CIVIL MISCELLANEOUS

Before S. S. Sandhawalia and M. R. Sharma, JJ,

M/S. SOHELA MAL DAYAL SINGH ETC.,—*Petitioners.*

versus

THE STATE AGRICULTURAL MARKETING BOARD, PUNJAB, THROUGH ITS CHAIRMAN, CHANDIGARH, ETC.,—*Respondents.*

Civil Writ No. 324 of 1972.

March 30, 1972.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 2, 3, 43 and 44—Constitution of India (1950)—Articles 14, 19 and 226—Section 44(3)—Whether violative of Articles 14 and, 19 of the Constitution—State Government not making rules under section 43—Power of the Marketing Committee to frame bye-laws under section 44—Whether can be exercised—Sections 3(14) and 44—Bye-laws framed under section 44—Whether fall within the purview of section 3(14)—Approval of the Government for such bye-laws—Whether necessary—Change in the remuneration of a Commission agent by an amendment in the bye-laws—Opportunity of hearing to the Commission agent—Whether necessary—Section 2(a)—"Wool"—Whether an article of agricultural produce—Definition of "agricultural produce"—Whether to be restricted by reference to the definition of word "producer"—Fees by the Market Committees with respect imported fruit—Whether can be imposed under the Act—Bye-laws of a Marketing Committee amended by the State Agricultural Marketing Board under section 44(3)—Constituents of the Committee—Whether can challenge the amended bye-laws under Article 226 of the Constitution—Writ—Whether can be issued to the Marketing Board.

Held, that a reading of section 44(3) of the Punjab Agricultural Produce Markets Act, 1961 shows that the power of the Board to effect an amendment, alteration, rescission or adoption of a new bye-law cannot be termed as arbitrary and unguided. First of all this power has to be exercised in the interest of the concerned Committee. Secondly, a suggestion regarding alteration of bye-laws is to be made to the Committee leaving it to accept or reject the same. Thirdly, if the Committee fails to accept the suggestion, then the Board has to give it a hearing before arriving at a decision whether such amendment etc. should be made or not. Fourthly, a Committee has been given the right of appeal to the State Government. The Board consists of responsible members, some of whom hold high positions in the Government. Such officers are presumed to know the various factors which are relevant for fixing remunerations for various persons. The exercise of power by such a body or its Chairman cannot be classed as arbitrary merely because the rules are silent on the subject. Hence section 44(3) is not violative of Article 14.

Held, that the Act has been brought on the statute book in order to remove the middleman, who in many cases used to eat up the profits of the producer. The Board and the Committees have been established so that proper markets for the disposal of agricultural produce may be set up. The buyers and the licensees under the Act have to pay an insignificant amount of fees in lieu of the services which they are provided at such markets. The entire fund collected is set apart and utilized for the purposes envisaged by the Act. When a market is fixed at a place and the Commission Agents and dealers are made to work under the prescribed conditions on payment of fixed remuneration, the element of competition also withers away and the producer gets a reasonably uniform return for the produce. Such a law, which is for the benefit of the producing community and also for a large number of buyers who visit such markets, cannot be said to go against the interests of the general public and therefore does not infringe Article 19 of the Constitution.

Held, that language of section 43(1) of the Act does not make it obligatory upon the State Government to frame the rules. If the Act can be satisfactorily worked without framing the rules, it is not for third persons to find fault with the action of those who are responsible for working the Act. It is well nigh impossible for any legislature to foresee the situations in which an enactment of the legislature may have to be applied. The modern trend of legislation has been that the Legislature lays down the policy in the main statute and leaves it to the rule-making authority to supply the details for working out a statute. An action for framing bye-laws under a statute can be taken even if the authority empowered under that statute to make rules has not exercised its discretion, or having considered the matter feels that there was no necessity for framing the rules on a particular subject covered by the statute. However, if the action taken is *ultra vires* the statute, it will be struck down as *ultra vires* but not on the basis of the abstract principle of law that the authority vested with the discretion to frame rules must have brought forth the rules even if it means a repetition of some provisions of the Act. Hence a Marketing Committee can exercise its power to frame bye-laws under section 44 even though the State Government has not made Rules under section 43. But where the legislature has left some details to be worked out by a rule-making authority under the statute, the executive action under that statute may smack of arbitrariness in the absence of rules framed by the competent authority. In that case the rule-making provisions may rightly be regarded as mandatory in spite of the use of word 'may' in the section of the statute which gives rule-making power.

Held, that section 3(14) of the Act entitles the Board to make bye-laws for its own internal working. Such bye-laws may relate to the manner in which the Board transacts its business, the mode of convening meetings and such other allied matters as may be prescribed in the rules. The bye-laws which touch upon these subjects only require the approval of the Government. Each and every bye-law which the Board may be competent to make

under the Act does not suffer from the same disability. The bye-laws framed by the Board under section 44 of the Act do not fall within the purview of section 3(4) and the approval of the Government for framing these bye-laws is not necessary.

Held, that the Board while suggesting an amendment in the bye-laws as also while adopting and confirming the same does not act either in a quasi-judicial capacity or in an administrative capacity as ordinarily understood. The Act empowers the Committees to frame their own bye-laws. The Board has been invested with the power to suggest amendments and alterations. The functions which have been conferred upon the Board and the Committee under the Act are quasi-legislative in character. When they perform these functions, they are not called upon to abide by the principles of natural justice to any extent other than what is provided for in the statute. The Act gives a right of hearing to the affected Committees only and this by implication negatives any right of hearing in favour of an individual constituent of the Committee. Hence it is not necessary to give an opportunity of hearing to Commission agents when their remunerations are changed by an amendment in the bye-laws.

Held, that the term "wool" is entered in the Schedule of the Act and it means that type of wool which is a product of animal husbandry. Synthetic or artificial wool, which is a product of a chemical process cannot come within the purview of the Act. The words "animal husbandry" as used in the definition of agricultural produce in section 2(a) of the Act mean the breeding of animals for getting good economic results. A farmer who carries on the profession of animal husbandry on a somewhat reasonable scale has to take into consideration the investment made by him and the yields expected therefrom. In some cases, the yield accruing from skins and tannery wool may also assume importance. Hence the wool which is product of animal husbandry and not artificial or synthetic wool, is an article of agricultural produce.

