interpretation of rule 7-A, they have to be held as junior to the petitioner, it does not look proper that the other respondents, who according to the same interpretation would rank junior to the petitioner, should be senior to him, simply because the petitioner moved this Court in May, 1966. It would be somewhat anomalous if in the same service, rule 7-A should be differently interpreted qua different officers. In the circumstances of this case, I am of the view that it could not be held that the writ petition was so much belated as it would merit dismissal on that score alone. It was conceded by the counsel for the parties that the acceptance of this petition was ultimately going to affect only one of the respondents, who was the junior-most out of them. It was not suggested by the learned counsel appearing for respondents 1 and 2 that the writ petition was bound to be dismissed on the ground of laches. All that they were contending was that we should not exercise our powers under Article 226 of the Constitution in favour a person who had approached this Court after a long time. As I have said, the present is not one of the cases where we should decline relief to the petitioner on the ground of delay alone.

(19) In view of what I have said above, I would accept this petition and hold that the petitioner was senior to respondents 3 to 19 in Class I. Respondents 1 and 2 are further directed to re-fix the seniority of the petitioner vis-a-vis the respondents in the class of Executive Engineers after considering the claim of the petitioner in the light of the interpretation of rule 7-A as given by me above. In the circumstances of this case, however, I will leave the parties to bear their own costs.

D. K. Mahajan, J.—I agree.

R. N. M.

CIVIL MISCELLANEOUS

Before R. S. Narula and S. S. Sandhawalia, JJ.

M/S RAM SARUP AND BROTHERS,—*Petitioners*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents*

Civil Writ No. 1578 of 1966

July 31, 1968.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—*Ss.* 23, 28 and 43—*Punjab Agricultural Produce Markets (General) Rules* (1962)—*Rule* 31(9)—*Fee levied under section* 23—*Whether in the nature of tax on sales—Rule* 31(9) *permitting the imposition of penalties on a defaulter—Whether* ultra vires *section* 43 *or in excess of powers of rule making authority.*

Held, that the amount of market fee which can possibly be recovered by a Market Committee under section 23 of Punjab Agricultural Produce Markets Act, 1961, does not in any manner appear to be disproportionate to the service which the committee is expected to render to the assessees of such fee by performing the duties refered in section 28 of the Act. Thus the fee charged by the Committee is co-related to the expenses incurred by it for performing statutory services mentioned in the Act and there appears sufficient *quid pro quo* for the levy. Hence the market fee leviable under section 23 of the Act is in the nature of fee and not in the nature of tax on sales.

Held, that the Act does not probihit the making of a provision for imposition of a penalty on a defaulter by the Rules framed under the Act and Rule 31(9) providing for such imposition is within the powers of the State Government conferred on it by sections 23, 43(1) and 43(2)(vii), (xxiii) and (xxv) of the Act. Hence Rule 31(9) is not *ultra vires* section 43 of the Act, nor is it in excess of the powers of the rule making authority of the State Government.

Case referred by the Hon'ble Mr. Justice Gurdev Singh on 3rd November, 1967 to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice S. S. Sandhawalia on 31st July, 1968.

Petition under Articles 226 and 227 of the Constitution of India, praying that a rule nisi be issued against the respondents and that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the report of *Members of the Committee, authorised to assess the business of the petitioners,*— vide *Resolution No. 20, dated 9th May, 1966, the assessment order, dated 11th July, 1966 and the demand notice dated 11th July, 1966 and directing the respondents not to levy, assess or recover any fee from the petitioners in respect of the transactions which have nothing to do with the producers such as commodities imported by them from outside the Mandi or which are purchased in packed conditions from Pucca Arthias; and on the sales of agricultural produce manufactured or extracted from agricultural produce on which the fee has been paid to the market Committee at the time of purchase and further declaring that* Sections 6(3) and 23 and rules 18, 31 and 39 are *ultra vires* the provisions of the *Constitution and the Act and are consequently invalid and ineffective.*

S. C. Goyal with Mohinder Singh Chadha and Maluk Singh, Advocates, for the Petitioners.

Munishwar Puri, Advocate, *for* Advocate-General (Punjab), for Respondent No. 1.

Ganga Parshad Jain with G. C. Garg and S. P. Jain, Advocates, for Respondents Nos. 2 and 3.

JUDGMENT

The judgment of this court was delivered by:

NARULA, J.—Two principal questions call for decision in this petition under Articles 226 and 227 of the Constitution, viz. (i) whether the market-fee levied by the Market Committee, Zira, under section 23 of the Punjab Agricultural Produce Markets Act (23 of 1961) (hereinafter called the Act) is in the nature of a fee or is in fact in the nature of a tax on sales; and (ii) whether sub-rule (9) of rule 31 permitting the imposition of penalties on a defaulter is *ultra vires* section 43 of the Act, and consequently the order of imposition of penalty on the petitioner under that provision is without jurisdiction. These questions have arisen in the following circumstances:—

