these proceedings. In the interest of both sides I direct that the amount may be put by the trial Court in fixed deposit for one year in any scheduled nationalised bank in Sonepat on the best available terms so that whoever gets the money should obtain it with interest accrued due thereon till that date. The trial Court is dirtcted to expedite the disposal of the suit. Mr. I. C. Jain prays that a direction may be issued to the executing Court not to confirm the sale till the final disposal of the petitioner's appeal before the Senior Subordinate Judge, Sonepat. His client can make an application to the executing court for setting aside the sale. The attachment can continue. The decree-holder can attach the amount deposited by the petitioner subject to the result of her suit, if so advised. No direction can be given by this Court on any of these matters in these proceedings.

(7) The parties are left to bear their own costs.

K. T. S.

FULL BENCH

Before O. Chinnappa Reddy, Bhopinder Singh Dhillon, A. S. Bains, Harbans Lal and Surinder Singh, JJ.

HARNAM DASS LAKHI RAM,—*Petitioner.*

versus

THE STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ Petition No. 8605 *of* 1976

May 27, 1977.

Punjab Agricultural Produce Markets Act (*XXIII of* 1961) *as amended by the Punjab Agricultural Produce Markets (Amendment and Validation) Act* (34 of 1976)—*Sections* 2(*hh*), 5, 6, 10-*A*, 23, 26, 27 and 28—*Punjab Agricultural Produce Markets (General) Rules* 1962 *as amended by the Punjab Agricultural Produce Markets (General) (First Amendment) Rules* 1975—*Rules* 2(10), 17*A*, 18 *and* 31—*Constitution of India* 1950—*Articles* 14, 20 *and* 304—*Notifications issued under sections* 5 *and* 6—*Whether can be struck down on the ground that area covered by them is very wide—Agricultural produce imported from outside the State—Levy of market fee on such produce—Whether hit by Article* 304—*Rendering of services in lieu*

of market fee—Nature and extent of—Stated—Funds raised from the levy of fee—Area of utilisation of such funds—Whether to be confined to the principal market yard—Levy of uniform market fee—Whether violates Article 14—*Sale or purchase of agricultural produce on which no fee is leviable—Failure to file return regarding such sales or purchases—Whether attracts penalty—Imposition of penalty—Whether violates Article* 20.

Held, that the State Government under section 6 of the Punjab Agricultural Produce Markets Act, 1961, has got powers to include as much area as it deems proper to be notified market area and so also such items of agricultural produce as may be necessary. The notifications cannot be struck down merely because the area covered under them is very wide. If there is a power to include larger area as notified market area or all items of agricultural produce mentioned in the Schedule transactions of which are to be controlled within the said market area, merely because the same power has been exercised, cannot be made a ground for quashing the notifications. (Paras 23 and 24).

Held, that the levy of market fee on agricultural produce which is imported from outside the State is not hit by Article 304 of the Constitution of India, 1950. A bare reading of the provisions of this Article would show that they are not attracted. Clause (a) of Article 304 can only be attracted if any discrimination is made in the imposition of any tax on the goods imported from the other State to which similar goods as may be manufactured in that State are subjected. The levy of market fee at the maximum rate on the agricultural produce produced in the State and so also on the agricultural produce imported from outside the State does not result in any discrimination. With a view to attract the provisions of Article 304(a) discrimination has to be made out because of the imposition of tax by the Legislature of the same State. Any imposition of market fee by any State other than the one in which agricultural produce is imported cannot be made the basis of discrimination for challenging the fee imposed by the State in which agricultural produce is imported. (Paras 25, 26 and 27).

Held, that the main purpose of the Act is to make provision for regulated Markets for the agricultural produce and in that respect render services to all concerned. It cannot be denied that the existence of a regulated market system in a State is itself a service to the sellers and to the intending purchasers of the agricultural produce. The provisions of the Act have to be administered by the Market Committees/Marketing Board and the State Government. The establishment and administrative network involving the administration of the Act by the Market Committees and the Board does require the finances to run such an administration. If the fee is being levied under the provisions of a statute, the services to be

rendered in lieu of the fee as provided under the statute have to be kept in view to uphold the provisions of the Statute. The question of rendering services has not to be looked from a narrow viewpoint. Under the provisions of the Act, the whole State has been divided into a number of Market areas and in each Market area are established Market proper, principal Market yard and sub market yard. The services to be rendered in lieu of the fee are manifold as postulated under the provisions of sections 26 and 28 of the Act. The services cannot be rendered to each and every licensee or purchaser or a class of licensees and purchasers. The services to be rendered cover a very vast area and, therefore, the question of rendering services cannot be looked into from personal or from the viewpoint of any class. The Market Committees disseminate information regarding the market rates of the agricultural produce bought and sold in the market and perform many other functions as are postulated under the provisions of the Act and the Rules made thereunder, which, if looked from proper perspective, are the services being rendered to all—to the producers of agricultural produce, to the licensees under section 10, to the licensees under section 13 and various other functionaries connected with the purchase, sale, storage and processing of the agricultural produce. It is true that a levy by way of fee is a sort of return or consideration for the services rendered which makes it necessary that there should be an element of *quid pro quo* in the imposition of a fee, but the question has to be viewed from a broader perspective. The provisions of sections 26 and 28 of the Act would show that the levy of fee under section 23 of the Act is correlated to the expenses incurred in rendering the services. (Paras 29, 30 and 32).

Held, that the area of utilization of the funds raised from the levy of fee is not to be confined to the principal market yard. A bare perusal of the provisions of the Act would show that the Committee is established for the notified market area. The principal market yard or the sub-market yard or the market is only a small place where the producers come and dispose of their agricultural produce. With the development made in the notified market area, the development of the principal market yard, or sub-market yard or the market is closely linked. The producers, who live in villages are to be provided facilities such as link roads, construction of culverts on the link roads for facilitating the transportation of the agricultural produce to the markets etc. If such facilities as are specified in the Act are not offered to the villagers who grow agricultural produce, they are not likely to get a fair return for the produce they grow and if that is not done, the real purpose for which the Act has been enacted, will be frustrated.

(Para 33).

Held, that the question of rendering services from the funds raised by way of payment of market fee, has to be looked into from a broader viewpoint. Each licensee or a class of licensees cannot ask the Court to weigh the rendering of services to the said person or class of persons in golden scales. A uniform levy of market fee does not treat unequals as equals, and, therefore, does not violate Article 14 of the Constitution. The rendering of services to a person or a particular class of persons in their personal capacity cannot be made the basis of distinction for holding such person or class of persons as unequals with the rest. (Para 35).

