CIVIL MISCELLANEOUS

Before D. K. Mahajan and R. S. Narula, JJ.

MESSRS GANESH COTTON COMPANY—*Petitioner*

versus

THE MARKET COMMITTEE, KOT KAPURA AND OTHERS,—*Respondents*

Civil Writ No. 2781 of 1964

January 4, 1967

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Ss. 19 and 23—Punjab Agricultural Produce Markets (General) Rules (1962)—Rules 29 and 31—Levy of market fee by a Market Committee—Passing of a resolution by the Committee—Whether necessary—"Levy"—Meaning of—Work or functions of the Committee relating to proceedings for assessment of market fee—Whether can be delegated to a sub-committee—Scope of such delegation stated—"Work"—Meaning of.

Held, that the levy of market fee by a Market Committee has been made by the legislature subject to the Rules that might be framed by the State Government. The power vested in the committee by section 23 of the Punjab Agricultural Produce Markets Act is itself subordinate to the rules framed in that behalf. By adopting this procedure, the Legislature is deemed to have incorporated into section 23, such rules as might be framed by the State Government in exercise of its rule-making power under the Act. If by such a rule, the State Government has decided, as in fact it has so decided by rule 29 of Agricultural Produce Markets (General) Rules, that all Market Committees in the State, should impose market-fees on *ad valorem* basis at a certain rate, the rule framed by the Government is statutory and is according to the legal fiction deemed to be a part of section 23. In such a situation no question of the necessity of any further resolution being passed by the Market Committee can arise. Under section 13(1)(a) of the Act, it is the duty of the Market Committee to enforce the rules framed by the State Government. The Committee has, therefore, no choice in the matter and would be failing in its duty if it were not to enforce the relevant rules. No formal resolution of the Committee for enforcing rules framed by the State Government is, therefore, necessary.

Held, that the word "levy" in section 23 of the Act comprises within its scope, the legislative function of imposition, executive duties of assessment as well as the procedural part of the work relating to recovery. All the three

duties have to be performed by the Committee subject to any rules framed by the State Government. In case of and to the extent to which the rules framed by the State Government make provision for the imposition or other allied matters, the Market Committee has no option, but to carry into effect the said rule as enjoined on it by the Act.

Held that section 19 of the Act authorises the Market Committee to delegate its function relating to proceedings for assessment of market fee to a Sub-Committee. But the only Committee or group of members to which any of the powers or duties of the Committee can be delegated under section 19, are those to whom either the administration of the sub-market yard for the conduct of any work of the Committee or the work of reporting on any matter, might have been delegated. No delegation is authorised by section 19 for any purpose other than those specified therein.

Held, that the word "work" has been used in section 19 of the Act in its ordinary dictionary meaning, that is, to denote "application of effort to some purposes, any job, any task, any function, anything done or made, doings or experiences, employment etc." and not only in the sense of "operations in buildings".

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 24th March, 1966 *for decision by a Division Bench owing to an important question of law being involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice R. S. Narula on 4th January,* 1967.

Petition under Article 226 *of the Constitution of India praying that a writ of* certiorari, mandamus *or any other appropriate writ, order or direction be issued directing the respondents not to recover any fee or penalty from the petitioner in respect of the transactions for the period* 1*st of September,* 1963 *to* 31*st of March,* 1964.

PREM CHAND JAIN WITH DR. A. S. ANAND, ADVOCATES, for the Petitioner.

AJIT SINGH SARHADI WITH B. S. DHILLON, B. S. SHANT AND S. S. DHINGRA, ADVOCATES, for the Respondents.

ORDER OF DIVISION BENCH

NARULA, J.—This reference to a Division Bench by Dua, J., on Mach 24, 1966, was necessitated on account of the importance and novelty of questions relating to the true scope and proper interpretation of sections 19 and 23 of the Punjab Agricultural Produce Markets Act (23 of 1961) (hereinafter called the Act), read with

rules 29 and 31 of the Punjab Agricultuarl Produce Markets (General) Rules, 1962, (hereinafter referred to as the General Rules), raised by Messrs Ganesh Cotton Company, a partnership concern of Kotkapura, district Bhatinda (hereinafter called the petitioner-firm), under Article 226 of the Constitution, while impugning the order of the Market Committee, Kotkapura, dated November 16, 1964, whereby the petitioner-firm was assessed on best judgment basis with liability to pay Rs. 6,000 on account of market-fee and penalty.

The facts leading to the reference are these.

In May, 1961, the Act was enforced in the Punjab. Section 3(1) of the Act authorises the State Government to establish and constitute a State Agricultural Marketing Board, consisting of fifteen members for exercising the powers conferred on and for performing the functions and duties assigned to the Board, by or under the Act. Such a Board was constituted by the State Government, and will be referred to by me in this judgment as the "Board". Sub-section (3) of section 3 of the Act gives the Board the status and legal personality of a body corporate and of a local authority having perpetual succession and a common seal. Sub-section (9) of section 3 confers on the Board powers of superintendence and control over the Market Committees. Sub-section (14) authorises the Board to frame its own bye-laws with the approval of the State Government. The State Government is authorised by sub-section (17) to delegate any of the powers conferred on the State Government, by or under the Act, on the Board or its Chairman. The Board is, in turn, authorised by the said sub-section to delegate any of its powers, under intimation to the Government, to the Board's Chairman, Secretary or any other officer. Section 11 of the Act empowers the State Government to establish a Market Committee for every notified market area by a notification. The constitution of the Market Committee is detailed in section 12. Duties of the Market Committees are enumerated in section 13. Clause (a) of sub-section (1) of section 13 is in the following terms:—

> "13(1) (a) It shall be the duty of a Committee to enforce the provisions of this Act and the rules and by-laws made thereunder in the notified market area and, when so required by the Chairman of the Board, to establish a market therein providing such facilities for persons visiting it in connection with the purchase, sale, storage, weighment and processing of agricultural produce concerned as the Chairman of the Board may from time to time direct."