(2) In exercise of powers conferred by sub-section (1) of section 6 of the Act, Zira was notified as a market area on August 14, 1963. By another natification of the same date (extract Annexure 'R-1', the market Yard of Zira market was notified under section 7. Notice of assessment of market-fee was served on the petitioner-firm and a reminder, dated March 7, 1966 (Annexure 'R-4'), was given to the firm notifying to the petitioner that it had failed to get its accounts checked by the Secretary of the Market Committee and also failed to produce form 'K' in respect of the purchase of paddy from outside the Zira market area. The petitioner was directed in the said notice to appear before the Chairman of the Market Committee and to explain petitioner's position within three days of the receipt of the said communication. This was followed by a notice under sub-rule (4) of rule 31 of the Punjab Agricultural Produce Markets (General). Rules, 1962 (hereinafter referred to as the 1962 Rules) in prescribed form 'N' (Annexure 'R-2'), dated March 28, 1966, informing the petitioner that it had failed to submit a return as prescribed by sub-rule (1) of rule 31, and that, therefore, the Committee would proceed to assess the amount of the dealers' business during the assessment periods 1963-64 and 1964-65 if the petitioner did not appear on April 4, 1966, and produce accounts, etc. It was added in the notice that if the petitioner committed default in putting in appearance and showing the books of account, the petitioner would be liable to be burdened with penalty under sub-rule (9) of rule 31 in addition to the market-fee which may be found due from it at the time of the assessment proceedings under sub-rule (8) of rule 31. The assessment proceedings were held by a duly authorised Sub-Committee and its inspection report, dated May 9, 1966 (annexure 'A'), was submitted to the Committee wherein it was held that the petitioner had

committed default in the production of its account books in spite of service of notices on it, and that, therefore, the assessment in question was being made according to the figures which had been taken from the Food and Supplies Department, Zira. On the basis of those figures it was held that the petitioner was liable to pay arrears of market-fee for the accounting period in dispute amounting to Rs. 4,118. Since the petitioner was a defaulter and had not shown cause against the notice for imposition of penalty, it was further recommended by the Sub-Committee that penalty equal to the fee due from the petitioner may be imposed on it under sub-rule (9) of rule 31. Thereafter the petitioner-firm is said to have produced some books of account on the basis of which a sum of Rs. 4,122 was found to be recoverable as arrears of market-fee. Certain other defaults committed by the petitioner were also referred to in the report of the Sub-Committee. When the report of the Sub-Committee came up for consideration in the meeting of the Market Committee, it passed the impugned assessment order by resolution, dated July 11, 1966 (annexure 'B') to the following effect:—

> "Report of the members of the Assessment Committee is detailed one. By majority vote it is passed that amount of Rs. 7,122.00 be recovered from Messrs Ram Sarup and Brothers according to law. Notice be served. Committee approves the decision of Assessment Committee. The cancellation of the licence is also approved as reported by the Sub-Committee. The Chairman should take notice of other matters also."

(3) The sum of Rs. 7,122 consisted of Rs. 4,122 on account of arrears of market-fee and Rs. 3,000 on account of penalty imposed on the petitioner-firm under rule 31(9) of the 1962 Rules. On the same day, notice (Annexure 'C') was issued to the petitioner to pay the said sum of Rs. 4,122 as market-fee and Rs. 3,000 as penalty for the years 1963-64 and 1964-65, on or before July 18, 1966, failing which the amount would be recoverable from the petitioner as arrears of land revenue. Instead of paying the amount, the petitioner filed this writ petition on July 21, 1966. At the time of its admission by Motion Bench (Dua and Pandit, JJ.), on July 22, 1966, the recovery of the amount in dispute was stayed on the petitioner furnishing a bank guarantee for the same. In September, 1966, respondents Nos. 2 and 3 filed their joint return to the rule issued in this case. An application, dated September 16, 1966 (C.M. 3546 of 1966) was filed by the

petitioner for amending the writ petition so as to take up some additional grounds in support of the claim of the petitioner for quashing the assessment order. After giving notice of the application, the amendment was allowed by this Court. The proposed amended petition, dated September 16, 1966, which had been filed with the application for leave to amend the petition was thereafter treated as the writ petition. During the pendency of the amended petition, the Market Committee, Zira, was superseded and the Government appointed an Administrator of the Committee. Under the order of the Court, dated September 7, 1967, the petitioner's application (C.M. 3634 of 1967) was allowed and the Administrator was substituted for the Market Committee as respondent No. 3.

(4) When the writ petition came up for hearing before a learned Single Judge of this Court on November 3, 1967, the following three contentions were sought to be raised on behalf of the petitioner:—

(i) "That to all intents and purposes the market-fee demanded from the petitioner-firm tantamounts to imposition of a tax which the respondent Market Committee is not authorised to impose;

(ii) That rule 31(9) of the Punjab Agricultural Produce Markets (General) Rules, 1962, under which the Market Committee has demanded Rs. 3,000 as penalty is *ultra vires*, and in excess of the powers of the rule making authority; and

(iii) That in assessing the market-fee payable by the petitioner-firm the Market Committee was not entitled to take into account sales and purchases made by the petitioner-firm from another market area in respect of which market-fee had already been paid."

(5) The learned Single Judge (Gurdev Singh, J.) by his order of reference, dated November 3, 1967, directed the papers of this case to be placed before my Lord, the Chief Justice for affording to the learned Judge, the assistance of another Judge of this Court for the decision of this case "under Paragraph I(xx) (b) of Chapter 3-B of the High Court Rules & Orders, Volume V." Gurdev Singh, J., further directed that on the reference being made, the larger Bench may consider various other matters which had also been raised in the case including the preliminary objection to the maintainability of the writ petition raised by Mr. Ganga Parshad Jain counsel for

respondents Nos. 2 and 3. It is in pursuance of the said order of the learned Judge, dated November 3, 1967, that this case has come up before us for disposal. Since Gurdev Singh, J. had desired the assistance of another Judge to dispose of the case, we put in to all the learned counsel appearing in this writ petition, if they wanted the learned Chief Justice to consider forming a special Bench of which Gurdev Singh, J. may be a member. We put this question to the learned counsel by way of abundant caution though it has been authoritatively held by a Division Bench of this Court in *Naranjan Das Kapur* v. *P. M. Dalal, Deputy Zonal Manager of the Life Insurance Corporation of India and another* (1) that where a reference is sought to be made under clause (xx) of rule 1 of Chapter 3-B of the High Court Rules and Orders Volume V, it is open to the Chief Justice to constitute any Division Bench for the hearing of the case, and it is not necessary that the Judge who made the reference must be a member of the Bench. All the counsel appearing in the case expressly stated that they did not want to raise any such objection and that the case may be heard and disposed of by us.