Held, that the provision of Rule 31 of the Punjab Agricultural Produce Markets (General) Rules, 1962, enjoins upon every licensed dealer and every dealer exempted under rule 18 from obtaining a licence to submit to the Committee a return in form M showing his purchases and sales of each transaction of agricultural produce within four days irrespective of the fact whether market fee is leviable on the same or not. The purpose of making this provision is to check the evasion of the market fee. Whether a particular transaction is liable to the assessment of the market fee or not, is hardly material. All transactions have to be intimated to the Committee who is then to proceed to assess the fee on the transactions on which fee is leviable. Furthermore, the penalty has to be inflicted on the defaulter. The default can be for not filing the return in form M or filing the incorrect return or for not paying the market fee assessed. It cannot be said that penalty can only be imposed if there is default in payment of the market fee alone. The provisions of the Rules clearly suggest that the default mentioned in sub-rule (9) of Rule 31, which attracts the penalty can be a default on account of non-submission of returns in form B or for submission of incorrect returns, or for default in making payment of the market fee.

(Para 37).

Held, that from a bare reading of Article 20 of the Constitution it is obvious that the word 'penalty' used in sub-clause (1) cannot be independently interpreted without making reference to the provisions of the earlier clause. The penalty imposed should be in connection with the commission of an offence. If the penalty which can be levied is for non-compliance with the provisions of Rule 31, it is not in connection with the commission of an offence and therefore, does not violate Article 20. (Para 41).

Amended Petition under Articles 226 *and* 227 *of the Constitution of India praying that* :—

(*a*) *a writ of* mandamus *or any other writ, order or direction declaring sections* 2, 3, 6 *and* 7 *of the Punjab Agricultural Produce Markets (Amendment and Validation) Act,* 1976 *(Annexure P.* 2) *as illegal and unconstitutional, be issued* ;

(*b*) *a writ in the nature of* mandamus, certiorari *or any other writ, order or direction quashing the impugned notice dated* 1st *December,* 1976 (*Annexure P.* 3) *be issued;*

(*c*) *a writ in the nature of* mandamus, certiorari *or any other writ, order or direction be issued quashing the notifications dated 20th September,* 1961 *and 16th March,* 1962 (*Annexures P.* 4 *and P.* 5);

(*d*) *a writ of* mandamus, certiorari *or any other writ, order or direction be issued declaring that the provisions of Section* 2(*a*) *are* ultra vires *the legislative competence of the Punjab legislature* ;

(*e*) *This Hon'ble Court may declare that Section* 23 *is void and ineffective* ;

(*f*) *this Hon'ble Court may declare section* 6 *particularly sub-section* (3) *of Section* 6 *as illegal, void,* ultra vires *and ineffective* ;

(*g*) *a suitable writ, order or direction be issued prohibiting the respondents from levying, assessing and/or recovering any market fee from the petitioner on gur, shakkar and khandsari* ;

(*h*) *any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case be issued* ;

(*i*) *Costs of this petition be allowed to the petitioner.*

It is further prayed that the levy and recovery of market fee on gur, shakkar and khandsari and the operation of the impugned notice (P. 3) *be stayed till the final disposal of the writ petition and the respondents be prohibited from enforcing the same.*

G. L. Sanghi, Senior Advocate (R. L. Batta, H. K. Puri, Advocates with him), *for the Petitioner.*

Shri I. S. Tiwana, D.A.G. Punjab, *for Respondent No.* 1.

Shri R. K. Garg, Supreme Court Advocate,

Balbir S. Bindra, Advocate.

Surjit Bindra, Advocate.

C. P. Sapra, Advocate.

S. S. Sodhi, Advocate.

for Respondents Nos. 2 *and* 3.

Harbhagwan Singh, Senior Advocate with Amarjit Chaudhary, Advocate, *for Respondent No.* 2.

JUDGMENT

B. S. Dhillon, J.

(1) This judgmest will dispose of Civil Writ Petitions Nos. 8605, 8604, 8757 to 8763, 8779 to 8788, 133 of 1976; 3 to 19, 86, 108 to 114, 161, 269, 333 to 340, 347, 578 of 1977, and 7508 of 1975. Since the question of law involved in all these cases is common, therefore, the same are being disposed of by a common judgment.

(2) Before the Punjab Agriculture Produce Markets Act, 1961 (Punjab Act No. 23 of 1961) (hereinafter referred to as the Act) was enacted by the Punjab Legislature, the Punjab Agriculture Produce Markets Act of 1939 was operating in the area of the erstwhile Punjab State; whereas the Patiala Agriculture Produce Markets Act, 2004 B.K. was operating in the erstwhile area of the Patiala and East Punjab States Union. Both these enactments were repealed by section 47 of the Act which Act was passed to consolidate and amend the law relating to better regulation of the purchase, sale, storage and processing of agricultural produce in the State of Punjab. This was so mentioned as the object of the enactment. It is pertinent to mention that with a view to check the malpractices in the sphere of purchase, sale, storage and processing of agricultural produce, the question of having regulated markets and regulating the sale and purchase in the market

areas, attracted the attention of Government of the day as far back as 1928. Royal Commission on Agriculture in India, 1928, highlighted this aspect in the following words:—

> "If, as we have held in the preceding paragraph, it is established that the cultivator obtains a much better price for his produce when he disposes of it in a market than he sells it in his village, the importance to him of properly organised markets needs no emphasis. The importance of such markets lies not only in the functions they fulfil but in their reactions upon production. Well regulated markets create in the mind of the cultivator a feeling of confidence and of receiving fair play and this is the mood in which he is most ready to accept new ideas and to strive to improve his agricultural practice. Unless the cultivator can be certain of securing adequate value for the quality and purity of his produce, the effort required for an improvement in these will not be forthcoming. The value of the educative effect of well regulated markets on the producer can hardly be exaggerated but it has yet to be recognised in India. From all provinces we received complaints of the disabilities under which the cultivator labours in selling his produce in markets as at present organised. It was stated that scales and weights and measure were manipulated against him, a practice which is often rendered easier by the absence of standardised weights and measures and of any system of regular inspection. Deductions which fall entirely on him but against which he has no effective means of protest are made in most markets for religious and charitable purposes and for other objects. Large 'samples' of his produce are taken for which he is not paid even when no sale is effected. Bargains between the agent who acts for him and the one who negotiates for the purchaser are made secretly under a cloth and he remains in ignorance of what is happening. The broker whom he is compelled to employ in the larger markets is more inclined to favour the purchaser with whom he is brought into daily contact than the seller whom he only sees very occasionally. This inclination to favour the buyer becomes more pronounced when, as not infrequently happens, he acts for both parties."

