of the non-obstante clause in it. Hence the landlord cannot evict the tenant on the ground of forfeiture based on section 111(g)(2) of the T. P. Act."

Similar view has been taken by a Single Judge of Rajasthan High Court in *Bhura and another* v. *Bahadur Singh and another* (13). Head note 'B' and para 5 of the judgment deserves to be noticed. Similar view has been taken by a Single Judge of Jammu and Kashmir High Court in *Madan Lal* v. *Zahur Hussain and another* (14).

(13) Before me no argument has been raised on behalf of the respondent-landlord that any of the statutory grounds of ejectment on which he came in his application for ejectment, has been made out. Moreover, the findings on the grounds of ejectment recorded by the Courts below are based on facts and no interference is called for in revision.

(14) For the reasons recorded above I allow this petition, set-aside the order of the Appellate Authority and restore that of the Rent Controller with no order as to costs.

S.C.K.

Before Prem Chand Jain and D. S. Tewatia, JJ.

PARKASH WOOLLEN INDUSTRIES—*Petitioner*

versus

STATE OF HARYANA and another,—*Respondents.*

Civil Writ No. 1010 *of* 1974

August 20, 1979.

Punjab Agricultural Produce Markets Act (*XXIII of* 1961) *as amended by Haryana Amending Acts* (21 *of* 1973 *and* 19 *of* 1979)—*Sections* 2(*a*), 5, 6, 8 *and* 23—*Punjab Agricultural Produce Markets*

(13) A.I.R. 1976 Rajasthan 249.
(14) 1973 R.C.R. 695.

(General) Rules 1962—Rule 30(1)—Constitution of India 1950—Articles 14 and 301—Expression 'brought for processing' occurring in section 23—Meaning of—Whether excludes manufacture—Processing forming integral part of manufacture—Market fee—Whether leviable—Dealer holding licence for sale, purchase, storage and processing of agricultural produce—Quantum of levy of fee—Whether variable according as such dealer carrying on one or more of the licenced activities—Market Committee rendering service to a class of dealers—Plea of sufficiency of funds received from other dealers and want of need for additional resources—Whether available to a dealer who contests his liability—Levy of fee on goods imported from outside the State—Whether offends against Article 301—Such levy—Whether discriminatory and violative of Article 14—Agricultural produce brought for processing subjected to levy of fee—Notifications under sections 5 and 6—Whether necessary.

Held, that the expression 'processing' in the context in which it has been used, unless the Act deliberately gives a specific meaning, means such treating of an agricultural commodity so as to make it consumable while the commodity remaining substantially the same, while 'manufacturing' envisages turning of original commodity into a different commodity with different use and marketable character thereof being different and distinct from that of the original agricultural commodity. In cases where the manufacturing process established by a dealer is an integral one, in that the article which a dealer is manufacturing cannot be manufactured without processing the raw agricultural produce and the said activity of the dealer cannot be bifurcated into two distinct activities—One a processing of an agricultural produce into an agricultural produce and the other of manufacturing a final product from such a processed agricultural produce—And the basic activity being that of manufacturing of a commodity distinct from the original item of agricultural produce subjected to the given manufacturing process, then such a dealer cannot be said to be bringing the agricultural produce inside the market area for processing. Thus, a dealer who brings agricultural produce for so manufacturing cannot be held liable to pay market fee in terms of section 23 of the Punjab Agricultural Produce Markets Act, 1961. (Paras 7 and 9).

Held, that when a Market Committee makes a provision for rendering service to the dealers, it does so with a view that dealers, who have obtained licences for carrying on business of sale, purchase, storage and processing of agricultural produce would so engage themselves and, therefore, an individual dealer cannot be heard to say that although he had a licence for engaging himself in all the aforesaid four kinds of activities but, in fact, carried on only one or two of such activities and so he would pay less market fee than the one who would be engaged in all the four activities of sale, purchase, storage

and processing of agricultural produce. Therefore a dealer who brings in the agricultural produce for processing cannot be heard to say that although he would be dealing with buying and selling of the agricultural produce and paying market fee on the said transactions, he would not be liable to pay market fee on the transaction of processing, as no service is rendered to him pertaining to the transaction of processing. Moreover, a dealer may have sufficient space for storing agricultural produce, although he may be more desirous to purchase agricultural produce in sufficient quantity in order to avoid purchasing at a time when the prices of the agricultural products are likely to go up. In such a case, if the Market Committee godowns are available, the dealer would be able to purchase sufficient quantity of agricultural products and store the same therein and thus earn profits in his business which is the main activity for a businessman. Such a service directly benefits the dealer and it has a definite correlation with the transaction of bringing in the agricultural produce for processing.

(Paras 20 and 21)

Held, that once the Market Committee renders service to a given class of dealers in regard to the given transaction, then the Market Committee is entitled to be compensated and such a dealer cannot be heard to say that from other dealers, the Committee had raised sufficient market fee and, therefore, he in regard to the services rendered to him, would not be liable to pay any market fee to the Market Committee.

(Para 24).

Held, that the fee levied on the dealers is by way of re-compense for services rendered to the dealers and such a levy does not put any unreasonable restriction on their rights to carry on their trade. Regulatory measures or measures imposing compensatory tax do not come within the purview of of restrictions contemplated in Article 301 of the Constitution of India 1950 and such measures need not comply with the requirement of the provisions of Article 304(b).

