

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10289 OF 2019

- | | | |
|----|--|----------------|
| 1. | The Maharashtra State Market Committee |] |
| | Co-operative Federation Ltd., Pune, |] |
| | A Co-operative Society Registered under |] |
| | the provisions of Maharashtra Co-operative |] |
| | Societies Act, 1960 |] |
| | having its office At: 583, Plot-D, |] |
| | Shri Chhatrapati Shivaji Market Yard, |] |
| | Pune – 411 037 |] |
| | Through Managing Director |] |
| | Shri K.S.Kulkarni |]...Petitioner |

Versus

- | | | |
|----|--|---|
| 1. | Union of India, |] |
| | Through Secretary, |] |
| | Ministry of Agriculture, |] |
| | Department of Agriculture and Cooperation, |] |
| | Having office at Krishi Bhawan, |] |
| | Dr. Rajendra Prasad Rd, |] |
| | Opposite Rail Bawan, |] |
| | Rajpath Area, Central Secretariat, |] |
| | New Delhi- 110 001. |] |
| 2. | The State of Maharashtra, through its |] |
| | Secretary, Department of Co-operation, |] |
| | Marketing and Textile having its office |] |
| | at Mantralaya, Mumbai – 400 032. |] |
| 3. | The Directorate of Marketing, |] |
| | State of Maharashtra, |] |
| | Having office at - 3 rd Floor, |] |
| | New Central Building, |] |
| | Ambedkar Wellesly Road, |] |

- Pune, Maharashtra 411 001]
4. National Agricultural Co-operative Marketing]
Federation of India Ltd. (NAFED)]
Having office at – NAFED House,]
Siddhartha Enclave, Ring Road,]
Ashram Chowk, New Delhi – 110 014]
Through Branch Manager, Western Region,]
Naman Centre, 'A' Wing, Unit No. 803,]
8th Floor, C-31, G Block, Opp. Dena Bank,]
Bandra Kurla Complex, Mumbai 400 051]
5. The Maharashtra State Co-operative]
Marketing Federation Limited]
Having office at Kanmoor House,]
Narsi Naatha Street,]
Mumbai- 400 009.]...Respondents

...

Mr.Girish S. Godbole a/w. Mr. Drupad S. Patil, Mr.B.G.Patil and Mr. Dheeraj Patil for the Petitioner.

Mr. R.V.Govilkar for Respondent No.1- Union of India.

Mrs.Ashwini A. Purav, AGP for Respondent Nos.2 and 3.

Mr.Rajesh Choudhary i/b. RKC Legal for Respondent No.4- NAFED.

Mr. S.S.Lanke a/w. Mr. Jitendra Gautam for Respondent No.5.

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**CORAM : R. D. DHANUKA &
V. G. BISHT, JJ.**

Reserved on : 29th April, 2021

Pronounced on : 8th June, 2021

JUDGMENT (PER : V.G.BISHT, J.)

1. Rule. Rule made returnable forthwith. By consent of parties, Petition is heard finally at the stage of admission.

2. By this Petition under Article 226 of Constitution of India, the petitioner has approached this Court with following prayers :

(a) Writ of This Hon'ble Court may be pleased to issue a Writ of Certiorari or any other writ, order or direction in the nature of Writ of Certiorari thereby quashing and setting aside the clause No. B (ii) of Chapter II of Guidelines for Price Support Scheme (PSS), being Exhibit B to this Petition.

b. The Hon'ble Court be pleased to declare that the Market Committee constituted under the provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 are entitled for market fees on purchases of

agricultural commodities made under Price Support Scheme (PSS) by Central and State Agencies in procurement/ purchase centres managed by the Marketing Committees in their respective Market Areas.

c. This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other writ, order or direction in the nature of Writ of Mandamus thereby directing the Respondent No.4 to forthwith pay Market Fees payable to the Marketing Committees under provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963.

d. Pending hearing and final disposal of petition, the execution, implementation, operation and effect of clause No. B (ii) of Chapter II of Guidelines for Price Support Scheme (PSS), being Exhibit B to this Petition be stayed.

- e. Any other just and equitable orders be passed in the interest of justice.

3. The petitioner is a Federation of Agricultural Produce Market Committees in Maharashtra registered under the provisions of Maharashtra Co-operative Societies Act, 1960. More than 290 Market Committees are the members of the said Federation. The respondent No.3 is a Directorate of Marketing constituted under the provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short, “APMC Act, 1963”). The respondent No.4- NAFED is one of the Central Nodal Agencies for procurement of 16 notified agricultural commodities of oilseeds, pulses and cotton under Price Support Scheme (PSS) and continued to be the sole Central Nodal Outright Procurement Agency of pulses and oilseeds under PSS of Government of India. The respondent No.5 is an apex society for agricultural marketing and processing co-operative societies. One of the function of the respondent No.5 is procurement of food grains under Minimum Support Scheme of Government of India. The respondents are

thus “State” and/ or “other authorities” within the meaning of Article 12 of the Constitution of India.