(3) In a Seminar on Regulated Markets organised by the Ministry of Food and Agriculture (Department of Agriculture) at Mysore in 1959, the question of regulating the sale and purchase outside the market proper, was considered. Subject No. 3 of the Seminar pertained to this aspect of the problem. An extract from the report of the Seminar regarding the said subject is as follows:—

> "*Subject* 3.—Regulating the Sale and Purchase outside the market proper. Many of the speakers enumerated the malpractices indulged in by the traders while making village-site purchases and wanted that there should be some sort of an over-all regulation of all transactions made beyond the market-yard. To make the Regulation effective over the operations of the traders the following measures were recommended for adoption by the market committees:—
>
> (1) Licensing of traders should be introduced throughout the market area.
>
> (2) Supervisory staff must be strengthened by the market committees.
>
> (3) Periodical returns should be submitted to the market committee for the purchases made by the licensees outside the market yard.
>
> (4) As in certain Acts there is no provision for the employees of the market committees to check weights and measures, such market committees should be delegated powers of checking the weights and measures within their jurisdictions."

(4) As is obvious, the Act was enacted after the Mysore Seminar and the Punjab Legislature took due care in incorporating in the Act the decisions taken in the Seminar with a view not to allow any lacuna in the Act to remain which can frustrate the whole purpose for which the enactment was made.

(5) Section 2 of the Act enacts definitions for the purpose of the Act. Some of the relevant provisions are reproduced as follows:—

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

* * * * *

(i) 'market' means a market established and regulated under this Act for the notified market area, and includes a market proper, a principal market yard and sub-market yard;

* * * * *

(k) 'market proper' means any area including all lands with the buildings thereon, within such distance of the principal market or sub-market yard, as may be notified in the official gazette by the State Government, to be a market proper;

* * * * *

(l) 'notified market area' means any area notified under section 6;

* * * * *

(n) 'principal market yard' and 'sub-market yard' mean an enclosure, building or locality declared to be a principal market yard and sub-market yard under section 7;

* * * * * *

(q) 'retail sale' means sale of agricultural produce not exceeding such quantity as may be prescribed."

(6) Section 3 provides for the constitution of the State Agricultural Marketing Board. The said Board being a body corporate, legal authority has been assigned definite functions in the Act.

(7) Sections 5 and 6, which are important for the disposal of the present petitions, are as follows:—

"5. The State Government may, by notification, declare its intention of exercising control over the purchase, sale, storage and processing of such agricultural produce, and in such area as may be specified in the notification. 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.

6. (1) After the expiry of the period specified in the notification under section 5 and after considering such objections and suggestions as may be received before the expiry of such period, the State Government may, by notification and in any other manner that may be prescribed, declare the area notified under section 5 or any portion thereof to be a notified market area for the purposes of this Act in respect of the agricultural produce notified under section 5 or any part thereof.

6. (2) The State Government if satisfied that in any notified market area a Committee is not functioning or two such areas or parts thereof are to be amalgamated or a part of any such area is to be amalgamated with another such area or is to be constituted into a separate notified market area, may by notification denotify any market area notified under sub-section (1) or any part thereof and, when the whole of such area is denotified, cancel a Committee and transfer all the assets of that Committee which remain after satisfactson of all its liabilities to the Board. Such assets shall be utilised by the Board for such objects in the area as it may consider to be for the benefit of the producers of that area.

6. (3) After the date of issue of such notification or from such later date as may be specified therein, no person unless exempted by rules made under this Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or

continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store, or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made thereunder and the conditions specified in the licence.

Provided that a licence shall not be required by a producer who sells himself or through a bona fide agent, not being a commission agent, his own agricultural produce or the agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use.

6. (4) For the removal of doubts, it is hereby declared that a notification published in the official gazette under this section or section 5 shall have full force and effect notwithstanding any omission to publish, or any irregularity or defect in the publication of, a notification under this section or under section 5 as the case may be."

(8) Section 7 provides for the principal market yard and one or more sub-market yards to be notified in each notified market area. Section 8 prohibits private markets to be opened in or near the places declared to be markets. Section 10 makes a provision for the grant of licences for the sale, purchase, storage and processing of agricultural produce which have to be issued by the Secretary of the Board. Sections 11 to 20 provide for the constitution of the Market Committees and regarding other matters concerning thereto. Section 23, which is again important for the disposal of the present writ petitions, is as follows:—

"23. A Committee shall, subject to such rules as may be made by the State Government in thss 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 two rupees and twenty 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."

(9) Section 25 provides that all receipts of the Board shall be credited in to a fund to be called the Marketing Development Fund, whereas section 26 makes a provision regarding the purposes for which the Marketing Development Fund may be expended. The said provision is as follows:—

"26. The Marketing Development Fund shall be utilised for the following purposes:—

(i) better marketing of agricultural produce;

(ii) marketing of agricultural produce on co-operative lines;

(iii) collection and dissemination of market rates and news;

(iv) grading and standardisation of agricultural produce;

(v) general improvements in the markets or their respective notified market areas;

(vi) maintenance of the office of the Board and construction and repair of its office buildings, rest-house and staff quarters;

(vii) giving aid to financially weak Committees in the shape of loans and grants;

(viii) payment of salary, leave allowance, gratuity, compassionate allowance, compensation for injuries or death resulting from accidents while on duty, medical aid, pension or provident fund to the persons employed by the Board and leave and pension contribution to Government servants on deputation;

(ix) travelling and other allowances to the employees of the Board, its members and members of Advisory Committees;

(x) propaganda, demonstration and publicity in favour of agricultural improvements;

(xi) production and betterment of agricultural produce;

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

(xiii) imparting education in marketing or agriculture;

(xiv) construction of godowns ;

(xv) loans and advances to the employees;

(xvi) expenses incurred in auditing the acounts of the Board;

(xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the Committees or the national or public interest :

Provided that if the Board decides to give aid of more than five thousand rupees to a financially weak Committee under clause (vii) the prior approval of the State Government to such payment shall be obtained."

(10) Section 27 provides for the Market Committee Fund; whereas section 28 makes a provision as regards the purposes for which the Market Committee Funds may be expended and the said provision is as follows: —

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

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

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

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

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

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

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

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

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

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

(xi) production and betterment of agricultural produce;

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

(xiii) imparting education in marketing or agriculture;

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

(xv) loans and advances to the employees;

(xvi) expenses of and incidental to elections; and

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interest of

the Committee or the notified market area or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

(11) Section 37 provides that whosoever contravenes the provisions of section 6 or section 8, shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which shall not be less than five hundred rupees, but may extend to five thousand rupees or with both.

(12) Section 38 gives power to the State Government to add to the Schedule of the Act any other item of agricultural produce or amend or omit any item of such produce specified therein. Section 43 gives power to the State Government to make the Rules.

(13) The Punjab Agricultural Produce Markets (General) Rules, 1962, have been framed under the Act. Rule 2(10) defines licensee in the following words:

> "2(10) 'licensee' means a person holding a licence issued under these rules or the rules hereby repealed."

(14) Rule 17 provides that a person desirous of obtaining a licence under section 10 of the Act shall apply in Form-A to the Chairman of the Board through the Committee of the area in which he wishes to carry on his business and shall also deposit with the Committee the requisite licence fee. Sub-rule (7) of this Rule provides that on receipt of the application; the Chairman may grant a licence to the applicant in Form-B. The licence shall be subject to the conditions mentioned therein.