Held, that definition of term 'agricultural produce" cannot be restricted by making reference to the definition of "producer". This word has been defined in the Act for an entirely different purpose and the definition has been incorporated in the Act to qualify a person who wants to become a member of the Committee. This definition cannot be made use of to restrict the meaning of the words 'agricultural produce'.

Held, that under the principle of territorial nexus, the law of the place or the State in which the trust is situate also governs the property which is situate outside that State. Thus the State in which a Market Committee is situate would be competent to provide for ancillary measures, like the sale of agricultural produce in such a Committee. The State legislature is competent to enact a law under which

the Market Committees are set up for the disposal of agricultural produce. By enacting this law, the legislature is not trenching upon a field reserved for any other legislature. The imported fruits come within the definition of "agricultural produce" and the legislature is competent to regulate their sale and storage. Hence Market Committees can impose fees with respect to imported fruits under the Act.

Held, that no doubt section 44(3) of the Act only empowers the Marketing Committee to level a challenge against the amendment and confirmation of bye-laws made by the Board and a constituent of the Committee does not possess any statutory remedy in this behalf. However, if the constituent cannot be non-suited for consideration like the availability of a remedy of a suit, it is unfair to deprive him of his right to approach the High Court under Article 226 of the Constitution. Section 3 of the Act expressly lays down that the State Agricultural Marketing Board shall be corporate and local authority. It, therefore, comes within the definition of State and its bye-laws and executive action are amendable to the writ jurisdiction of the High Court.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, Prohibition or any other appropriate writ, order or direction be issued quashing the impugned notification dated 9th July, 1971 in Punjab Government Gazette, and further praying that operation of the impugned notification be stayed till the final decision of this Writ Petition.

H. S. Wasu, Senior Advocate with L. S. Wasu, Advocate, *for the petitioners.*

Kuldip Singh, with R. S. Mongia and J. S. Narang, Advocates, *for respondent No.* 1.

JUDGMENT

Sharma,J.—In all these petitions (C.Ws. No. 324 of 1972, 3761 of 1971, 220 of 1972, 295 of 1972, 4436 of 1971, 4199 of 1971, 3765 of 1971, 4117 of 1971, 3693 of 1971 and 4141 of 1971) the petitioners have challenged the *vires* of some provisions of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961) (hereinafter called 'the Act') and the bye-laws framed thereunder.

These will be disposed of by this judgment.

(2) Shri H. S. Wasu, the learned Senior Advocate, advanced the main arguments in C.W. No. 324 of 1972. The petitioners in that case are Commission Agents dealing in fruits and vegetables within the notified area of the market area, Ferozepore. They have been granted a licence for this purpose under section 6 of the Act, for

carrying on this business. In exercise of its powers under section 2(a) of the Act, the State Government specified a number of vegetables and fruits as "agricultural produce", and by a separate notification, under section 5 of the Act, the Government decided to exercise control over the purchase, sale, storage and processing of these items of fruits and vegetables. Initially, the State Government,—*vide* its notification No. SAMB/1, dated the 31st of May, 1963 (copy Annexure 'A' to the petition); allowed all the Commission Agents to charge commission at the rate of 4 per cent on the value of the produce. They were also allowed 6 paise per basket or bag as unloading charges. This situation was allowed to prevail for some time when by another notification (Annexure 'B'), dated December 11, 1970, published in the Punjab Government Gazette dated the 18th of December, 1970, the Chairman of the State Agricultural Marketing Board notified certain changes in the bye-laws. The vegetables were split up into two categories—perishable and non-perishable. The commission payable to the Commission Agents in respect of non-perishable goods was reduced to 2 per cent and the unloading charges were reduced from 6 paise to 5 paise per basket or bag. The affected persons filed a petition in this Court and the counsel for the State Agricultural Marketing Board, realising that there were certain infirmities in the notification issued in the name of the Chairman of the Board, made a statement before the Court that the Board would withdraw the said notification. On this undertaking being given, the writ petition was dismissed as infructuous.

(3) It has further been alleged that the Chairman of the Punjab Agricultural Marketing Board, Chandigarh, issued another notification dated July 9, 1971, copy Annexure 'C' to the writ petition, under which vegetables, i.e., potatoes. onions, arbi, garlic, ginger and Shakkar Kandi were categorised as non-perishable vegetables and the rate of commission in respect of these items was reduced from 4 per cent to 2 per cent. The rate of unloading charges was also reduced from 6 paise to 5 paise per basket or bag etc. Feeling aggrieved by the said notification, the petitioners have filed this petition.

(4) Before us the learned counsel for the petitioners has raised the following points:—

(1) That the bye-laws were not framed by the competent authority.

(2) That even if the Chairman of the Board was competent to frame the bye-laws, he could not confirm the same under section 44(4) of the Act inasmuch as that power vested only in all the Members of the Board and could be exercised only in a meeting duly convened for that purpose.

(3) That section 43 of the Act entitled the State Government to frame the rules for carrying on the purposes of the Act and section 44 of the Act entitled a Committee to frame bye-laws in respect of a market area "subject to any rules made by the State Government." It was suggested that unless and until the State Government framed the relevant rules, the Committee could not exercise any power of framing the bye-laws.

(4) That a reading of the provisions of the Act showed that the power to exercise superintendence and control over the Board vested in the Government. At one stage the Chairman in contradistinction with the Board had been invested with the powers to frame the bye-laws and to confirm them. The legislature made a distinct departure from this policy by deleting the word "Chairman" and adding the word "Board" in section 44(3) of the Act. In this view of the matter, it could not be inferred that the legislature intended that the power of State Government regarding superintendence and control was desired to be conferred on the Chairman or a Secretary or Subordinate functionaries.

(5) That under section 3(14) of the Act the bye-laws framed by the Board could become effective only after the State Government had accorded its approval. The law vested the authority to grant approval in the State Government and it could not abdicate its functions by delegating this power to the chairman.

(6) That section 44(3) of the Act was *ultra vires* the Constitution of India inasmuch as it contravened Articles 14 and 19 of the Constitution of India. A Commission Agent was not entitled to get any hearing; he had no right to prefer an appeal and, in substance, the exercise of power under this section was unguided and arbitrary.