4. According to petitioner, in order to develop and regulate marketing of agricultural and other produce in market areas and markets and in order to confer powers on Market Committees to establish market fund for various purposes, the State of Maharashtra enacted the APMC Act, 1963. The petitioner then contends that although the PSS is in existence in India for more than three decades, there were no Guidelines to regulate the PSS operation. Taking into consideration the necessity to prepare comprehensive Guidelines for effective implementation of the scheme to ensure that the farmers are benefited and to put in place a system of efficient marketing, development of non-traditional/ new markets, processing of agricultural produce for value addition and the sales through network of retail points, the Government of India, through Ministry of Agriculture Department of Agriculture & Co-operation issued Guidelines **(Exhibit -B)** for PSS.

5. The petitioner further contends that as per the said Guidelines, the respondent No.4 i.e. NAFED is one of the Central Nodal Agencies for procurement of 16 notified agricultural commodities of oilseeds and pulses under PSS. It procures stocks under PSS directly from the farmers through its co-operative network at State level and primary level. In order to strengthen co-operative marketing in the country, NAFED also undertakes procurement and marketing of agricultural commodities in joint venture with States Co-operative Marketing Federations/ Marketing Co-operative Societies.

6. The petitioner further contends that as per clause (C) of Chapter II of said PSS Guidelines, it is the responsibility of Central Nodal Agencies to identify the purchase centres in consultation with State Government. Furthermore, as per clause (XIV) of Chapter III of said Guidelines, the service charges @ 2.5% for copra and 1.5% for other commodities is paid on the Minimum Support Price (MSP) to the Central Agencies. Additionally, a maximum of 2% service charge is paid to the procuring agencies at the State and procurement level. Procurement by State Level Marketing

Federation shall be made through the Primary Co-operative Societies in which service charges @ 1% (out of total 2%) is to be paid to Primary Societies. However, if there is no Primary Societies functional in a particular area as certified by the State Government, the State Agencies/ Federations would be paid 2% service charge provided they open and manage the procurement centers as per the Guidelines. Besides, the Department of Agriculture and Co-operation (DAC) shall also provide 2% incentive to the central agencies on the net profit earned for disposal of PSS stocks. Thus, it is clear that the nodal agencies are entitled for service charges and incentives for implementing the PSS Guidelines.

7. The petitioner further contends that clause (XIII) of Chapter III of PSS Guidelines provides that the Central Government will reimburse the loss, if any, caused to nodal agencies. Computation of loss shall be total “Procured Cost”. The said term “Procured Cost” is explained to mean MSP + statutory taxes + commission of agents + labour charges + service charges to procurement agencies + bank charges – (minus) realization on sale of stock. Thus, according to petitioner, it is clear that the nodal agencies are

responsible and liable to pay all statutory taxes and service charges.

8. It is the further case of the petitioner that if provisions of the APMC Act, 1963 are read with PSS Guidelines, then it would be clear that the Market Committees are entitled for fees and charges payable to them under Section 31 for services provided to seller and purchaser. Section 31 does not make any distinction between the private purchaser and nodal agency who is purchasing the goods.

9. It is the further case of the petitioner that at the request of respondents and for effective implementation of PSS Guidelines, the Market Committees provided basic facilities like space, shed, storage godowns, weighing machines, electricity, water and manpower for management of the procurement centres opened in the respective market areas. Therefore, the Market Committees requested the respondents to pay market fees payable under Section 31 in addition to the fees payable under clause (XIV) of Chapter III of PSS Guidelines. Accordingly, upto the year 2016-17, the said market fee was duly paid. However, from 2017-18

onwards the respondents have stopped payment of market fees. On an inquiry and demand, the District Marketing Officers have informed to the Market Committees that as per PSS Guidelines, said market fees are not payable. Despite repeated demands seeking payment of market fees and charges for purchase of notified stocks made by the NAFED, no payments are made till date. Therefore, present Petition.

10. The respondent No.5 – Maharashtra State Co-operative Marketing Federation Ltd. by filing affidavit in reply contends that the respondent No.4 – NAFED and respondent No.5 have rightly denied the payment of market fees to Market Committee payable under the provisions of Section 31 of the APMC Act, 1963. According to it, clause – B (ii) of Chapter II of Guidelines for PSS (Exhibit -B) is rightly constituted and needs no interference. The respondent No. 5 denies that the said clause is ultra-vires and prejudicial to the interest of the petitioner.

