

APPELLATE CIVIL

Before Harbans Singh, C.J. and Prem Chand Jain, J.

MESSRS PAHLAD RAI BHAGWANI PRASAD—Appellants.

versus

THE MARKET COMMITTEE AND ANOTHER,—Respondents

LPA No. 459 of 1972.

December 5, 1973.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 11, 12 and 23—Punjab Agricultural Produce Markets (General) Rules (1962)—Rules 31—Notification under Section 11 not issued and Market Committee not established—State Government—Whether can appoint an Administrator to exercise the powers of the Committee—Notice under Rule 31 demanding market fee prior to the date of the establishment of the Committee—Whether valid.

Held, that Section 11 of the Punjab Agricultural Produce Markets Act, 1961 makes it absolutely clear that by issuing a notification the State Government establishes a Market Committee for every notified market area and specifies its headquarters. Before the establishment of a Market Committee under section 11 of the Act, notification under Section 12 cannot be issued as establishment of a Market Committee and specifying its headquarters is a condition precedent to the constitution of a Committee or taking action under proviso to clause (b) of sub-section (5) of section 12 of the Act. A situation can be envisaged that notifications under sections 11 and 12 may be issued simultaneously on one and the same day, but without the establishment of a Market Committee and specifying its headquarter, an Administrator cannot be appointed to exercise the powers and perform the functions of a Committee.

Held, that under Section 23 of the Act, it is the Committee which levies on *ad valorem* basis, fees, on the agricultural produce bought or sold by licencees in the notified market areas subject to such rules as may be made by the State Government in this behalf. Prior to the date of establishment of the Committee, there is no Committee and as such the traders cannot be required to pay any market fee earlier to the date of the establishment of the Committee, as the establishment of the Committee is a condition precedent to the levying of the fee. Hence a notice under Rule 31 of the Punjab Agricultural Produce Markets (General) Rules, 1962 demanding market fee prior to the date of establishment of the Committee is invalid and without jurisdiction.

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment dated 27th September, 1972. passed by Hon'ble Mr. Justice M. R. Sharma in Civil Writ No. 1093 of 1972.

Anand Swaroop, Advocate, with I. S. Balhara, Advocate, for the appellant.

G. C. Garg, Advocate, for the respondents.

JUDGMENT

Judgment of the Court was delivered by :—

Jain, J.—Messrs. Pahlad Rai-Bhagwani Prasad have filed this appeal under Clause 10 of the Letters Patent against the judgment and order of a learned Single Judge of this Court, dated September 27, 1972, dismissing Civil Writ No. 1093 of 1972. The facts on which there is no dispute, read as under :—

(2) The appellant firm is carrying on business of selling cotton seeds, Gur, Shakar and Khandsari, etc. to small shopkeepers and consumers at Kosli after purchasing the said commodities from big Mandis in Punjab and Uttar Pradesh. On 4th December, 1970, the State of Haryana issued a notification under section 5 of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961), (hereinafter referred to as the Act) declaring its intention of exercising control over the purchase, sale, storage and processing of agricultural produce in the area specified in the notification. On 5th July, 1971, a notification under section 6(1) of the Act was issued notifying the market area. On 28th of September, 1971, another notification under section 12 of the Act was issued in the following terms :—

“Whereas no Committee under section 12 of the Punjab Agricultural Produce Markets Act, 1961 (as amended by Haryana Act 25 of 1970), has been constituted so far. Now, therefore, in exercise of the powers conferred by proviso to clause (b) of sub-section (5) of section 12 of the said Act, and all other powers enabling him in this behalf, the Governor of Haryana hereby appoints the persons mentioned against each to exercise the powers and to perform the functions of the Committee within the meaning of the said section”.

On 5th/29th January, 1972, a notice under rule 31(1) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the Rules), was issued to the appellant—firm saying that

Messrs Pahlad Rai Bhagwani Prasad v. The Market Committee,
and another (Jain, J.)

the firm had not sent the daily purchase and sale report in form 'M' for the period 20th December, 1971 to 31st December, 1971, and had thus violated the provisions of rule 31(1), and why proceedings under rule 39 be not initiated. The appellant-firm sent its detailed reply in which it was stated that as no notification under section 11 of the Act had been issued and as no Market Committee had been constituted under section 12 of the Act, there was no authority to realise the market fee from the appellant. On 4th February, 1972, a notification under section 11 of the Act was issued establishing a Market Committee with its headquarters at Kosli for the market area declared *vide* notification issued under section 6(1) of the Act. Thereafter another notice under rule 31(4) was sent to the appellant firm requiring it to show cause why action should not be taken in accordance with law as the firm had repeatedly failed to submit its returns for the period 21st December, 1971 to-date. The appellant-firm on the receipt of the notice, approached this Court and filed Civil Writ No. 1093 of 1972, calling in question the legality of the notice dated March 6, 1972 (copy Annexure 'D'). The writ petition was contested on behalf of the respondents. As earlier observed, the learned Single Judge did not find any merit in the petition and accordingly dismissed the same. Hence the present appeal.