(7) The categorisation of vegetables into perishable and non-perishable was not a proper classification.

(5) Before I deal with these points, I would like to dispose of two preliminary objections raised by Shri Kuldip Singh, the learned counsel for the respondent-Board. He has submitted that the petitioners had no *locus standi* to file the instant petitions in as-much as they are the constituents of a Committee and it is open to the Committee to fix any remuneration, which it likes. The Chairman, while exercising powers under section 44(3) and (4) of the Act, merely amends the bye-laws of the Committee. No constituent member of a corporation can object to the fixation of remuneration save as provided by the internal constitution of the corporation.

(6) The second submission of the learned counsel was that the Board was a statutory Corporation and as such was not amendable to the writ jurisdiction of this Court.

(7) In order to effectively answer the first objection raised by the learned counsel, the nature of the challenge levelled against the impugned action and the fact whether the Board comes within the definition of the word "State" or not have to be seen, for if a petitioner claims that any of his fundamental rights have been infringed by the State, then it is quite obvious that he cannot be left without a remedy.

(8) Article 12 of the Constitution defines the word "State" as the Government and Parliament of India including all local or other authorities within the territory of India or under the control of the Government of India. If the Board can be regarded as a local or other authority within the territory of India, then it would fall within the definition of the word "State". If a citizen is denied equal protection of laws by any of the bye-laws framed by the Board or even by its executive action, then the citizen will have a right to approach this Court under Article 226 of the Constitution.

(9) Section 3 of the Act entitles the State Government to constitute a Board for exercising the powers conferred and for performing the functions and duties assigned to it under the Act. Sub-Section (3) of this section runs as follows :—

"(3) The Board shall be a body corporate as well as a local authority by the name of the State Agricultural Marketing Board having perpetual succession and a common

seal, with power, subject to the provisions of this Act, to acquire and hold property and shall by the said name sue and be sued."

(10) The law expressly lays down that the Board shall be corporate and a local authority. In this view of the matter, I hold that the Board comes within the definition of the word "State" and its bye-laws and executive action can be attacked on the ground of infringment of Article 14 of the Constitution.

(11) It is no doubt true that there may be certain matters which relate exclusively to the internal functioning of the Board such as the fixation of the cadre of its employees and the payment of salaries to them. Similarly, it may also take a decision that the weigh-men and the Commission Agents will be paid remuneration at given rates; but once it fixes the rates payable to a particular class of its constituents or payable in respect of certain items of agricultural produce, it is not expected to work any discrimination. The attack in this petition is that the Board has made a discriminatory classification between the two items of agricultural produce and has violated the rights of the petitioners under Article 14, by making a classification in which there is no nexus for the objects to be achieved by fixing different rates in respect of these items. I am of the view that this objection will have to be considered on merits and the petition cannot be thrown out straightaway.

(12) In support of the second preliminary objection, the learned counsel for the respondent-Board has relied on *Co-operative Central Bank Ltd., and others etc.* v. *Additional Industrial Tribunal, Andhra Pradesh, Hyderabad, and others etc.* (1), wherein it has been held that bye-laws of a co-operative society framed in pursuance of the provisions of the Act cannot be held to have the force of law. Since a writ can only issue if there is an infraction of any statutory law, no petition lay against the co-operative society. The learned counsel states that we are confronted with a situation which is in *pari materia* with the one contemplated by the above-mentioned authority. I do not agree with this contention. If there is any violation of the petitioners' right under Article 14, then even an executive action can be struck down. The learned counsel for the respondent-Board then submitted that section 44(3) of the Act entitled only a Committee to raise

(1) A.I.R. 1970 S.C. 245.

objections against the framing of bye-laws by the Board; the petitioners, being constituents, had no right to challenge the same. In support of this contention, he has relied upon a judgment delivered by Tuli, J., in *Shri Baldev Raj Sharma* v. *The State of Punjab* (2), but that again was the case of an employee of a municipal committee whose orders of confirmation incorporated in a resolution of the Municipal Committee were set aside because the Government in exercise of its powers under section 236 of the Punjab Municipal Act, 1911, annulled the resolution of the Committee. It is obvious that Baldev Raj Sharma, petitioner in that case, could have filed a suit for damages against the impugned action, if he was so advised. The question of applicability of Article 14 was neither involved in that case nor was the same considered by the learned Judge.

(13) Even otherwise I feel that whenever there is an infraction of a legal right of a citizen by the State, the person wronged has the right to challenge the same. As already noticed, section 44(3) of the Act empowers the Committee to level a challenge against the amendment and confirmation of bye-laws made by the Board. A constituent of the Committee does not possess any statutory remedy in this behalf. If such a constituent cannot be non-suited for considerations like the availability of a remedy of a suit, then it would be unfair to deprive him of his right to approach this Court under Article 226 of the Constitution. Since the main attack levelled in this petition is based on the interpretation of Article 14 and the notification affects a large number of persons, I would not think it proper to drive the petitioners to file a civil suit instead of allowing them to agitate this matter in this Court. Thus, I find no merit in the preliminary objections and overrule the same.

(14) Coming now to the first submission raised by the learned counsel for the petitioners, I might say that the same stands concluded by a reading of section 3(17) of the Act, which runs as under :—

> "3(17) (i) The State Government may delegate to the Board or its Chairman or Secretaries any of the powers conferred on it by or under this Act; and (ii), the Board may, under intimation to Government, delegate any of its powers to its Chairman, Secretary, or any of its Officers."

(2) C.W. No. 2290 of 1969 decided on 16th November, 1971.

The Board is competent to delegate any of its powers to its Chairman and such a delegation had in fact been made by the Board,—*vide* its resolution No. 25 dated January 30, 1969. Under this resolution, the powers of the Board under section 44(2), (3) and (4) were delegated to the Chairman in the following terms :—

> "Section 44 deals with formulation of bye-laws of the Market Committees. Such bye-laws are required to be confirmed by the Board. Further, Board is also competent to issue directions to the Market Committees to adopt or amend a particular bye-law. For administrative convenience it is suggested that this power may be delegated."

(15) When faced with this situation, the learned counsel for the petitioners submitted that even though the Chairman was competent to suggest to the Committees to make an amendment in the bye-laws and in the absence of their agreement to do so, he could propose the same after giving an opportunity of hearing to the various Committees yet he could not in exercise of powers under section 44(4) of the Act confirm the same.

