A

BRITISH INDIA CORPORATION LTD.

v.

MARKET COMMITTEE, DHARIWAL & ANOTHER

B

December 16, 1982

[V.D. TULZAPURKAR AND A. VARADARAJAN, JJ.]

Punjab Agricultural Produce Markets Act, 1961 Section 23—Rule 29 (7)—Scope of—Goods purchased by head office but weighed and delivered within the market committee area—If attract fee.

C

The appellant, with its head office at Kanpur in U.P., runs two woollen mills—one of which is in Dhariwal in the State of Punjab. The raw material purchased by the head office at Kanpur was sent from various centres to the mills and no raw material used in the mills was purchased locally or within the area of the Market Committee.

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On demand of market fee by the Committee under section 23 of the Punjab Agricultural Produce Markets Act, 1961 the appellant stated that no purchase or sale of the raw material received by the mills took place within the area of the Market Committee and that for this reason the Committee had no jurisdiction to levy any fee in respect of those materials.

E

A Writ Petition filed by the appellant in the High Court was dismissed as infructuous since the Market Committee agreed to withdraw the assessment and to make fresh assessment according to the rules.

Some time later, however, the Market Committee once again levied market fee and penalty. A single Judge of the High Court quashed the demand notice of the Market Committee on the ground that the assessment order was not in accordance with the provisions of the Act and Rules. But a Division Bench of the High Court allowed the Committee's Letters Patent Appeal.

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On the question whether the Market Committee was competent to levy fees.

G

Dismissing the appeal,

HELD: Clauses (b) and (c) of rule 29 (7) of the Punjab Agricultural Produce Markets (General) Rules, 1962 would be attracted bringing the transaction within the term 'bought or sold' if in pursuance of the agreement of sale or purchase, even if entered at the head office of the mills at Kanpur, the agricultural produce was weighed in the market area or if in pursuance of the

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A agreement of sale or purchase the agricultural produce was delivered in the said area to the purchaser or to some other person on behalf of the purchaser. [163 E-F]

In the instant case both clauses (b) and (c) would be applicable provided the transaction of sale was completed immediately on the delivery of the goods to the mills on weighment within the market area, if the delivery and/or weighment B are such that without both or either of them there will no sale at all in law.

[164 A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 681 of 1978.

Appeal by special leave from the judgment and order dated the 2nd day of September, 1976 of the Punjab & Haryana High C Court in Letters Patent Appeal No. 208 of 1974.

Y.S. Chitale, Mrs. A.K. Verma and *Ashok Gupta* for the Appellant.

Hardev Singh and *R.S. Sodhi* for the Respondents.

D The Judgment of the Court was delivered by

VARADARAJAN, J. This appeal by special leave is directed against the judgment of a Division Bench of the Punjab and Haryana High Court at Chandigarh in Letters Patent Appeal No. 208 of 1974 E by the respondent in that appeal. The appellant who filed the Writ Petition, has its head office at Kanpur and is running two woollen mills, one at Dhariwal, in the name and style of New Egerton Woollen Mills (hereinafter referred to as 'Dhariwal Mills') and another at Kanpur in the name and style of 'Lal-Imli Cawnpore Woollen Mills' (hereinafter referred to as 'Kanpur Mills'). The F case of the appellant-company was that after the purchase of raw material made by its head office at Kanpur the raw material is sent from various centres in India as well as from abroad to both the mills in accordance with their requirements and no raw material used in the Dhariwal Mills is purchased locally or within the area of the Market Committee, Dhariwal excepting that during the years G 1969 and 1970 two contracts for the purchase of raw wool of the value of Rs. 6,000/- and Rs. 5,000/- were entered into within the area of the said Market Committee. The appellant's case was that no purchase or sale of the raw material received by the Dhariwal Mills takes place within the area of the Market Committee H and that, however, the Market Committee made a demand for payment of market fee on all raw wool purchased by the appellant from 7.3.1962 to 29.6.1968 by a letter dated 21.6.1968 on pain of

recovery of that amount and penalty as arrears of land revenue, if not paid within the specified time. After a series of correspondence between the appellant and the Market Committee — first respondent, the latter made an assessment of market fee due from the appellant and demanded a sum of Rs. 3,67,200/- made up for Rs. 2,44,800/- being fee payable for the period from 26.5.1961 to 31.12.1970 and Rs. 1,22,400/- being penalty. As the amount was not paid the Market Committee took steps under s. 41 (2) of the Punjab Agricultural Produce Markets Act, 1961 for the recovery of the amount as arrears of land revenue. It is in these circumstances that the appeallent filed a Writ Petition No. 4247 of 1971 which was dismissed as infructuous on 15.11.1972 as the Market Committee agreed to withdraw the assessment and to make a fresh assessment according to the rules.