11. According to respondent No. 5, the Government of Maharashtra in response to their Notification No. SAPAS-2019/ CR-

143/ 24-C dated 9th September, 2019 addressed to Joint Secretary, Government of India, New Delhi have requested the Government of India to implement the Price Support Scheme in the season 2019-20 for the purpose of pulses inclusive of moong. The Government of Maharashtra by the said notification dated 9th September, 2019 have exempted all the State duties and taxes in respect of PSS operation. Therefore, respondent No. 5 is not paying any duties/taxes to the petitioner. This being so, the Petition is not maintainable and deserves to be dismissed with costs.

12. Respondent No.4- NAFED by filing affidavit in reply raised preliminary objection as to the maintainability of the Petition by contending that NAFED not being the “State” under Article 12 of the Constitution of India is not amenable to the writ jurisdiction and in support of its contention placed reliance in ***National Agricultural Co-operative Marketing Federation of India Ltd., Versus Nafed Processed Food Cooperative Marketing Federation of India Employees Union and others***¹

¹ 2001 (58) DRJ 799 (DB)

13. Respondent No.4 -NAFED then contends that it is one of the Central Nodal Agencies for the procurement of pulses, oilseeds and copra with the role and responsibility under PSS. The procurement under PSS is exempted from the Mandi tax/ levy etc., under Chapter II clause B (ii) of the Guidelines for PSS which states that “Exemption from and tax/ levy etc: State/ UT Government shall exempt all state duties in respect to PSS operation in the interest of its farmers and reduce the procurement cost. Further, these taxes, if charged by the State/ UT Government, the same shall not be admissible/ reimbursable to the State / UT Government and state/ procuring agency”. Therefore, according to respondent No. 4-NAFED, NAFED is not liable to pay any levy fee to the Marketing Committee.

14. Respondent No.4-NAFED lastly contends that the petitioner is not entitled to the relief prayed in the Petition against it as the respondent-NAFED is acting on behalf of the Government and under the said scheme, the State/ UT Government shall exempt all state duties in respect of PSS operation in the interest of its farmers and reduce the procurement cost.

15. Respondent No.4- NAFED filed additional affidavit in reply and contended that NAFED is one of the Central Nodal Agencies of Government of India to implement PSS and Price Stabilization Fund (PSF) Scheme of Government of India. As per PSS scheme, the State Government has to submit the proposal to DAC & FW for implementation of PSS Scheme in the State wherein State gives an undertaking that they will exempt all the State duties/ taxes in respect of PSS operation.

16. It is the further case of respondent No.4- NAFED that to mitigate hardships to consumers, PSF Centre Scheme for providing working capital and other incidental expenses for procurement and distribution of commodities was approved by the Central Government. In respect of the said fund, the Central Government issued operational Guidelines for Price Stabilization Fund (PSF) 2015. PSF scheme was stayed in operation for two years, under which mandi taxes/ fee was payable.

17. Respondent No.4 then again reiterated that the procurement under PSS is exempted from the Mandi tax/ levy etc., under Chapter II clause B (ii) of the Guidelines for PSS.

18. Respondent No.2 -State of Maharashtra through its Deputy Secretary (Marketing), Co-operation, Marketing and Textile Department filed affidavit in reply. Respondent No.2 has broadly reiterated the contentions raised by respondent No.5 in its affidavit in reply and contends that the Petition being not maintainable, deserves to be dismissed with costs.

19. In response to the above noted affidavit in reply of respondent No.2-State of Maharashtra, the petitioner has filed affidavit in rejoinder and contends that respondent No.4 was paying the market fees to the respective Market Committees till 2018, however, thereafter they stopped the payment. The petitioner has also enclosed a copy of the chart (Exhibit “B”) showing details of payment made by the NAFED and services provided by the Market Committees.

20. It is further contended and reiterated that if provisions of the APMC Act, 1963 are read with PSS Guidelines, then it would be clear that the Market Committees are entitled for fees and charges payable to them under Section 31 for services provided to the seller and purchaser. Rest of the contentions are the reiteration of the facts narrated in the petition itself.

21. Mr. Godbole, learned Counsel for the petitioner, submits that the respondents have withheld payment of market fees by relying upon clause (B) (ii) of Chapter II of PSS Guidelines, which is precisely under challenge. According to learned Counsel, however, a bare perusal of the said clause would make it clear that the exemption is granted only to the “State duties”.

22. The learned Counsel then would invite our attention to Section 29 of the APMC Act, 1963 which deals with the powers and duties of the Market Committee and points out sub-sections 2 (v), (vi), (vii), (ix), (xvii), (xx) and (xxi). The learned Counsel further pointed out Section 31 of the APMC Act, 1963 and vehemently submitted that the Market Committees are entitled for fees from

every purchaser of agriculture produce marketed in the market area and this being so, the respondents do not have any right to withhold payment of said fees on purchases made by respondent No.4- NAFED.