(16) It is no doubt true that under section 44(4) of the Act, it is for the Board to confirm or amend the bye-laws, but if the powers of the Board stand validly delegated to the Chairman then by a deeming provision one would be entitled to read the word "Board" instead of the word "Chairman" wherever it occurs in section 44 of the Act. It is not uncommon for statutory corporations and local authorities to delegate their own powers to their Chairman or Secretaries so that the day-to-day working of the corporations may not be hampered. It is a matter of common knowledge that when powers are vested in a large body of persons, then the decisions cannot be expedited because sometimes it becomes difficult to serve the notice of the meeting on individual members and sometimes there is a lack of the proper quorum. Apart from raising the bald assertion, the learned counsel has not been able to substantiate this argument by citing any authority. I am of the view that the only requirement of law is that the action of the statutory corporations should have the backing of a provision of law. If the law entitles a corporation to delegate its functions to its Chairman, then it would be futile to suggest that the action taken by the Chairman would not be equivalent to the action taken by the corporation itself.

(17) It was then suggested that under the old section 44(3) of the Act, the Chairman was empowered to make suggestions regarding

alteration of bye-laws to a Committee and on its failure to accept the suggestion he was authorised to register the alteration. This section was amended by the Punjab Act No. 40 of 1963 and the words "Chairman of the" appearing before the word "Board" were dropped. The effect of this amendment was that the Board, in contradistinction with its Chairman, was authorised to suggest the alteration and the final registration of bye-laws. This change in law was a pointer to the fact that the legislature did not intend that an individual like the Chairman should register and confirm the altered bye-law. The Board, while delegating its functions to its Chairman under section 3(17)(ii) of the Act, has frustrated the avowed intention of the legislature.

(18) This argument overlooks the fact that when the legislature enacted Punjab Act, No. 40 of 1963, it was alive to the situation that powers of the Board could be delegated to its Chairman. The effect of the amendment was that whereas the Chairman could exercise these functions in his individual discretion earlier, now he could act only if the Board delegates its power to him. Suffice it to say that the Board can withdraw its power at any time and the discretion of the Chairman, which was absolute at one time, has been brought under a moderate control. I can infer no other intention of the legislature from this change of law and am unable to see how the intention of the legislature has been frustrated because of the Board delegating its power to the Chairman.

(19) Coming now to the next two submissions advanced by the learned counsel, I find that they are also devoid of any merit. Section 43(1) of the Act reads as under :—

"43 : Power to make rules.—

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

Section 44(1) of the Act reads as under:—

"44. Bye laws.—

(1) Subject to any rules made by the State Government under section 43 a Committee may, in respect of notified market area, make bye-laws for—

(i) the regulation of its business;

(ii) the conditions of trading;

(iii) the appointment and punishment of its employees;

(iv) the payment of salaries, gratuities and leave allowances to such employees;

(v) the delegation of powers or duties, to the Sub-Committee or Joint-Committee or *ad hoc* Committee or any one or more of its members under section 19; and

(vi) the remuneration of different functionaries not specifically mentioned in this Act, working in the notified market area and rendering any service in connection with the sale, purchase, storage and processing of agricultural produce;

and may provide that contravention of any of such bye-laws shall be punishable, on conviction, with a fine which may extend to fifty rupees."

The learned counsel for the petitioners has suggested that I should read the two sections together and since section 44(1) speaks of the bye-laws to be subject to any rules, I should hold that unless and until appropriate rules are framed by the Government a Committee would be incompetent to make bye-laws. I am unable to agree with this contention for various reasons. In the first place, the language of section 43(1) does not make it obligatory upon the State Government to frame the rules. If the Act can be satisfactorily worked without framing the rules, then it is not for third persons to find fault with the action of those who are responsible for working the Act. Secondly, this argument over-looks entirely the principles which govern the theory of subordinate legislation. It would be well nigh impossible for any legislature to foresee the situations in which an enactment of the legislature may have to be applied. The modern trend of legislation has been that the Legislature lays down the policy in the main statute and levels it to the rule making authority to supply the details for working out a statute. Prof. C. K. Allen has made the following observations in his celebrated book "Laws In the Makking" 1961 Edition, at page 521:—

"As has been noted, the great bulk of Parliamentary legislation now a days is of the social and administrative rather than

> of the 'legal' kind. Parliament is obliged to delegate much of its legislative office for two principal reasons : (1) it has no time to deal in detail with the multifarious matters which claim its extention; (2) many of these matters are so technical that there is a natural tendency to commit them to experts, while many others are of exclusively local importance. Further, much of the time and interest of any Government in power is taken up with purely political exigencies, and especially with foreign policy."

If the above matters could be pressed into service for justifying the action of the legislature to leave the matters of detail to the rule-making authority, then it cannot be said that a legislature, which takes upon itself the task of supplying the details in the statute itself, should be made to suffer the disability of not having its commands obeyed unless and until it calls into aid some rule-making authority. I am of the view that an argument cannot always be raised that action under a statute cannot be taken if the authority empowered under that statute to make rules has not exercised its discretion, or having considered the matter feels that there was no necessity for framing the rules on a particular subject covered by the statute. Indeed, it would be a different matter when the Court comes to the conclusion that the action taken is *ultra vires* the statute. In that event, the action itself would be struck down as being *ultra vires,* but certainly not on the basis of the abstract principle of law that the authority vested with the discretion to frame rules must have brought forth the rules even if it means a repetition of some of the provisions of the Act.

(20) I may, however, make it clear that where the legislature has left some details to be worked out by a rule-making authority under the statute, the executive action under that statute may smack of arbitrariness in the absence of rules framed by the competent authority. In that case the rule-making provisions may rightly be regarded as mandatory in spite of the use of word 'may' in the section of the statute which gives rule-making power. Here I am concerned with interpreting sections 43 and 44 of the Act. When these sections are read together the only inference that can be raised is that when the rules are framed by the Government, the bye-laws should not over-step the limits set by such rules.