(15) Rule 18(1) provides that under sub-section (3) of section 6, the persons mentioned in the Rule, shall be exempt from taking licences for the purchase of agricultural produce. Clause (c) of this sub-rule exempts hawkers and petty retail shop-keepers who do not engage in any dealing in agricultural produce other than such hawking or retail purchases. Explanation to this clause is as follows:—

> "*Explanation*.—For the purposes of this clause and clause (b) of sub-rule (2), a person whose turnover of sales and purchases of agricultural produce does not exceed sixty thousand rupees during a year, shall be treated as a petty retail shop-keeper."

(16) Clause (f) of this sub-rule, which was deleted on 3rd September, 1964, provided that the persons making purchase of any agricultural produce otherwise than from a producer directly, is exempt from taking a licence. Sub-rule (2) of rule 18 similarly deals with the exemption from taking a licence for the sale of agricultural produce and the provisions are *pari materia* the same as in rule 18(1). Rule 31 is as follows:—

"31. *Account of transaction and of fees to be maintained.*—

(1) Every licensed dealer and every dealer exempted under rule 18 from obtaining a licence shall submit to the Committee a return in Form-M showing his purchases and sales of each transaction of agricultural produce within 4 days of the day of transaction :

Provided that a person exempt from taking a licence under rules 18(2)(b) and 18(2)(c) shall be exempt from the provisions of this sub-rule in respect of sale of agricultural produce by him and person exempt from taking a licence under rules 18(1)(e) and 18(2)(e) shall be exempt from the provisions of this sub-rule in respect of sale and purchase of agricultural vroduce by hsm :

Provided further that in case of a dealer, who exclusively deals in fruits and vegetables, it shall not be necessary to fill in Form-M, the particulars of the person to whom any quantity of fruits and vegetables less than one quintal is sold :

Provided further that in case the *kacha arhtiya* sends one copy of Form-J to the Market Committee the *kacha arhtiya* will be exempted from sending Form-M to the Market Committee and the buyer shall indicate in Form-M only the total quantity and the gross value in respect of each commodity purchased from each seller.

(2) The Committee shall maintain a register in Form-N showing the total purchases and sales made by dealers and the fees recoverable and recovered from them.

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

(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) If a dealer habitually makes default in the submission of returns or if in the opinion of the Committee the dealer habitually submits false returns, the Committee may order for the inspection of the dealer's accounts.

(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.

(10) Habitual defaut in the submission of returns and habitual submission of false return shall be a sufficient ground for suspension or cancellation of, or refusal to renew, a licence, and the provisions of this rule shall apply in addition to and not in derogation of any other law, penal or otherwise, applicable to non-compliance, or defective compliance with any duty imposed upon a dealer by the Act or by these rules, or by any bye-law or order of a Committee.

(11) An assessment order made under sub-rules (8) and (9) shall be communicated to him by means of a demand notice in Form-P and a copy thereof shall be granted to the dealer on his making a written application, and paying a sum of two rupees as copying fee to the Committee. Every Committee shall maintain a register of copying fees.

(12) The copy shall be prepared in the office of the Committee and certified to be correct by the Secretary or in his absence by another person appointed in this behalf by the Chairman. Such certificate shall give the dates on which the application was received and the copy prepared and delivered to the applicant, and shall be conclusive evidence of the correctness of these dates.

(13) (i) An appeal against an assessment order made under sub-rules (8) and (9) shall lie to the Chairman of the Board. No such appeal shall be entertained unless the applicant has deposited the amount of the assessed

as due from him in full with the Committee concerned.

(ii) The Chairman of the Board after hearing the appellant **and also the Committee** making the assessment, or, if he deems necessary, after such enquiry as he may think proper, may accept, modify or reject the assessment order appealed against.

(iii) The Chairman of the Board may waive the whole or a part of the penalty imposed under sub-rule (9), in a case where such penalty would, in his judgment mean undue hardship to the appellant.

(iv) The order passed by the Chairman shall be final and conclusive."

(17) Keeping in view the provisions of sections 6, 10, 23 and the rules made thereunder, it is obvious that no person, unless exempted by rules made under this Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the Rules and Bye-laws made thereunder and the conditions specified in the licence. All such persons are liable to pay market fee by the provisions of section 23 of the Act. Section 8 bars the setting up, establishment or continuance or allowing to be continued any place within the limits of such markets or within a distance thereof to be notified in the official gazette in this behalf in each case by the State Government for the purchase, sale, storage and processing of any agricultural produce.

(18) However, the form-A prescribed under Rule 17 for making application and form-B prescribed under the same rule in which Form the licence was to be granted, omitted to provide that the licence is also granted for sale and purchase of the agricultural produce. The levy of the market fee on the licensees, who were granted licences under the Act in form-B was challenged on the ground that since the licence was not issued for sale and purchase

of the agricultural produce as there was no mention of the same in the licence in form-B, therefore, the levy of market fee under section 23 of the Act, could not be made. This contention was upheld by their Lordships of the Supreme Court in *M/s Raunaq Ram Tara Chand and others* v. *The State of Punjab and others* (1), wherein it was held that since the licensee before their Lordships held the licence only in respect of business of Kacha Arhtiya and/or Commission Agents and not for the sale and purchase of agricultural produce, therefore, he was not liable to pay the market fee. As regards the power of the Committee to issue licence for the sale and purchase, their Lordships observed as follows:—

> "While we express no opinion on the point whether the absence of reference to buying and selling of agricultural produce in Form-A and Form-B disables the Committee to issue licences for that purpose, we are of opinion that the present appeals can be disposed of on sole ground that the appellants have not as a matter of fact been issued such licences and no fees can, therefore, be levied on them in respect of purchases and sales of agricultural produce by them. The appellants are, therefore, not liable to payment of fee under the Act as demanded."

Their Lordships repelled the contention that since Gur and Shakkar are manufactured products, therefore, they cannot come under the definiton of the agricultural produce within the meaning of section 2(f) of the Act.

(19) The petitioners in Civil Writ Petition No. 8605 of 1976, filed a Writ Petition No. 1166 of 1973, challenging the jurisdiction of the Market Committee to levy market fee on the strength of the judgment in *Raunaq Ram's case* (supra) which petition was allowed by A. S. Bains, J. on 21st October, 1975.

(20) The State Government introduced Rule 17-A by notifying Punjab Agricultural Produce Markets (General) (First Amendment) Rules, 1975, with effect from 26th August, 1975, in the following words:—

> "17-A. Special provision with regard to licences valid up to 31st March, 1976:—
>
> (1) Every person holding a licence valid upto 31st March, 1976, in Form 'B' on the date of commencement of the

(1) A.I.R. 1975 S.C. 1587.

