

Amar Singh v. State of Punjab and another (Jain, J.)

ment is only another aspect of the same argument that has already been considered. The right and title of the State Bank of Patiala to proceed to recover its dues from the appellant in the terms of Patiala Act 4 of 2002 Bk., is not as a mere transferee of the assets and liabilities of the Bank of Patiala or the Patiala State Bank but by virtue of the provisions of section 56 of Act 38 of 1959. In this respect the learned counsel has first referred to *Mehar Singh v. Municipal Committee, Amritsar* (2), in which it was held that where a suit is brought by a municipal committee for possession of land belonging to Government but vested in the Committee for management, the Committee cannot take advantage of the sixty years' limitation allowed to the Government, and then to *The State Electricity Board v. K. Govindarajulu* (3), in which the learned Judge held that in a suit by the State Electricity Board to recover a certain sum of money, being the cost of a pole which had been broken by the defendant's lorry and the loss of revenue to the plaintiff on account of interruption of electric supply to the consumers, was not within the rule of sixty years' limitation because the suit was factually instituted by the Board and could by no means be regarded as one instituted by or on behalf of the Government. There was no provision like section 56 of Act 38 of 1959 of which in the first case the Municipal Committee, and in the second case the State Electricity Board, had the benefit to proceed to make recovery of its dues from a debtor under a law like Patiala Act 4 of 2002 Bk.

(12) There is no other argument that has been urged in this case. So this appeal fails and is dismissed with costs.

BALRAJ TULLI, J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and P. C. Jain, JJ.

AMAR SINGH,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 1835 of 1966

July, 16 1968

*The Punjab Agricultural Produce Markets Act (XXIII of 1961)—Ss. 5, 6 and 38 and the Schedule—Power of the State Government to add any other items*

(2) A.I.R. 1948 Lah. 153.

(3) A.I.R. 1960 Mad. 571.

*of agriculture produce to the Schedule—Whether controlled by sections 5 and 6—Such power—Whether vests under section 38—Requirement of licence and payment of market fee on added items of agriculture produce—Whether can be imposed without following the procedure under section 5 and 6.*

*Held*, that sections 5 and 6 of the Punjab Agricultural Produce Market Act, 1961, do not control the power of a State Government to add to the Schedule any other item of agricultural produce or amend or omit any item of such produce specified therein by a notification. It is under section 38 of the Act that the State Government has been given power to amend the Schedule. This power is exercisable independently and is not subject to the provisions of sections 5 and 6. The inclusion of the items in Schedule is only a preliminary step so that the other provisions of the Act may be made applicable. The Act does not apply to every item of Agricultural produce but applies only to those items which are included in the Schedule.

(Para 8).

*Held*, that requirement of obtaining a licence and payment of market fee on items added to the Schedule under section 38 cannot be imposed without following the procedure as laid down in sections 5 and 6 of the Act.

(Para 10).

*Petition under Articles 226 and 227 of the Constitution of India that a writ in the nature of certiorari, mandamus or any other appropriate writ order or direction be issued quashing the impugned notification No. GSR/PA-23/61/S. 38/Amd/66, dated 29th April, 1956 and directing the State—authorities not to treat the items of agricultural produce which are grown outside the State of Punjab as items governed by the provisions of the Punjab Agricultural Produce Markets Act, 1961.*

H. S. WASU, SENIOR ADVOCATE, WITH B. S. WASU, ADVOCATE, for the Petitioner.

J. S. WASU, SENIOR ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB). SECRETARY, MARKET COMMITTEE, THROUGH G. P. JAIN, WITH B. S. GUPTA AND G. C. GARG, ADVOCATES, for the Respondents.

#### JUDGMENT

JAIN, J.—This judgment will dispose of Civil Writ No. 1835 of 1966 and Civil Writ No. 728 of 1967 as common question of law is involved in both these petitions.

(2) These two petitions under Articles 226 and 227 of the Constitution have been filed by Amar Singh, Proprietor of Firm Amar

Amar Singh v. State of Punjab and another (Jain, J.)