(21) For the consideration of the 5th point raised by the learned counsel, it is necessary to set down the provisions of section 3(14) of the Act—

"3(14) Subject to rules made under this Act, the Board may, with the approval of the State Government, frame bye-laws for—

(a) regulating the transaction of business at its meetings,

(b) the assignment of duties and powers of the Board to its Chairman, Secretaries or persons employed by it ; and

(c) such other matters as may be prescribed"

The learned counsel for the petitioners urges that the above mentioned provision of law lays down that the bye-laws framed by the Board become effective only after the approval of the State Government has been obtained. The amendment of the bye-laws introduced by the Chairman could become effective only after the State Government had accorded its approval to the proposed change. Suffice it to say that this provision of law entitles the Board to make bye-laws for its own internal working. Such bye-laws may relate to the manner in which the Board transacts its business, the mode of convening meetings and such other allied matters as may be prescribed in the rules. The bye-laws which touch upon these subjects only require the approval of the Government. Each and every other bye-law which the Board may be competent to make under the Act does not suffer from the same disability. The bye-laws framed by the Board under section 44 of the Act certainly do not fall within the purview of this provision. I am of the view that the amended bye-law as contained in Annexure 'C' was validly made.

(22) I now come to the next submission made by the learned counsel. In this respect, he has attacked the *vires* of section 44(3) of the Act as being unconstitutional on the ground that it violated Articles 14 and 19 of the Constitution as also for being violative of the principles of natural justice. Section 44(3) of the Act runs as follows:—

"44(3). (a) Notwithstanding anything contained in this Act, or the rules or bye-laws made thereunder, if the Board considers that an amendment, alteration, rescission of

adoption of a new bye-law is necessary or desirable in the interests of such Committee, he may, by an order in writing to be served on the Committee by registered post, require the Committee, to make such amendment, alteration, rescission or adopt a new bye-law within such time as may be specified in such order.

(b) If the Committee fails to make any such amendment, alteration or rescission or to adopt the new bye-law within the time specified by the Board in his order under clause (a) the Board may after giving the Committee an opportunity of being heard, register such amendment, alteration, rescission or such new bye-laws, and issue a certified copy thereof to such Committee.

(c) The Committee may, within one month from the date of issue of an order made under clause (b), appeal against such order to the State Government.

(d) Where an appeal is presented within one month from the date of the issue of an order clause (b) registering an amendment, such amendment shall not come into force till the order is confirmed by the State Government.

(e) A certified copy of the amendment of the bye-laws registered by the Board under clause (b) shall, subject to the result of an appeal, if any, under clause (c) be conclusive evidence, that the same has been duly registered and such amendment, alteration, rescission or a new bye-law shall be deemed to have been made by the Committee."

A reading of this section shows that the power of the Board to effect an amendment, alteration, rescission or adoption of a new bye-law cannot be termed as arbitrary and unguided. First of all this power has to be exercised in the interest of the concerned Committee. Secondly, a suggestion regarding alteration of bye-laws is to be made to the Committee leaving it to accept or reject the same. Thirdly, if the Committee fails to accept the suggestion, then the Board has to give it a hearing before arriving at a decision whether such amendment etc. should be made or not. Fourthly, a Committee has been given the right of appeal to the State Government. I cannot lose sight of the fact that the Board consists of responsible

members, some of whom hold high positions in the Government. In *Messrs Pannalal Binjraj and others* v. *Union of India and others* (3), it has been held by the Supreme Court that when power is entrusted to a responsible individual or a body of individuals such entrustment of power cannot be challenged as arbitrary. The Court may, however, strike down the action taken in exercise of that power when it appears to the Court to have been taken in a *mala fide* or unreasonable manner. In the instant case the power exercised by the Board is hedged in by so many checks and balances that it cannot be called as an arbitrary exercise of power.

(23) It was also submitted by the learned counsel that the power conferred upon the Chairman was arbitrary and unguided inasmuch as he by ordering the alteration of the bye-laws could fix any remuneration payable to the Commission Agents. Had the Government framed the rules and provided the maximum commission payable, then possibly it could be said that the guide-lines had been given in the rules. Reliance in this behalf was made on M/s. *Devi Das Gopal Krishnan etc.* v. *State of Punjab and others* (4). That was a case under the Punjab General Sales Tax Act. The statute provided that the taxable turn-over of a dealer shall be subject to tax "not exceeding two pice in a rupee." The argument raised was that the statute did not disclose any policy giving guidance to the legislature, for fixing any rate within the maximum. Repelling this contention, the Supreme Court observed as follows:—

> "At the same time a larger statutory discretion placing a wide gap between the minimum and the maximum rates and thus enabling the Government to fix an arbitrary rate may not be sustained. In the ultimate analysis, the permissible discretion depends upon the facts of each case. The discretion to fix the rate between 1 pice and 2 pice in a rupee is so insignificant that it is not possible to hold that it exceeds the permissible limits. It follows that section 5 of the Act as amended is valid."

(24) The learned counsel for the petitioners can derive no benefit from this authority. The argument raised by him loses sight of the fact that fixation of sales-tax at the discretion of the executive authority, within the maximum limit prescribed, stands on an entirely different footing from the rates of commission payable as fixed by

(3) A.I.R. 1957 S.C. 397.
(4) A.I.R. 1967 S.C. 1895.

the Board under the Act. This Act is covered by Item No. 5 of List II (State List) of the Constitution, which runs as follows:—

> "Local Government, that is to say, the constitutions and powers of Municipal Corporations, Improvement Trust, District Boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