Punjab Agricultural Produce Markets (General) (First Amendment) Rules, 1975, and carrying on the business of purchase or sale of any agricultural produe notified under section 6 shall, within a period of fifteen days of such commencement, apply to the authority specified in section 9 for an amendment in his licence for the purpose of specifying such business therein and such amendment shall be made by the aforesaid authority without payment of any fee:

Provided that amendment in the licence may be allowed after the expiry of the aforesaid period if the application is made within a period of thirty days of such commencement and the applicant pays such penalty, not exceeding sixty rupees, as the aforesaid authority may specify in that behalf.

(2) Every amendment made in the licence under sub-rule (1) shall have effect from the date of commencement of the Punjab Agricultural Produce Markets (General) (First Amendment) Rules, 1975.

(21) The petitioners accordingly got their licences amended. With a view to overcome the effect of the judgment of the Supreme Court in *Raunaq Ram's case* (supra), the Punjab Agricultural Produce Markets (Validation) Ordinance, 1975 (Punjab Ordinance No. 16 of 1975) was promulgated on 29th December, 1975, and subsequently on 27th February, 1976. The Punjab Agricultural Markets (Validation) Act, 1976, was enacted in the identical terms to substitute the prior ordinance which was thereby repealed. The said Validation Act was challenged in this Court and the same was struck down by a Division Bench of this Court in case *M/s. Rulia Ram Bhavishan Kumar* v. *The State of Punjab and another* (2). It was held that the Validation Act does not cure and rectify the basic legal infirmity pointed out in the judgment of *Raunaq Ram's case* (supra), therefore, section 2 of the Act was held to be patent intrusion into the field of the exercise of judicial power and thus the Validation Act was struck down as unconstitutional. In the wake of this decision, the State Legislature enacted the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976, (Punjab Act 34 of

(2) 1976 P.L.J. 428.

1976) (hereinafter referred to as the Amendment & Validation Act) with retrospective operation from the date of the Principal Act, i.e., from 26th May, 1961. Section 2 of the Amendment and Validation Act provided that after clause (h) of section 2 of the Principal Act, the following clause shall be and shall be deemed always to have been inserted, namely,—

> "(hh) 'licensee' means a person to whom a licence is granted under section 10 and the rules made under this Act and includes any person who buys or sells agricultural produce and to whom a licence is granted as Kacha Arhtia or Commission Agent or otherwise but does not include a person licensed under section 13."

Section 3 provides that after section 10 of the Principal Act, the following section shall be and shall be deemed always to have been inserted, namely:

> 10-A. Any person to whom a licence is granted under section 10 shall be deemed to be a licensee under that section for the purposes of this Act and the rules made thereunder including that of levy of fees under section 23 on the agricultural produce bought or sold by him in the notified market area, irrespective of the fact whether the business of buying or selling of agricultural produce is specified in his licence or not."

(22) Section 7 of the Amendment and Validation Act provided that notwithstanding the retrospective operation of sections 2 and 3 of this Act, no contravention of, or no failure to comply with, any of the provisions of the Principal Act, as amended by this Act, and the rules made thereunder, shall render any person guilty of an offence, if such contravention or failure—

> (i) relates to any provision inserted in the principal Act by this Act; and
>
> (ii) occurred at any time before the date of commencement of this Act.

The provisions of this Amendment and Validation Act have been assailed in this bunch of writ petitions.

(23) The first contention of Shri Sanghi, the learned counsel for the petitioners in Civil Writ No. 8605 of 1976, that the notifications, Annexures 4 and 5 attached with the writ petition issued under sections 5 and 6 of the principal Act respectively are liable to be quashed on the ground that these notifications are ultravires the provisions of sections 5 and 6 of the Act, is without any merit. The said notifications were issued as far back as on 20th September, 1961 and 16th March, 1962, respectively. As is clear from the provisions of sections 5 and 6 of the Act, the State Government by issuing notification under section 5 of the Act declared its intention to exercise control over the purchase, sale, storage and processing of agricultural produce specified in the notification in the area specified therein with a view to invite objections. Any person could raise objections as to the inclusion of the items of agricultural produce or the area and after the said objections were considered and disposed of by the State Government, the notification under section 6 was then issued. It is not disputed that the State Government under section 6 of the Act has got powers to include as much area as it deems proper to be notified market area and so also such items of agricultural produce as may be necessary.

(24) The contention that the area covered under the notification issued under section 6, is very wide and, therefore, the notifications should be struck down, is really without any merit. If there is a power to include larger area as notified market area or all items of agricultural produce mentioned in the Schedule transactions of which are to be controlled within the said market area, merely because the same power has been exercised, cannot be made to be a ground for quashing the notifications. Admittedly, no objections were raised by the petitioners in response to the notification issued under section 5 of the Act but on the other hand, the petitioners continued to be licensees from the very beginning under the Act and submitted to the jurisdiction of the Market Committee after the issuance of notification under section 6. No argument has been raised to challenge the *vires* of the provisions of sections 5 and 6 of the Act and that being so, it has to be held that the notifications, Annexures P-4 and P-5, issued under sections 5 and 6 of the Act are valid and are not liable to be set aside on any ground.

(25) Similarly, there is no merit in the contention of the learned counsel for the petitioners that the levy of market fee on Gur, Shakar and Khandsari, which are imported by the petitioner from

outside Punjab, is hit by Article 304 of the Constitution of India. The provisions of Article 304 of the Constitution are as follows:—

> "304. Restrictions on trade, commerce and intercourse among States.—
>
> Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law—
>
> (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:
>
> Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

A bare reading of the provisions would show that the said provisions are not attracted.

(26) Clause (a) of the said Article, which is said to have been attracted, can only be attracted if any discrimination is made in the imposition of any tax on the goods imported from the other States to which similar goods as may be manufactured in that State are subjected. In the present case, no discrimination is made out. The levy of market fee at the maximum rate of 2 per cent has been imposed on the agricultural produce produced in the State and so also on the agricultural produce imported from outside the State.

(27) The contention that the market fee is paid in the States from where agricultural produce is imported and, therefore the levy of market fee under the Act amounts to double levy of fee which results into discrimination, is really without any basis. With a view to attract the provisions of sub-Article (a) of Article 304 of the Constitution of India, discrimination has to be made out because of the imposition of tax by the Legislature of the same State. Any imposition

of market fee by the other State cannot be made the basis of discrimination for challenging the fee imposed by the Legislature of the Punjab State. This contention, therefore, is without any merit.