(6) Mr. Ganga Parshad Jain reiterated before us his preliminary objection to the maintainability of this writ petition by submitting that against the best judgement assessment made in this case under sub-rules (8) and (9) of rule 31 of the 1962 Rules, a statutory appeal lay to the Chairman of the Board under sub-rule (13) of rule 31, and the petitioner having failed to avail of that alternative remedy, we should not permit it to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. He relied for his objection on a Division Bench judgement of this Court in *M/s. Khem Chand Vijay Kumar* v. *J. S. Malhotra and another* (2). In that case it was held that whether or not the impugned assessment is best judgement assessment must depend on the facts and circumstances of each case, and, therefore, must in the fitness of things, be determined by the appellate authority, where the case is not one of those clear-cut cases ,in which it is possible to find that the impugned assessment is outside the statute and without the authority of law justifying challenge under Article 226 of the Constitution. After hearing learned counsel for the parties on the preliminary objection, we are inclined to think that the question as to the validity of the levy of market-fee under section 23 of the Act and the question of *vires* of sub-rule (9) of rule 31 of the 1962 Rules go to the root of the

(1) I.L.R. (1963) 1 Punj. 297=1963 PLR. 125.
(2) A.I.R. 1963 Punj. 383.

matter and raise questions relating to the inherent jurisdiction of the Market Committee and could not properly have been adjudicated upon by the appellate auhority named in rule 31(13) and that the alternative remedy by way of appeal is no bar to our deciding those two issues. We are, however, firmly of the opinion that other matters involving disputed questions of fact or mixed questions of law and fact or even ordinary questions of law could have been more appropriately raised by the petitioner in the exercise of its statutory right of appeal, and there is no reason why we should allow the extraordinary jurisdiction of this Court being invoked for raking up such matters. Reference to those questions will hereinafter be made wherever it becomes necessary. Regarding his first contention, Mr. S. C. Goyal referred to the relevant pleadings of the parties contained in paragraph 16(ix) of the writ petition on the one hand and in corresponding paragraph of the written statement of respondents Nos. 2 and 3 on the other. (It may be pointed out that respondent No. 1 did file any return and that respondents Nos. 2 and 3 did not file any fresh return after the amendment of the writ petition). Sub-paragrah (ix) of paragraph 16 of the writ petition reads:—

> "That the market-fee is in fact a tax. A fee is always chargeable for some service rendered and is always commensurate with the expenses involved in rendering that service. A perusal of the budgets of the various Market Committees in Punjab, clearly establishes that the market-fees charged is many times higher to the expenses involved for the maintenance of the service. This is why the Market Committees have been contributing lacs of rupees to various funds and even their bank accounts will reveal that they are possessed of lots of funds, which they have earned by the imposition of the market-fee. To all intents and purposes the market-fee tantamounts to the imposition of the tax, which can be imposed only by the State Government. The Market Committees have no jurisdiction to impose a tax under the colour of the market-fee, which in substance is a tax".

(7) In reply it has been stated:—

> "This sub-paragraph is legal and needs no reply. However, may be stated that the fee is the price paid for services as detailed in section 28 of the Act. The tax means a duty imposed on property or persons for the benefit of the

State. There is a vast difference between the market-fee and the tax. The Market Commitee has to render and is rendering various services as detailed in section 28 of the Act. The fee of 0.40 paise per every one hundred rupees on the value of agricultural produce bought or sold by a licensee in the market area is not much in view of the expenditure involved for the maintenance of services under section 28 of the Act. The rest of the allegations made in this sub-paragraph are not admitted as correct."

The market-fee is levied under esction 23 of the Act which reads:—

"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 by licensees in the notified market area at a rate not exceeding fifty Naye 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."

(8) The market-fee is collected under section 23 and all other moneys received by the Market-Committee are paid into the Market Committee Fund referred to in section 27 of the Act. The amount received in the Market Committee Fund can be expended by the Committee only for three purposes, viz.; (a) for payment to the Market Board as contribution such percentage of its income derived from licence fee as is specified in the Act to defray expenses of the office establishment of the Board, and other expenses of the Board incurred by it in the interest of the Market Committee; (b) for payment to the State Government the cost of any special or additional staff employed by it in consultation with the Committee for giving effect to the provisions of the Act in the notified market area in question; and (c) for all or any of the seventeen purposes mentioned in section 28 of the Act including acquisition of sites for markets and maintenance and improvement thereof, etc. In the absence of any definite material about the income which accrues to a Market Committee by recovery of market-fee on the one hand and the expenses