The laws framed by the State Legislature under this entry have some relation with the Governmental powers exercised by the State. Such laws usually provide for a democratic body with its own constitution to decide what regulatory measures it should adopt in order to advance the social progress of the people. Such democratic bodies are answerable to the electorate and in many cases their actions are subject to the control of the Government. Take, for instance, the case of a Municipal Committee. It is invested with the jurisdiction to frame its own bye-laws under which it can impose some of the taxes which the State Legislature can impose. The reason is obvious; because some of the governmental functions are assigned to a Municipal Committee and the power to impose taxes is implicit in the exercise of governmental power which comprises of legislative, executive and judicial functions. In short, a Municipal Committee acts as a miniature legislature while framing the bye-laws and the same body fixes the quantum of tax in the manner and for the porposes envisage by its charter. The question of delegation of powers becomes relevant only when the bye-law is framed by one body and is worked by another. If the law creating a Municipal Committee lies within the competence of a State legislature, and the said law provides for the exercise of power by a Municipal Committee under proper checks and controls which are compatible with the fundamental rights of a citizen, then it would be idle to suggest that the Municipal Committee cannot fix the quantum of tax. The fixation of remuneration of Weighmen and Commission Agents under the bye-laws of a local authority stands on a much stronger footing. The necessary guideline can be gleaned out of the commonsense attributes of the words 'commission' and 'weighman's charges'. The Committee under the Act are local authorities elected by classes of persons who are directly affected by the provisions of the statute. The bye-laws framed by them are subject to supervision by the Board and the Government. While framing the bye-laws in respect of commission payable, they are expected to keep in mind the commission which

was previously charged by the Commission Agents with such modifications as are deemed by them to be necessary in the interests of producers and the buyers. When this power is exercised by such a representative-body, then it is not always necessary that the maximum rate of commission should be mentioned either in the rules or in the Act. The Board is invested with the jurisdiction to supervise the functioning of the Committees in order to bring about uniformity. It consists of responsible officers of the State Government, like the Director of Agriculture, the Director of Animal Husbandry and others. Such officers are presumed to know the various factors which are relevant for fixing this type of remuneration. The exercise of power by such a body or its Chairman cannot be classed as arbitrary merely because the rules are silent on the subject. In any case the learned counsel for the petitioners has not placed on record any material to show that the commission allowed was unreasonable. On the other hand, the learned counsel for the Board has placed before the Court a copy of the survey report in which the commission payable to the dealers has been discussed. The relevant portion of this report is as under:—

> "As has been hinted above, the commission charges that were prevalent before the enforcement of the bye-law varied from Rs. 0.75 nP. to Re. 1 per hundred rupees of the value. This was raised to Rs. 1.50 per hundred rupees of the value. This increase was not only unjustified but was disproportionate one, so much so that in actual practice even the trade did not accept it for business transactions between themselves. It has been found that there is a rebate given out of this commission when a pucca Arhtiya makes purchases through the Katcha Arhtiya. The commission charges as prevalent on second transaction are Rs. 0.75 nP. only. The rebate varies from anything like 15 paise to 30 paise per hundred rupees for the value. In short the commission charges in practice amongst the trade are less than Rs. 1.25 per hundred rupees of the value. The rebate is given different names like Mudat, interest deduction, Dani and so on. Secondly, the recent increase in prices and in agriculture production has resulted in a very substantial increase in the income of the Katcha Arhtias. It was stated by the representatives of the traders before me during the meetings that they were making a profit of about Rs. 20,000 or more from an investment of Rs. 1,00,000

or so. This means a return of 20 per cent per year. This is too much to be allowed to continue, especially in view of the fact that it is a policy of the Government not to allow undue accumulation of wealth and to reduce middle man's charges."

If the above factors are to be taken into consideration, then it becomes obvious that the dealers who have been allowed a commission of 2 per cent have no reasonable basis for making out a grievance on the score of the quantum of the commission.

(25) Somewhat analogous provisions of the Act regarding the payment of charges to the weighman were challenged in *Kishore Chand and others* v. *State of Punjab and others* (5). Tuli, J., who decided the case, repelled the contention raised in the following terms:—

".....section 44(1)(vi) of Punjab Agricultural Produce Markets Act, 1961, is a constitutionally valid piece of legislation and it cannot be struck down on the ground of either being discriminatory or conferring arbitrary power on the market committee. Enough guiding principles have been stated in the preamble and section 1 of the Act. Moreover, the members of the market committees are elected representatives of various classes of persons who have any concern with the activities that take place in the market area. The weighmen, brokers and other functionaries have also the right to elect one or two members of each market committees according to its membership, who can represent their point of view and safeguard their interests. Marketing legislation is a well-settled feature of all commercial countries and the object of such legislation is to protect the producers from being exploited by the middlemen and profiteers and to see that they are not charged excessively high rates for the services rendered to them in the market. It is not possible for the legislature to lay down any guiding principles for fixing the remuneration of weighmen or such other functionaries working in the market area. It will depend on various factors which prevail in a market committee. The

(5) I.L.R. (1970)II Pb. & Hr. 160.

members of the market committee are presumed to be fully conversant with the local conditions and to fix the rates of various functionaries in good faith at a proper level taking into consideration the time and the labour spent. The power is not entrusted to an individual but to a representative body of responsible persons elected by all those persons who have any thing to do with the transactions which take place in a market area under the jurisdiction of a market committee. They cannot, therefore, be expected to fix the rates which are not properly remunerative to the functionaries with a view to harm them. The power to frame bye-laws is also not unaffected because it is subject to confirmation by the Chairman of the State Agricultural Marketing Board under section 44(4) of the Act and have to be notified in the gazette. The Chairman of the Board is a very high officer of the State Government, namely, the Director or Joint Director of Marketing for the State. The Chairman of the Board has to keep in view the conditions in the entire State and keep a uniformity in the rates as far as possible in all the market committees. Section 44(1)(vi) of the Act, therefore, does not suffer from any constitutional infirmity and is not *ultra vires* Articles 14 and 19(1)(f) and (g) of the Constitution."

I am in respectful agreement with the view expressed by my Lord. The Act and the Rules do not provide the maximum limit within which remuneration payable to weighman is to be fixed by the Committee and yet the challenge against the legality of such fixation was turned down. The case of commission payable to Commission Agents stands on the same footing. I see no reason to strike a discordant note in their case.

The attack levelled on the basis of Article 19 of the Constitution does not hold water either . It is conceded by the learned counsel for the petitioners that the Act has been brought on the statute book in order to remove the middleman, who in many cases used to eat up the profits of the producer. The Board and the Committees have been established so that proper markets for the disposal of agricultural produce may be set up. The buyers and the licensees under the Act have to pay an insignificant amount of fees in lieu of the services which they are provided at such markets. The entire fund collected is set apart and utilised for the purposes envisaged by the

Act. When a market is fixed at a place and the Commission Agents and dealers are made to work under the prescribed conditions on payment of fixed remuneration, the element of competition also withers away and the producer gets a reasonably uniform return for the produce. Such a law, which is for the benefit of the producing community and also for a large number of buyers who visit such markets, cannot be said to go against the interests of the general public.