---

Singh, Harbans Singh of Mewa Mandi, Amritsar and M/s. Dhanoo Ram, Ram Chand, Sabzi Mandi, Abohar, district Ferozepur respectively for the issuance of a writ *certiorari* quashing the impugned Notification No. GSR-93/PA-23/61/S. 38/AMD/66, dated 29th of April, 1966, and also for a writ of *mandamus* directing the State authorities not to treat the items of agriculture produce which are grown outside the State of Punjab as items governed by the provisions of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act).

(3) The matter in Civil Writ No. 1835 of 1966 had come up for hearing earlier before A. N. Grover, J. (as he then was) and considering the importance of the points involved, the same was referred to a Division Bench and that is how the matter has come up before us. The connected Civil Writ No. 728 of 1967 was ordered to be heard with Civil Writ No. 1835 of 1966 by the Motion Bench.

(4) According to the allegations of the petitioner in Civil Writ No. 1835 of 1966, the petitioner is a Commission Agent and a Kacha Arhti dealing in purchase and sale of fruits and vegetables within the notified area of Market Committee, Amritsar, and has been granted licence for doing this business under the provisions of Section 6 of the Act. It was alleged that the State Government vide its aforesaid Notification, dated 29th April, 1966, added to the Schedule a large number of items (fruits and vegetables) which are produced in States other than Punjab, and on this ground the Secretary, Market Committee, Amritsar, has by a notice required the dealers in items added to the Schedule to obtain licences under the Act immediately in respect of those items. It was asserted that by the same notice the dealers were further warned that they will have to pay market fee on these items @ 40 Paise for every one hundred rupees, failing which they will be dealt with in accordance with law for the breach of the provisions of the Act. A copy of this notice was attached with the petition as Annexure 'A'. A deputation of the traders met the higher authorities and also the Hon'ble Minister but the same did not bear any fruit. Hence finding no other remedy, the impugned notification which is attached with this petition as Annexure 'B' of which reference has been made earlier, is sought to be impugned on the ground that the same is invalid and *ultra vires* in so far as no show cause notice was given to the petitioner and other dealers before the same was issued and no objections were invited from them and considered by the State Government as contemplated under Section 5 of the Act.

(5) Similar allegations have been made by the petitioner of Civil Writ No. 728 of 1967 in his petition and the same need not be reproduced. Only this fact may be mentioned that notice Annexure 'B' issued by the Secretary, Market Committee, Abohar did not require the dealers to obtain licences and to pay market fee, but it has been specifically alleged in para 6 of the petition that dealers have been warned to pay market fee on the aforesaid items at the rate of 40 Paise for every one hundred rupees and this allegation has not been denied by the Municipal Committee, Respondent No. 2.

(6) In the return, filed on behalf of the Market Committee, by the Secretary, the allegations in the writ petitions have been controverted and it has been maintained that the impugned notification is perfectly valid and section 5 of the Act does not apply to the amendment of the Schedule.

(7) In order to appreciate the relevant contentions of the parties on the merits of the controversy involved in this case, it is necessary to refer to some of the relevant provisions of the Act which read as under:—

“Section 5: Notification of intention of exercising control over purchase, sale, storage and processing of agricultural produce in specified area.

The State Government may, by notification, declare its intention of exercising control over the purchase, sales, 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. Declaration of notified market area:

- (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

**Amar Singh v. State of Punjab and another (Jain, J.)**

portion thereof to be notified market area for the purposes of this Act in respect of the agricultural produce notified under section 5 or any part thereof.

- (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 the Act, the rules and by-laws made thereunder and the conditions specified in the licence."

**38. Power of State Government to amend the Schedule:**

The State Government may, by notification, add to Schedule to this Act any other item of agricultural produce or amend or omit any items of such produce specified therein.