it has to incur on the items specified in sections 27 and 28 of the Act, (all of which are admitted to be related to the functions of the Committee), on the other, it is impossible to record any finding as to whether there is a *quid pro quo* between the amount of the fee and the services to be rendered by the Committee in question or not. On the material available before us, it is obvious that the amount of market-fee which can possible be recovered by a Committee does not in any manner appear to be disproportionate to the services which it is expected to render to the assessees of such fee, by performing the duties referred to in section 28. In our opinion no proper foundation has in fact been laid in this case by the petitioner on which it could build the argument sought to be made out on its behalf. In any event, the petitioner has not furnished any material for substantiating the vague allegation made in sub-paragraph (ix) of paragraph 16 of the writ petition which has already been quoted. Be that as it may, it appears to be wholly futile to go any further into this matter as the market-fee of 0. 40 Paisa on sale of goods worth Rs. 100/- within the market area cannot be called a tax in the face of the authoritative pronouncements of the Supreme Court in *Mohammad Hussain Gulam Mohammad and another* v. *The State of Bombay and another* (3) and in a recent unreported judgement in *Lakhan Lal and others* v. *State of Bihar and others* (4). *In Mohammad Hussain Gulam Mohammads's case* (supra), the Supreme Court held that the Market Committee which is authorised to levy fee provided by section 11 of the Bombay Agricultural Produce Markets Act (22 of 1939) renders services to the licensees particularly when the market is established and it cannot be held that the fee charged for services rendered by the Market Committee in connection with the enforcement of the various provisions of the Bombay Act and in connection with the facilities in the various markets establishehd by it, is in the nature of a sales-tax. It is not disputed that the Market Committee, Zira, has established a Market in Zira and the functoins enjoined on it under the Act are now being performed by the Administrator appointed by the Government. It has not been disputed anywhere in the writ petition that the Market Committee in question is performing the functions which are required

(3) A.I.R. 1962 S.C. 97.

(4) Writ Petition Nos. 103 and 199 of 1967 decided on 26th March, 1968.

of it under section 28 of the Act which may be quoted at this stage:—

"Subject to the provisions of section 27, the Market Committee Funds shall be expended for the following purposals :—

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

(iii) construction and repair of buildings which are necessary for the puroses of the market and for the health, convenience and safety of the persons using it.

(iv) provision and maintenance of standard weights and measures ;

(v) pay, leave allowances, gratuities compessionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents while on duty, medical aid, pension or provident fund to the persons employed by the Committee;

(vi) payment of interest on loans that may be raised for purpose of the market and the provisions of a sinking fund in respect of such loans;

(vii) collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the agricultural produce concerned;

(viii) providing comforms and facilities, such as shelter, shade, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes;

(ix) expenses incurred in the maintenance of the offices and in auditing the accounts of the Committees;

(x) propaganda in favour of agricultural improvements and thrift;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the Committee;

(xiii) imparting education in marketing or agriculture;

(xiv) payments of travelling and other allowances to the members and employees of the Committee, as prescribed;

(xv) loans and advances to the employees;

(xvi) expenses of and incidental to elections; and

(xvii) with the previous sanction of the Board any other purpose which is calculated to promote the general interets of the Committee or the notified market area, or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

Section 23 fixes a ceiling of fifty paise per Rs. 100 for the imposition of the fee. Inasmuch as the fee levied by the Zira Market Committee is only forty paise on sale worth Rs. 100/- (which is within the maximum limit) the levy is fully authorised and valid.

(9) A short noted of the recent unreported judgment of the Supreme Court in the case of *Lakhan Lal and others* v. *State of Bihar and others* (5). That case relates to the Bihar Agricultural Produce Markets Act (16 of 1960). The relevant provisions of the Bihar Act are in *pari materia* with the Punjab Act. The validity of the market-fee of thirty-five paise per Rs. 100/- worth of agricultural produce and the licence fee prescribed by rules 71 and 73 of the rules framed under the Bihar Act were impugned in the Supreme Court in two petitions under Article 32 of the Constitution on the ground that the said levies partook of the nature of a tax and there was no sufficient *quid pro quo* for the levies. The Supreme Court held that the fees charged by the Market Committee are correlated to the expenses incurred by it for rendering statutory services mentioned in the Act, and that, therefore, there is sufficient *quid pro quo* for the levies in question and they satisfy the test of "fee" as laid down in *Commissioner, Hindu Religious Endowments, Madras* v. *Shri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt* (6). In the face of the abovesaid two judgements of the Supreme Court, it cannot possibly be held that there is any force at all in the first contention which was sought to be raised before the learned Single Judge and was again pressed before us.

(5) 1968 Supreme Court Notes (Note No. 219) at page 155.
(6) (1954) S.C.R. 1005.

(10) The arguments of the learned counsel for the petitioner on the second point are not only ingenious but also look attractive on the first sight, though in ultimate analysis we have not been able to find any force in any of them either. Sub-rules (7) to (9) of rule 31 may be quoted at this stage in order to appreciate the submissions of the learned counsel on this point:—

"31 (7) The Committee may authorise one or more of its members to carry out the inspection ordered by it under sub-rule (5). Such members or members shall be assisted by such employees of the Committe as may be deputed by it for that purpose.

(8) Such member or members may after inspection prepare a return or may amend the return already furnished, on the basis of transactions, appearing in the dealers' account books, and the Committee may levy a fee, or, as the case may be, an additional fee, under section 23 on the basis of such return or amended return, but if the account books are reported to be unreliable, or as not providing sufficient material for proper preparation or amendement of the return or if no such books are maintained or produced, the Committee may assess the amount of the dealer's business on such information as may be available or on the basis of best judgment, and levy fee on the basis of such assssment.

(9) In addition to the fee or additional fee levied under sub-rule (8) the Committee may recover from the defaulter penalty equal to the fee or additional fee so levied."