(Para 26).

Held, that a perusal of sections 5 and 6 of the Act would show that the same require ascertaining of the views and objections only in regard to the exercising of control over the purchase, sale, storage and processing of such agricultural produce in regard to the given area as notified in the notification and that after hearing the objections, if any, the State Government shall declare under section 6 of the Act the given area as notified under section 5 or part thereof to be a notified market area for the purposes of the Act in respect of the agricultural produce notified under section 5 or any part thereof. The expression 'exercising control over the purchase, sale, storage and processing of such agricultural produce' used in section 5 has to be read with the provisions of section 8 of the Act and when so read, the inescapable conclusion is that the view of the affected parties are

ascertained as to whether in regard to such agricultural produce the State Government should or should not exercise control of the type envisaged in section 8 of the Act in a given area and, therefore, for imposition of market fee on a given transaction, no such notification is required to be published for ascertaining the views or objections of the parties affected. Thus, by levying market fee for bringing in agricultural produce for processing in a given market area, the dimensions thereof neither get reduced nor extended so as to necessitate the ascertaining of views of the business community and affected persons by issuing notifications under sections 5 and 6 of the Act.

(Paras 27 and 29).

Held, that the Legislature, Union or State cannot differently treat people similarly situated, but at the same time right is conceded to the legislature to classify persons and things keeping in view the purpose of the legislation and seeing that such differentiation has nexus with the object sought to be achieved by classification so attempted by it. The objective of the statute in question is to compensate the services rendered by Market Committee to dealers by levying market fee either on the given transaction of the dealer or on the dealer engaged in such transaction. If a dealer is engaged in the transaction of processing agricultural produce and if the Market Committee does render service to such a dealer, then the Market Committee would be liable to be compensated for the services so rendered, whether the agricultural produce that he imports for carrying on his business of processing from outside the State or from within the State is immaterial. The imposition of market fee on the produce brought in in a given market area from outside the State does not result into any kind of discrimination for the reasons that the goods imported in a market area from outside the State and the goods imported from a given market area within the State do not fall in the same category in that when the goods, after being purchased, are brought in a given market area for processing from within the State, they were already subjected to market fee at the time of the transaction of purchase and sale in the State, while the goods imported from outside the State were not so subjected to market fee within the State prior to their import and were to be so subjected for the first time on being brought in for processing. Thus, the levy of market fee on agricultural produce imported from outside the State is not discriminatory and, therefore, does not violate Article 14 of the Constitution.

(Paras 32 and 33).

Case referred by Hon'ble Mr. Justice Prem Chand Jain, on 31st May, 1974 to a larger Bench for decision of an important following question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, and Hon'ble Mr. Justice Prem Chand Jain, ordered that the petition may be placed before a

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(D. S. Tewatia, J.)

Bench of five Judges, on May 2, 1977. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, and Hon'ble Mr. Justice D. S. Tewatia finally decided the case on August 20, 1979.

"Whether, under the amended section 23, fee was leviable on the agricultural produce brought by the licensees for manufacturing yarn and blanktes ?"

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased :—

(a) *to strike down Section 11 of the Punjab Agricultural Produce Markets (Haryana Amendment) Act, 1973 (Act No. 21 of 1973) to the extent it amends/substitutes section 23 of the Act by adding the words "brought for processing" being invalid and unconstitutional ;*

(b) *to issue a Writ of Certiorari to quash :—*

(i) *Circular No. 641 dated the twenty-fourth May, 1973 Annexure 'P-1' to this writ petition, to the extent it include "manufacturing yarn from wool" in the "processing of wool", and*

(ii) *Show-cause Notice No. 1436. dated the sixth September, 1973, Annexure 'P-2' to this writ petition ;*

(c) *to issue a writ of Mandamus directing the Committee respondent No. 2, to refund the fees paid by the petitioner to the tune of Rs. 2756.55, and issue a direction or order to the Committee to forbear from calling upon the petitioner to make payment of and realising of such fees in future ;*

(d) *to issue any other writ. order or direction which this Hon'ble Court may deem fit and proper in the circumstances and on the facts of the case ; and*

(e) *to award costs of this petition to the petitioner.*

It is further prayed that during the pendency of this writ petition. the respondents be restrained from realising such fee from the petitioner concerning the wool brought from outside the notified market area for manufacturing yarn and blankets in the notified market area.

K. S. Kundu, Advocate, *for the Petitioner.*

Naubat Singh, Senior D.A.G. Haryana.

Gian Singh, Advocate, for No. 2 with P. S. Jain and V. M. Jain, Advocates.

G. C. Garg, Advocate, *for the Respondents.*

JUDGMENT

D. S. Tewatia, J.

The question that primarily falls for consideration in these writ petitions Nos. 1010, 1323, 1373, 1379, 4984, 5170, 5178 to 5181, 5265, 5332, 5378, 5475, 5914 and 6886 of 1974; 284, 1320, 6605, 6834, 6835, 6841, 6842, 7041 and 7449 of 1975; 121 of 1976; and 1836, 1842, 1907, 1908, 1951, 1952, 1955 to 1959, 1962, 2020, 2021, 2085, and 2263 of 1979 (in all 42 writ petitions) is as to whether the market-fee could be validly imposed on the dealers in the position of the petitioners who allegedly bring various items of agricultural produce into market area for manufacturing.