Section 19 of the Act is the only provision in the statute authorising delegation of the Committee's powers or duties, and is in the following words:—

> "19. A Committee may appoint, one or more of its members or others to be a sub-committee or to be a joint committee or to be an *ad hoc* committee for the administration of the sub-market yard, for the conduct of any work or for reporting on any matter and may delegate to such committee or any one or more of its members such of its powers or duties as it thinks fit:
>
> Provided that when any such committee is to consist of, or the powers of the Committee are delegated to, one member the resolution shall operate only after it is duly approved by the Chairman of the Board."

Levy of fees by the Committee is authorised by section 23, which provision is 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 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."

The State Government is authorised by section 35 of the Act to supersede the Committee by notification, if in the opinion of the Government, the Committee is incompetent to perform or persistently makes default in performing the duties imposed on it by or under the Act, or abuses its powers. Appeal is provided against certain decisions of a Committee by section 40 of the Act to the Board. Revisional powers

against the orders of the Board are conferred on the State Government by section 42. Section 43(1) of the Act empowers the State Government to "make rules for carrying out the purposes of the Act" by notification. Sub-section (2) of section 43 provides that in particular, and without prejudice to the generality of the power conferred by sub-section (1), rules framed by the State Government under the said section may provide, *inter alia,* for; "(ii) the powers to be exercised and the duties to be performed by the Board or Committees and their officers and servants" and "(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." Section 44 of the Act authorises a Committee to make bye-laws for the regulation of its business, and certain other purposes subject to any rules made by the State Government under section 43, in respect of the notified market area, within the jurisdiction of the Committee concerned.

In exercise of powers conferred on the State Government by section 43 of the Act, the General Rules were framed in 1962. Rule 14 prescribes that the Secretary of the Market Committee shall be its executive officer and the entire office establishment of the Committee shall be under his control. Sub-rule (5) of that rule is in the following terms:—

> "(5) It shall be the duty of the Secretary to carry into effect the provisions of the Act, rules and bye-laws framed under the Act and instructions of the Board, and the decisions of the Committee and of the Chairman of the Committee consistent with the Act, the rules and the bye-laws and instructions of the Board and of the Chairman of the Board and to effect maximum improvement in the market".

Rule 29 with which we are directly concerned, authorises a Committee to levy and collect fees on the sale and purchase of agricultural produce. The rule is quoted below:—

> "29. Levy and collection of fees on the sale and purchase of agricultural produce:—
>
> (1) Under section 23 a Committee shall levy fees on the agricultural produce bought or sold by licencees in the notified market area at the rates fixed by the Board from time to time:

(2) * * * * * ;

(3) The fees shall be paid to the Committee or a paid officer duly authorised to receive such payment within four days of the day of the transaction.

(4) * * * * *.

(5) * * * * * *.

(6) * * * * * *.

(7) * * * * * *

(8) * * * * * *."

Rule 31 makes provision for maintenance of accounts of transactions and of fees paid by the licensed dealers. It requires every licensed dealer to submit to the Committee a return in the prescribed form. Sub-rule (3) of rule 31 is in these terms:—

"(3) The Committee shall levy the fee payable under section 23 on the basis of the return furnished under sub-rule (1)".

Sub-rules (4) and (6) to (9) of rule 31 are in the following words :—

"(4) If any dealer fails to submit a return as prescribed in sub-rule (1) or the Committee has reason to believe that any such return is incorrect, it shall, after giving a notice in Form O to the dealer concerned and after such enquiry as it may consider necessary, proceed to assess the amount of the dealer's business during the period in question.

(5) * * * * * * *

(6) After an order under sub-rule (4) is made, the Committee shall inform the dealer of the date and place fixed for the inspection:

Provided that if the dealer so desires, and pays such fee as the Committee may fix in this behalf, the inspection shall be made at the dealer's premises.

(7) The Committee may authorise one or more of its members to carry out the inspection ordered by it under sub-rule (5). Such member or members shall be assisted by such employees of the Committee 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 amendment 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 assessment.

(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."

An appeal against the order of assessment made by the Committee to the Chairman of the Board is provided by sub-rule (13) of rule 31, subject to the assessee depositing the amount of fee assessed due from him in full with the Committee concerned.

By resolution dated January 19, 1963, (Annexure R-4), the Board fixed the market-fee on *ad valorem* basis for all items of agricultural produce at a rate of 40 Naye Paise per hundred rupees with effect from January 8, 1963, in exercise of powers claimed to have been conferred on the Board by rule 29 (which has already been quoted above). In pursuance of the said resolution, the Chairman of the Board issued a circular letter, dated January 24, 1963, (Annexure R-5), to the Chairmen of all Market Committees in the State informing them of the said decision and directing the Committees to realise market-fee at the rate specified above with effect from the 8th of January, 1963.