(11) The 1962 Rules were framed under section 43 of the Act. The provisions of sub---section (1) and certain clauses of sub-section (2) of section 43 may also be noticed at this stage:—

"43. (1) The State Government may by notification make rules for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for ——

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* * * * * *

* * * * * *

(vii) management of the market, maximum fees which may be levied by a Committee in respect of the agricultural

produce bought or sold by licensees in the notified market area, and the manner and the basis thereof, and the recovery and disposal of such fees;

* * * * * *
* * * * * *

(xxii) any matter in respect of which fees shall be payable under this Act, and fixing the amount of such fees and the mode of payment and recovery thereof;

* * * * * *
* * * * * *

(xxv) the realisation or disposal of fees recoverable thereunder or under any rules or bye-laws made under this Act;

* * * * * *
* * * * * *

(xxix) the penalties to be imposed upon the employees of the Board and Committees, including the manner of imposing such penalties and the right of appeal against such penalties;

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* * * * * *

(12) The submission of Mr. Goyal in connection with the petitioner's attack on the vires of sub-rule (9) of rule 31 of the 1962 Rules were:—

(i) the absence of any specific provision in the Act authorising imposition of penality on a defaulter implies prohibition against the making of any rule for such a purpose;

(ii) no authority having been conferred on the Government under any of the clauses of sub-section (2) of section 43 of the Act to frame any rule for the levy of penality on a defaulter, the impugned rule has been framed without any lawful authority;

(iii) clause (xxix) of sub-section (2) of section 43 has by expressly providing for cases in which rules may be made for levy of penalty excluding by implication the power to provide for imposition of penalty in any other case in exercise of the rule-making authority conferred on the Government by section 433; and

(iv) by adding the maximum amount of penalty provided by the impugned rule (which would be equal to the amount of market-fee) to the market-fee leviable under section 23 of the Act, the liability of an assessee under the Act may extend to eight paise on sales worth Rs. 100 which would exceed the maximum limit of the ceiling on the quantum of liability towards market-fee fixed by the purview of section 23 at fifty Paise for sales worth every Rs. 100.

(13) For the first proposition counsel referred to section 23 of the Punjab General Sales-tax Act, sections 270 to 273 of the Indian Income-tax Act, 1961, section 15 of the Punjab Urban Immovable Property Tax Act, 1940, section 8-A of the Punjab Professions, Trades, Calling and Employments Taxation Act, 1956, and section 11 of the Punjab New Mandi Township (Development and Regulation) Act, 1960, and argued that provision for penalty is already made in the statute itself and no penalty which is not provided by the Act itself has ever been levied under the rules for the first time. The mere fact that provision for imposition of penalty has been made in certain statutes themselves does not in our opinion debar an appropriate Legislature from authorising the State Government to frame rules for imposition of penalty either expressly or by implication for the purpose of giving effect to other provisions of the statute. There is no quarrel with the proposition of law enunciated in the *State of Kerla* v. *K. M. Charia Abdulla and Co.* (7) to the effect that when power to frame rules is conferred by an Act, the power can be exercised by the appropriate rule-making authority only within the strict limits of the authority conferred and that if in making a rule, the State Government transcends its authority, the rule would be invalid because the statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of the authority conferred. It is settled law that validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised. Nor is there any dispute about the ratio of the Judgment of the Supreme Court in the *Central Bank of India and others* v. *Their Workmen etc.* (8) to the effect that a statutory rule cannot enlarge the meaning of the section and that if a rule goes beyond that the section contemplates, the rule must yield to the statute. We also agree with the

(7) AI.R. 1965 S.C. 1585.
(8) A.I.R 1960 S.C. 12.

proposition of law canvassed by the learned counsel for he petitioner that while interpreting a statutory provision to find out whether it authorised the imposition of penalty or not, an interpretation in favour of the subject should be preferred in case of doubt or ambiguity. We have no doubt that if Mr. Goyal could succeed in showing that the impugned rules is beyond the authority conferred on the State Government under section 43 or under any other provision of the Act, he must indeed succeed in having the said rule declared *ultra vires* section 43, and in getting rid of so much of the impugned orders as purport to impose a penalty of Rs. 3,000 on the petitioner. But the question to be answered is whether sub-rule (9) of rule 31 is really outside the scope of the authority of the State Government conferred on it by the Act. The argument advanced on behalf of the petitioner about the impugned rule being *ultra vires* section 43 as it is not covered by any of the clauses of sub-section (2) of that section is obviously fallacious. Sub-section (2) starts with a *non obstante* clause "— — — without prejudice to the generality of the foregoing power — — ——", and has to be read subject to sub-section (1) of section 43 and not in supersession thereof. Th various clauses of sub- section (2) are merely illustrative and do not in any manner detract from the general power conferred by sub-section (1) on the State Government to make rules "for carrying out the purposes" of the Act. If it is, therefore, found that the impugned rule can be framed for carrying out the purposes of the Act, it would be within the authority conferred on the State Government by sub-section (1) of section 43 and could not be challenged as being unauthorised irrespective of whether the rule does or does not fall within the purview of any of the clauses of sub-section (2). The enumeration of particular powers in an Act does not in any way curtail the general power given under the Act to make any rules for carrying out the purposes of the Act. The only proviso to this maxim is that the rule should not be inconsistent with the provisions of the Act (per Basu, J., in *Gokulananda Roy* v. *President, District School Board, Burdwan and others* (9). The purposes of the Act have been described in its preamble as follows:—

> "to consolidate and amend the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in the State of Punjab."

(9) A.I.R. 1964 Cal. 568.

(14) The manner in which the said purposes have to be achieved can be gathered from section 28 of the Act, which has already been reproduced. In order to provide funds required for carrying out the purposes of the Act, section 23 has been enacted (besides provision for licence-fees, etc.). The levy and collection of market-fee may become extremely difficult if there were to be no provision for penalising defaulters. The levy of the market-fee has been authorised "subject to such rules as may be made by the State Government" in that behalf. Section 23 itself, therefore, authorises the framing of rules by the State Government in the matter of levy of market-fee subject only to the limitations contained in the purview and provisos of that section. The said rule-making power is in addition to the powers conferred on the State Government by section 43. It is, therefore, not only to section 43 that we have to look for the power and authority of the State Government in this matter, but also to section 23. Even independent of the authority conferred by section 23, I am of the opinion that the language of sub-section (1) of section 43 is in the circumstances of the case broad enough to cover a provision like the one contained in the impugned rule.