23. The learned Counsel would further submit that said Sections do not make any distinction between the private purchaser and respondent No.4- NAFED and therefore, respondent No.4 cannot claim any exemption from payment of market fees to the Market Committees.

24. Elaborating further, the provisions of APMC Act, 1963, the learned Counsel would contend that under the provisions of the APMC Act, 1963, the Market Committees recover market fees and supervision charges. The said supervision charges are collected on behalf of the Government. The market fees are collected to generate market fund. The said market fee exclusively belong to the particular Market Committee and this being so, it is more than clear that the said clause (B) (ii) is not applicable for claiming exemption in payment of market fees.

25. According to learned Counsel, the respondents are relying on clause (B) (ii) of PSS Guidelines and claim that they are not entitled to pay market fees. Assuming that the said clause grants exemption to NAFED from payment of market fees, then also the said clause is illegal and bad in law as the same is contrary to the provisions of the APMC Act, 1963.

26. The learned Counsel then invited our attention to various correspondence and impressed upon us that the petitioner's services were availed by the respondents from time to time and paid market fees till 2018. During the course of argument, the learned Counsel invited our attention to the letter dated 9th September, 2019 addressed to the Joint Secretary (Co-op), Department of Agriculture and Co-operation, Krishi Bhawan, New Delhi by Principal Secretary (Marketing), Government of Maharashtra requesting for implementation of PSS in season 2019-20 for pulses (moong).

27. Assailing this correspondence, learned Counsel would point out Section 59 of the APMC Act, 1963 and would submit that no notification till date under said Section 59 is issued by the respondents. The respondents could not have given exemption to the payment of the market fees and even if assuming for the sake of argument that it had powers to do so, then the proviso to Section 59 was not complied with inasmuch as it provides that no order to the prejudice to the Market Committee shall be passed without an opportunity being given to such Market Committee to represent its case. Admittedly, no such opportunity was given to the petitioner.

28. On the point of maintainability of the Petition, the learned Counsel would submit that the respondent No.4- NAFED is actually acting as an agent of the Central Government, which is an admitted position and therefore, for all purposes, it is a “State” / “other authority” within the meaning of Article 12 of the Constitution of India.

29. Per contra, Mr. Govilkar, learned Counsel for respondent No.1- Union of India, invited our attention to the prayers in this petition and would submit that since the petitioner has prayed for setting aside a part of the Guidelines framed by the Central Government for Price Support Scheme (PSS), the petitioner not having issued a notice to the Attorney General of India, the petition is liable to be dismissed on that ground itself.

30. It is submitted by learned Counsel that the scheme in question has been framed for the benefit of farmers. The respondent No.4- NAFED is a central level player whereas the respondent No. 5- The Maharashtra State Co-operative Marketing Federation Limited is a state level player. The actual working of such benefits to be passed on to the farmers is worked out by respondent Nos. 4 and 5. Neither the Central Government nor State Government have paid any amount to the petitioner towards market fees on franchise of agricultural commodities made under Price Support Scheme (PSS) by the Central and State Agencies in last several years. No case is thus made out by the petitioner for

seeking any relief in this petition.

31. Insofar as submission of learned Counsel for respondent No.1 that no relief can be granted in favour of the petitioner for want of notice to the Attorney General of India is concerned, a perusal of the prayer clause (a) of the petition clearly indicates that the petitioner has prayed for quashing and setting aside a part of the Guidelines i.e. clause (B) (ii) of Chapter II of the Guidelines for PSS. At the first instance, it is the case of the petitioner in the petition that the payment of market fee is not excluded under the said clause (B) (ii) of Chapter II of the Guidelines. The exemption is granted under the said Guidelines only to the “State Duties”.

32. It is the case of the petitioner in the petition that under the provisions of the APMC Act, 1963, the supervision charges are collected on behalf of the Government whereas the market fees are collected to generate market fund. The said market fee exclusively belong to the particular Market Committee and thus the said clause (B) (ii) is not applicable for claiming exemption in payment of market fee.

33. Be that as it may, the petitioner has not impugned constitutional validity of any statute and thus, there is no substance in the submission of learned Counsel for respondent No.1.

34. Mr. Choudhary, learned Counsel for respondent No.4- NAFED, took preliminary objection about maintainability of the Petition by submitting that the respondent No. 4- NAFED not being the State within the meaning of Article 12 of the Constitution of India, is not amenable to the writ jurisdiction and consequently the Petition is not maintainable. To buttress his submission, the learned Counsel placed reliance in *National Agricultural Co-operative Marketing Federation of India Ltd., (supra)* and more particularly relied on paragraph Nos. 5, 6, 7, 22 and 23.