In or about September, 1963, the petitioner-firm obtained a dealer's licence under the Act. The licence remained valid till March 31, 1964. The petitioner-firm was carrying on the business of purchase of raw cotton and sale of ginned cotton and cotton-seeds. In respect of purchases of cotton made by it during the period September, 1963 to March 31, 1964, the petitioner-firm submitted daily returns required under the Act and the Rules, and actually deposited

a sum of Rs. 3,148.63 on account of market-fees in pursuance of the Board's resolution, dated January 19, 1963, and in accordance with the requirements of rule 29. On May 9, 1964, a notice under sub-rule (4) of rule 31 in the prescribed form (Annexure 'A') was served by the Chairman of the Market Committee, alleging that the petitioner-firm had not furnished correct returns for the period in question and that it appeared to the Committee to be necessary to make assessment under rule 31 of the Act in respect of the above-mentioned period. By the notice, the petitioner-firm was directed to appear before the Market Committee on May 12, 1964, and to produce accounts and documents specified in the notice for the purpose of the proposed assessment together with objections, if any, which the petitioner-firm might wish to prefer, and any evidence which the petitioner-firm might like to adduce in support of those objections. 'Show-cause' notice for levy of penalty prescribed under rule 31(9) of the General Rules was also given to the petitioner-firm. It was further warned that in case of its failure to comply with the notice, the Committee would proceed to make best judgment asesssment under sub-rule (8) of rule 31.

In petitioner-firm's reply, dated May 16, 1964, (Annexure 'B'), objection was taken to the notice, dated May 9, 1964, being vague and in general terms. Clarification of the same and certain other information was sought by the petitioner-firm before it could submit a final reply. The Chairman of the Market Committee turned down the petitioner-firm's request in the Committee's letter, dated May 29, 1964 (Annexure R-1), and alleged that the petitioner-firm was evading to show its accounts. The petitioner-firm was warned in that letter that if it failed to show its accounts up to the 2nd of June, 1964, the petitioner-firm's case would be referred to the Committee for necessary action. Instead of appearing before the Committee, the petitioner-firm sent a notice under section 31(1) of the Act (Annexure 'C'), wherein it was alleged, *inter alia*, as follows:—

> "Pursuant to section 31(1) of the Agricultural Produce Act, 1961, you are hereby served with the following notice:—
>
> 1. * * * * * *.
> 2. * * * * *.
> 3. That our enquiries reveal that all this has been done at the instance of Shri Amar Nath Mittal, a member of the Committee, who has a personal grudge against us and he in connivance with the Secretary of the Committee to

take revenge against us has maliciously caused this notice to be served upon us.

4. * * * * * * *.

5. That the Secretary of the Committee was asked to serve a similar notice to other factories in Kot Kapura who have also been purchasing Kapas from outside the market. The Secretary has intentionally refrained from doing so under influence of Shri Amar Nath Mittal because he is interested in other Factories and the Secretary wishes to shield them.

6. * * * * * * *.

7. That every thing being done in a pre-planned manner to harass us and without any just or reasonable cause only to win favour of a member of the Committee, Shri Amar Nath Mittal, who is taking undue advantage of his position as a member of the Committee."

It was ultimately stated in the said communication that if the Committee did not cancel its notice, the petitioner-firm would have to pursue other legal remedies. The petitioner-firm followed up the said notice by an application under rule 33, dated June 12, 1964 (Annexure 'E'), for refund of the market-fee already paid by it. It was alleged in the application that the amount already paid by the petitioner-firm had been remitted "under a genuine mistake of law and under the wrong instructions of the Committee" and, therefore, the said amount was refundable. The petitioner-firm had in fact appeared before the Committee on June 11, 1964, before sending the application for refund. According to the petitioner-firm's version contained in the writ petition (paragraph 11) "the Chairman of the Market Committee felt satisfied and came to the conclusion that the amount paid by the petitioner-firm was refundable, and they were not legally liable to make the payment" and that the Chairman had directed the Market Committee to refund the sum of Rs. 3,148.63 paise on an application made by the petitioner-firm under rule 33. The petitioner-firm's case is that it was in pursuance of the said direction that the application, dated June 12, 1964, was submitted. This averment is, however, denied by the respondents. The denial does not appear to be unjustified as the Chairman of the Committee himself sent the Committee's reply, dated June 19, 1964 (Annexure 'F'), to the application for refund rejecting the claim; and it was the Chairman himself who wrote to the

petitioner-firm in the Committee's letter, dated the July 1, 1964, (Annexure 'D'), that the petitioner had promised the Committee in its meeting held on June 11, 1964, to deposit the market-fee. If the Committee had felt satisfied and the Chairman had directed refund of the amount on June 11, 1964, there could be no earthly reason why the Chairman should have taken a directly opposite view in the very first communication sent by him after that day, and followed up by the other a fortnight later. In the letter dated July 1, 1964 (Annexure "D"), the petitioner-firm was directed to attend the office of the Committee on the 4th of July, 1964, with the accounts etc. failing which, it was stated that the Committee would assess the petitioner-firm on the best judgment basis, on the presumption that the petitioner-firm was evading the payment of the requisite market-fee. The information of delegation of its functions for assessment of the petitioner-firm to a Sub-Committee was given to the petitioner-firm in the said communication in the following words:—

> "You are also hereby informed that the Market Committee,—*vide* its resolution No. 408, dated 11th June, 1964, has delegated all the powers of the Committee, i.e., inspection of books and best assessment and imposing penalty etc., to Shri Amar Nath Mittal, Shri Mal Singh and Seth Ram Dayal, Members, Market Committee. The Secretary, Market Committee, will assist these members.
>
> It will be in your own interest to get the books examined by these members and get the case finalised on the said date."