(28) It was then contended by the learned counsel for the petitioners that since the Market Committee, Bhatinda, was not rendering any services to the petitioners, therefore, the said Committee cannot levy market fee on the petitioners. For laying basis for this argument, the learned counsel for the petitioners relies on the averments made in paras 17, 19, sub-paras (x), (xi) and (xvi) of para 24 of this writ petition. It may be pointed out that in para 17 of the petition, it has been averred that the petitioners' shop is situated in the Bazar about two Kilometers away from the principal Market or submarket yard. This fact has been denied in the return filed on behalf of respondents Nos. 2 and 3. It has been averred in reply to para 17 that during the period for which the demand has been made, the petitioners' shop was in the market yard which was shifted subsequently on construction of New Mandi. Regarding the averments made in paras 17 and 19, that no services were rendered by the Market Committee to the petitioners, it has been averred in the return that the services had been rendered throughout the period within the jurisdiction of the Market Committee in accordance with the provisions of the Act. It has been averred that if there is more recovery of the market fee greater services can be rendered by the Market Committee. It has been further averred on behalf of the Market Committee that a number of schemes framed by the Market Committee could not be implemented for want of funds.

(29) The contention of the learned counsel for the petitioners that since no services are being rendered by the Market Committee to the category of unregulated sales to which category the petitioners belong, therefore, the Committee is not entitled to charge any fee from the petitioners, is really not well founded. Firstly, there is no clear-cut averment as to which type of services as are postulated in the provisions of the Act, were not being rendered to the petitioners. Secondly, as would be apparent from the provisions of the Act and the Rules made thereunder, the market fee is levied for the purpose of rendering services to the licensees under sections 10 and 13 and to the producers residing in the market area. The purposes for which the fund realised from Market fee is to be spent are enumerated under the provisions of sections 26 and 28 of the Act. It may be observed

that a portion of market fee recovered by the Market Committee is given to the Marketing Board for constituting the Market Development Fund. The funds of the Market Committee and that of the Board are to be spent for the purposes enumerated under the provisions of sections 26 and 28 of the Act. The main purpose of the Act is to make provision for regulated Markets for the agricultural produce and in that respect render services to all concerned. It cannot be denied that the existence of a regulated market system in a State is itself a service to the sellers and to the intending purchasers of the agricultural produce. The provisions of the Act have to be administered by the Market Committees/Marketing Board and the State Government. The establishment and the administrative net work involving the administration of the Act by the Market Committees and the Board, does require the finances to run such an administration. If the fee is being levied under the provisions of a statute, the services to be rendered in lieu of the fee as provided under the statute, have to be kept in view with a view to uphold the provisions of the statute. The learned counsel for the petitioners wants us to quash the notice, copy of which is Annexure 'P-3', on the ground that Market Committee, Bhatinda, did not render the services to the petitioners. The learned counsel has not challenged the provisions of the Act which authorises the Market Committee to levy such fee. It may be pointed out at this stage that by impugned notice, the Market Committee has given an opportunity to the petitioners to raise objections to the proposed levy of market fee and penalty. It is open to the petitioners to show cause to the Committee and to take a plea that the Committee has failed to spend the Market Committee funds in accordance with the provisions of the Act or has failed to render any service to the market area in accordance with the provisions of the Act, but we cannot be asked to quash the notice on this ground especially when the provisions of the Act under which the levy is being made, are not being assailed as unconstitutional. It may be observed that the question of rendering services has not to be looked from a narrow view point, Under the provisions of the Act, the whole State has been divided into a number of Market areas and in each Market area are established Market proper, principal Market yard and sub-market yard. The services to be rendered in lieu of the fee are manifold as postulated under the provisions of sections 26 and 28 of the Act. It cannot be successfully contended that the services should be rendered to each and every licensee or purchaser or a class of licensees and purchasers. The services to be rendered cover a very vast

area and, therefore, the question of rendering services cannot be looked into from personal or from the view point of any class. The Market Committees disseminate information regarding the market rates of the agricultural produce bought and sold in the market and perform many other functions as are postulated under the provisions of the Act and the Rules made thereunder, which, if look ed from proper perspective, are the services being rendered to all— to the producers of the agricultural produce, to the licensees under section 10, to the licensees under section 13 and various other functionaries connected with the purchase, sale, storage and processing of the agricultural produce.

(30) It is no doubt true that a levy by way of fee is a sort of return or consideration for the services rendered which makes it necessary that there should be an element of *quid pro quo* in the imposition of a fee, as has been held by their Lordships of the Supreme Court in *The Government of Andhra Pradesh and another* v. *Hindustan Machine Tools, Ltd.* (3). But the question has to be viewed from a broader perspective. Reference in this connection may usefully be made to the decision of their Lordships of the Supreme Court in *The Corporation of Calcutta and another* v. *Liberty Cinema* (4), wherein it has been observed as follows:—

> "It, therefore, appears to us that the word *quid pro quo* should be read not in the narrow and restricted sense as submitted by the learned counsel for the appellant but in a somewhat wider sense as including cases where the function of licence is to impose control upon an activity the cost incurred for effectuating the control, and this on the basis that the industry or activity is placed under regulation and control not merely in public interest but in the interest and for the benefit of the licensees as a whole as well."

(31) Their Lordships in *The Commissioner, Hindu Religious Endowments, Madras* v. *Shri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt* (5), observed as follows:—

> "It is absolutely necesary that the levy of fees should on the face of the legislative provision; be co-related to the expenses incurred by Government in rendering the services."

(3) A.I.R. 1975 S.C. 2037.
(4) A.I.R. 1965 S.C. 1107.
(5) A.I.R. 1954 S.C. 282.

(32) The observations of their Lordships in *The Commissioner Hindu Religious Endowments' case* (supra), aptly apply to the present case. The provisions of sections 26 and 28 of of the Act would show that the levy of fee under section 23 of the Act is corelated to the expenses incurred in rendering the services. Similarly, the decision of their Lordships in *The Municipal Council, Madurai* v. *R. Narayanan, etc*, (6), is of no help to the learned counsel for the petitioners as the said case was decided on its own facts. As has been observed earlier, the petitioners have not laid any foundation for the arguments even on facts that no services are being rendered to them.

(33) The contention that the area of utilisation of the funds raised from the fee should be confined to the principal market yard, is really without any merit. The bare perusal of the provisions of the Act would show that the Committee is established for the notified market area. The principal market yard or the sub-market yard or the market is only a small place where the producers come and dispose of their agricultural produce. With the development made in the notified market area, the development of the principal market yard, or sub-market yard or the market, is closely linked. The producers, who live in villages, are to be provided facilities such as link roads, construction of culverts on the link roads for facilitating the transportation of the agricultural produce to the market, etc. If such facilities, as are specified in the Act, are not offered to the villagers who grow agricultural produce, they are not likely to get the fair return for the agricultural produce they grow with hard labour and if that is not done, the real purpose for which the Act has been enacted, will be frustrated. It may be observed that the constitutionality of the provisions of sections 26 and 28 of the Act, has already been upheld by a Full Bench of this Court in *Kewal Krishan Puri and another* v. *The State of Punjab and others* (7). In *Kewal Krishan Puri's case* (supra) the contention that there was complete absence of *quid pro quo* and the levy is in fact a tax in the garb of fee, has been repelled by the learned Judges and we are in complete agreement with the observations made therein.