35. The learned Counsel, during the course of argument, invited our attention to clause (B) (ii) of Chapter II of Guidelines for PSS and would submit that the State/ UT Government shall exempt all state duties in respect of PSS operation in the interest of its farmers and reduce the procurement cost. The learned Counsel also

invited our attention to the undertaking (given at page No. 56 of the Petition) given by Principal Secretary Agriculture, State/ UT Government thereby undertaking that the State/ UT Government is willing to undertake the PSS operation in the State as per PSS guidelines of the Government of India and agree to exempt all the State duties/ taxes in respect of PSS operation.

36. The learned Counsel lastly contended that the NAFED is one of the Central Nodal Agencies of Government of India to implement PSS and PSF scheme of Government of India Department of Agriculture, Cooperation and Farmers Welfare (DAC & FW), Ministry of Agricultural & Farmers Welfare in Government of India issued guidelines in respect of PSS scheme and Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution for PSF scheme. According to learned Counsel, as per PSS scheme, the State Government has to submit the proposal to DAC & FW for implementation of PSS scheme in the State wherein State gives an undertaking that they will exempt all the State duties/ taxes in respect of PSS operation. In view of the undertaking given by respective Principal Secretary (Marketing)

and as also in the light of guidelines for PSS, NAFED is not liable to pay any levy fee to the Market Committee, argued learned Counsel.

37. Mrs.Purav, learned AGP representing respondent Nos. 2 and 3-State, reiterated the contentions raised in affidavit in reply and would support notification dated 9th September, 2019 which exempt all the State duties/ taxes in respect of PSS operation (procurement/ transportation/warehousing/ sale etc.)

38. Mr. Lanke, learned Counsel for respondent No.5, would submit that his affidavit in reply be taken into consideration.

39. Mr.Godbole, learned Counsel for the petitioner, in his rejoinder argument submits that the APMC Act is a State enactment falling under 7 Schedule Part II of the Constitution of India. Admittedly, there is no notification exempting the respondents from payment of market fees. In this obtaining situation, the executive order cannot supersede State legislation i.e. the provisions of the APMC Act, 1963.

40. The learned Counsel then pointed out paragraph Nos. 2 and 3 of the additional affidavit filed by respondent No.4- NAFED and would submit that the petitioner is not concerned with Price Stabilization Fund (PSF Scheme of Government of India) and therefore, all the contentions raised in the additional affidavit which are PSF centric are not applicable to the petitioner.

41. The learned Counsel reiterated that the real cause under challenge is clause (B) (ii) of PSS and interpreting the said clause, the learned Counsel strenuously emphasized that it does not empower respondents to refuse fees as the said clause include taxes which does not mean fees. In this regard, the learned Counsel placed reliance on the judgment given in *Kewal Krishan Puri and Another Versus State of Punjab and Another*².

REASONS AND CONCLUSION

42. Before appreciating the grievance of the petitioner and setting the controversy at rest, what at any rate, at the first instance, merit our attention is the provisions of the APMC Act, 1963. The cause of

² (1980) 1 SCC 416

action staring at in the present Petition is gross denial on the part of respondent No.4- NAFED and respondent No.5 in making payment of market fee to Market Committee payable under relevant provisions of the APMC Act, 1963. It is in this whining backdrop, a quick and studied glance and glare becomes inevitable. We, therefore, proceed to examine certain relevant provisions of the APMC Act, 1963.

43. As per Section 11 of the said Act, for every market area, the State Government shall establish a Market Committee for regulating, processing and marketing the agricultural produce. Section 12 (2) confers status upon APMC as local authority.

44. Section 29 contains provisions regarding the powers and duties of the Market Committee. Under sub-section 2 (v) a duty is cast on Market Committee to provide for necessary facilities for the marketing of agricultural produce within the market in the market area. Under clause (xvii) of sub-section (2), the Market Committee may levy, take, recovery and receive charges, fees, rates and other sums or money to which it is entitled.

45. Section 30 A of the APMC Act, 1963 deals with the power of the Market Committee to open collection centres for marketing of notified produce; provision for receipt and payment by purchaser. Section *inter alia* lays down that the dues to a Market Committee shall consist of fees to be levied and collected from a purchaser by or under the APMC Act, 1963.

46. We now come to important Section viz. Section 31 of the APMC Act, 1963 which reads as follows:

***“31. Power of Market Committee to levy fees
²[and rates of commission (adat).***

¹[(1)] It shall be competent to a Market Committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the Official Gazette in that behalf), from every purchaser of agriculture produce marketed in the market area :

Provided that, when any agricultural produce brought in any market area for the purposes of

processing only ³[-----] is not processed ⁴[-----] within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been marketed in the market area, and shall be liable for the levy of fees under this section, as if it had been so marketed :

⁵*[Provided further that,*

(a) any agricultural produce brought in any market area for the exclusive purpose of export shall be exempted for the payment of fees and supervision cost, if such exporter or his duly authorized agent present the letter of credit or confirmed order of export or confirmed export order consignment, whichever is relevant or applicable, at the time of entry of such produce in the market area, to the officer authorized in this behalf by the market committee concerned along with a declaration in that behalf, in such form as the State Government may, by order from time to time, direct ;

(b).....