Instead of complying with the notice, the petitioner-firm sent reply, dated July 3, 1964 (Annexure 'G'), requesting the Committee to stay the proceedings till the question of the petitioner-firm's liability could be decided by the Court. The Sub-Committee fixed July 11, 1964, as the date of hearing. On the allegations that the Sub-Committee had no jurisdiction to embark upon the assessment proceedings against the petitioner-firm, as the petitioner-firm had ceased to be a licensee, that there was no resolution of the Market Committee under section 23 of the Act to levy market-fee, that the petitioner-firm was exempt form taking licence under section 6(3) of the Act read with rules 18(1) (f) and 18(2) (f) of the General Rules, that the impugned notice was vague and indefinite, that the statutory period of two months of the notice under section 31, not having expired, the Committee had no jurisdiction to proceed with the assessment and was

bound to adjourn the proceedings, and that the whole action was *mala fide* and had been started at the instance of Mr. Amar Nath Mittal, the petitioner-firm filed civil writ No. 1407 of 1964, in this Court on 10th of July in that year, to quash the impugned notice and all proceedings taken by the Committee in pursuance thereof, and to direct the Committee to refund the amount already paid by the petitioner-firm. The writ petition was, however, dismissed by the Motion Bench (Grover and Khanna, JJ.), on July 14, 1964, as premature. Thereupon the petitioner-firm appeared before the Sub-Committee on July 17, 1964, and again on August 3, 1964. Copies of the proceedings of the Committee have not been filed by either side in this case. In pursuance of the orders of the court, original records had been produced before the learned Single Judge. The petitioner-firm claims to have taken copies of the resolutions, dated 3rd of August, 27th of August, and 24th of September, 1964, and read out the same to us at the hearing of this case. The respondents did not question the correctness of the copies. The resolutions are in Punjabi. Translated freely into English, the relevant parts of the three resolutions, would read thus:—

(From resolution, dated August 27, 1964).

"M/s. Ram Chand, Hari Chand and Ganesh Cotton Company of Kot Kapura, have shown their accounts to Seth Ram Dayal Ji, member and Shri Sarmukh Singh Ji, Secretary, Market Committee. But both of them have not been able to prepare their report as the persons, who had taken notes regarding the accounts, were busy in other matters. Hence, they have been enjoined upon to submit their report by Sunday, the 7th August, 1964, in respect of both the firms."

(From resolution, dated August 27, 1964).

"In the meeting held today, the 27th August, 1964, in the office, papers regarding assessment relating to the firms were put up. But the report is incomplete. So the Secretary has been enjoined upon that he should complete his report with the help of Seth Rām Dayal Ji, Member, immediately by the 1st."

(From resolution, dated September 24, 1964).

"The President has told the Committee that the Secretary, Market Committee, Kot Kapura, has asked from M/s. Ganesh Cotton Company, Kot Kapura, three or four times to furnish its detailed account. Besides it Shri Ram Dayal, Member, and Shri Amar Nath Ji Mittal, Member,

Sub-Committee, have also asked the firm to furnish its account several times. The firm has not furnished its complete account, etc. On the other hand the firm insisted that the Committee should refund the fee deposited by it. Thereon it has been resolved unanimously that Rs. 223.92 NP., as market-fee have not been paid to the Market Committee according to the account produced. It is clear from the non-production of the account by the firm that there are several irregularities therein. A dispute is going on between the partners of this firm regarding many irregularities in the accounts of the firm. So the Committee unanimously resolves that Rs. 3,000 are due as market-fee from the firm Ganesh Cotton Company, Kot Kapura. The Committee has taken the President, Market Committee, Kot Kapura, into confidence.—*vide* resolution No. 408, dated the 11th June, 1964, that according to rule 31(9) of the Punjab Agricultural Produce Markets (General) Rules, 1962, Rs. 3,000 be recovered as penalty as the accounts of the firm are unreliable and the Sub-Committee has recommended to the general Committee that the accounts of all the firms of the partners may be scrutinized and their licences may also be cancelled, so that in future no firm should attempt to evade the payment of the fees of the Marketing Committee of the market. This firm may be issued a demand notice on form (P) for recovery (of the fees). In case, the amount is not paid within the period specified in form 'P', steps may be taken for the realisation of the same as revenue."