2. Thirty-seven writ petitions are preferred by the petitioners who bring in wool for manufacturing woollen yarn and blankets, three are preferred by those who bring in paddy for shelling and manufacturing rice from it, one by a dealer who manufactures poultry feed; and another by a dealer who brings in gram for manufacturing Dal. Since the question of law that falls for consideration is identical to all the writ petitions, a common order is proposed.

3. Before dealing with the question posed, a short history of the legislation dealing with the matter deserves notice. Till 7th May, 1973, market-committees could levy fees only on the agricultural produce bought or sold by the licencees in the notified area and no such fee was leviable on agricultural produce brought for processing by the licensees in the notified market area. Section 23 of the Punjab Agricultural Produce Markets Act (Punjab Act No. 23 of 1961), hereinafter called the Act, as enforced in the State of Haryana, which is charging section, at that time, was in the following terms:—

> "23. A Committee may, subject to such rules as may be made by the State Government in this behalf, levy on *ad valorem* basis fee on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding fifty naya paise for every one hundred rupees:—
>
> Provided that—
>
> (a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

Section 23 of the Act was amended by the Punjab Agricultural Produce Markets (Haryana Amendment) Act No. 21 of 1973 and it then ran as under:—

"23. A Committee may, subject to such rules as may be made by the State Government in this behalf, levy on *ad valorem* basis fees on the agricultural produce bought or sold or brought for processing by licensees in the notified area at a rate not exceeding two rupees for every one hundred rupees:

Provided that except in case of agricultural produce brought for processing—

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

The aforesaid amendment in section 23 and levy of market-fee as a result of the said amendment was challenged by some of the licensees on the writ side, one of such writ petitions being Civil Writ No. 1010 of 1974.

4. During the pendency of such writ petitions, the amendment of section 23 of the Act affected by Haryana Amending Act 21 of 1973 was withdrawn by Haryana Amending Act No. 5 of 1976 with effect from 11th February, 1976; but soon thereafter section 23 of the Act was again amended by Haryana Amendment Act No. 19 of 1979 and after the latest amendment, it emerges in the following terms:—

"23. A Committee may, subject to such rules as may be made by the State Government in this behalf, levy on *ad valorem* basis fees on the agricultural produce bought or sold or brought for processing by dealers in the notified area at

a rate not exceeding two rupees for every one hundred rupees:'

Provided that except in case of agricultural produce brought for processing—

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

The market-fee sought to be imposed in pursuance of the latest amendment has been challenged in some of the writ petitions. As a result of this latest amendment, section 23 of the Act is almost brought back to the position in which it stood after the amendment effected by the Haryana Amendment Act No. 21 of 1973, the only difference being that earlier it was the 'licensees' who were made liable to pay the market-fee, while in the latest amendment, the said expression of 'licensees' has been replaced by the expression 'dealers'. The petitioners in all the writ petitions are, however, both 'licensees' as also 'dealers' and, therefore, the variation noticed above is not of any relevance to the merits of the case.

5. Learned counsel for the petitioners has sought to interpret the expression 'brought for processing' occurring in section 23 of the Act in a manner so as to exclude such dealers as bring agricultural produce for manufacturing.

6. The expressions 'processing' and 'manufacturing' have been used in the Act, but neither of the terms has been defined therein. It has been urged on behalf of the petitioners that the expressions 'processing' and 'manufacturing' are mutually exclusive terms and in support of the aforesaid contention reference is made to *J. K. Cotton Spinning and Weaving Mills Co. Ltd.* v. *The Sales Tax Officer, Kanpur, and another,* (1).

7. Reference is also made to the meaning as given to these two terms in *Corpus Juris Secundum* which gives the following meaning to these two terms:—

MEANING OF 'PROCESSING' (72 C.J.S. 976)—

"'Processing' is a flexible term and may refer to either chemical or physical changes in the thing acted upon. It

(1) (1965) 16 S.T.C. 563.

is defined as meaning a course or method of operations; a series of actions, motions or occurrences; progressive act or continuous operation or treatment; an action, operation, or method of treatment applying to something; a series of operations leading to some result. It is also defined as meaning to subject to some special process or treatment; to subject to a process of manufacture, development or preparation for the market."

MEANING OF 'MANUFACTURING' (66 C.J.S. 669)—

"'Manufacture' has been defined as the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties, or combinations, whether by hand labour or by machinery; also anything made for use from raw or prepared materials."

Our attention was also drawn to *Sri Om Parkas Gupta* v. *Commissioner of Commercial Taxes and others,* (2). In that case, the Calcutta High Court (Single Bench judgment) was considering the question as to whether converting of camphor powder into camphor cubes amounts to manufacture or processing. It was contended in that case that unless as a result of the process the raw material was converted into any other form, which conversion did not take place when camphor was made into cubes from camphor powder, it did not come within the meaning of section 2(b) of the West Bengal Sales Tax Act, 1954. Repelling the contention, B. N. Banerjee, J. approvingly quoted the following definition of the expression 'process' from Oxford Dictionary—

"a continuous and regular action or succession of actions, taking place or carried on in a definite manner, and leading to the accomplishment of some result."