⁸*[(2).....*

(3)

(4)]”.

47. A plain reading of Section 31 would show that its empowers the Market Committee to levy and collect fees, at such rates as may be decided by it, but subject to minimum and maximum rates which may be fixed by the State Government by notification from every purchaser of agricultural produce marketed in the market area. The only exemption contemplated by second proviso to Section 31 is to the effect that any agricultural produce brought in any market area for the exclusive purpose of export shall be exempted for the payment of fees and supervision cost, if such exporter or his duly authorized agent present the letter of credit or confirmed order of export or confirmed order of export at the time of entry of such produce in the market area.

48. Reading Section 29 along with Sections 30 A and 31 of the APMC Act, 1963, it would be noticed that the power of the Market Committee to levy fees in the prescribed manner at such rates as may be fixed by the State Government by notification in the Official Gazette in that behalf from every purchaser of agricultural produce is vis-a-vis various facilities for the marketing of agricultural

produce and duties to be performed by the Market Committee. What is immediately obvious from the provisions discussed so far and more particularly Section 31 is that Section does not make any distinction between the private purchaser and respondent No.4 – NAFED and therefore, we are in agreement with the contentions of learned Counsel for the petitioner when he argues so.

49. The respondents, on the other hand, appear to be drawing strength from clause (B) (ii) of the Chapter II of guidelines for Price Support Scheme (PSS) (Exhibit B). It reads as follows :

“(B) (ii) Exemption from mandi tax/ levy etc.: State/ UT Govt. shall exempt all state duties in respect to PSS operations in the interest of its farmers and reduce the procurement cost. Further, these taxes, if charged by the State/ UT Government, the same shall not be admissible/ reimbursable by the DAC to the State/ UT Government and state/procuring agency”.

50. Taking recourse to the above clause, learned Counsel for respondent No.4- NAFED submitted that NAFED is acting on behalf of the Government and under the Price Support Scheme (PSS)/

guidelines, the State/UT Government shall exempt all State duties in respect of PSS operation in the interest of its farmers and reduce the procurement cost.

51. Refusing to by the submission so advanced by the learned Counsel for respondents, learned Counsel for the petitioner canvassed his point of view by submitting that the exemption is granted only to the “State duties/ taxes”. “Taxes” do not mean fees, according to learned Counsel. The learned Counsel for petitioner immediately and promptly drew our attention to the pronouncement given in the case of ***Kewal Krishan Puri and Another (supra)*** in order to strengthen his interpretation.

52. We have perused the decision given in the case of ***Kewal Krishan Puri and Another (supra)***. It has been held by the Hon’ble Apex Court that the Constitution recognizes a different and distinct connotation between taxes and fees.

53. We are inclined to quote with advantage following paragraphs from the said judgment of the Hon’ble Apex Court. They are as follows :

9. We may now extract some very useful and leading principles from the decision of this Court in *Shirur Mutt's* (1954 S.C.R., 1005, *supra*) pointing out the difference between tax and fee. At pages 1040-41 says Mukherjea J., as he then was:

"The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the tax-payer and the public authority..."

A 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency."

At page 1042 the learned Judge. Enunciates:

"The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege Public interest seems to be at the basis of all impositions, but in a fee it is

some special benefit which the individual receives.

After pointing out the ordinarily there are two classes of cases where Government imposes 'fee' upon persons, the first being the type of cases of the licence fees for Motor Vehicles or the like and in the other class of cases "the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered" (vide page 1043), it is said further:

If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes".

"23. From a conspectus of the various authorities of this Court we deduce the following principles for satisfying the tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area:-

(1) That the amount of fee realised must be

earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expanded for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such service in the long run go to increase the

volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above”.

54. We note here again the relevant provision of the APMC Act, 1963 which we have said about a bit earlier. The principles so culled out and enunciated above by the Hon'ble Apex Court are clearly characterized and reflected by Section 29 of the APMC Act, 1963.

55. From the above discussion, it is more than clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable co-relationship with the services rendered by the Government. In other words, the levy must be proved a quid pro quo for the services rendered.

56. We further would like to point out that the fee levied is not on the agricultural produce in the sense of imposing any kind of tax or duty on the agricultural produce. Nor it is a tax on the transaction of produce or sale. The fee is an impost on the respondent No.4- NAFED buyer of the agricultural produce in the market in relation to transaction of its purchase. The agriculturalists are necessarily not required to part with or share any portion of the burden of the fee. Therefore, it would be myopic to draw any self-serving interest from clause (B) (ii) of Chapter II of guidelines for PSS.