In pursuance of the above-said final resolution (of the details of which the petitioner-firm claims to have become aware only during the hearing of the case before Dua, J.), demand notice, dated November 16, 1964, (Annexure 'H'), was served by Shri Bhopinder Singh Dhillon, Chairman of the Market Committee, Kot Kapura, informing the petitioner-firm that its business during the period September 1, 1963, to March 31, 1964, had been assessed for the levy of market-fee and penalty, and that after deducting the sum of Rs. 3,148.63 Paise already paid by the petitioner-firm, another some of Rs. 3,000 on account of fee and Rs. 3,000 on account of penalty, had been assessed due from the petitioner-firm, which the latter was directed to pay to the Market Committee on or before the 30th day of November in that year, failing which the amount would be recoverable as an arrear of

land revenue. It was in this situation that the present writ petition was filed on December 14, 1964. At the time of admission of the petition by the Motion Bench (Grover, and Dua, JJ.), on December 23, 1964, respondent No. 1 accepted service of notice of the case, through its counsel. In the writ petition it was prayed that the record relating to the petitioner-firm's case may be called up, that the respondent Committee may be restrained from recovering any amount of market-fee or penalty from the petitioner-firm in respect of the transactions for the period in dispute, and to direct the respondent Committee to refund the amount already recovered by it from the petitioner-firm.

Respondents Nos. 1 and 5 filed a joint written statement on December 23, 1964, accompanied by affidavits of Sarmukh Singh, Secretary of the Market Committee and of Shri Amar Nath Mittal, respondent No. 2, and the "R series" of documents to which a reference has already been made. In civil miscellaneous No. 858 of 1965, dated March 8, 1965, filed by the petitioner-firm an order was made by this Court (Pandit, J.), on April 7, 1965, for the production of relevant record by the Market Committee including the minute book for the period 1st of April to 31st of December, 1964, the resolutions delegating the powers of the Committee to the Secretary by the Chairman, and the original letter, dated June 11, 1964, addressed by the petitioner-firm to the Chairman of the Market Committee for personal hearing.

When the case was argued before Dua, J., on February 25, 1966, preliminary objection to the maintainability of the petition was taken by the respondents, about the alternative remedy by way of appeal from the order of the Market Committee, to the Chairman of the Board being available to the petitioner. The learned Judge felt that the said objection could not be accepted and directed the petition to be reheard. During the interval, the Secretary of the Market Committee filed a further affidavit, dated March 18, 1966. The legal position has been explained by the Secretary in the said supplementary affidavit in the following words:—

> "It is submitted that in accordance with section 23 of the Punjab Agricultural Produce Markets Act, the Market Committee has to levy, i.e., to collect or to raise market fee, subject to such rules as may be made by the State Government in this behalf. Rule 29 of the General Rules, framed under the Punjab Agricultural Produce Markets Act, clearly provides that the rates of the market fee are to be fixed

by the State Agricultural Marketing Board from time to time and Market Committee has to collect the market fee in accordance with the rate so fixed by the State Agricultural Marketing Board."

Dua, J., granted time to the petitioner-firm till March 22, 1966, to file any further affidavit in reply to the supplementary return of the first respondent. No such rejoinder, however, appears to have been filed by the petitioner. When the matter was reheard on March 24, 1966, Dua, J., thought it proper to direct that, in view of sufficiently important questions requiring determination in the case, the writ petition may be heard by a larger Bench in the very first instance. This led to the present reference.

At the hearing before us, Mr. Prem Chand Jain, pressed the following contentions:—

(1) The levy of the market-fee without the existence of a resolution of the Market Committee under section 23 of the Act, is illegal and contrary to the provisions of the said section. The impugned assessment is liable to be struck down as there was no resolution of the Market Committee levying fees on agricultural produce bought or sold in the notified market area, as required by section 23 of the Act.

(2) The Sub-Committee appointed by the Market Committee could not make the assessment or levy the market-fee and penalty, and had no legal authority to go into the accounts of the petitioner-firm, as the Committee is not authorised by any law to delegate its powers in these matters to any Sub-Committee.

(3) The action taken by the Sub-Committee was actuated by malice of Shri Amar Nath Mittal, Member of the Sub-Committee, and his political colleague Shri Mal Singh, who were the two members out of the three constituting the Sub-Committee in question; and

(4) The petitioner-firm was not given an adequate hearing or opportunity before the passing of the impugned order, and in any case, the proceedings of the Committee itself showed that they were not conducted according to judicial norms and with due regard to principles of natural justice.

On the first proposition raised by the learned counsel, his argument was that section 23 of the Act alone authorised the levy of market-fee and that exclusive statutory jurisdiction for the said imposition is vested by the aforesaid provision in the Market Committee which could act only by passing a resolution of its own. Howsoever attractive this argument may appear at the first sight, there is no force in it. If the words "subject to such rules as may be made by the State Government in this behalf "were not there in section 23 of the Act, there would probably have been no answer to the submission of Mr. Prem Chand Jain. The levy by the Committee has been made by the Legislature subject to the Rules that might be framed by the State Government. The power vested in a Market Committee by section 23, is itself subordinate to the rules framed in that behalf. By adopting this procedure, the Legislature is deemed to have incorporated into section 23, such rules as might be framed by the State Government in exercise of its rule-making power under the Act. If by such a rule, the State Government has decided, as in fact it has so decided by rule 29, that all Market Committees in the State, should impose market-fees on *ad valorem* basis at a certain rate, the rule framed by the Government is statutory and is according to the legal fiction deemed to be a part of section 23. In such a situation no question of the necessity of any further resolution being passed by the Market Committee, can arise. Clause (vii) of sub-section (2) of section 43 of the Act specifically authorises the State Government to frame rules regarding the market-fees which may be levied by a Committee in respect of agricultural produce, bought or sold, in the notified market area, as well as the manner and the basis thereof, and for its recovery and disposal. If rule 29 is valid, as indeed it is, no further action for making the imposition effective appears to be necessary. Under section 13 (1) (a) of the Act, it is the duty of the Market Committee to enforce the rules framed by the State Government. The Committee has, therefore, no choice in the matter and would be failing in its duty if it were not to enforce the relevant rules. No formal resolution of the Committee for enforcing rules framed by the State Government is, therefore, necessary. In exercise of powers vested in the Secretary of the Committee by sub-rule (5) of rule 14 of the General Rules, the Secretary of the Committee is bound to carry into effect the provisions of the Act, the rules and bye-laws, as well as the instructions of the Board. The Secretary of the Committee and the Committee itself were, therefore, acting within their jurisdiction to enforce rule 29, by exercising the executive function of levying the market-fee in question and of making assessments thereof, as well as by embarking upon the execution proceedings