(8) Mr. Harnam Singh Wasu, learned counsel for the petitioners basing his argument on sections 5 and 6 of the Act, contended that no item of fruits and vegetables could be added to the Schedule appended to the Act by virtue of impugned notification No. G. S. R. 93/ P. A. 23/61/ S. 38/ Amd/66, dated 29th April, 1966, Annexure 'B' without following the procedure as laid down in these sections. According to the learned counsel prior to the inclusion of these items in the Schedule, the State Government neither issued any notification declaring its intention of including these items in the Schedule, nor did it invite objections before inclusion of the items in the Schedule and hence on this ground, the impugned notification was illegal and invalid. I am unable to agree with this contention of the learned counsel. Sections 5 and 6 of the Act do not control the power of a State Government to add to the Schedule any other item of agricultural produce or amend or omit any item of such produce specified therein by a notification. It is under Section 38 of the Act, that the State Government has been given power to amend the Schedule and the impugned notification has

been issued in pursuance of the power exercised by the State Government under this section. This power is exercisable independently and is not subject to the provisions of sections 5 and 6. The inclusion of the items in the Schedule is only a preliminary step so that the other provisions of the Act, may be made applicable. The Act, does not apply to every item of agricultural produce but applies only to those items which are included in the Schedule.

(9) It is under the provisions of Sections 5 and 6 that the State Government issues a notification declaring its intention of exercising control over purchase, sale, storage and processing of such agricultural produce. In that notification the State Government has also to specify the area over which it would exercise such control and would invite objections and after going through the procedure as laid down in Section 6, sub-clause (1) the State Government would declare the area notified under Section 5 or any portion thereof to be notified market area for the purposes of this Act in respect of the agricultural produce notified under Section 5 or any part thereof. Then under Section 6 Sub-clause (3), 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, would be entitled to set up or establish or continue any place for the purchase, sales, storage and processing of the agricultural produce which was so notified, without a licence granted in accordance with the provisions of the Act, the rules and by-laws made thereunder and the conditions specified in the licence. So Sections 5 and 6 of the Act have been enacted by the Legislature for entirely a different purpose and do not control the power of the State Government under Section 38 of the Act. In this view of the matter, I hold that the notification Annexure 'B' is perfectly legal and cannot be challenged on the ground that the same has been issued without following the mandatory provisions of Sections 5 and 6 of the Act.

(10) Mr. Wasu, learned counsel for the petitioner, next contended that the petitioner was still entitled to relief as control was being exercised over the purchase, sale, storage and processing of the items added to the Schedule and for that purpose the Secretary, Market Committee had issued notice requiring the petitioner to obtain licence under the Act and to pay market fee on the items which had been added to the Schedule without following the procedure as laid down in Sections 5 and 6 of the Act. In reply the learned counsel

Piyare Lall Khanna *v.* The State Bank of Patiala and others  
(Narula, J.)

appearing on behalf of the State submitted that no such relief was asked for by the petitioner in the petition and the same could not be granted. I am unable to agree with this contention of the learned counsel for the State. It was admitted in paragraph 5 of the return filed by the Secretary, Market Committee, Amritsar in Civil Writ No. 1835 of 1966 that notice had been issued requiring the dealers to obtain licences under the Act, in respect of the added items in the Schedule and to pay the market fee as mentioned in the said notice which is attached with the petition as Annexure 'A', while in Civil Writ No. 728 of 1967 in reply to para 6 of the petition, it was not denied that the dealers had been warned to pay market fee on the added items by the notice Annexure 'B'. The learned counsel for the State has also conceded that notice had been issued in respect of those added items to the petitioner to obtain the licence and pay the market fee without following the procedure as laid down in Sections 5 and 6 of the Act.

(11) In view of the admission of the learned counsel for the State and the error being apparent on the record, there will be no justification in refusing to grant this relief to the petitioner simply on the ground that the same was not specifically asked for in the petition. I accordingly hold that the petitioners cannot be required to obtain the licence and to pay the market fee on the added items without following the procedure as laid down in Sections 5 and 6 of the Act, and on this score notice Annexure 'A' in Civil Writ No. 1835 of 1966 and notice Annexure 'B' in Civil Writ No. 728 of 1967 are had and unenforceable. The petitioners are granted relief only to this extent. On the other grounds, there is no force in the petitions and are dismissed but there will be no orders as to costs.

D. K. Mahajan, J.—I agree.

K. S.

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

BRIJ MOHAN SINGH CHOPRA,—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2669 of 1967

July 19, 1968.

*Punjab Industries Service (State Service, Class I) Rules (1966)—Rule 9—Expression "Deputy Directors (Class I)" in Rule 9(b)—Whether includes Deputy*