(34) The contention of the learned counsel for the petitioners that the sales and purchases made by the petitioners, who alleged

(6) A.I.R. 1975 S.C. 2193.

(7) C.W. 5697 of 1975 decided on 28th January, 1977.

that their shops are outside the principal market yard or sub-market yards are not regulated sales and are sales by retail sellers, is really unfounded. As is clear from the provisions of the Act, all sales and purchases of agricultural produce made within each market area are being regulated under the Act. It is immaterial whether the said sales or purchases take place in the principal market yard or sub-market yard or even outside. The retail sale has been defined in clause (q) of section 2 of the Act to mean the sale of agricultlral produce not exceeding such quantity as may be prescribed. As has been pointed out in rule 18, the person whose turnover does not exceed Rs. 60,000 is exempt from taking a licence of retail seller. It is, therefore, idle to contend that the sales and purchases made by the petitioners are not regulated or that the petitioners are retail sellers. It would thus be seen that according to the averments made by the respondents as a matter of fact, the shop of the petitioners was situate within the market yard during the relevant period for which the impugned notice has been issued. Even if that may not be so, keeping in view the provisions of the Act and the Rules made thereunder, the transactions of the petitioners are regulated by the Act.

(35) The next contention of Shri Sanghi, the learned counsel for the petitioners, that the impugned notice proposing the levy of market fee is discriminatory and *ultra vires* of Article 14 of the Constitution, is also without any merit. As has been observed earlier, the notice for show cause cannot be quashed by us. While raising this contention, Shri Sanghi has not challenged the constitutional validity of any provisions of the Act and has based his argument on pre-supposed facts. The contention that the shop of the petitioners is situate in the Bazar away from the principal market yard or sub-market yard and that since they are not being rendered any services being outside the market yard, whereas the services rendered to the persons carrying on their activities within the principal and sub-market yards, are substantially more and, therefore, the petitioners are being discriminated in violation of Article 14 of the Constitution of India, is without any basis. As has been observed above, the question of rendering services from the funds raised by way of payment of market fee, has to be looked into from a broader view point. Each licensee or a class of licensees cannot ask the Court to weigh the rendering of services to the said person or class of persons, in golden scales. Reliance placed by him on the decision of the Supreme Court in *Kunnathat Thathunni Moopil Nair, etc.* v.

State of Kerala and another (8) and *Bennet Coleman and Co. Ltd. and others* v. *Union of India and others* (9), is really of no assistance to him. On the facts of the said cases, their Lordships found that the provisions of Article 14 of the Constitution of India were infracted and, therefore, the impugned actions were struck down. In the present case, there is no basis for holding that the levy of uniform market fee is treating unequals as equals. The rendering of services to a person or a particular class of persons in their personal capacity cannot be made the basis of disctinction for holding such person or class of persons as unequals with the rest. The provisions of the Act, under which the levy of fee has been imposed being valid, it is not open to the petitioners to raise any such argument on the basis of the assumed classification of equals and unequals as has been contended.

(36) Similarly, the contention that the provisions of section 10 of the Amendment and Validation Act are *ultra vires* of Article 19 (1)(f) and (g) of the Constitution of India, is without any merit. The said provisions have been enacted with a view to remove the vice in the principal Act and the Rules made thereunder in view of the decision of the Supreme Court in *Raunaq Ram's case* (supra). It is not disputed that if there was no defect in Form-B in which the licence was being issued under the Rules, the levy of market fee cannot be held to have been against the provisions of Article 19(1) (f) and (g) of the Constitution. The said provisions cannot be held to have affected the property of the petitioners or their profession. The levy, which was due from the petitioners under the provisions of the principal Act, could not be collected in view of the defect in the form in which the licence was issued and with a view to cure that vice, the provisions of section 10(a) of the Act have been enacted by the Legislature.

(37) The only other contention which remains to be considered is that even though the Market Committee is entitled to recover the market fee in view of the Amendment and Validation Act, it has no jurisdiction to impose the penalty under Rule 31, sub-rule (9) of the General Rules. Rule 31 has already been reproduced in the earlier part of the judgment. It may be observed that in view of the provisions of sub-rule (1) of Rule 31, every licensed dealer

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(8) A.I.R. 1961 S.C. 552.
(9) A.I.R. 1973 S.C. 106.

and every dealer exempted under Rule 18 from obtaining the licence, is liable to submit return in form-M showing his purchases and sales within 4 days of the day of transaction. Under sub-rule (2), of this Rule, the Committee has to maintain the register in form N showing the total purchases and sales made by the dealers and the fee recoverable. The fee has to be levied on the basis of this data under sub-rule (3). Under sub-rule (4) the Committee has been given power to proceed to assess the amount of the dealer's business during the period in question if the Committee has reason to believe that any such return is incorrect. Under sub-rule (5), the Committee can order for inspection of dealer's accounts if in the opinion of the Committee the dealer habitually makes default in the submission of returns or he habitually submits false returns. Under sub-rule (8) the Committee can proceed to assess the amount of the dealer's business on the basis of best judgment assessment. Under sub-rule (9), the Committee may recover from the defaulter penalty equal to the fee or additional fee so levied in addition to fee or additional fee levied under sub-rule (8). Under sub-rule (10) in the case of habitual default in the submission of returns and habitual submission of false return, the Committee can suspend or cancel the licence. Under sub-rule (13), an appeal against the order of assessment and penalty, lies to the Chairman of the Board. The licensee has been defined in the Rules as a person holding a licence issued under these rules or the rules repealed. It is not disputed that the petitioners were licensees under the Rules during the period in question even though there was no mention of sale or purchase in the licence. It is no doubt true that their Lordships of the Supreme Court in *Raunaq Ram's case* (supra) held that in view of the fact that the licensees before their Lordships were not given licences for sale and purchase, therefore, they were not liable to pay the market fee but that interpretation related to the interpretation of the provisions of section 23 of the Act and not of Rule 31 read with Rule 2(10) of the Rules. The provision of Rule 31 enjoins upon every licensed dealer and every dealer exempted under rule 18 from obtaining a licence to submit to the Committee a return in Form-M showing his purchases and sales of such transaction of agricultural produce within four days irrespective of the fact whether market fee is leviable on the same or not. The purpose of making this provision is to check the evasion of the market fee. Whether a particular transaction is liable to the assessment of the market fee or not, is hardly material. All transactions have to be intimated to the Committee who is then to proceed to assess the fee on the

transactions on which fee is leviable. Furthermore, the penalty has to be inflicted on the defaulter. The default can be for not filing the return in form-M or for filing the incorrect return or for not paying the market fee assessed. It is idle to contend that the penalty can only be imposed if there is a default in payment of the market fee alone. The provisions of the Rules clearly suggest that the default mentioned in sub-rule (9) of Rule 31, which attracts the penalty, can be a default on account of non-submission of returns in form-M or for submission of incorrect returns, or for default in making payment of the market fee as required under the Rules. This is so clear from the language of sub-rule (10) of Rule 31, read with the other sub-rules of Rule 31. Therefore, keeping in view the provisions of Rule 31, the petitioners, who were admittedly licensees during the relevant period; were required to submit the returns in form-M but admittedly the same were not submitted, therefore, it cannot be argued that the Committee has no jurisdiction to levy penalty.