for the recovery of the assessed amounts. Mr. Jain submitted that the Committee may no doubt be bound by the rules framed by the State Government, and may even be dissolved, if it did not carry into effect those rules, but it must still be required to pass a resolution in pursuance of that rule, in order to take statutory responsibility for the levy which the Committee alone is authorised to impose by section 23. This in fact is the same argument put in another way. The duties of a Market Committee under the Act include the statutory duty of enforcing the rules framed by the State Government. There appears to be no logic in requiring the Committee to resolve in its meeting that it is to enforce a particular rule. Indeed if the Committee were to dispute its liability to carry the rules framed by the State Government into effect, it would be failing in its statutory duty and any person interested may be entitled to claim a *mandamus* against the Committee to perform the duties enjoined on it by the Act.

In the view I have taken of the first argument of Mr. Prem Chand Jain, it does not really appear to be necessary to go into the question of the interpretation of the word "levy" as used in section 23 of the Act. In *Firm L. Hazari Mal Kuthiala* v. *Income-tax Officer, Special Circle, Ambala Cantt., and another* (1), it was laid down by a Division Bench of this Court (Bhandari, C.J., and Bishan Narain, J.) that to "levy a tax" means to impose or assess or to impose, assess or collect a tax under the authority of law. The word "levy" is, therefore, capable of being used interchangeably for the imposition or for the assessment and collection or for both or for all or any of them. It is indeed apparent that in rule 31(8), which authorises the Committee to "levy fee payable under section 23, on the basis of the return furnished under sub-rule (1) of rule 31", the word "levy" is used in the sense in which it comprises the process of assessment and recovery. If the word "levy" is read in the same sense even in section 23, the very basis of the argument of Mr. Prem Chand Jain vanishes. In my opinion, however, the word "levy" in section 23 of the Act comprises within its scope, the legislative function of imposition, executive duties of assessment as well as to the procedural part of the work relating to recovery. All the three duties have to be performed by the Committee and subject to any rules framed by the State Government. In case of and to the extent to which the rules framed by the State Government make provision for the imposition or other allied matters,

(1) I.L.R. 1957 Punj. 577=A.I.R. 1957 Punj. 5.

the Market Committee has no option, but to carry into effect the said rule as enjoined on it by the Act.

The second string of the argument of Mr. Jain on the first contention, must fall with the first point. This argument was to the effect that, in any case, the Board could not be authorised by the State Government, while framing rule 29, to fix the rates of the market-fee and that this could be done either by the Committee or by the State Government itself. There is no force in this argument. Once it is granted that the State Government has the express power under section 43(2) (ii) of the Act to define the powers to be exercised and the duties to be performed by the Board or the Committee, it is open to the State Government to impose any duty to be performed under the Act, either on the Board or on the Committee. Again, under clause (vii) of sub-section (2) of section 43, the Government has to fix the maximum rates of market-fees amongst other things. This cannot be expected to be done by the Government as a whole and must in the nature of things be left to some authority nominated by the Government under the rules. There is nothing wrong in the State Government having empowered the Board to fix the relevant rates from time to time, as the State Board is expected to be more conversant with the day-to-day market trends and is in a better position to decide the reasonable rates of market-fees, which may be levied by the Committees.

This takes me to the second contention of the petitioner-firm. Section 23 read with rules 29 and 31 having authorised the Committee to assess and recover the amount of market-fee, the question that arises is, could this function of the Committee be validly delegated by it to the Sub-Committee consisting of respondents Nos. 2 to 4, within the scope of the Committee's authority under section 19 of the Act. The factual aspect is not in dispute, and it is admitted that by resolution No. 408, dated June 11, 1964, the Committee had actually delegated its function in question to respondents Nos. 2 to 4. Mr. Prem Chand Jain argued that delegation of the Committee's power in the matter of levy of market-fee is permissible only to the extent indicated in sub-rule (7) of rule 31 of the General Rules, for the purpose of carrying out the inspection of a dealer's accounts under sub-rule (5) of that rule. I regret I am unable to agree with this contention of the learned counsel. The delegation authorised by sub-rule (7) of rule 31 is not the only delegation permitted by the statutory provisions. Even sub-rule (7) of rule 31 is valid only because of the delegation permitted by section 19 of the Act. The question then

