Before S. S. Sandhawalia, C.J. & J. V. Gupta, J.

WALAITI RAM MAHABIR PARSHAD,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5509 of 1981.

November 25, 1983.

Punjab Agricultural Produce Markets Act (XXIII of 1961) as amended by Punjab Act VII of 1981—Sections 23 and 23-A—Punjab Agricultural Produce Markets (General) Rules, 1962—Rule 29—Rate of maximum market fee raised to Rs. 3 per hundred—Enhancement challenged by the dealers—Market fee leviable up to Rs. 2 maintained and enhancement beyond that struck down—Court devising scheme for refund of market fee collected above the authorised amount—Section 23-A promulgated—Market Committees permitted to retain fee collected in excess of that leviable if burden of such fee was passed on by the licensee to the next purchaser—Section 23-A—Whether seeks to validate the levy of market fee at the enhanced rate—Provisions of the amending Act—Whether constitutionally valid—Barring of judicial remedies for refund and rendering any decree or order of Court unenforceable in this regard—Whether valid.

Held, that section 23-A of the Punjab Agricultural Produce Markets Act, 1961 as introduced by the amending Act, when viewed in the larger perspective is not a provision validating the collection of market fee at the enhanced rate but is merely intended for the retaining of such excess fee by Market Committees and to prevent its refund as unjust enrichment to middle men licensees. In plain language the provisions only determine as to who is to keep this unauthorised collection of market fee from myriad of purchasers who could no longer come forward to claim them back. Both in equity and in law, the mandate of the statute that the excess market fee should remain with Market Committees appears to be unquestionable. The grievance with regard to placing of onus of proof pertaining to the recovery of market fee from next purchasers is equally untenable. Under Rule 29 of the Punjab Agricultural Produce Markets (General) Rules, 1962, the licensees are expressly authorised to realise the same from their next purchasers. The burden of proof on the licensees in this context was wholly in accordance with principle, equity and the statute. Clearly enough the licensees alone would have special knowledge about the dealings made by them first with the producers and then in re-sale with the next purchasers. They alone would have the necessary record and the data on the point whether the market fee had been realised or

not from the buyers. In such a situation putting them to strict proof appears to be obviously correct. The Market Committees cannot possibly go on a wild goose chase to first find out as to the transactions of the licensees subsequent to the first purchase from the producers and thereafter to discharge the impossible burden of establishing whether the same had been recovered from the next purchasers or not. Again, the barring of legal remedies for refund and further rendering any decree or order of a Court unenforceable in this regard cannot be described as an intrusion into the pristinely judicial wing of the State. The broader perspective of the Act is that the very basis of the right of refund or recovery of excess market fee has now been taken away by the statute. It is well settled that the Legislature can by amendment prospectively or retrospectively take away the basis of a judgment or remove the infirmity in a statute. Herein the statute creates a bar against a refund of excess market fee where the same has been recovered from the next purchasers. Once the substantive right of refund is validly taken away then it would follow that the procedural rights of preferring a suit or executing a decree would fall with the same. It is, therefore, held that section 23-A of the Act particularly, and the amending Punjab Act No. VII of 1981 generally, does not suffer from any constitutional invalidity.

(Paras 13, 14, 15, 16 & 18).

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

(a) *a writ of* mandamus *declaring Section 3 of Punjab Agricultural Produce Markets (Amendment) Act,* 1981, *Punjab Act No. 7 of* 1981 (*Annexure P.*1) *as void, invalid, and* ultra vires, *be issued* ;

(b) *a writ of* Mandamus *or prohibition restraining the respondents from enforcing the provisions of Punjab Act No. 7 of* 1981 (*Annexure P.* 1) *be issued* ;

(c) *any other writ, order or direction quashing the impugned notice (Annexure P.2) be issued;*

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

(e) *issue of advance notices on the respondents may kindly be dispensed with;*

(f) *Costs be allowed to the petitioner.*

It is further prayed that till the decision of the writ petition, recovery of amount of Rs. 13,178.20 may kindly be stayed.

Mr. R. L. Batta, Advocate with M. M. Singh Bedi, Advocate, *for the Petitioner.*

H. S. Bedi, D.A.G. Punjab, *for the State.*

Bhagirath Dass, Sr. Advocate with S. C. Pathela, Advocate, *for respondents Nos. 2 to 4.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. The constitutional validity of Section 23-A recently inserted in the principal Act by the Punjab Agricultural Produce Markets (Amendment) Act, 1981 (Punjab Act No. 7 of 1981) is the primary and indeed the core question in this set of fifteen cases which stands admitted to a hearing by the Division Bench.