(15) A Division Bench of the Calcutta High Court held in *Abdul Rauf* v. *The State* (10), that it is one of the canons of interpretation of statutes that an Act which authorises the making of bylaws, impliedly authorises the annexation of reasonable pecuniary penalty for their infringement, recoverable by action or distress. Reliance was placed by the Calcutta High Court for laying down law to that effect on the relevant passage in Maxwell on Interpretation of Statutes. In *Protap Properties Private, Ltd.* v. *Stae of West Bangal and others* (11), it was observed as below:—

> "The rule-making power is sufficiently general and includes everything that is necessary to give effect to the provisions of the Act, and the renewal of a licence can be said to be the manner of carrying in to effect the licensing provisions of the Act, and indeed, is a very important part of the procedure provided to carry in to effect the provisions of the Act. In such case, namely, where there exists a general power, the interpretation of it must not be too limited."

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(10) A.I.R. 1960 Cal. 436.
(11) A.I.R. 1960 Cal. 296.

All that has happened is that the broad policy and principles having been enacted in the statue, the working out of the details have been left to the State Government, which has been empowered to make rules for the purpose of carrying into effect the provisions of the Act."

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In my opinion the subject of renewal of licence is well within the rule-making power, and that the rules framed in respect thereof, particularly rules 8 and 19, are valid and *intra vires*."

(16) There was no provision in the Act for renewal of cinema licences. Rules were made in that behalf in exercise of rule-making power conferred on the State Government in similar terms as has been conferred on the Punjab State by sub-section (1) of section 43. The rule-making power in the case before us is equally general and appears to us to include everything that is necessary to give effect to the provisions of the Act. At page 326 of 'Craies on Statute Law' (sixth edition), it is stated that a bylaw cannot be said to be inconsistent with the laws of England merely because it requires something to be done which there was no previous obligation to do; and that otherwise a nominal power of making bylaws would be utterly nugatory. On the same page it is further observed:—

"A bylaw is a local law, and may be supplementary to the general law; it is not bad because it deals with something that is not dealt with by the general law, but it must not alter the general law by making that lawful which the general law makes unlawful, or that unlawful which the general law makes lawful."

(17) The impugned rule in the case before us is not repugnant to any provision in the Act, but appears to be merely ancillary to section 23 of the Act. The leading case on the subject is *Hall* v. *Nixon* (12). In the case before the Court of Queen's Bench, the statutory provision had merely authorised the framing of bylaws. In the bylaws framed under that authority penalties were provided for infringing the by laws. Lush, J. observed:—

"So that, instead of a fixed notice and penalties, the legislature leaves it to the discretion of the local board; and

(12) L.R. 10 Q. B.D. 152.

further, the section gives them express power as to giving notices, and though it says nothing as to penalties, it necessarily gives what the common law implies, namely, the power to enforce the bye-laws by penalties."

(18) Counsel for the respondents lastly referred to the Privy Council judgment in *Archibald G. Hodge* v. *The Queen* (13) wherein it was held that the local legislature had power under the British North America Act, 1867, to entrust to a Board of Commissioners authority to enact regulations like section 4 of the Liquor License Act of 1877 (Chapter 181, Revised Statutes of Ontario, 1877) which were in the nature of police or municipal regulations and thereby to create offences and annex penalties thereto.

(19) Mr. Ganga Parshad Jain, learned counsel for respondents Nos. 2 and 3, then referred to the marginal note of rule 31 — "sections 23 and 43(2) (vii)" — and argued that though a marginal note or a heading cannot control or affect the meaning or scope of the relevant statutory provision, it can sometimes be called in aid for throwing light on certain ancillary matters. In this case the marginal note is intended to show that rule 31 was sought to be framed by the Government in exercise of the power conferred on it under section 23 as well as under section 43 read with clause (vii) of sub-section (2) of the last mentioned section. I have already held that rule 31 including sub-rule (9) of that rule falls squarely within the power conferred on the State Government under section 23 subject to the exercise of which power alone the market-fee is leviable. The impugned sub-rule is also within the scope of the general authority conferred by sub-section (1) of section 43 on the State Government. Mr. Ganga Parshad Jain further argued that even if it were to be necessary to bring rule 31(9) within one of the specific clauses of section 43(2), it can be justifiably and fairly said to be within the rule-making field of clauses (vii), (xxii) and (xxv) (which have already been quoted by me) of sub-section (2) of section 43. I find great force in this submission of Mr. Jain. The provision for imposition of penalty on a defaulter contained in rule 31(9) is so closely linked up with making provision for "recovery of such (market) fees" as to form an implied and integral part of the power conferred by clause (vii) of section 43(2). The creation of a new duty usually carries with it a corresponding remedy to assure its observance. When a statute empowers the levy of a fee subject to rules which may be framed by a named

(13) 9 Appeal cases 117.

authority, the power carries with it by implication everything necessary for making the levy effective by making appropriate rules in that behalf. It is well settled that where an Act confers a jurisdiction, it carries with it, without the necessity of making an express provision in that behalf, the power of doing such acts or employing such means as are necessary for its proper exercise.

(20) Moreover, the power conferred by clause (xxii) to make rules to provide for "made of payment and recovery" of market-fee necessarily includes power to ensure and facilitate assessment and recovery of the market-fee by penalising defaulters. Similarly, annexation of a provision for penalties appears to fall within the scope of the autohrity conferred specifically by clause (xxv) to make rules for "the realisation of fee recoverable under any rules made under the Act." From whatever angle, therefore, the matter is viewed, it is clear that the rule falls within the general as well as the specific power conferred on the State Government by sections 23, 43(1), and 43(2)(vii), (xxii) and (xxv) of the Act. Once it is found that specific provisions in the Act at least impliedly authorise the making of rules for imposition of penalty, the first argument of Mr. S. C. Goyal on the contention relating to the attack on the vires of rule 31(9) cannot possibly be sustained.