And held that—

"The activity contemplated by the word 'process' is general, requiring only continuous and regular action or succession of actions leading to the accomplishment of some result but it is not one of the requisites that the activity should involve some operation on some material in order to its conversion to some other stuff. In my opinion, the

(2) (1965) 16 S.T.C. 935.

word 'process' used in section 2(b) of the West Bengal Sales Tax Act, 1954, has been used in the general sense. In this general sense also the word 'process' was interpreted by this Court in the case of *Khodabux* v. *Manager, Calendonian Press* (3).

A consideration of the aforesaid meanings and the ratio of the decisions aforementioned leads to the conclusion that the expression 'processing' in the context in which it has been used, unless the Act deliberately gives a specific meaning, as it does when it defines 'agricultural produce' as meaning 'all agricultural produce whether processed or not.....as specified in the Schedule to this Act' (as would be presently shown), means 'such treating of an agricultural commodity so as to make it consumable while the commodity remaining substantially the same' while 'manufacturing' envisages turning of original commodity into a different commodity with different use and marketable character thereof being different and distinct from that of the original agricultural commodity.

8. Such being the position, there is no difficulty in determining the liability in terms of section 23 of the Act of a dealer who merely processes an item of agricultural produce into an agricultural produce, nor determination of the liability presents any difficulty in regard to a dealer who directly manufactures from the processed agricultural produce. It is the determination of a liability of the dealer who not only manufactures a distinct consumable item out of finally processed agricultural produce, but also processes a raw agricultural produce into an aforementioned item of agricultural produce.

9. It has been contended on behalf of the petitioners that in cases where the manufacturing process established by a dealer is an integral one, in that the article which a dealer is manufacturing cannot be manufactured without processing the raw agricultural produce and the said activity of the dealer cannot be bifurcated into two distinct activities—one a processing of an agricultural produce into an agricultural produce and the other of manufacturing a final product from such a processed agricultural produce and the basic activity being that of manufacturing of a commodity distinct from the original item of agricultural produce subjected to the given manufacturing process, then such a dealer cannot be held to be

(3) A.I.R. 1954 Cal. 484.

bringing the agricultural produce inside the market area for processing. The contention aforementioned is sought to be underpinned by the following observations of their Lordships of the Supreme Court made in *the case of J. K. Cotton Spinning and Weaving Mills Co. Ltd.* (supra):

> ".....in the case of a cotton textile manufacturing concern, raw cotton undergoes various processes before cloth is finally turned out. Cotton is cleaned, carded, spun into yarn, then cloth is woven, put on rolls, dyed calendered and pressed. All these processes would be regarded as integrated processes and included 'in the manufarture' of cloth. It would be difficult to regard goods used only in the process of weaving cloth and not goods used in the anterior processes as goods used in the manufacture of cloth .....
> In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified, in rule 13 will qualify for special treatment."

In view of the aforesaid authoritative enunciation, we hold that a dealer, who brings agricultural produce for so manufacturing, cannot be held liable to pay market-fee in terms of section 23 of the Act.

10. Now the next question that arises for consideration is as to who out of the petitioners can be considered to be bringing the items of agricultural produce for such manufacturing. We have before us 4 or 5 types of dealers. Firstly those who bring in raw wool for manufacturing woollen yarn and blankets. Apparently, woollen yarn and blankets are a commodity different from the raw wool, and therefore, such of the dealers, as manufacture woollen yarn and blankets from raw wool, after processing the same, are not liable to pay market-fee in terms of section 23 of the Act.

11. The next set of dealers are those who bring in paddy and process the same into rice. It has been urged on behalf of the petitioners that rice is a manufactured product and is different from

paddy. In this connection they drew our attention to *Ganesh Trading Co., Karnal* v. *State of Haryana and another*, (4), wherein it has been held that rice and paddy are two different commodities, rice being a different commodity from paddy. In our opinion, these decisions rendered in the context of relevant provisions of the Sales Tax Act cannot be of any help to the petitioners. There, the expression 'manufacturing' was considered in general common parlance terms as in the Act no specific meaning was attributed to the said expression. That is not so here. In the present case, one will have to look into the definition of 'agricultural produce' which has been defined in section 2(a) of the Act in the following terms:

> "2. In this Act, unless the context otherwise requires—
>
> (a) 'agricultural produce' means all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act."

To see as to what is an 'agricultural produce', we would also, by virtue of the definition, have to take into consideration the Schedule. In the Schedule, both paddy and rice have been mentioned. Reading the Schedule with the definition, one would reach an inescapable conclusion that rice has been treated as processed paddy, although in common parlance rice is a commodity different from paddy. Hence, for the purpose of section 23 of the Act, the rice would be treated as a processed agricultural item and, therefore, bringing of paddy for processing the same into rice would be clearly covered by section 23 of the Act thus rendering such a dealer liable to pay market-fee.