2. The issues arising herein cannot be well appraised without reference to their somewhat tortuous legal background. Way back in 1961 the Punjab Agricultural Produce Markets Act (hereinafter called the Act) was originally promulgated and Section 23 thereof authorised the Market Committees to levy *ad valorem* fee in agricultural produce brought or sold by a licensee in the Notified Market Area at a rate not exceeding Re. 00.50 Paise for every hundred rupees. The scale of fee was retained till 1969 whereafter by Punjab Act No. 25 of 1969 it was raised to Re. 1.00 per hundred and later by Punjab Act No. 17 of 1973 it was further escalated to Rs. 1.50 P. per hundred and further by Punjab Act No. 13 of 1974 the fee was raised from Rs. 1.50 to Rs. 2.25 per hundred. This enhancement was challenged in this Court in *M/s. Hanuman Dall & General Mills, Hissar* v. *The State of Haryana and others* (1) and the increase to Rs. 2.25 P. per hundred was struck down and the market fee was allowed to be maintained at the original rate of Rs. 1.50 per hundred. The Punjab State Agricultural Marketing Board went in appeal to the Supreme Court but meanwhile by Act No. 14 of 1975, the market fee was raised afresh from Rs. 1.50 to Rs. 2.20 per hundred but the Market Committees in Punjab were directed to charge the market fee at the rate of Rs. 2.00 per hundred with effect from the 23rd of August, 1975 only. However, in the

(1) A.I.R. 1976 Pb. & Hary. 1.

year 1978 by Punjab Ordinance No. 2 of 1978 followed by Punjab Act No. 22 of 1978 maximum market fee leviable was again raised from Rs. 2.20 to Rs. 3.00 per hundred. The enhancement was *inter alia* challenged directly by the dealers of Punjab before their Lordships of the Supreme Court. By their exhaustive judgment in *Kewal Krishan Puri and another* v. *State of Punjab and others* (2) the maximum market fee leviable up to Rs. 2.00 was maintained and any enhancement beyond that was struck down.

3. Meanwhile marketing fees at the enhanced rates which had not been sanctified had been collected and many licensees from Punjab filed a number of writ petitions in the Supreme Court for refund of the market fees collected above the authorised amount. These writ petitions were disposed of by their Lordships in *M/s Shiv Shanker Dal Mills etc.* v. *State of Haryana and others* (3), wherein following a similar situation in *The Newabganj Sugar Mills Co. Ltd. and others* v. *The Union of India and others* (4) they devised a scheme and issued nine precise guidelines with regard to the amount claimed. In compliance with these directions the Registrar of the Punjab and Haryana High Court entertained claims for refund and processed and verified them. Apparently during the pendency of the proceedings the impugned provisions of the Act were promulgated on the 2nd of March, 1981.

4. The representative matrix of facts may be briefly taken from CWP 5509/1981—*M/s. Walaiti Ram* v. *State of Punjab and others.* The petitioner-firm is engaged in the business of purchase and sale of agricultural produce at Maur, district Bhatinda and is a Licensee under the Act. In accordance with rule 29 of the Punjab Agricultural Produce Markets (General) Rules, 1962, framed under the aforesaid Act the liability to pay the market fee is *inter alia* on the buyer if he is a licensee, and consequently the writ petitioners were responsible for the payment of market fee. The petitioning-firm in the context of the history noted above had continued to pay market fee even at the enhanced rates which were not later upheld by the final Court and in accordance with the directions in *M/s. Shiv Shanker Dal Mills' case* (supra) filed a claim for refund before the Registrar of the Punjab and Haryana High Court. After the

(2) A.I.R. 1980 S.C. 1008.
(3) A.I.R. 1980 S.C. 1037.
(4) A.I.R. 1976 S.C. 1152.

promulgation of the impugned Act No. 7 of 1981, the petitioners further received the impugned notice (Annexure P.2) informing them that they have got adjusted a sum of Rs. 13178.20 and asking them to show cause as to why the said amount be not recovered from them. Aggrieved thereby, the writ petitioners have raised the challenge to the very validity of the amending Act and in particular to the insertion of Section 23-A in the principal Act.