(38) Even if it be said for argument's sake, that in view of the judgment of their Lordships of the Supreme Court in *Raunaq Ram's case* (1) (supra) the petitioners who at the relevant time were not licensees for the sale and purchase of agricultural produce, therefore, they were not required to submit the return in form 'M', still the petitioners cannot successfully contend that the Committee has no jurisdiction to impose penalty as in view of the provisions of the Amendment and Validation Act deeming the petitioners to be licensees for the sale and purchase of the agricultural produce with retrospective effect, the petitioners in law were licensees for the sale or purchase of agricultural produce during the relevant time. Considering the question of the effect of the retrospective enforcement of the amended provisions, their Lordships of the Supreme Court in *M. K. Venkatachalam I.T.O. and another* v. *Bombay Dyeing and Mfg. Co. Ltd.* (10), observed as follows:—

> "Thus there can be no doubt that the effect of the retrospective operation of the Amendment Act is that the proviso inserted by the said section in S. 18-A(5) of the Act would, for all legal purposes, have to be deemed to have been included in the Act as from April 1, 1952."

(10) A.I.R. 1958 S.C. 875.

(39) The legal consequences of this legal fiction cannot be avoided. It was conceded by Shri Sanghi that if the provisions of the Amendment and Validation Act are upheld, the petitioners are liable for the payment of market fee. If this is so, it is not understood as to how it can be successfully argued that the provisions of sub-rule (9) of Rule 31, will not be applicable.

(40) The contention that if it is held that the Committee has got jurisdiction to levy penalty, the provisions of the Amendment and Validation Act will be hit by Article 20 of the Constitution, is again without any merit. The provisions of Article 20 of the Constitution are as follows: —

"20. *Protection in respect of conviction for offences*: —

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."

(41) From the bare reading of the provisions, it is obvious that the word 'penalty' used in sub-clause (1) of Article 20 of the Constitution, cannot be independently interpreted without making reference to the provisions of the earlier clause. The penalty imposed should be in connection with the commission of the offence. In the present case, the penalty which can be levied, is not in connection with the commission of an offence. The penalty is for non-compliance of the provisions of sub-rules of rule 31, and the same is not being imposed for an offence or on ground of conviction. Similar view has been taken by a learned Judge of the Kerala High Court in *Cochuvareed* v. *Addl. Income-Tax Officer, Ernakulam and another* (11), and *P. Ummali Umma, c/o M. K. Mohammed Kunhi, Timber Merchant, Kasaragoda v. The Inspecting Assistant Commissioner of Income Tax, Ernakulam and others* (12).

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(11) 1965 Ker. L.J. 1177.
(12) 1966 I.T.J. 171.

(42) In case of *Jawala Ram and others* v. *The State of Pepsu (now Punjab) and others* (13), their Lordships considered the provisions of sections 3 and 4 of the Pepsu Sirhind Canal and Western Jumna Canal Rules (Enforcement and Validation) Act, 1954, vis-a-vis the provisions of Article 20 of the Constitution of India and came to the conclusion that unauthorised use of canal water from canal is not an 'offence' and imposition of enhanced water charge under Rules 32 and 33 of the Pepsu-Sirhind Canal Rules is not 'a penalty' within the meaning of sub-Article (1) of Article 20 of the Constitution. The observations made by their Lordships go to show that the use of the word 'penalty' cannot be independently interpreted and the same is connected with the earlier clause in sub-Article (1) of Article 20 of the Constitution. In this view of the matter, there is no merit in this contention.

(43) Before parting with the judgment, we may observe that no doubt we have held that the Committee has jurisdiction to levy penalty under sub-rule (9) of rule 31, in law, but at the same time, we are of the opinion that if the default in making the returns in form-M was made by the licensees, in view of the fact that they were not liable to pay the market fee for the sale and purchase of agricultural produce as was held by their Lordships in *Raunaq Ram's case* (1) (supra), in that case it will be quite relevant for the Committee to take into consideration the fact that the licensees were made liable to pay the market fee in view of the provisions of the Amendment and Validation Act, and, therefore, the Committee in its exercise of discretion under sub-rule (9) of rule 31, may not impose a severe penalty up to the amount of the market fee claimed. We have no doubt in our mind that the Committee concerned, while considering the question of imposing the penalty under sub-rule (9) of rule 31, will use this discretion in a quasi-judicial manner and while taking into consideration the fact that the licensees were not earlier liable to pay the market fee on the transactions of sale and purchase, as they were not licensees for purchase and sale of agricultural produce, were made liable to pay, after many years in view of the Amendment and Validation Act, will decide the question of levy of penalty.

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(13) A.I.R. 1962 S.C. 1246.

(44) For the reasons recorded above, there is no merit in these petitions and the same are hereby dismissed with costs.

O. Chinnappa Reddy, J.—I agree.

A. S. Bains, J.—I also agree.

Harbans Lal, J.—I agree.

Surinder Singh, J.—I agree.

N.K.S.

FULL BENCH

MISCELLANEOUS CIVIL

Before R. S. Narula, C.J., P. C. Jain, Gurnam Singh, M. R. Sharma and R. N. Mittal, JJ.

JAI SINGH EX-CONSTABLE No. 1441,—*Petitioner.*

versus

STATE OF HARYANA ETC.,—*Respondents.*

Civil Writ No. 6243 *of* 1976

May 30, 1977.

Punjab Police Rules 1934—*Rules* 12.21, 12.22 *and* 13.18—*Constitution of India* 1950—*Articles* 16 *and* 311—*Rule* 12.21—*Whether* ultra vires *Article* 16—*Such rule—Whether violates Article* 311—*Grant of certificate under rule* 12.22—*Whether debars the Superintendent of Police from discharging a constable under rule* 12.21.

Held, that though it is correct that the members of the State Police Force are as much members of a civil service as of any other, it is incorrect that Article 16 of the Constitution of India 1950 requires that exactly similar rules must exist for all matters in ever civil service of the State. Every service is governed by its own rules. No service rule can be struck down as being *ultra vires* Article 16 of the Constitution merely because it is more rigorous than the corresponding rule for some other Service of the State or because its equal cannot be found in any other Service. Equality of