

M/s Nathu Ram Roshan Lal Loona v. The Punjab State etc. (Tuli, J.)

(13) Following the view taken by the learned Judges of Madras, Orissa and Mysore High Courts, I would accept this application and direct that the name of Mussadi, deceased, be struck off the record and the names of his legal representatives be substituted in his place under section 153 of the Code of Civil Procedure. As mentioned above, two of the legal representatives are already on the record. The remaining two, namely, Lachhi Ram and Man Bhari be impleaded as respondents. There will, however, be no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli and Prem Chand Jain, JJ.

M/S. NATHU RAM-ROSHAN LAL LOONA,—Petitioner.

versus

THE PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ No. 2606 of 1964

August 29, 1969.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 2(s), 13(3), 13(4), and 30—Punjab Agricultural Produce Markets (General) Rules (1962)—Rule 2(11)—Model Bye-laws framed by Punjab Agricultural Marketing Board—Bye-laws 11(2) and 28—Rule 2(11)—Whether beyond the competence of the State Government and ultra-vires section 30—Rule 2(11) and Model bye-law 28—Whether invalid because of non-specification of the rate of market charges—Bye-law 11(2)—Fixation of 20 paise as minimum difference between two bids in an auction of cotton—Whether imposes unreasonable and arbitrary restriction on the trade.

Held, that section 2(s) of the Punjab Agricultural Produce Markets Act, 1961, defines 'trade allowance' to include an allowance having the sanction of custom in the notified market area concerned and market charges payable to various functionaries. It is thus evident that the market charges to be prescribed by the Rules must be the charges payable to various functionaries in the market area. These functionaries are mentioned in section 13(3) and (4) of the Act as brokers, weighmen, measurers, surveyors, godown-keepers and other functionaries. There is thus enough guidance for the particularisation and prescription of market charges. The market charges mentioned in rule 2(11) of the Punjab Agricultural Produce Markets (General) Rules, 1962, do not relate to persons other than functionaries in the market area. Rule 2(11), therefore, is not beyond the competence of the State Government and is authorised by section 30 of the Act.

(Para 2)

Held, that in a market all transactions of sale and purchase are the result of contracts and the parties are free to enter into such contracts within the limits imposed by the Rules which have not been shown to be in any way unreasonable. The object of the Act is to save the agriculturists, who bring their produce to the markets for sale, from unspecified market charges and mal-practices which were prevalent in the market before the present Act or its predecessor Act was brought on the statute book. The market charges are payable by the buyer and, therefore, he knows the extent of those charges. He will avail of the services of the market functionaries on the basis that he has to pay the market charges, the maximum limit of which has been prescribed. It is his free will to avail of those services or not. If he finds the charges to be heavy, he can make the purchases elsewhere and not go to the market area. Rule 2(11) and bye-law 28 of the model Bye-laws framed by Punjab Agricultural Marketing Board, therefore, cannot be struck down on the ground that they do not specify the rate of the market charges to be levied in the market area but prescribe the maximum limit. (Para 3)

Held, that it is quite reasonable to fix the difference between two bids in an auction of agricultural produce so that unnecessary time is not wasted in very small bids made with regard to the quantities sold at the auction. The minimum quantity of agricultural produce that can be purchased or sold in one transaction is fixed whereas there is no maximum limit prescribed. The difference of twenty paise between two bids prescribed in the bye-laws with regard to cotton is not in any way unreasonable nor has it the effect of hampering the trade. This difference of twenty paise does not relate to the minimum quantity that can be sold but to the bids which are made at any auction whatever the quantity provided it is not less than the minimum fixed. Sub-clause (2) of Bye-law 11, by providing for the difference between the two bids with regard to cotton at any auction, does not place an unreasonable or arbitrary restriction on the right to carry on business. (Para 4)

Case referred by the Hon'ble Mr. Justice Bal Raj Tuli, on the 3rd February, 1969, to a larger Bench for decision of an important question of law. The Division Bench consisting of the Hon'ble Mr. Justice Bal Raj Tuli and the Hon'ble Mr. Justice Prem Chand Jain, finally decided the case on the 28th August, 1969.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued or made against the respondents:—