5. In the returns filed on behalf of the respondent-State and the Punjab State Agricultural Marketing Board and the Market Committee of Maur, the factual position is not at all controverted. The core of the stand herein is that under the Rules, the writ petitioners were entitled to recover the market fee paid by them from the next purchaser and since they had done so they were not in law or equity entitled to the refund of the said amount. In any case the petitioners by the impugned Act are only put to proof that in fact they have not recovered the enhanced market fee from the next purchaser, in order to substantiate their claim. In sum, the stand of the respondents is that the writ petitioners cannot be allowed to unjustly enrich themselves by first having recovered the enhanced market fee from the next purchaser and thereafter, lay claim for a refund of the same from the respective Market Committees. Both the constitutional validity and the equity of Section 23-A is sought to be maintained.

6. Since the whole controversy herein revolves centrifugally round the provisions of the recently inserted Section 23 of the Act, it is apt to quote it at the very outset:—

> "In the principal Act, after Section 23, the following section shall be inserted namely:—
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> '23-A (1) Notwithstanding anything contained in any judgment decree or order of any Court, it shall be lawful for a Committee to retain the fee levied and collected by it from a licensee in excess of that leviable under Section 23, if the burden of such fee was passed on by the licensee to the next purchaser of the Agricultural Produce in respect whereof such fee was levied and collected.'
>
> (2) No suit or other proceedings shall be instituted, maintained or continued in any court for the refund of

whole or any part of the fee retained by a Committee under sub-section (1) and no court shall enforce any decree or order directing the refund of whole or any part of such fee.

(3) If any dispute arises as to the refund of any fee retained by a Committee by virtue of sub-section (1) and the question is whether the burden of such fee was passed on by the Licensee to the next purchaser of the concerned agricultural produce, it shall be presumed unless proved otherwise that such burden was so passed on by the licensee.

(4) If any amount of fee retainable by a Committee under sub-section (1) has been refunded to any licensee, the same shall be recoverable by the Committee in the manner indicated in Sub-section (2) of Section 41.

(5) The provisions of this Section shall not affect the operation of Section 6 of the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976."

Now even a plain reading of the aforesaid provision manifests that the five salient features thereof are:—

(i) It entitles the Market Committees to retain the excess market fee collected by it from a licensee if the burden of such fee had been passed on by such licensee to the next purchaser;

(ii) It creates a corresponding bar against the claim of refund of the excess fee by the Committees by a licensee where the burden had been passed on to the next purchaser;

(iii) The onus of proof to establish that the burden of such market fee had not indeed been pass on to the next purchaser would lie on the licensees c. ming a refund thereof;

(iv) Where a refund of the excess market fee had in fact been secured by a licensee without discharging the onus of proof

aforesaid then such market fee would become recoverable as arrears of land revenue by the Committees; and

(v) No suit, decree or other proceeding would lie for the refund of whole or any part of the excess market fee retained by the Committees and no Court shall enforce any decree or order directing such refund.

6. The whole gravamen of the attack herein primarily levelled by Mr. R. L. Batta on behalf of the writ petitioners is that the impugned provisions of the afore-quoted Section 23-A, in essence seeks to validate the levy of market fee at Rs. 3 per hundred despite the judgment in *Kewal Krishan Puri's case* (supra) holding to the contrary and sustaining the same to the extent of Rs. 2 per hundred only. It was sought to be submitted that the retention of this excess fee by Market Committees in practical effect is nothing but a validation of the same at the rate of Rs. 3 per hundred. On this premise, the contention is that such validation is sought to be effected without in any way removing the basic infirmities in the Act enhancing the fee to Rs. 3 per hundred or affecting the foundation of the final Court's judgment in *Kewal Krishan Puri's case* which must continue to hold the field. In sum, the argument that Section 23-A is a blanket overriding of the said judgment without in any way taking away the basis thereof by removing the infirmities in the statute and thus amounts to a flagrant trenching into the judicial power by the legislature.

6-A. In view of the aforesaid contention, it becomes necessary to straightaway notice the equally firm and categoric stand taken on behalf of the respondents. Mr. Bhagirth Dass, their learned counsel, has with his usual incisive forcefulness contended that the amending Act or Section 23-A is not even remotely a validation of the market fee up to Rs. 3 and indeed it never could be so in face of the clear-cut ratio and observations of their Lordships in *Kewal Krishan Puri's case* striking down the excess market fee above Rs. 2. According to him, the limited purpose of the Act is to merely bar the refund of excess market fee which the licensees, as middle men after payment to the Market Committees had recovered from their next purchasers. The provisions of Section 23-A were consequently nothing but an application of the salutory principle that there should be no unjust and illegal enrichment of the licensees and, therefore, a bar against the refund of the excess market fee from the Committees.

purchase of the agricultural produce becomes necessary. Indeed it is apt to quote the relevant sub-rule (2) which is as under:—

> "29(2) The responsibility of paying the fees prescribed under sub-rule (1) shall be of the buyer and if he is not a licensee then the seller who may realise the same from the buyer. Such fees shall be leviable as soon as an agricultural produce is bought or sold by a licensee."