12. The above view receives support from a Division Bench decision of this Court in *M/s Prem Chand Ram Lal* v. *The Punjab State and others*, (5). It was contended in that case that Gur, Shakkar and Khandsari were not 'agricultural produce' being manufactured items and that since these manufactured items of 'agricultural produce are included in the Schedule, there is inconsistency in the Schedule and the definition of 'agricultural produce' which treats only raw and processed agricultural produce to be agricultural produce. Repelling the contention, Mehar Singh, C.J., who delivered the opinion for the Bench, observed as follows:

> "This is an untenable approach, because here, as already stated, the Schedule is in the definition itself and is an

(4) (1973)32 S.T.C. 623.
(5) 1970 P.L.J. 432.

integral part of it. Instead of stating all the commodities, listed in the Schedule, in the definition and making it run into a page or two, it has been stated in the definition that agricultural produce means produce as specified in the Schedule to the Act. Whatever may be the position in a statute in which the Schedule is not a part of definition of an expression, and those are the types of cases upon which the learned counsel for the appellant has relied, in the present case the Schedule is an integral part of the definition itself. It is open to the Legislature to describe the making of a particular commodity or articles as a process even though in the ordinary dictionary meaning it may be considered as a manufacture. The Legislature in the case of the Act has described the commodities listed in the Schedule as processed produce of agriculture, horticulture, animal husbandry or forest, and the Court must accept its description and no artificial meaning can be read into the same. In the definition itself the Legislature has described those items in the Schedule as processed, such of them as have gone through a change by transformation and, while, if the matter was left at large and considered according to the dictionary meaning, some of those commodities may be manufactured commodities, the Legislature having described them as processed ones, no more can be said against the manner in which the Legislature has done this. The word of the Legislature on this is final and a Court is not permitted to read more into the definition than what is in it. So that this argument on the side of the appellant cannot be accepted that the Schedule to the Act is inconsistent with the definition of the expression 'agricultural produce' as in section 2(a), as there is no inconsistency because the Schedule is a part and parcel of the definition itself. It is the items in the Schedule itself that have been defined as agricultural produce and that is enough for the present purpose. The last aspect of the argument in this respect is a reference to section 38 of the Act which runs—"The State Government may, by notification, add to the Schedule to this Act any other item of agricultural produce or amend or omit any item of such produce specified therein," and what is contended is that while exercising this power under this provision the State Government cannot bring in the

Schedule a commodity manufactured though it can do so in respect of a commodity processed. But no such question arises in the present case, and when any such addition is made to the Schedule, and that is question, then this question will, if it has substance, need consideration. Nothing in section 38 of the Act whittles down the definition of the expression 'agricultural produce' as in section 2(a) which proceeds on the basis that the Schedule is an integral part of it. So this argument on the side of the appellant does not prevail."

The above view has received the approval of the Supreme Court in *M/s. Raunag Ram Tara Chand and others* v. *The State of Punjab and others*, (6), and the following observations appearing in paragraph 14 thereof can be quoted with advantage:

"The appellants also contend that since Gur and Shakkar are manufactured products they cannot come under the definition of agricultural produce within the meaning of section 2(a) of the Act. Section 2(a) defines agricultural produce to mean 'all produce whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act which mentions 95 items of commodities. These are statutorily agricultural produce under section 2(a). It is not possible to entertain the argument that the Court will undertake a judicial scrutiny of these items in order to come to a conclusion whether these are agricultural produce or not. In view of the definition in section 2(a) such an enquiry is out of place. In this context we may note that under section 38 the State Government may by notification add to the schedule any other item of agricultural produce or amend or omit any such specified item. It is because of this power to add to the schedule items of agricultural produce that the first part of the definition under section 2(a) gives guidance as to what agricultural produce means. The submissions are, therefore, devoid of substance."

Again, the position of cotton is the same, for cotton, both ginned or unginned as also Banaula (cotton-seed) have been treated as agricultural produce and, therefore, the decisions given under the Sales Tax Act, wherein Banaula has been treated as a manufactured commodity distinct from cotton would be of no avail to the

(6) A.I.R. 1975 S.C. 1587.

petitioners. In *Raghbir Chand Som Chand v. Excise and Taxation Officer, Bhatinda, and others,* (7), ginned and unginned cotton has been treated to be the same substance, as would be clear from the following observation of their Lordships:

> ".....The case of the person who conducts the process of ginning is, however, vastly different. He does the same type of thing as the man who cleans wheat and puts it into bags. No doubt, he does obtain cotton seed which is a separate commodity, but the ginned cotton is only the same thing as unginned cotton except that it is more ready for use by the manufacturer. To put a commodity in such a state that it can be more readily used for manufacture, is almost the same thing as making a commodity marketable; the commodity remains the same and does not alter its character in any respect. I am, therefore, of the view that unginned and ginned cotton are essentially the same thing....."

13. Such dealers as convert gram into Dal, in our opinion, would not be liable to pay market-fee for bringing gram into market area, for conversion of gram into Dal does not amount to processing of gram into Dal, but it amounts to manufacturing of Dal from gram—Dal being a commodity distinct from gram, and in common parlance also, Dal is not known as gram.

14. Similar would be the position of the dealers who convert maize and other agricultural produce into poultry feed. The item called poultry feed obtained after mixing and conversion of maize and other ingredients is a commodity entirely different from its ingredients and, therefore, bringing in of maize, barley, etc. in the market area for converting the same into poultry feed cannot amount to be processing of the agricultural produce of such items in terms of section 23 of the Act.

15. Obtaining of Mungphali Dana (Groundnut seed) after the breaking of shell, however, would not amount to the manufacturing of Mungphali Dana, as the Act treats Munghphali and Mungphali Dana, both processed and unprocessed as agricultural produce and, therefore, bringing in of Mungphali into the market area would amount to its bringing for processing and not for manufacturing.

(7) (1960) 11 S.T.C. 149.