(3) It was contended by Mr. Anand Swaroop, Senior Advocate, learned counsel for the appellant, that unless a Committee was established under section 11 of the Act, no fee could be levied. A similar contention was raised before the learned Single Judge who after considering the same in the light of the relevant provisions of the statute and the judicial pronouncements, placed before him, held that it was open to the Government to take action under sections 11 and 12 of the Act in one notification only and that if from the language of the notification it could be inferred that the action was taken under both the sections, the procedure adopted could not be objected. This finding of the learned Single Judge was contested by Shri Anand Swaroop on the ground that before the establishment of a Market Committee under section 11 of the Act, notification under section 12, dated 28th September, 1971 could not be issued as establishment of a Market Committee and specifying its headquarters was a condition precedent to the constitution of a Committee or taking action under proviso to clause (b) of sub-section (5) of section 12 of the Act. After giving our thoughtful consideration to the entire matter, we find considerable force in the contention of the learned counsel for the appellant.

(4) At this stage, it would be proper to examine certain relevant provisions of the Act. Section 5 of the Act provides that 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 and that such notification shall also 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. Under section 6(1), after the expiry of the period specified in the notification under section 5 and after considering such objections 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. Under sub-section (3) of section 6, after the date of issuance of notification 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 so notified, 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 by-laws made thereunder and the conditions specified in the licence. In the proviso to sub-section (3), it is stated that a licence shall not be required by a producer who sells himself or through a *bona fide* agent, not being a commission agent, his own agricultural produce or the agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use. Section 7(1) provides that for each notified market area, there shall be one principal market yard and one or more sub-market yards as may be necessary. Under sub-section (2) of section 7, the State Government may, by notification, declare any enclosure, building or locality in any notified market area to be principal market yard for the area and other enclosures, buildings or localities to be one or more sub-market yards for the area. Under section 9, the Secretary of the Board or any other officer authorised by him in writing, is the authority for granting licences required under section 6. Section 10 prescribes the procedure for making application for licences, fees to be paid and cancellation or suspension, of licences. Section 11 provides that the

Messrs Pahlad Rai Bhagwani Prasad v. The Market Committee,
and another (Jain, J.)

State Government shall by notification establish a market committee for every notified market area and shall specify its headquarters. Section 12 provides the constitution of the Committee.

(5) As is apparent from the facts narrated in the earlier part of the judgment, notification under section 11 was issued on 4th February, 1972, while notification under section 12 was issued on 28th September, 1971. On the contention raised before us by Mr. Anand Swaroop, learned counsel for the appellant, the question that requires determination is whether a Committee can be constituted, or till a Committee is constituted and its Chairman and Vice-Chairman are elected, can the State Government appoint such person or persons as may be considered suitable in this behalf to exercise the powers and perform the functions of such Committees? From the bare reading of sections 11 and 12, the answer has to be in the negative. In the instant case, the Administrator was appointed under the proviso to clause (b) of sub-section (5) of section 12 to exercise the powers and perform the functions of the Committee which admittedly came into being on 4th February, 1972 when the notification under section 11 of the Act was issued. We fail to understand how an Administrator could be appointed of a Committee prior to 4th February, 1972 by virtue of notification issued under section 12 dated 28th September, 1971 when the Market Committee had not come into existence. Section 11 makes it absolutely clear that by issuing a notification, the State Government shall establish a Market Committee for every notified market area and shall specify its headquarters. A situation can be envisaged that notifications under sections 11 and 12 may be issued simultaneously on one and the same day, but it is beyond our comprehension to visualise a situation that without the establishment of a Market Committee and specifying its headquarters, an Administrator could be appointed to exercise the powers and perform the functions of a Committee or a Committee could be constituted under the other sub-sections of section 12. In this view of the matter, we are constrained to hold that notification issued under section 12 of the Act on 28th September, 1971, appointing an Administrator for the Market Committee, was illegal and without jurisdiction.

(6) In the light of our finding that the Committee was established for the first time on 4th February, 1972, the next question that arises for determination is whether the impugned notice issued on 6th March, 1972 under rule 31 could validly be issued? The

answer to this question again has to be in the negative. Under section 23, it is the Committee which levies on *ad valorem* basis, fees, on the agricultural produce bought or sold by licencees in the notified market area subject to such rules as may be made by the State Government in this behalf. The Committee was established on 4th February, 1972. Prior to that there was no committee and as such the appellant could not be required to pay any market fee earlier to 4th February, 1972. Mr. Garg, learned counsel, appearing for the Committee, contended that even if no Committee had been established, then also under rule 29(2), the appellant could be required to pay market fee. We are not impressed by this contention of the learned counsel. The establishment of a Committee is a condition precedent to the levying of the fee. Section 23 read with rule 29 also lead to the same conclusion. It may be observed that the fees are levied in order to carry out the purposes enumerated in section 28 of the Act and if the Committee is not in existence, then the question of carrying out such purposes does not arise. The Committee was established on 4th February, 1972, and no fee could be levied prior to that date. In this view of the matter, the notice issued on 6th March, 1972, requiring the appellant to submit returns for the period 21st December, 1971 to-date, is without jurisdiction and cannot legally be sustained.

(7) Before parting with the judgment, another contention of Mr. Anand Swaroop, learned counsel for the appellant, may be noticed. It was contended by him that unless a Committee provided all the facilities, no fee could be levied and as in the instant case no facilities were provided, the Committee was not entitled to levy fees. On second thought, the learned counsel submitted that he did not press this contention of his as he would challenge the levy or realisation of fees after 4th February, 1972 on this ground if and when such an occasion arises.

(8) For the reasons recorded above, with great respect, we are unable to agree with the view taken by the learned Single Judge and accordingly allow this appeal with costs, set aside the judgment and order of the learned Single Judge and quash the notice dated 6th March, 1972 (copy Annexure 'D') so far as it relates to the period prior to February 4, 1972.

K.S.K.