Herein we are primarily concerned with the case of licensees alone and under the statutory rule whilst the obligation of paying the fee is on the licensee he equally has the right to realise the same from the next purchaser. There is no manner of doubt and indeed it was the common case before us that crores of rupees were collected as excess market fee beyond the permissible limit of Rs. 2 per hundred from innumerable individual purchasers who are now impossible to be located and who alone in equity would be entitled to a refund. By virtue of the statutory provisions, the middle men licensees were entitled to recover the fee from their next purchasers and there is no reason to presume that they would not have availed themselves of the right. Indeed it was in this situation that even the final Court earlier in *Shiv Shanker Dal Mills' case* did not allow any refunds to go back to the licensees. They were to be kept in trust for the agriculturists and next purchasers and in the event of their failure were to go to the Market Committees or other public purposes. Whilst making the nine precise directions in the said case, it was observed as follows:—

> "The counsel for the Market Committees pointed out that although refund of excess collections might be legally due to the traders many of the traders had themselves recovered this excess percentage from the next purchasers. So much so, these tiny tittles if they are to return to the original payers, should revert to the next purchasers themselves. The traders who are the petitioners have no more right to keep such small sums than the market committees themselves. To the extent to which the traders had paid out of their own, of course, they were entitled to keep them, but not where they had, in turn, collected from elsewhere. It would be hard to leave every agriculturist to file a suit or other legal proceeding for recovery of negligible sums which cumulatively amount to colossal amounts. Many a little makes a mickle."

It is plain from the above that even on a *prima facie* consideration of the matter, their Lordships have set their face against refund to licensees where they had in turn collected the excess fee from elsewhere or from next purchasers. The directions given by them were primarily for the avoidance of what could become a misappropriation of the unauthorised collection of enhanced market fee from millions of unknown purchasers who could hardly be identified or come forward to claim the paltry amounts. It appears to me that the present Act in essence statutorily affects the same larger purpose. It primarily provides that where the excess market fee had been deposited with the Committees by the licensees who had reimbursed themselves from next purchasers then such Committees should retain the amount against any refund to middle-men. Allowing the same would merely be an unjust enrichment of the licensees and fortuitous windfall for them with regard to monies unauthorisedly collected from the next purchasers.

10. Again it seems wholly untenable to hold that Section 23-A in any way validates the recovery of excess fee up to Rs. 3 per hundred. It is common ground that no future recoveries at this rate can possibly be made or authorised by the said provision. It is only in the interregnum betwixt the promulgation of the earlier Act and its final striking down in *Kewal Krishan Puri's case* that the excess market fee may have come to be collected. Neither does it retrospectively validate such excess collection. It merely creates a limited bar regarding the claim to refund of money to licensees who have already reimbursed themselves from their next purchasers under Rule 29.

11. The view that the impugned provisions cannot be deemed as validating ones is further buttressed by the fair concession made on behalf of the respondents by Mr. Bhagirath Dass that Section 23-A, as enacted, does not entitle the Market Committee to themselves recover any excess collections from licensees barring the specific case of unauthorised refunds. The statutory provisions only sanctify the retention of the excess market fee by the Committees where the same has been received by way of deposit from the licensees but does not go further to enable them to recover any such excess fee which may have remained in the hands of the licensees. The fair stand on behalf of the respondents themselves is that in cases where the excess amount had not actually come into the coffers of the Market Committees at any stage, the present provisions do not entitle them

to recover the same because such excess market fees are not validated or authorised either by this amending Act or any other provision.

12. In fairness to Mr. Bhagirath Dass we must notice his firm reliance on *R. S. Joshi* v. *Ajit Mills Ltd. and another* (5). Therein a larger Bench of the final Court has now put all controversy at rest by holding that within limitations the State legislature has competence to appropriate to Government even taxes collected illegally by a dealer. The somewhat narrower view earlier expressed in *Ashoka Marketing Ltd.* v. *The State of Bihar and another* (6) on which primary reliance was sought to be placed on behalf of the writ petitioners has been expressly disagreed from.