57. Even the very guidelines for PSS requires notification if any exemption from Mandi tax/ levy is to be given. Herein comes

Section 59 of the APMC Act. It reads as follows :

***“59. Power to exempt Market Committees, etc.,
provisions of Act -***

The State Government may, by a general or special order, in the Official Gazette, exempt any Market Committee or any class of persons from any of the provisions of this Act or any rules made thereunder, or may direct that such provision shall apply to such Market Committee or to such class of persons with such modifications not affecting the substance thereof as may be specified in that order :

Provided that, no order to the prejudice of any Market Committee shall be passed without an opportunity being given to such Market Committee to represent its case”.

58. A bare reading of Section 59 would show that the State Government is empowered, by a general or special order in the Official Gazette to exempt any Market Committee or any class of persons from any of the provisions of the APMC Act or any rules made thereunder, or may direct that such provision shall apply to such Market Committee or to such class of persons with such

modifications not affecting the substance thereof as may be specified in that order. The proviso to Section 59 puts a rider and clarifies that no order to the prejudice of any Market Committee shall be passed without an opportunity being given to such Market Committee to represent its case.

59. In the instant case, admittedly, no notification has been published in the Official Gazette as per the mandate of Section 59 of the APMC Act, 1963. Assuming for the sake of argument that any such notification does exist, then the respondents have not brought on record anything to show that before passing of such notification in the Official Gazette, the petitioner was afforded an opportunity to represent its case. This clearly demonstrates the failure on the part of respondents to fulfill the guidelines for PSS.

60. In the light of above discussion, we now would like to spare a thought whether the respondent No.4- NAFED in the present case is an instrumentality or agency of the Government so that it can be squared up to writ jurisdiction. The answer must obviously be in the affirmative if we have regard to the Guidelines for PSS (Exhibit

“B”). We offer our reasons.

61. The Guidelines for PSS issued by the Government of India seek to ensure remunerative prices to the growers for their produce with a view to encourage higher investment and production and to safeguard interest of consumers by making supplies at reasonable prices with low cost of intermediation. The price policy also seeks to evolve a balanced and integrated price structure in the perspective of the overall needs of the economy. This is apparent from Chapter I of the guidelines for Price Support Scheme (PSS).

62. The Guidelines for PSS seek to achieve the above visualized targeted objectives as conceived and formulated in tandem with State/ UT Government. The State/ UT Government in pursuing the realization of these said objectives is required to make all necessary logistic and working capital arrangements. These Guidelines also make provision for reimbursement from DAC to respective State/ UT Government. In short, there is strong semblance of financial, functional and administrative powers to be exercised by Central Government through the Guidelines.

63. Similarly, respondent No.4- NAFED and others are made Central Nodal Agencies for the procurement of notified agricultural commodities of oilseeds and pulses under PSS. There is no dispute on this count from the side of respondent No.4-NAFED. Since the basic function of respondent No.4- NAFED, being a Central Nodal Agency, is not only to ensure the implementation of PSS Guidelines but also to fulfill the cherished objectives, it is as good as Government functionary albeit having character of Central Nodal Agency.

64. The Central Government through its Nodal Agencies, like NAFED, is performing public and statutory duty in the light of PSS Guidelines. In consonance with the same, NAFED is also performing these duties and carry out its transaction for the benefit of growers and consumers and not for private profit. We are, therefore, more than clear in our mind that since the respondent No.4 -NAFED is discharging public functions, it is amenable to writ jurisdiction under Article 226 of the Constitution of India. Consequently, we reject the preliminary objection as to

maintainability of petition against the respondent No.4- NAFED.

65. The ratio laid down in *National Agricultural Co-operative Marketing Federation of India Ltd., (supra)* does not advance the case of respondent No.4- NAFED inasmuch as in that case Employees Union (respondents) had challenged the decision of NAFED introducing voluntary retirement scheme and the orders of termination issued under clause 17 (iv) (d) of the Staff Regulations providing for compulsory retirement. Since the dispute was between the employees of NAFED, the Delhi High Court found, after consideration of constitution of NAFED, NAFED not to be “State” or other authority or instrumentality or agency of the “State” within the meaning of Article 12 of the Constitution of India.

66. In the case in hand, we are not called upon to go into constitution of NAFED independent of Central Government *vis-a-vis* PSS. On the contrary, the facts and circumstances of the present case unequivocally establish NAFED to be one of the Central Nodal Agency and thus essentially one of the components, amongst

others, of very Central Government thereby making it amenable to writ jurisdiction.

