

The learned Chief Justice while upholding that order observed as follows :—

“It is contended that the Chief Engineer had no jurisdiction to pass this order on the ground that the procedure regarding alteration or alignment of watercourses was laid down in section 30-A which did not by section 68 confer any power of revision on the Chief Engineer. Section 68, however, in sub-section (2) does refer to disputes regarding construction of watercourses and in my opinion it would not be proper to interfere and I accordingly dismiss the petition but leave the parties to bear their own costs.

From the relevant portion of the judgment reproduced above, it is clear that the learned Chief Justice considering the circumstances of that case, did not find it proper to interfere with the order of the appropriate authority. These observations are in the nature of *obiter* and cannot be read to mean that under sub-section (2) of section 68, construction of new watercourses can be ordered.

(17) For the reasons recorded above I have no hesitation in holding that under sub-section (2) of section 68, construction of a new watercourse or realignment of a watercourse cannot be ordered. The reference is answered accordingly.

K.S.K.

APPELLATE CIVIL.

*Before D. K. Mahajan and Gopal Singh, JJ.*

UNION OF INDIA.—Appellant

*versus*

MARKET AREA COMMITTEE, AMBALA CANTT.,—Respondent

**Regular First Appeal No. 345 of 1964.**

March 17, 1971

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—Section 31—Demand of fee by a Market Committee on sale and purchase of agricultural produce—Such demand—Whether recurring—Cause of action for filing a suit*

Union of India v. Market Area Committee, Ambala Cantt. (Mahajan, J.)

*denying the demand—Whether accrues from each demand—Suit filed within six months of the last demand—Whether barred by time.*

*Held*, that where a Market Committee seeks to levy market fee on the sale and purchase of agricultural produce, the demand for such fee is recurring. The demand, till paid, if it is objected, is a demand which is all the time recurring and liability to pay the fee is recurring liability. The sales and purchases of agricultural produce on which the fee is sought to be levied are not made at one fixed point of time. They are made off and on and whenever they are made, the liability to pay the market fee arises. The cause of action to deny the liability accrues every minute till the suit is filed. Hence a suit denying such liability is within time if filed within six months of the last demand of the fee. (Para 3).

*Regular First Appeal from the decree of the court of Shri O. P. Singhla, Sub-Judge 1st Class, Ambala City, dated 31st August, 1964, dismissing the suit with costs.*

H. S. GUJRAL, ADVOCATE, WITH BIRINDER SINGH, ADVOCATE, for the appellant.

D. S. NEHRA, ADVOCATE, WITH K. S. NEHRA, ADVOCATE, AND G. C. GARG, ADVOCATE, for the respondent.

### JUDGMENT

The judgment of this court was delivered by :—

MAHAJAN, J.—(1) The only question involved in this appeal is about the interpretation of section 31 of the Punjab Agricultural Procedure Market Act, 1961 (hereinafter referred to as the Act). Section 31 is in the following terms :—

“31. (1) No suit shall be instituted against the Board or a Committee or any member or employee thereof or any person acting under the direction of any such Committee, member or employee for anything done or purporting to be done under this Act, until the expiration of two months next after a notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of the Board or a Committee delivered to him or left at its office, and in the case of any such member, employee or person as aforesaid, delivered to him or left at his office or usual place of abode, and the plaint shall contain a statement that such notice has been so delivered or left.

- (2) Every such suit shall be dismissed unless, it is instituted within six months from the date of the accrual of cause of action."

(2) The facts are simple and admit of no controversy. The appellant is the Union of India. It is controlling the Railway Administration. The Railway Administration had its grain shop at Ambala Cantt., for supply to its employees. A fee is sought to be levied by the Market Committee under the Act on the sale and purchase of Agricultural produce made at this Grain Shop. The imposition of this fee is not accepted as valid by the Union of India. A notice was issued by the Union of India on the 12th of October, 1963, objecting to this levy. The basis for this notice was the communication dated April 1, 1963, from the Collector demanding the market fee. The present suit was filed on 2nd May, 1964, for a declaration that no such fee can be demanded from the Union of India. This suit has been contested by the Market Committee principally on the basis of section 31(2) of the Act. The contention is that the suit is barred as it has not been filed within six months of the accrual of cause of action. This contention has prevailed with the trial Court and the suit has been dismissed. The Union of India has preferred this appeal.

(3) Mr. Gujral, learned counsel for the Union of India, contends that the cause of action in this case is the recurring cause of action and, therefore, the suit is well within six months of the accrual of cause of action. His contention is that a recurring cause of action is accruing every minute till the suit is filed. It is set out in the plaint that the tax demand is illegal and the Union is not liable for the same. We are not concerned with the merits of the plea but the fact of the matter is that the demand for tax, till paid, if it is objected, is a demand which is all the time recurring. The liability to pay fee, on principle, is a recurring liability. It is not that the Union of India made purchases at one fixed point of time and, thereafter, made no purchases. The purchases are made off and on and whenever a purchase is made the liability to pay the market fee to the respondent arises. In this sense the liability is a recurring liability. It will be useful, at this stage, to make a reference to section 23 of the Indian Limitation Act of 1908, and section 22 of the Limitation Act of 1963. The only difference in the phraseology is that section 23 used the word 'wrong', while section 22 used the

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word 'tort'. However, the word 'tort' is defined in section 2(m) of the Limitation Act of 1963 in the following terms and any civil wrong is covered thereby :—

"2. In this Act, unless the context otherwise requires,—

x            x            x            x            x

(m) 'tort' means a civil wrong which is not exclusively the breach of a contract or the breach of trust;

x            x            x            x            x  
                   x            x            x            x            "

The only question is whether such a demand would be a recurring demand? We have already held that it would be a recurring demand and, therefore, in terms of section 31(2) of the Act the suit would be within six months of the accrual of the cause of action.

(4) Mr. Nehra, learned counsel for the respondent, however, contends that in view of the requirement of notice under section 31(1), section 31(2) should be interpreted as to mean "the cause of action mentioned in the notice." We are unable to agree with this contention. If that was the intention of the framers of the Act section 31(2) would have been in the following terms :—

"Every suit shall be dismissed unless it is instituted within six months from the date of the accrual of cause of action mentioned in the notice or from the date of six months of the notice."

The framers of the Act, however, used the expression "from the date of the accrual of cause of action." We must take it that they understood that causes of action are of two types — those that arise once and those that keep on arising, that is, recurring cause of action. The period of six months has to be reckoned with reference to the type of the cause of action that accrues. In this view of the matter, we differ from the decision of the Court below.

(5) For the reasons recorded above, this appeal is allowed, the judgment and decree of the Subordinate Judge is set aside and the case is remanded to him for decision on merits. The parties are directed to appear before him on 19th of April, 1971. The Court-fee paid on appeal should be refunded. The costs will be costs in the cause.

K.S.K.