13. In view of the aforementioned considerations and precedent we have no hesitation in holding that Section 23-A, when viewed in the larger perspective is not a provision validating the collection of market fee at Rs. 3 per hundred but is merely intended for the retaining of such excess fee by Market Committees and to prevent its refund as unjust enrichment to middle men licensees. As was said earlier in plain language the provisions only determine as to who is to keep this unauthorised collection of market fee from myraid of purchasers who could no longer come forward to claim them back. Both in equity and in law, the mandate of the statute that the excess market fee should remain with Market Committees appears to us as unquestionable.

14. The somewhat tall grievance attempted to be made out on behalf of the writ petitioners with regard to placing of onus of proof pertaining to the recovery of market fee from next purchasers appears to be equally untenable. Herein it is again necessary to recall that under Rule 29, the licensees are expressly authorised to realise the same from their next purchasers. Mr. Bhagirath Dass was, therefore, eminently right in pointing out that the burden of proof on the licensees in this context was wholly in accordance with principle, equity, and the statute. Clearly enough the licensees alone would have special knowledge about the dealings made by them first with the producers and then in re-sale with the next purchasers. They alone would have the necessary record and the date on the point whether the market fee had been realised or not from the buyers. In

(5) 1977(4) S.C.C. 98.

(6) A.I.R. 1971 S.C. 946.

such a situation putting them to strict proof appears to be obviously correct. The Market Committees cannot possibly go on a wild goose chase to first find out as to the transactions of the licensees subsequent to the first purchase from the producers and thereafter to discharge the impossible burden of establishing whether the same had been recovered from the next purchasers or not. Section 106 of the Evidence Act is in the following terms:—

> "S. 106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

The aforesaid provision codified a well-known principle of the general law of evidence and herein Section 23 does no more than follow these general principles of burden of proof.

15. The last arrow to the bow of the writ petitioners was again that the barring of legal remedies for refund and further rendering any decree or order of a Court unenforceable in this regard was also a trenching of legislative power into an exclusive judicial field. Reliance was placed on the recent Division Bench judgment of this Court in *Bajinder Singh and another* v. *The Assistant Collector Guhla,* (7).

16. So far as the legal position is concerned, there is no manner of doubt that any blatant intrusion into the pristinely judicial wing of the State is unconstitutional. However, the question is whether merely limiting the remedies for refund and rendering the existing decrees, or orders inexecutable, would amount to such an intrusion. We are unable to review it from any such angle. The broader perspective of the Act noticed above is that the very basis of the right of refund or recovery of excess market fee has now been taken away by the statute. It is well-settled that the legislature can by amendment prospectively or retrospectively take away the basis of a judgment or remove the infirmity in a statute. Herein we have already held that the statute creates a bar against a refund of excess market fee where the same has been recovered from next purchasers. Once the substantive right of refund is validly taken away then it would follow that the procedural rights of preferring a suit or executing a decree would fall with the same. This seems to be well settled from the authoritative decision in *The State of Orissa* v.

(7) 1983 P.L.R. 528.

Bhupindra Kumar, (8) which has been repeatedly affirmed thereafter. Consequently if the substantive right to refund is held to be validly abrogated the bar to procedural remedy cannot be deemed as an intrusion into the judicial field. This contention must, therefore, be also rejected.

17. Before parting with this judgment we must notice that though the conceded position before us is that the Market Committees also cannot recover the excess market fee remaining in the hands of the licensees yet the cases of adjustment, bank guarantees, stay orders or interim orders during the pendency of the long drawn out proceedings stand on a different footing. These interim orders would inevitably merge into the final orders and are, therefore, primarily governed by the same. Orders of this nature were only transitory and at best can imply that the licensees who before the striking down of the law were obliged to deposit the market fee had been merely granted either time or easier modes of payment therefor. In the eye of the law the money must be deemed to have gone to the coffers of the Committee to be adjusted against future liabilities. Substantial rights of the parties cannot be governed by the mere fortuitous circumstances of such interim orders. Therefore, it appears to us that these at best can be viewed as no more than convenient or concessional mode of either the deposit of market fee or its payment by agreed instalments in future.

18. To conclude we would hold that Section 23-A of the Act particularly, and the amending Punjab Act No. 7 of 1981 generally, does not suffer from any constitutional invalidity and is hereby upheld.

19. It is common ground that apart from this significant legal question, the individual cases would need consideration on merits as well. Accordingly we direct that these be laid before a Single Bench for decision thereon in accordance with the answer to the legal questions.

J. V. Gupta, J.—I agree.

N.K.S.

(8) A.I.R. 1962 S.C. 945.