boils down to this. Does section 19 of the Act authorise the Committee to delegate its work or functions relating to proceedings for assessment of market-fee to a Sub-Committee? The answer to the question, in my opinion, is clearly in the affirmative. I am inclined to agree with Mr. Prem Chand Jain that the last part of section 19 reading "and may delegate to such Committee or any one or more of its members such of its powers or duties as it thinks fit" is related only to the Sub-Committees mentioned in the earlier part of the section for the purposes specified therein, and does not enlarge the scope of delegation. The reason for this interpretation which has appealed to me is that the Legislature has inserted the word "such" before the Committee in the above-quoted part of the sentence. "Such" can, in the context, have reference only to the Committee or one or more of its members to which reference has been made in the earlier part of the section. The only Committees or group of members to which any of the powers or duties of the Committee can be delegated under section 19, are those to whom either the administration of the sub-market yard for the conduct of any work of the Committee or the work of reporting on any matter, might have been delegated. No delegation is authorised by section 19 for any purpose other than those specified therein. I am, however, unable to agree with the further submission of Mr. Prem Chand Jain that the expression "the conduct of any work" of the Committee refers to construction works alone. The learned counsel said that the word "work" in section 19 cannot be equated to job, function, etc., but must be read in the sense in which P.W.D. works are referred to. Mr. Prem Chand Jain, however, candidly admitted and fairly and frankly conceded that neither in any provision in the Act nor in the rules framed thereunder, there is any scope for a Market Committee embarking upon constructional works. In view of this admission, the intention of delegating conduct of constructional works to a Sub-Committee, cannot possibly be attributed to the Legislature which knew full well that the Market Committees have not to carry out any such works. The word "work", therefore, appears to have been used in section 19 of the Act in its ordinary dictionary meaning, that is, to denote "application of effort to some purpose, any job, any task, any function, anything done or made, doings or experiences, employment, etc." and not only in the sense of "operations in buildings". Reference was then made by Mr. Jain to clause (5) of sub-section (1) of section 44 of the Act, which authorises the Committee to make bye-laws for delegation of its powers or duties to Sub-Committees or Joint Committees or *ad hoc* Committees. Clause (v) of sub-section (1) of

section 44 also refers to delegation under section 19. Counsel for both sides stated that no such bye-laws have been framed by the respondent Committee. Even if, however, any such bye-laws were to be framed they could not outstep the authority of delegation vested in a Committee under section 19 of the Act. The bye-laws could neither restrict nor enlarge the scope of statutory delegation authorised by section 19. It is, therefore, clear that the Market Committee did not outstep its statutory jurisdiction and in fact acted in accordance with it, in delegating the executive function of making assessment of market-fee to a Sub-Committee. The second contention of Mr. Jain also, therefore, fails.

Regarding the allegation of malice against Shri Amar Nath Mittal, two aspects of the case were emphasised by the learned counsel for the petitioner-firm. Firstly, it was contended that the respondents have falsely denied the allegation made by the petitioner-in paragraph 10 of the writ petition to the effect that at the time of hearing, it has been pointed out by the representative of the petitioner-firm to the Committee that the proceedings against the petitioner had been taken on account of a grudge borne against the petitioner-firm by respondents Nos. 2 and 3, and that in spite of the said fact being made known, those very two members had been appointed on the Sub-Committee to scrutinise the accounts of the firm. Reference has been made to the express allegation made in paragraph 3 of the petitioner-firm's letter to the respondents, dated June 2, 1964 (Annexure 'C'), wherein it was specifically stated that the enquiries made by the petitioner-firm revealed that the entire action had been taken "at the instance of Shri Amar Nath Mittal, a member of the Committee, who had a personal grudge against the petitioner-firm" and that Mr. Mittal was taking revenge against the petitioner-firm in connivance with the Secretary maliciously. In spite of the fact that the receipt of the communication, dated June 2, 1964 (Annexure 'C'), is admitted by the respondents, they have stated in paragraph 10 of their written statement that it is false to suggest that the petitioner-firm ever told the Market Committee that they had strained relations with respondents Nos. 2 and 3. Though there does appear some confusion in the manner of the general denial of the allegation made by the petitioner-firm, the respondents cannot be held to be entirely to blame for the same. The allegations made in paragraph 10 of the writ petition relate to oral statements alleged to have been made before the Market Committee by the representative of the petitioner-firm. The allegations said to have been made orally by the petitioner-firm before the Committee have been specifically denied

by the respondents. The denial in paragraph 10 of the written statement has of necessity to be related to the allegations made in the corresponding paragraph of the writ petition. It is indeed somewhat unfortunate that the respondents have averred that the petitioner firm never told the Market Committee that they had strained relations with respondents Nos. 2 and 3. But this appears to be due to some misunderstanding, as it is obvious that the petitioner-firm had made such an allegation expressly in paragraph 3 of its communication, dated June 2, 1964, about one month before the appointment of the second respondent on the Sub-Committee. This fact cannot, in my opinion, be sufficient by itself to attribute malice to the Committee. The only other aspect pressed in this connection relates to the allegation made by the petitioner-firm in paragraph 10 of the writ petition to the effect that about two years prior to the filing of the petition, Madan Gopal, a partner of the petitioner-firm had made a complaint to the Government against Amar Nath Mittal, respondent No. 2, alleging misappropriation of cement stocks owned by the Municipal Committee, by the second respondent. It had been added by the petitioner-firm that the enquiry in connection with the complaint of Madan Gopal was still being conducted by the Government. In the corresponding paragraph of the joint written statement of respondents Nos. 1 and 5, nothing at all has been stated about the complaint said to have been made by Madan Gopal against Amar Nath Mittal. In paragrpah 4 of the affidavit of respondent No. 2, Mr. Mittal has admitted that Madan Gopal had made an application against him to the State Government, but has stated that the said application was subsequently filed away. Respondent No. 2 has not denied that the said application had been made about two years prior to the filing of the petition. At the hearing before us, we asked Mr. Prem Chand Jain to inform us whether the allegation of personal enmity with the second respondent had been made in the earlier writ petition (C.W. 1407 of 1964) or not. The answer to that question given to us was in the negative. I have called for the record of the earlier case and find that in fact a specific allegation had been made in paragraph 15(j) of the previous writ petition in the following words:—