The appellant contended in the present Writ Petition out of which this appeal has arisen that although it made all efforts for associating itself with the fresh assessment proceedings by producing the necessary records, the Market Committee once again levied market fee of Rs. 4,26,000/- and penalty of a like sum and made a demand for the total sum of Rs. 8,52,000/- by notice dated 16.8.1973. The present Writ Petition was filed under Articles 226 and 227 of the Constitution for quashing that demand notice and restraining the Market Committee from recovering the amount. The learned Single Judge allowed the Writ Petition on a legal point that the assessment order made is not accordance with the provisions of the aforesaid Act and the Rules, without expressing any opinion on the merits of the case. The Market Committee, therefore filed the aforesaid Letters Patent Appeal.

There is no dispute that the raw material received by the Dhariwal Mills is an agricultural produce as defined is s. 2A of the Act and that the said commodity after being received by the Dhariwal Mills is weighed within the notified area of the Market Committee. The contest between the parties is on the question whether in the circumstances of the case the provisions of s. 23 of the Act were attracted or not.

Section 23 of the Act reads thus :

"A Committee shall, subject to such rules as may be made by the State Government in this behalf, levy on *ad*

A *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 :—

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(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

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(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

A persual of the records produced by the appellant reveals the existence of a number of original contracts entered into by the appellant at Kanpur with various suppliers of raw wool in India D with a provision practically in all the transactions that 80 per cent of the goods was payable against the documents and the balance after receipt and examination of the goods which were to be despatched to Dhariwal Mills directly. There are certain terms and conditions on the back of the contract forms in regard to the procedure for scouring yield. It will be necessary to state only a E few of those terms and conditions. Clause A relating to the procedure for scouring yield read thus :—

(A) Two bales at random are taken and issued to Scouring Department. The weight recorded at the time of receipt of the consignment is taken. After scouring in F three bowl Scouring Machine using warm water, the wool is dried in the dryer and spread in a covered place for about 12 hours to regain normal moisture. The wool is then weighed and yield calculated".

G Clauses 2 and 3 read thus :

'2. The Mills have every right to reject a portion or bulk if the quality is not up to the suppliers' samples given at the time of offers.

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3. Weight received in the mills will be taken as final weight."

Rule 29 of the Punjab Agricultural Produce Market (General) Rules 1962 framed under the Act provides for levy of the fees on agricultural produce bought or sold by licensees in the notified market area. Rule 29 (7) read thus :

> "29 (7) For the purposes of this rule agricultural produce shall be deemed to have been bought or sold in a notified market area:
>
> (a) if the agreement of sale or purchase thereof is entered into the said area;
>
> (b) if in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or
>
> (c) if in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser."

Clauses (b) and (c) would be attracted bringing the transaction within the term 'bought or sold' if in pursuance of the agreement of sale or purchase, even if entered into at Kanpur, the agricultural produce is weighed in the market area or if in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

The Division Bench of the High Court in the Letters Patent Appeal was of the opinion that both clauses (b) and (c) are applicable to the facts of the present case even on the admitted facts of this case as the transaction of sale is completed immediately on the delivery of the goods to the Dhariwal Mills. In that view the learned Judges allowed the appeal and set aside the judgment of the learned Single Judge and left it open to the appellant-company to satisfy the Market Committee in respect of any transaction which does not fall within the scope of their judgment.

The question is as regards the situs of the sale. If the sale transaction took place within the Market Committee either by delivery of the goods or by weighment thereof, the transaction would fall within the ambit of Rule 29 (7). After having heard

A learned cousel for the parties we are of the opinion that no interference with the judgment under appeal is called for except that it is necessary to make it clear that the delivery and weighment to be taken into consideration by the market Committee in respect of the past transactions regarding which the demand has been made and also future transactions must be delivery an/or weighment B without which there will be no sale at all in law. Subject to this clarification we dismiss the appeal and direct the parties to bear their own costs.

P. B. R. *Appeal dismissed.*