- (i) declaring the proviso of section 30 of the Punjab Agricultural Produce Markets Act as ultra vires and void of the Constitution of India;
- (ii) declaring Rule 2 Sub-clause 11 of the Punjab Agricultural Produce Markets (General) Rules and Bye-law No. 28 of the Model bye-laws as ultra vires of the Act void and unconstitutional;

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- (iii) declaring section 23 of the Act void and ultra vires the Constitution;
- (iv) declaring Rule 29, Sub-Rule 2 of the Rules void and ultra vires of the Act and Constitution;
- (v) declaring that the Bye-laws in respect of auction of Agricultural produce are void, ultra vires the Act, Rules and Constitution;
- (vi) Prohibiting the Respondents from charging or permitting to be charged the market charges and the market fees under the above provision of the law and refunding the fees and charges already paid;
- (vii) prohibiting the respondent from enforcing sub-clause (2) of the bye-laws No. 11 relating to the auction of agricultural produce according to which the difference between two bids must not be less than 20 paise in the case of Cotton and not less than 10 paise in case of other produce.

R. C. DOGRA, ADVOCATE, for the Petitioner.

D. S. TEWATIA, ADVOCATE-GENERAL, (HARYANA), for Respondent No. 1.

N. K. SODHI, ADVOCATE, for Respondents Nos. 2 and 3.

JUDGMENT

B. R. TULI, J.—This writ petition came up for hearing before me on February, 3, 1969, when I referred it for decision to a Division Bench, as I was informed that some of the points raised in the writ petition were the subject-matter of Letters Patent Appeal No. 423 of 1964. That appeal was decided by the Hon'ble Chief Justice and P. C. Jain, J. on May 13, 1969, and this writ petition has been placed before us for hearing in pursuance of my order of reference.

(2) The facts of this case are that the petitioner-firm holds a dealers' licence under section 10 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called the Act), and is carrying on business in cotton within the limits of the notified area of the Dabwali Market Committee in the district of Hissar. The petitioner firm has challenged the levy of market charges as being *ultra vires* section 30, of the Act. The submission is that market charges have not been defined in the Act but this expression has been defined in rule 2(11), of the Punjab Agricultural Produce Markets (General) Rules, 1962, (hereinafter called the Rules). The Rules have been framed by the State Government in exercise of powers conferred

on it by section 43 of the Act. It is submitted that the market charges have neither been defined nor enumerated in the Act nor have any principles or criteria been laid down for the guidance of the Government or any other authority to determine the scope and the extent of the market charges. We regret our inability to agree to this submission. Section 2(s), of the Act defines "trade allowance" to include an allowance having the sanction of custom in the notified market area concerned and market charges payable to various functionaries. It is thus evident that the market charges to be prescribed by the Rules must be the charges payable to various functionaries in the market area. These functionaries are mentioned in section 13(3), and (4), of the Act as brokers, weighmen, measurers, surveyors, godown-keepers and other functionaries. There is thus enough guidance for the particularisation and the prescription of market charges. It has not been shown that the market charges mentioned in rule 2(11), of the Rules relate to persons other than functionaries in the market area. We are, therefore, of the opinion that rule 2(11), is not beyond the competence of the State Government and is authorised by section 30 of the Act.

(3) It has then been submitted that the Market Committee, Dabwali, has adopted the model bye-laws framed by the Punjab Agricultural Marketing Board and while adopting them has not specified the rate of the market charges to be levied in the market area. The maximum limit of the charges has been prescribed but not any definite rate. It is stated that the parties to a transaction are not permitted to bargain with regard to the market charges and they are forced to pay the maximum charges fixed in the bye-laws. The allegation in the petition does not make any such precise allegation. The reply on behalf of respondents 2 and 3, however, is that the outside limit of the extent of the market charges has been prescribed in the bye-laws and the parties to a transaction are at liberty to make a bargain in any transaction with regard to the market charges provided the market charges agreed to do not exceed the maximum limit provided in the bye-laws. It has been thus denied inferentially that any restriction has been placed on the free bargaining between parties with regard to the market charges provided as a result of bargain the charges to be levied do not exceed the maximum provided in the bye-laws. There is, therefore, no merit in the submission of the learned counsel that the prescription of the market charges in any way hinders the carrying on of the business of the petitioner-firm. It has to be remembered