> "That whole thing is *mala fide* and has been started at the instance of Amar Nath Mittal."

That was one of the grounds on which the notice, dated May 9, 1964, was claimed in the previous case to be bad in law and liable to be

quashed. It is, therefore, obvious that the petitioner-firm did in fact make allegations of personal enmity with Amar Nath Mittal, respondent No. 2, at least on June 2, 1964, about a month before the constitution of the Sub-Committee on July 1, in that year, and that they have been continuing to harp on that enmity consistently right through. The learned counsel for the respondents referred to another allegation made in paragraph 10 of the writ petition relating to an alleged election contest to the office of the President of the Municipal Committee, Kot Kapura, between Madan Gopal, a partner of the petitioner-firm, on the one hand, and Amar Nath Mittal, respondent No. 2, on the other. In reply to that allegation, respondent No. 2 has stated in his affidavit that it is incorrect to suggest that Madan Gopal aforesaid was ever a rival candidate to Shri Mittal for election to the office of the President of the Municipal Committee, Kot Kapura, and that in fact Madan Gopal himself had voted for Mr. Mittal along with the other members in Mr. Mittal's unanimous election to that office. No counter-affidavit has been filed as rejoinder to the said allegation. However improper it may have been for the Committee to appoint Amar Nath Mittal on the Sub-Committee entrusted with quasi-judicial functions in the face of the allegations made against him, it cannot be held that this is evidence of any malice on the part of the Committee. Moreover, the only allegation that has been made against Mal Singh, the second member of the Committee, is that he was a political colleague of Amar Nath Mittal. This has been denied by the latter, though no separate affidavit has been filed by Mal Singh. Counsel for the petitioner-firm has frankly confessed that he has nothing at all to say against the third member Seth Ram Dayal, respondent No. 4. That being so, the majority of the members of the Sub-Committee had no malice of any kind, against the petitioner-firm. Inasmuch as the decision of the Sub-Committee was unanimous, their order cannot be set aside on the allegations of malice made in this case.

This takes me to the last contention pressed on behalf of the petitioner-firm. I find great force in the same. In the first instance, I consider it highly improper for the Market Committee to have appointed Amar Nath Mittal on the Sub-Committee on July 1, 1964, when the petitioner-firm had admittedly given in writing a month earlier that according to their information, the entire proceedings had been initiated at the instance of Amar Nath Mittal, and on account of some alleged personal grudge with him. Howsoever incorrect might have been the allegation, it would have been but proper for the Committee to avoid appointing Amar Nath Mittal on the Tribunal entrusted with the quasi-judicial functions of assessing the

petitioner-firm and penalising it if necessary. It is significant that in this case, the allegation of Madan Gopal having actually made a complaint against Amar Nath Mittal in or about 1962, charging him with serious criminal offences, has been admitted by respondent No. 2. Except for some very compelling reason, Mr. Mittal should not have been put on the Sub-Committee in these circumstances. No such compelling reasons have been suggested. Secondly it appears to me that the Committee did not at all act according to judicial norms in passing the impugned order of assessment and levy of penalty. The impositions have been made on best judgment basis on the allegations made in the resolution, dated September 24, 1964, to the effect that the petitioner-firm had not produced any accounts, though Amar Nath Mittal, respondent No. 2, and the Secretary had pressed for the same. This allegation is directly contrary to the facts recorded in the resolutions, dated August 3, and August 27, 1964, wherein it is specifically admitted that accounts had been shown by the petitioner-firm to Seth Ram Dayal, respondent No. 4, and Sarmukh Singh, Secretary of the Committee, and that the said two persons had not been able to prepare their report for which purpose the proceedings had been adjourned. This shows that the final order based on alleged non-production of accounts, has not been passed in accordance with law. Quasi-judicial Tribunals must adhere strictly to principles of natural justice and proceed according to judicial norms. They should not only do justice but their proceedings should also appear to have been carried on in a manner which is in consonance with well-known and well-recognised principles of natural justice. The impugned orders appear to have been passed in utter disregard of those principles, and cannot, therefore, be sustained.

The result is that no case for directing refund of the amount already paid by the petitioner-firm as market-fee has been made out, but the impugned resolution, dated 24th September, 1964, and order, dated 16th November, 1964, making an additional assessment of Rs. 3,000 against the petitioner-firm on best judgment basis and imposing a penalty of another Rs. 3,000 against the petitioner-firm, cannot be sustained and are hereby set aside. This writ petition is, therefore, allowed to the above extent. In view of the partial success of the parties, on the points involved in the case, the parties are left to bear their own costs.

D. K. MAHAJAN, J.—I agree.

K.S.K.