The factors which are alleged to cause infringement of right to trade are of such insignificance that they hardly deserve any mention. It was said that a petty trader had to deposit the fees daily; he had to maintain accounts and to preserve the counterfoils for long periods. Suffice it to say that these are common features of every regulatory measure. Those who enjoy benefits under a statute which regulates business cannot be heard to say that they should not suffer inconveniences of the petty nature which have been complained of in this case.

(26) It now remains to be considered whether the law is bad because it does not provide an opportunity of hearing to a Commission Agent whose remuneration may be reduced by the authorities exercising their functions under the Act. The learned counsel states that the change in the remuneration of a Commission Agent visits his civil rights with evil consequences. The Board while effecting an amendment of the bye-laws acts in a quasi-judicial capacity and before it passes any order affecting the rights of a Commission Agent it must give him prior hearing. Reliance has been placed on the case of *A. K. Kraipak and others.* v. *Union of India and others* (6) wherein it has been held that even an administrative authority is enjoined upon to give a hearing to the affected person before it passes an order affecting his rights.

(27) I am afraid, I find no force in this submission of the learned counsel. The Board while suggesting an amendment in the bye-laws as also while adopting and confirming the same does not act either in a quasi-judicial capacity or in an administrative capacity as ordinarily understood. The Act empowers the Committees to frame their own bye-laws. The Board has been invested with the

(6) A.I.R. 1970 S.C. 150.

power to suggest amendments and alterations. To my mind, it appears that the functions which have been conferred upon the Board and the Committee under the Act are quasi-legislative in character. When they perform these functions, they are not called upon to abide by the principles of natural justice to any extent other than what is provided for in the statute. The Act gives a right of hearing to the affected Committees only and this by implication negatives any right of hearing in favour of an individual constituent of the Committee. In *Union of India* v. *Col. J. N. Sinha and another* (7), the Supreme Court observed that the principles of natural justice supplement the law and not supplant it. If on a careful reading of the Act, the Court comes to conclusion that the statute by implication negatived the application of the principles of natural justice, then it cannot by a process of its own reasoning import these principles in the statute.

(28) Last of all the learned counsel for the petitioners made a faint attempt to argue that the classification of vegetables and fruits into perishable and non-perishable categories was arbitrary. Here again, the submission is devoid of any legal basis. In *Shri Ram Kishna Dalmia* v. *Shri Justice S. R. Tendolkar and others* (8), the Supreme Court made an exhaustive discussion of the law and observed that it was open to the legislature to make a reasonable classification. The Courts would presume the classification to be reasonable unless the contrary is proved. It is a matter of common knowledge that vegetables like onion, potatoes, beet-roots etc. can be kept for longer periods than the cabbages and the cauliflowers can be kept. It is also easier to handle potatoes than it is to handle tomatoes and cabbages. If the rule-making authority has made a classification, which appears to be justified on the basis of reasons which are apparent even to laymen, I do not think I would be justified in interfering with the discretion exercised by it, especially when there is a legal presumption in favour of its actions and the petitioners have placed no material before the Court to dislodge that presumption.

(29) In C. W. No. 4117 of 1971, Shri H. S. Wasu, the learned Senior Advocate appearing for the petitioners, has raised an additional point. According to him 'wool', as mentioned in the Schedule

(7) 1970 S.L.R. 748.

(8) A.I.R. 1958 S.C. 538.

annexed to the Act is not an article of agricultural produce. The term 'wool' has not been defined in the Act and in its undefined form it is a very wide term which is liable to be misinterpreted and misused by the executive authorities inasmuch as there are many kinds of wool, such as raw wool, wool waste, wool tops, knitting wool, tannery wool and synthetic or artificial wool, etc. It was suggested that in order to properly restrict exercise of executive discretion in bringing the wool within the ambit and scope of this Act the term 'wool' should have been defined in the Act. This argument ignores the definition of 'agricultural produce' as given in section 2(a) of the Act which runs as under:—

"2. Definitions.—

(a) 'agricultural produce' means all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act."

When the term 'wool' is entered in the Schedule, it means that type of wool which is a product of animal husbandry. Synthetic or artificial wool, which is a product of a chemical process, cannot come within the purview of the Act. The counsel also submitted that his clients mainly dealt in tannery wool, i.e., wool procured from the skins of dead sheep etc. Animal husbandry, according to him, consists primarily of tending live cattle. I see no force in this contention either. The word 'husbandry' has been defined in the Webster International Dictionary as "care of domestic affairs; domestic economy; domestic management; hence, thrift frugality; wise management." In this context, the words 'animal husbandry' would mean the breeding of animals for getting good economic results. A farmer who carries on the profession of animal husbandry on a somewhat reasonable scale has to take into consideration the investment made by him and the yields expected therefrom. In some cases, the yield accruing from skins and tannery wool may also assume importance. If a farmer keeps animals for supplying mutton, then it would not be unreasonable for him to take tannery wool into consideration for assessing his overall return from the business. Sometimes even the bones of the animals slaughtered may be utilized for making bonemeal—a fertilizer of common use. In view of these considerations, it would

be wholly unreasonable to restrict the amplitude of the words 'animal husbandry'.

(30) In C.W. No. 3693 of 1971 and C.W. No. 4141 of 1971, a challenge was levelled against the levy of fees on the sale of fruits grown outside the State of Punjab in the market areas of the State. Shri D. N. Awasthy, the learned counsel for the petitioner, has submitted that the historical background for the enactment of marketing legislation shows that the object of this legislation was to protect the producer of agricultural produce from being exploited by the middlemen and profiteers and to enable him to secure a fair return for his produce. The learned counsel referred to various passages of the Royal Commission on Agriculture in India appointed in 1928. These passages are also set down in *M. C. V. S. Arunachala Nadar* v. *State of Madras and others* (9).