16. Mr. G. C. Garg had filed some cases in which dealers had alleged that they were bringing groundnut and muster-seeds for manufacturing oil. These cases were not yet admitted, but Mr. Garg was permitted to intervene and, therefore, liability of such dealers is also dealt with.

17. As regard the bringing in of oil-seeds for producing oil therefrom would, in our opinion, amount to bringing in the commodity for manufacturing, as the oil is a commodity vastly different and distinct from the raw agricultural produce from which it is extracted.

18. It was next contended on behalf of the petitioners that, in any case, market-fee can be levied for service rendered and since no service is rendered to the dealers, who without exception have their factories, in which they process the agricultural produce, outside the principal market yard, so there being no *Quid pro quo* the fee sought to be levied could not be considered a fee but a tax. The learned counsel for the petitioners drew our attention to the following few criteria laid down by their Lordships in *Kewal Krishna Puri and another* v. *State of Punjab and another,* (8), for satisfying the tests for a valid levy of market-fee on the agricultural produce bought or sold by licensees in a notified market area:

> "(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for its purpose.
>
> (2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.
>
> (3) That while rendering services in the market area for the purpose of facilitating the transactions of purchases and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(8) C.A. 1083 of 1977 decided on 4th May, 1979.

(4) That while conferring some special benefits on the licensees it is permissible to render such services in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefitting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of *quid pro quo* may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

Laying emphasis on the second and third criteria aforementioned, it was contended that services rendered to the licensees must be in relation to the transaction of processing and that services should be such as confer some special benefits on the licensees, which have a direct, close and reasonable correlation between the licensees on the one hand and the transactions on the other.

19. All the licensees before us held the licences for carrying on business activity pertaining to the sale, purchase, storage and processing of agricultural produce. The market-fee, earlier to the amendment, was leviable only on the sale and purchase of the agricultural produce and not on the storage and processing. After the amendment, fee was sought to be levied on the agricultural produce brought for processing in the market area. However, no such fee is yet leviable on the storage of agricultural produce. The question that arises for consideration is as to whether the quantum of

levy of market-fee would vary in the case of a person who carries on all the four business activities pertaining to the sale, purchase, storage and processing of agricultural produce, and a dealer who carries on one or two or only three of such activities.

20. When a Market Committee makes a provision for rendering service to the dealers, it does so with a view that dealers, who have obtained licences for carrying on business in all the four above-mentioned activities pertaining to the agricultural produce would so engage themselves and, therefore, an individual dealer cannot be heard to say that although he had a licence for engaging himself in all the aforesaid four kinds of activities of sale, purchase, storage and processing but, in fact, carried on only one or two of such activities and so he would pay less market-fee then the one who would be engaged in all the four activities of sale, purchase, storage and processing of agricultural produce. Therefore, in our opinion, a dealer who brings in the agricultural produce for processing cannot be heard to say that although he would be dealing in buying and selling of agricultural produce and paying market-fee on the said transactions, he would not be liable to pay market-fee on the transaction of processing, as no service is rendered to him pertaining to the transaction of processing. Moreso, for the reason that in a given case, a dealer after processing agricultural produce into agricultural produce would have to dispose of the processed agricultural produce. This, he would do so in the principal market-yard or sub-market yard; but while so selling the processed agricultural produce, no market-fee would be leviable on the transaction of sale and purchase of such processed agricultural produce, as the fee on the said agricultural produce had already been levied when it was brought in for processing by the dealer, who would now be effecting sale thereof and rule 30 of the Punjab Agricultural Produce Markets (General) Rules, 1962, envisages that —

> "30. (1) No market-fee shall be levied on the sale or purchase of any agricultural produce manufactured or extracted from the agricultural produce in respect of which such fee has already been paid in the same notified market area or in another notified market area within the State ....."

In such a case, although the dealer had made use of services that are rendered to a seller and buyer, yet he would not be liable to pay any fee for the services so rendered.

20-A. It has been asserted on behalf of the Market Committee that the Market Committee expends its funds on supplying information regarding the prevalent rates in other markets. It has also established godowns and rest houses which can be made use of by the dealers who bring in agricultural produce for processing.

21. The dealer may not have sufficient space for storing agricultural produce, although he may be more desirous to purchase the agricultural produce in sufficient quantity in order to avoid purchasing at a time when the prices of the agriculture products are likely to go up. In such a case, if the Market Committee godowns are available, the dealer would be able to purchase sufficient quantity of agricultural products and store the same therein and thus earn profits in his business which is the main activity for a businessman. Such a service directly benefits the dealer and it has a definite correlation with the transaction of bringing in the agricultural produce for processing.

22. The learned counsel for the petitioners drew our attention to the following observations of the Supreme Court in *Kewal Krishna Puri and another's case* (supra)—

> ".....in future if the market fee is sought to be raised beyond the rate of Rs. 2 per hundred rupees, proper budgets, estimates, balance-sheets showing the balance of the money in hand and in deposit, the estimate income and expenditure, etc., should carefully be prepared in the light of this judgment. It may be, as was submitted before us, that it is not imperative either for the Market Committees or the Board to prepare balance-sheets because their accounts are audited by Government auditors but for the purposes of raising the market-fee any further, the balance-sheets will give a true picture of the position along with the budgets and estimates. Then, and then only, there may be a legal justification or raising the rate of the market fee further to a reasonable extent....."

