1992) 12 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1097 of 1980

Tulsi Ram Salig Ram . APPELLANT

Vs

Punjab State Agricultural Marketing Board RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Citation : (1993) 3 LJR 87 : (1993) PLJ 519 : (1993) 2 RRR 330

Hon'ble Judges : G.R.Majithia, J

Judgement

G.R. Majithia, J.—This judgment disposes of Civil Writ Petitions No. 1097, 422, 423 of 1980, 1840 of 1979,75,293,294,295,296,297 and 298 of 1985 since common question of law arised for determination in these petitions.

2. Punjab Agricultural Produce Markets (Amendments and Validation) Act, 1976 (Punjab Act No. 34 of 1976) (for short, the Amending Act,) was enacted with retrospective operation from the date of the enforcement of the Punjab Agricultural Produce Markets Act, 1961 hereinafter referred to as the Principal Act), i.e., May from May 26, 1964. The Amending Act, inter alia, provided that any person to whom a licence is granted under Section 10 of the Principal Act shall be deemed to be a licensee under that section for the purpose of the Amending Act and the rules made thereunder including that of levy of fees under Section 23 on the agricultural produce bought or sold by him in the notified market area irrespective of the fact whether the business of buying or selling of agricultural produce is specified in his licence or not. The validity of the Amending Act was challenged in a bunch of writ petitions and the same were disposed of by a FullBench of this Court and the Judgment is reported as M/s Harnam Dass Lakhi Ram v. The State of Punjab and others, A.I.R. 1978 Punjab & Haryana 53. Judgment rendered by this Court was challenged in the apex Court in Civil Appeal No. 1418 of 1977 and the same was decided on December 1, 1983. It is not disputed that the judgment of this Court was not set aside or modified. Market fee was leviable with retrospective effect in view of the provisions of the Amending Act. Penalty could be imposed for nondeposit of

market fee under subrule (9) of Rule 31 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the Rules). Default in submission of the returns by the licensee could attract levy of penalty under subrule 9 of Rule 31 of the Rules. In conformity with the provisions of this rule, demand notice was issued by Market Committee, Patiala dated August 1, 1978, which is appended to C.W.P. No. 1097 of 1980 as Annexure P2 and the same reads thus :

"You are hereby informed that your business during the period from 197374 to 197475 has been assessed for the levy of market fee and penalty etc. as under :

a)

Assessed value of business

Rs. 5,54,39086

b)

Market fee chargeable

Rs. 8,31585

c)

Deduct market fee already paid, if any

d)

Net payable (b c)

Rs. 8,31585

e)

Penalty

Rs. 8,31585

f)

Total (d + e)

Rs. 16,63170

You have given bank guarantee for the amount of Rs. 831585 P. Bank guarantee for the remaining amount Rs. 831585 P. may also be given on or before 4.9.1978 failing which the said sum will be recoverable from you as an arrears of land revenue.

A perusal of the same reveals that market fee payable on the assessed value of business was Rs. 8315.85 and penalty of equal amount was imposed on the petitioners for failure to submit the returns in form ''M'' by the licensees like the petitioners. The Full Bench while disposing of bunch of writ petitions made the following observations in M/s Harnam Dass Lakhi Ram''s case (supra) regarding the imposition of penalty under subrule 9 of Rule 31 of the Rules:

"45. Before parting with the judgment, we may observe that no doubt we have held that the Committee has jurisdiction to levy penalty under subrule (9) of Rule 3 1, in law, but at the same time, we are of the opinion that if the default in making the returns in Form M was made by the licensees, in view of the fact that they were not liable to pay the market fee for the sale and purchase of agricultural produce as was held by their Lordships in Raunaq Ram''s case (AIR 1975 St 1587) (supra), in that case it will be quite relevant for the Committee to take into consideration the fact that the licensees were made liable to pay the market fee in view of the provisions of the Amendment and Validation Act, and, therefore, the Committee in its exercise of discretion under subrule (9) of Rule 31, may not impose a severe penalty up to the amount of market fee claimed. We have no doubt in our mind that the Committee concerned, while considering the question of imposing the penalty under subrule (9) of Rule 31 will use this discretion in a quasijudicial manner and while taking into consideration the fact that the licensees were not earlier liable to pay the market fee on the transactions of sale and purchase, as they were not licensees of purchase and sale of agricultural produce, were made liable to pay, after many years in view of the Amendment and Validation Act, will decide the question of levy of penalty."

In some cases, the penalty, was reduced by 50 per cent by the Chairman of the Punjab State Agricultural Marketing Board (hereinafter referred to as the ''Board'') on appeal or revision by the licensees. Uniformity was not observed by the Market Committee or by the Chairman of the Board while disposing of appeal or revision against the imposition of penalty. The levy of market fee with retrospective effect is no more in doubt in view of the decision of the Full Bench of this Court in M/s. Harnam Dass Lakhi Ram case (supra). Penalty can also be imposed in view of the provisions contained in subrule (9) of Rule 31 of the Rules.

3. The precise question is in what manner the power of imposition of penalty should be exercised. The power should not be exercised arbitrarily. The authority empowered to pass orders prejudicially affecting a citizen must act fairly and it should so appear to the world at large. It should avoid discrimination which is one of the basic features of our Constitution.

4. For the reasons stated above, these petitions are allowed and notices/orders imposing penalty on the petitioners for defaulting in making the returns in Form ''M'' as enjoined by the Amending Act are quashed and the board is directed to reexamine the cases of the petitioners. The Board will exercise power of imposition of penalty under subrule (9) of Rule 31 keeping in view of the observations supra. The penalty can be imposed in view of the proved facts and observations of the Full Bench in M/s Harnam Dass Lakhi Ram case (supra). The amount of penalty will not be recovered till the final decision by the Board. In the circumstances of the case, there will be no order as to costs.