(31) The learned counsel also invited the attention of the Court to the following provisions of the Act,—

"2. Definitions.—

(a) 'agricultural produce' means all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act;

(f) 'dealer' means any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce notified under sub-section (1) of section 6 or purchases, sells, stores or processes such agricultural produce;

(o) 'producer' means a person who in his normal course of avocation grows, manufactures, rears or produces, as the case may be, agricultural produce personally, through tenants or otherwise, but does not include person who works as a dealer or a broker or who is a partner of a firm of dealers or brokers or is otherwise engaged in the business of disposal of agricultural

(9) A.I.R. 1959 S.C. 300.

produce other than that grown, manufactured, reared, or produced by himself, through his tenants or otherwise. If a question arises as to whether any person is a producer or not for the purposes of this Act, the decision of the Deputy Commissioner of the District in which the person carries on his business or profession shall be final."

"5. Notification of intention of exercising control over puchase, sale, storage and processing of agricultural produce in specified area:—

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

It was suggested that the meaning of the words 'agricultural produce' should be restricted by taking into consideration the definition of the word 'producer' given in the Act. In short, something which is not produced by the producer defined in section 2 (o) of the Act should be regarded as lying outside the ambit of the words 'agricultural produce' as defined in section 2(a) of the Act. In my opinion, this is not a proper approach to the problem, because the words of the statute are clear and they have to be given their natural meaning. Section 5 of the Act lays down that the State Government may by notification declare its intention of exercising control over the purchase etc. of agricultural produce. The latter term is defined in clear words and I see no reason to restrict the meaning of this term by making reference to the definition of the word 'producer'. Suffice it to say that the word 'producer' has been defined in the Act for an entirely different purpose. Under section 12 of the Act the Committees constituted are to consist of nine Members from the producers of the notified market area. The definition of the word 'producer' has been incorporated in the Act to qualify a person who wants to become a

member of the Committee. This definition cannot be made use of to restrict the meaning of the words 'agricultural produce'.

(32) It was then submitted by the learned counsel that in pith and substance the Act deals with the local produce and protects the interests of the producers residing in the State. A person who imports fruit from outside cannot be made to pay the fees under the Act. The provisions of the Act which impose such fees in respect of imported fruit are beyond the scope of the Act and hence liable to be struck down. Reliance in this behalf was made on *State of Bihar and others* v. *Sm. Charusila Dasi* (10). That was the case of a religious trust situate in one State and having properties in another State. On a consideration of the entire matter, the Supreme Court was of the view that the law of the State in which the trust was situate would govern that trust. The relevant observations run as under:—

> "There is no reason why the doctrine of territorial connection or nexus which has been applied to the income-tax legislation, sales tax legislation and also to legislation imposing tax on gambling, should not be applied to the legislation in respect of public religious endowments. Sufficiency of the territorial connection involved a consideration of two elements, namely, (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection. Where, therefore, the religious endowment is itself situated in Bihar and the trustees function there, the connection between the religious institution and teh property appertaining thereto is real and not illusory, indeed, the religious institution and the property appertaining thereto form one integrated whole and one cannot be dissociated from the other. If, therefore, any liabilty is imposed on the trustees, such liability must affect the trust property ,even if it is situated outside the State of Bihar. The Act applies to such a trust and the provisions of the Act cannot be struck down on the ground of extra-territoriality."

(10) A.I.R. 1959 S.C. 1002.

Anand Prasad Lakshminiwas Ganeriwal v. *State of Andhra Pradesh and others* (11) was also cited for the same purpose. This again was the case of a trust having its situs in one State and property in the other. The Supreme Court held that where the trust is situate in a particular State, the law of that State will apply to the trust, even though any part of the trust property, whether large or small, is situate outside the State where the trust is situate.

(33) I do not see how the learned counsel can derive any assistance from these authorities. While applying the principle of territorial nexus, the Supreme Court observed that the law of the place or the State in which the trust was situate would also govern the property which is situate outside that State. If this principle of territorial nexus is applied to the facts and circumstances of this case, then it becomes obvious that the State in which a Market Committee is situate would be competent to provide for ancillary measures, like the sale of agricultural produce in such a Committee. The State legislature is competent to enact a law under which the Market Committees are set up for the disposal of agricultural produce. By enacting this law, the legislature is not trenching upon a field reserved for any other legislature. The doctrine of 'pith and substance' is wholly inapplicable to such a case. I am of the view that even imported fruits come within the definition of the words 'agricultural produce' and the legislature was competent to regulate their sale, storage, etc. under section 5 of the Act.

(34) In C.W. No. 4199 of 1971, Mr. Puran Chand, learned counsel for the petitioners, has submitted that the petitioners are being called upon to pay the market fees even though their business premises are not situate in the market proper. It is, however, admitted by him that their business premises lie within the limits of the area in which businessmen are prohibited to carry on trade under section 8 of the Act. Instead of closing their business altogether the Market Committee has allowed them the concession of continuing their business on payment of the precribed fees. If this is so, then the petitioners in this writ petition instead of challenging the action of the Market Committee should really be thankful to it.

(11) A.I.R. 1963 S.C. 853.

(35) In C.W. No. 4436 of 1971, Mr. Ahluwalia, the learned counsel for the petitioners has submitted that the bye-law in question was bad on account of the reason that the order in writing suggesting the alteration in bye-law was not served on the Committee by registered post. The petition, however, does not contain any such averment. Shri Kuldip Singh, learned counsel for the Board, has produced a copy of the letter No. 6510-75 dated May 25, 1971, which was sent to the Market Committee under registered cover and which contained the suggestion regarding the amendment of bye-laws. On seeing this letter, the learned counsel did not press his arguments any further.

(36) No other point was urged by any of the counsel appearing for the petitioners.

(37) In view of what has been stated above, these petitions fail and are dismissed but without any order as to costs.

SANDHAWALIA, J.—I agree.

K.S.K.

APPELLATE CRIMINAL

Before Pritam Singh Pattar and Muni Lal Verma, JJ.

THE STATE OF HARYANA,—*Appellant*

versus

PHULA RAM,—*Respondent.*

Criminal Appeal No. 1174 of 1968.

April 3, 1974.

East Punjab Essential Services Maintenance Act (XIII of 1947)—Sections 5 and 7—Code of Criminal Procedure (Act V of 1898)—Sections 190(1) and 200(aa)—Indian Evidence Act (1 of 1872)—Sections 56 and 57(7)—Police Act (V of 1861)—Sections 22 and 29—Complaint filed by a Gazetted Officer authorised by the State Government in that behalf—Such complaint—Whether to be proved and exhibited—Police constable proceeding on leave