(21) The second argument advanced by Mr. Goyal is wholly misconceived. In order to make a rule framed under the Act valid, it is not necessary that it must fit in one or more of the illustrative clauses contained in sub-section (2) of section 43. Even if a rule is not covered by any of those clauses but can be framed for "carrying out the purposes of the Act", it would be valid as falling within the scope of the authority conferred on the State Government by sub-section (1) of section 43.

(22) This takes me to the third contention of Mr. Goyal on the second issue. Clause (xxix) of sub-section (2) of section 43 authorises the State Government to make rules for providing "penalties to be imposed upon the employees of the Board and Committees, including the manner of imposing such penalties." It is the authority conferred by the above quoted clause that has, according to the submission of Mr. Goyal, excluded by implication the power to make rules to impose penalties in any other circumstances. There is no force in this submission of the learned counsel. The penalties referred to in clause (xxix) have no relation to the levy, assessment

or recovery of market-fees. Nor is the provision related to the imposition of possible penalties on defaulters referred to in rule 31. The imposition of penalties on employees of the Board or of the Market Committees could possibly have been argued to be not necessary for "carrying out the purposes of the Act." Specific provision had, therefore, to be made for the same in sub-section (2) of section 43. Clause (xxix) is related to an entirely different subject and nothing contained therein can, in my opinion, exclude the implied authority conferred on the State Government to make rules for imposition of penalty on defaulters in connection with the levy of market-fees. Provision is made in section 37 of the Act for imposition of penalties on persons who might contravene the provisions of sections 6, 8 or 13(2) and (4) of the Act on their being convicted by a Magistrate. Similarly sub-section (3) of section 37 provides for imposition of penalty on conviction of anyone who contravenes the provisions of section 30. Those are penalties intended to be imposed by a regular Criminal Court in certain specified circumstances. Specific provision for the same in section 37 does not, in my opinion, impliedly exclude the power of the State Government to make rules for imposition of penalties on defaulters. There is, therefore, no force in the submission of Mr. Goyal based on the judgement of a Division Bench of this Court (Dua, J and myself) in *Daya Krishan* v. *The assessing Authority-cum-Excise and Taxation Officer Enforcement). Ferozepore, and others* (14) to the effect that section 37 excludes the possibility of any provision being made for the imposition of penalty on a defaulter in the same manner as the provision for deposit of the tax due as a condition precedent for the hearing of an appeal under the Punjab General Sales Tax Act, 1948, was held in *Daya Krishan's case* (supra) to exclude the making of a rule providing for deposit of the disputed tax as a condition precedent for the entertainment of a revision petition. Whereas the rule which was impugned in *Daya Krishan's case* would have retarded the operation of the provision for filing petitions for revision of the orders under the General Sales Tax Act, the provision for penalty against defaulters is clearly one which aids the achievement of the objects of section 23 of the Act.

(23) Nor have I been able to find any force in the last submission of Mr. Goyal on the question of vires of rule 31(9). The ceiling fixed by the purview of section 23 of the Act relates to market-fee

(14) (1966) 18 S.C. 117.

as such and cannot possibly be made applicable to market-fee plus penalty. It has been held in *Morisetty Bhadraiah and others* v. *The Sales Tax Appellate Tribunal, Hyderabad, A. P.* (15) that tax does not by itself include penalty. On the same basis, it can be .safely held that the ceiling fixed for imposition of market-fee does not envelope within itself the amount of penalty which may be lawfully levied on a defaulter. The maximum amount of penalty which can be imposed on a defaulter has been provided in sub-rule (9) of rule 31, and the same does not appear to be unreasonably high.

(24) The last submission of Mr. Goyal was based on the judgment of a Division Bench of the Madras High Court in *re M. P. Kumaraswami Raja* (16). Counsel submitted that as the provisions in the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, relating to advance provisional assessment and levy were held to be inconsistent with the provisions of the Madras General Sales Tax Act, 1939, and, therefore, *ultra vires* the State Government, we should hold rule 31(9) to be similarly *ultra vires* the powers of the State Government under the Act. For the same proposition counsel also relied on the judgement of the Nagpur High Court in *Babulal* v. *D. P. Dube and others* (17) wherein it was held that it was not within the competence of the State Government under its rule-making powers to alter the incidence of the Tax from the seller to the purchaser, and that rule 20-A of the Central Provinces and Berar Sales Tax Rules, 1947, which made such a change, was *ultra vires* the State Government. I do not think that anything contained in the abovesaid two judgments is relevant for deciding the matter in issue before us. In *Babulal's case* (supra) the rule was struck down as it altered the incidence of tax from the seller to the purchaser. No such thing has happened in the instant case. The liability to pay penalty has been imposed by the impugned rule on the very same person on whom lies the liability to pay the market-fee. The provision contained in the impugned rule is not in any manner inconsistent with any provision of the Act and, therefore, the instant case does not fall within the ratio of the judgment of the Madras High Court in *re M. P. Kumaraswami Raja* (supra). All the submissions of Mr. Goyal in relation to the vires of rule 31(9), therefore, fail.

(15) (1964) 15 S.T.C. 787.
(16) (1955) 6 S.T.C. 113.
(17) (1955) 6 S.T.C. 255.