And urged that the implication of the aforesaid observations was that the market committee were prohibited from raising additional funds either by enhancing the rate of the market-fee or by making more dealers liable to pay the market-fee, unless the market committee stood in need of additional resources and in order to prove,

that it needed additional sources, it had drawn up a balance-sheet which gave true picture of its resources.

23. It was stressed further that their Lordships of the Supreme Court having found in that case that the resources raised by levying Rs. 2 as the market-fee were sufficient, no market-fee would be leviable either on the bringing in of agricultural produce for processing or storing of the same unless the market-committees were to show that they were in need of more funds than they were able to get by restricting the levy of market-fee on the sale and purchase of the agricultural produce alone.

24. We find no merit in this contention of the learned counsel. Once it is held that the Market Committee is rendering service to a given class of dealers in regard to the given transaction, then the Market Committee is entitled to be compensated and such a dealer cannot be heard to say that from other dealers the Committee had raised sufficient market-fee and, therefore, he, in regard to the services rendered to him, would not be liable to pay any market-fee to the Market-Committee.

25. The next contention urged on behalf of the petitioners is that the levy of market-fee on the goods imported in the market-committee area from outside the State contravened the provisions of article 301 of the Constitution of India, in that it imposed unreasonable restrictions on the rights of the petitioners dealers to carry on their trade.

26. Here again, we do not find any merit in the stand taken on behalf of the petitioners. The fee levied on the dealers is by way of recompense for services rendered to the dearles falling in the category of the petitioners. Such a levy does not put any unreasonable restriction on the rights of the petitioners to carry on their trade. This view finds support from a decision of the Supreme Court reported in *G. K. Krishnan etc.* v. *State of Tamil Nadu and another*, (9), and the following observations can be taken notice of with advantage:—

> "..... The appellants in that case impugned the Rajasthan Motor Vehicles Taxation Act, 1951, *inter-alia*, as violating article 301. The High Court dismissed the petitions and

(9) AIR 1975 S.C. 589.

this Court by a majority of 4 to 3 held that the Act was valid and dismissed the appeals. The case particularly overruled the decision in *Atiabadi case* (10), insofar as it held that if a State legislature wanted to impose tax to raise moneys necessary in order to maintain roads, that could only be done after obtaining the sanction of the President as provided in Article 304(b). In *Khyerbari Tea Co. Ltd.* v. *The State of Assam* (10*a*) it was said that the decision in Atiabari case was affirmed in Automobile case with a clarification that regulatory measures or measures imposing compensatory tax do not come within the purview of restrictions contemplated in Article 301 and that such measures need not comply with the requirement of the provisions of article 304(b). In whatever way one may choose to put it, the effect of the majority decision in the Automobile case is that a compensatory tax is not a restriction upon the movement part of trade and commerce.....".

The learned counsel for the petitioners further submitted that before imposing the market-fee on the agricultural produce brought in for processing, it was incumbent upon the Market Committee to issue a notification in that regard, as envisaged by sections 5 and 6 of the Act. In this regard, he placed reliance on a Division Bench decision of this Court reported in *Amar Singh* v. *State of Punjab and others* (11).

27. The provisions of sections 5 and 6 of the Act are in the following terms :—

"5. The State Government may, by notification, declare its intention of exercising control over the purchase, sale, storage and processing of such agricultural produce, and in such area as may be specified in the notification. Such notification shall state that any objections or suggestions which may be received by the State Government within a period of not less than thirty days to be specified in the notification, will be considered.

6. (1) After the expiry of the period specified in the notification under section 5 and after considering such objections

(10) (1961) 1 S.C.R. 809 = (A.I.R. 1961 S.C. 232).
(10a) (1964) 5 S.C.R. 975=(AIR 1964 S.C. 925).
(11) 1968 P.L.R. 909.

and suggestions as may be received before the expiry of such period, the State Government may, by notification and in any other manner that may be prescribed, declare the area notified under section 5 or any portion thereof to be a notified market area for the purpose of this Act in respect of the agricultural produce notified under section 5 or any part thereof.

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A perusal of the aforesaid provisions would show that the same require ascertaining of the views and objections only in regard to the exercising of control over the purchase, sale, storage and processing of such agricultural produce in regard to the given area as notified in the notification and that after hearing the objections, if any, the State Government shall declare under section 6 of the Act the given area as notified under section 5 or part thereof to be a notified market area for the purpose of the Act in respect of the agricultural produce notified under section 5 or any part thereof. The expression 'exercising control over purchase, sale, storage and processing of such agricultural produce' used in section 5 has to be read with the provisions of section 8 of the Act, which are in the following terms:

"8. (1) After the date of issue of notification under section 6 or from such later date as may be specified therein, no person, unless exempted by rules made under this Act, shall, either for himself or on behalf of another person or of the State Government, within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made thereunder and the conditions specified in the licence.

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When so read, one reaches an inescapable conclusion that the views of the affected parties are ascertained as to whether in regard to

such agricultural produce the State Government should or should not exercise control of the type envisaged in section 8 of the Act in a given area and, therefore, for imposition of market-fee on a given transaction, no such notification is required to be published for ascertaining the views or objections of the parties affected.