67. Insofar as the contention of learned Counsel for respondent No.1 that the scheme has been formulated for the purpose of giving maximum benefit to the farmers is concerned, in our view, for the purpose of giving maximum benefit to the farmers, the market fee which the petitioner is entitled to under the provisions of the APMC Act, 1963 cannot be deprived of.

68. We have gone through the averments made by the petitioner and more particularly paragraph No. 8 of the affidavit in rejoinder dated 28th January, 2021 filed by the petitioner and also **annexure - B** showing the amount paid by NAFED from time to time for the services rendered by the Market Committees.

69. In our view, there is no merit in the submission made by learned Counsel for respondent No.1. No affidavit in reply is filed by respondent No.1 in this petition. We, however, have dealt with the over all submission advanced by learned Counsel in this judgment.

70. In so far as the prayer clause (a) of the writ petition is concerned, in our view, clause no.B(ii) of Chapter II of the Guidelines for Price Support Scheme (PSS) (Oilseeds, Pulses & Cotton) issued in the Month of May 2014 by the Government of India grants exemption from mandi tax/levy etc. The said clause clearly provides that State/UT Government shall exempt all state duties in respect to PSS operations in the interest of its farmers and reduce the procurement cost. However if these taxes if charged by State/UT Government, the same shall not be admissible/reimbursable by the Department of Agriculture & Cooperation to the State/UT Government and state/procuring agency.

71. In our view, the said clause does not exempt from payment of fees being paid to the Market Committees constituted under the provisions of the APMC Act, 1963 on purchase of agricultural commodities made under Price Support Scheme by Central and State Agencies in procurement/purchase centres managed by the Marketing Committees in their respective Market Areas. The

said guidelines heavily relied upon by the respondents thus does not apply to the exemption of the market fees. We are thus not required to grant relief in terms of prayer clause (a).

72. Be that as it may, even if it is considered that the said guidelines are applicable and thereby exempt the payment of market fees payable to the Market Committees constituted under the provisions of the APMC Act, 1963, the Central Government is not empowered to give any such exemption in respect of payment of market fees. The petitioner is entitled to payment of the said market fees under the said APMC Act, 1963 which is a State Act. No notification has been issued under Section 59 of the said Act exempting the payment of market fees. In our view, even otherwise no order to the prejudice to the Market Committees could be passed without an opportunity being given to such Market Committees to represent its case. No such opportunity is given to the respondents by the Central Government before framing such guidelines. In our view, the respondents thus could not press in service any part of the said guidelines to refuse the payment of market fees to the petitioner payable under the

provisions of the said MPMC Act.

73. None of the respondents has disputed that the petitioner had been paid market fees as reflected in the statement annexed at Exhibit 'B' to the affidavit-in-rejoinder filed by the petitioner on 28th January 2021. The Government has issued from time to time circulars for fixing the prescribed rates of agriculture market produce. The respondents though had made payment of market fees to the petitioner from time to time as reflected in the said chart annexed at Exhibit 'B' to the rejoinder has not paid the balance amount for the period 1st January, 2019 onwards. The petitioner has thus made out a case for declaration as sought in prayer clause (b) and for writ of mandamus as prayed in prayer clause (c).

74. In our view, there is no substance in the submission made by Mr.Govilkar, learned counsel for the respondent no.1 that since prayer clause (a) is pressed by the petitioner, the same cannot be considered without any notice to the Attorney General of India. Since we are of the view that the said guidelines do not apply to

the exemption from payment of market fees, no such notice is required to be issued to the Attorney General of India. Be that as it may, the Central Government has only issued the guidelines annexed at Exhibit "B" to the petition which are not statutory in nature and on this ground also, notice to the Attorney General of India is not required to be issued.

75. In so far as the contentions raised by the respondent no.5 in the affidavit-in-reply dated 6th December 2019 are concerned, reliance placed on Notification dated 9th September 2019 in paragraph 4 of the said affidavit is totally misplaced. Even the said notification does not exempt the payment of market fees.

76. The respondent No.4 has only relied upon the said guidelines issued by the Government of India to refuse to comply with its obligation to pay the market fees to the petitioner. In our view, since the said guidelines are not at all applicable to the petitioner for seeking exemption from payment of market fees, no reliance thereon can be placed by the respondent no.4 on such guidelines to avoid its statutory liabilities.

77. We therefore pass the following order :-

ORDER

(i) Rule is made absolute in terms of prayer clauses (b) and (c);

(ii) The respondent no.4 is directed to make payment of market fees payable to the Market Committees from 1st June 2019 onwards till date within four weeks from today to the Market Committees;

(iii) There shall be no order as to costs;

(iv) Parties to act on the authenticated copy of this order.

(V.G. BISHT, J.)

(R.D. DHANUKA, J.)