(25) This takes me to the third main contention of Mr. Goyal mentioned in the order of reference. Learned counsel submitted that in computing the amount of fee, the sales and purchases effected by the petitioner in other market areas in respect of which the market-fee had already been paid and which did not involve any transaction with a producer should have been excluded by the Market Committee while fixing liability of the petitioner. Realiance was placed by Mr. Goyal in this connection on my judgment *Messrs Mehar Chand Prem Chand* v. *The Punjab State and others* (18). It is claimed that in the present case the sales and purchases were effected after the deletion of rules 18(1) (f) and 18(2) (f), i.e., after September 18, 1964. In so far as such sales were concerned, different considerations would apply. In any case, we do not appear to be called upon to enter into the merits of the assessment on matters like the one sought to be covered by the submission in hand as such matters could have been raised by the petitioner in an appeal against the impugned order. Whether the petitioner is entitled to any relief on the ground now sought to be submitted by its counsel would depend on disputed facts into which we cannot go in these proceedings. Mr. Ganga Parshad Jain submitted that my decision in the *case of Messrs Mehar Chand Prem Chand* (supra) needs reconsideration, and that in any case nothing contained in that judgment would be applicable to sales or purchases effected after September 18, 1964. In the circumstances already explained, it does not appear to be necessary to go into that question. Counsel also submitted that those sales and purchases are not taxable because of the amendment of Rule 30. Sub-rule (1) of rule 30 of the 1962 Rules (prior to its amendment on October 11, 1963) provided that if a fee has once been levied on the sale or purchase of any quantity of agricultural produce in a notified market area and the dealer concerned complies with the provisions of sub-rule (2) of that rule, then no fee shall be leviable on the sale or purchase within the same notified market area of any agricultural produce manufactured or extracted from the agricultural produce in respect of which the fee has already been paid. The argument of Mr. Goyal was that on and with effect from October 11, 1963, the follwing had been substituted as sub-rule (1) and (1-A) in place of original sub-rule (1) of rule 30 referred to above by operation of rule 2 of the Punjab Agricultural Produce Markets (General) (Third Amendment) Rules, 1963 :—

"(1) no market-fee shall be levied on the sale or purchase of any agricultural produce manufactured or extracted

(18) C.W. 1410 of 1964 decided on 18th May, 1967.

from the agricultural produce in respect of which such fee has already been paid in the same notified market area within the State.

(I-A) The dealer who claims exemption from payment of market fee levied on any agricultural produce manufactured or extracted from the agricultural produce in respect of which the market fee has already been paid in another notified market area shall make declaration and give certificate to the market Committee in Form 'K-I' duly attested by the Committee where the fee has already been paid."

(26) So far as claiming exemption under sub-rule (1) of rule 30 is concerned, the petitioner could succeed in the claim even under the amended rule only if it could prove that it had made the requisite declaration and given the certificate in form 'K-I' duly attested by the Committee where the fee was alleged to have been already paid as required by the amended sub-rule (1-A) of rule 30. The impugned order does not show that any such declaration was filed by the petitioner. On the record before us, therefore, we cannot possibly accept this claim of the petitioner for the first time in these proceedings as it involves disputed question of fact, for deciding which no material has been furnished in this case. Moreover, matters of this type could, as already stated, be more appropriately agitated in an appeal against the impugned order, which alternative remedy the petitioner has deliberately avoided to avail of for reasons best known to it. In the circumstances of this case, we are, therefore, unable to allow any relief to the petitioner on this count either.

(27) Lastly, Mr. Goel, urged that the finding of the Committee about the petitioner being a defaulter was erroneous in law, and, that, therefore, the order for impugned imposition of penalty against the petitioner under sub-rule (9) of rule 31 lacked foundation. Mr. Goyal submitted that the assessment years concerned being 1963-64 and 1964-65 and sub-rule (1) of rule 30 of the 1962 Rules having been amended with effect from October 11, 1963, the petitioner could not have been held to be a defaulter in respect of those years. Sub-rule (2) of rule 30 required the dealer concerned to maintain in form 'L' a true and correct account of the sale or purchase as the case may be of the said agricultural produce and of any agricultural produce manufactured or extracted from it.

(28) The contention of the learned counsel for the petitioner was that the requirement to maintain a true and correct account in form 'L' contained in sub-rule (2) of rule 30 was abrogated after the amendment of rule 30(1), and, therefore, the non-maintaining of the said account could not be held to amount to a default on the part of the petitioner. The argument is *prima facie* erroneous. It is only sub-rule (1) of rule 30 that has been amended as indicated above Sub-rule (2) which requires the maintenance of true account in prescribed form 'L' does not appear to have been abrogated and the non-maintenance of that register clearly amounted to a default. Moreover, this is an argument which should have been urged by the petitioner before the Committee and in case of its being dissatisfied by the order of the Committee in that behalf in an appeal which could have been preferred by the petitioner against the original order of assessment. In the impugned order the petitioner was held to be a defaulter on various counts. So there is no merit in this contention.

(29) It is, therefore, held that—

(1) the market-fee leviable under section 23 of the Punjab Agricultural Produce Markets Act (23 of 1961) is in the nature of fee and not in the nature of a tax on sales;

(2) nothing contained in the Act prohibits the making of a provision for imposition of a penalty on a defaulter by rules framed under the Act;

(3) sub-rules (9) of rule 31 providing for imposition of penalty on defaulters is within the powers of the State Government conferred on it by sections 23, 43(1) and 43(2) (vii), (xxii) and (xxv) of the Act;

(4) rules 31(9) of the 1962 Rules is not *ultra vires* section 43 of the Act; and

(5) rule 31(9) is not in excess of the powers of the rule-making authority, i.e., the State Government.

(30) None of the contention raised by Mr. Goyal having succeeded, this writ petition must fail and is accordingly dismissed, No costs.

K. S. K.

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