28. *The case of Amar Singh* (supra), on which reliance has been placed on behalf of the petitioners, was a case in which the State Government, in pursuance of its powers under section 38 of the Act made additions to the Schedule by adding certain items of agricultural produce, which were absent from it. The contention raised therein was that such items could not have been added before issuing notification under sections 5 and 6 of the Act. The contention so advanced was repelled and it was held that issuance of notification under sections 5 and 6 of the Act was not a condition precedent for adding of items to the Schedule by the State Government in exercise of its powers under section 38 of the Act. It was, however, added that before calling upon the dealers to take out licences in regard to the newly added items of agricultural produce to deal in the newly added items of agricultural produce, there has to be a notification issued under sections 5 and 6 of the Act.

29. There is no quarrel with the aforesaid proposition of law laid down in that case. In the present case, all the petitioners, as already observed, held licences not only for engaging in the activities of purchase, sale, storage and manufacture, but also for bringing in agricultural produce for processing in regard to the given market area, the dimension whereof as a result of amendment to section 23 of the Act has neither been reduced nor extended so as to necessitate the ascertaining of the views of the business community and the affected persons by issuing notification under sections 5 and 6 of the Act.

30. Lastly, the learned counsel for the petitioners argued that to the extent the levy of market-fee is imposed only on the produce brought in the market area from outside the State and not on the agricultural produce brought in a given market area from within the State it discriminates between the two types of the produce and, therefore, is discriminatory in character and contravenes the provisions of article 14 of the Constitution of India.

31. For one thing there is no basis for such a contention as section 23 of the Act in terms makes no such distinction, but

assuming for the sake of argument that such a distinction is made, then too, in our opinion, there is no merit in the contention.

32. While dealing with the assertion in regard to the violation of the provisions of article 14 of the Constitution of India, it is trite to reiterate what, by now, has been authoritatively established by the highest judicial forum of the country that the legislature, Union or State, cannot differently treat people similarly situated, but at the same time right is conceded to the legislature to classify persons and things keeping in view the purpose of the legislation and seeing that such differentiation has nexus with the object sought to be achieved by classification so attempted by it. Hence, in the light of the aforesaid enunciation, one has to see as to whether the Haryana State Legislature by subjecting the market-fee on the agricultural produce imported into a given market area from outside the State violates the provisions of article 14 of the Constitution of India.

33. The objective of the statute in question is to compensate the services rendered by market-committee to dealers by levying market-fee either on the given transaction of the dealer or on the dealer engaged in such transaction. If a dealer is engaged in the transaction of processing agricultural produce and if it is held, as has been done by us in the earlier part of the judgment, that market committee does render service to such a dealer, then the market committee would be liable to be compensated for the services so rendered, whether the agricultural produce that he imports for carrying on his business of processing from outside the State or from within the State is immaterial. However, if it is held that the goods imported from outside the State by the dealer for processing shall escape the levy of market fee on goods brought for processing from outside the State and the dealer decides to buy all goods for processing from outside the State, then he shall escape altogether from paying the market-fee to the market-committee despite the said Committee's rendering service to him and, therefore, resulting in disabling the market committee to compensate itself for services rendered to such a dealer. Such an interpretation would go against the purpose of the statute. In our opinion, therefore, the imposition of market-fee in the present case on the produce brought in a given market area from outside the State does not result into any kind of discrimination for the reason that the goods imported in a market area from outside the State and the goods imported from a given market area within the State do not fall in the same category, in that when the goods, after being purchased, are brought in a given market area for processing from

within the State, they had already subjected to market-fee at the time of the transaction of purchase and sale in the State, while the goods imported from outside the State were not so subjected to market-fee within the State prior to their import and were to be so subjected for the first time on being brought in for processing.

34. For the reasons aforesaid, we hold that such of the dealers as bring in agricultural produce in a given market area from outside the State for processing and not for manufacturing are liable to pay market-fee in terms of section 23 of the Act.

35. In view of our aforesaid findings, the dealer-petitioners who bring in raw-wool for manufacturing wollen yarn and blankets (Civil Writ Nos. 1010, 1323, 1373, 1379, 4984, 5170, 5178 to 5181, 5265, 5332, 5914, of 1974; 1320, 6605, 6834, 6835, 6841, 6842, 7041, 7449 of 1975; 121 of 1976; 1842, 1907, 1908, 1951, 1952, 1955 to 1959, 1962, 2020, 2021, 2085 and 2263 of 1979) or the oil-seeds for manufacturing oil (in the case of intervener in Civil Writ No. 2344 of 1979) or gram (Civil Writ No. 5575 of 1974) or poultry feed (Civil Writ No. 1836 of 1979) would be beyond the purview of section 23 of the Act and would, therefore, be not liable to pay any market-fee in regard to the agricultural produce brought in by them in the market area for the aforesaid manufacturing purposes. Hence, the writ petitions filed by such dealers are allowed and it is further ordered that the market-fee already paid shall be refunded by the Market Committee to the petitioners. The other writ petitions bearing Nos. 5378 and 6886 of 1974 and 284 of 1975 (relating to processing of paddy into rice) are dismissed. However, we leave the parties to bear their own costs.

Prem Chand Jain, J—*I agree.*

N.K.S.

Before Sukhdev Singh Kang, J.

MAKHAN SINGH and others,—*Petitioners.*

versus

HARYANA GOVERNMENT and others,—*Respondents.*

Civil Writ No. 305 *of* 1968.

August 21, 1979.

Police Act (V *of* 1861)—*Section* 15—*Proclamation issued notifying a village in a disturbed state—Such proclamation—Whether*