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that in a market all transactions of sale and purchase are the result of contracts and the parties are free to enter into such contracts within the limits imposed by the Rules which have not been shown to be in any way unreasonable. The object of the Act is to save the agriculturists, who bring their produce to the markets for sale, from unspecified market charges and mal-practices which were prevalent in the markets before the present Act, or its predecessor Act was brought on the statute book. The market charges are payable by the buyer and, therefore, he knows the extent of those charges. He will avail of the services of the market functionaries on the basis that he has to pay the market charges, the maximum limit of which has been prescribed. It is his free will to avail of those services or not. If he finds the charges to be heavy, he can make the purchases elsewhere and not go to the market area. Rule 2(11), and bye-law 28, therefore, cannot be struck down on any ground urged before us and we hold the same to be valid.

(4) Another point that has been argued by the learned counsel for the petitioner-firm is that the Market Committee, Dabwali, has placed an unreasonable restriction on the right of the petitioner-firm to carry on its business as it has provided that at any auction of agricultural produce the difference between the two bids with regard to cotton shall not be less than twenty *paise* while ten *paise* has been prescribed in the case of other agricultural produce. It is submitted that the restriction is beyond the scope of the Act and the Rules and is unreasonable and arbitrary as it imposes an unreasonable and arbitrary restriction on the trade. This provision is made in sub-clause (2) of Bye-law No. 11. Once again we find ourselves unable to accept this submission. Some rules with regard to the auction sales have to be framed and it is quite reasonable to fix the difference between two bids so that unnecessary time is not wasted in very small bids being made with regard to the quantities sold at the auction. We are informed that the minimum quantity that can be purchased or sold in one transaction is 5 kilograms whereas there is no maximum limit with regard to the quantity of the agricultural produce to be sold. We do not consider that the difference of twenty *paise* between two bids prescribed in the bye-laws with regard to cotton is in any way unreasonable or has the effect of hampering the trade. It is to be noted that this difference of twenty *paise* does not relate to a quantity of 5 kilograms but to the bids which are made at any auction whatever the quantity provided it is not less than 5 kilograms. There is, therefore, no force in this argument of the learned counsel.

(5) In the petition, the proviso to section 30 of the Act was challenged as being void and *ultra vires* of Article 19 of the Constitution of India. According to this proviso, all market charges are to be paid by the buyers and the validity of this proviso was upheld by a Division Bench of this Court in *Piara Ram v. The State of Punjab and others*, (Falshaw, C.J., and Harbans Singh, J.) (1), which was followed by another Division Bench (Mehtar Singh, C.J. and Mahajan, J.), in *Murari Lal Sharma v. The State of Punjab and others* (2). This matter was again raised before the Division Bench in *Messrs. Ch. Surja Ram and Sons Ginning and Pressing Factory v. The Punjab State and others* (3), and the learned Judges observed:—

“We see no reason to accept the contention of the learned counsel that the decision in *Piara Ram's case* does not lay down correct law.”

The learned counsel for the petitioner-firm has not argued before us the other points which have been decided by the Division Benches earlier but has stated that he does not want to give up those points and that it should be noted in the judgment that those points are stressed. We, however, see no force in the submission of the learned counsel that proviso to section 30 of the Act is void and *ultra vires* of Article 19 of the Constitution of India.

(6) Similar is the position with regard to the *vires* of section 23 of the Act and sub-rule (2) of rule 29 of the Rules. The validity of these provisions has also been upheld by the Division Bench of this Court in *M/s. Ch. Surja Ram and Sons case* (3), (*supra*).

(7) There is thus no force in this writ petition which is dismissed with costs. Counsel's fee Rs. 100.

PREM CHAND JAIN, J.—I agree.

N. K. S.

(1) C.W. 308 of 1963 decided on 5th November, 1963.

(2) C.W. 1444 of 1963 decided on 24th August, 1966.

(3) I.L.R. 1971 (1) Pb. & Hr. 172.