A SHIV SHANKER DAL MILLS ETC. ETC.

v.

STATE OF HARYANA & ORS. ETC.

November 9, 1979

B [V. R. KRISHNA IYER, R. S. PATHAK AND A. D. KOSHAL, JJ.]

Constitution of India 1950, *Article* 226—*High Court holding levy illegal—Consequential liability to refund—'Alternative remedy' available—Jurisdiction under—Whether barred.*

In *Kewal Krishan Puri* v. *State of Punjab and others* [1979] 3 S.C.R. page
C 1217, this Court struck down payment of market fees at the increased rate of 3 per cent (raised from the original 2 per cent) under Haryana Act No. 22 of 1977. A consequential liability was therefore cast on the market committees to refund the excess amounts collected.

The appellants and the petitioners who had paid under mistake the excess sums demanded a direction to the effect that these amounts be refunded.

D On the question of refund of the excess amounts collected by the market committees.

HELD : 1. Where public bodies under colour of public laws recover people's money, later discovered to be erroneous levies, the *dharma* of the situation admits of no equivocation. There is no law of limitation especially for public bodies on the virtue of returning what was wrongly recovered to
E whom it belongs. In our jurisprudence it is not palatable to turn down the prayer for high prerogative writs on the negative plea of alternative remedy, since the root principle of law married to justice, is *ubi jus ibi remedium.*

[1172 G-H]

2. In our jurisdiction, social justice is a pervasive presence and save in special situation it is fair to be guided by the strategy of equity by asking
F those who claim the services of the judicial process to embrace the basic rules of distributive justice, while moulding the relief by consenting to restore little sums taken in little transactions from little persons to whom they belong.

[1173 E]

3. Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court
G exercising this flexible power to pass such orders as public interest dictates and equity projects. [1174 D]

In the instant case although the refund of excess collections might be legally due to the traders, many of the traders had themselves recovered the excess percentage from the next purchasers. To the extent the traders had paid out of their own, they were entitled to keep them, but not where they had in
H 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. [1173 F-H]

4. *In Newabganj Sugar Mills* v. *Union of India and others* [1976] 1 SCR 803 this Court in a similar situation devised a new procedure to deal with a new situation where equity demanded redistribution but procedural expensiveness and cumbersomeness effectively thwarted legal actions. [1173 H-1174 A] A

5. Situations without precedent demand remedies without precedent. [1174 B]

[The Court devised a scheme of refund by the market committees and redistribution of the small amounts to those from whom unwarranted collections had been made.] [1174 C] B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3220-3234 of 1979.

Appeals by Special Leave from the Judgment and Order dated 11-7-79, 23-8-79, 8-8-79, 15-10-79, 30-7-79, 18-9-79, 22-10-79, 18-10-79, 29-10-79, 16-10-79, and 12-10-79 of the Punjab and Haryana High Court in Civil Writ Peittions Nos. 2306, 2966, 2737, 3617, 2588, 3277, 3749, 3697, 3820, 3625, 3624 and 315-317/79 respectively. C

AND D

Writ Petitions No. 892, 918, 921, 979-980, 1057-1058, 1095, 1234, 1273, 1051, 997, 940 and 981/79.

(Under Article 32 of the Constitution)

Dr. Y. S. Chitale (CA 3220/79), *R. A. Gupta, Adarsh Goel* and *S. K. Goel,* for the Appellant in CA 3220/79 and 3222/79 for the Petitioner in W.P. 892, 918 and 921/79. E

B. Datta and *K. K. Manchanda* for the Appellant in CA 3221/79, 3224-3226/79.

Anil B. Dewan, Adarsh Goel, S. K. Goel, and *R. A. Gupta* for the Appellant in CA 3323/79. F

Adarsh K. Goel, S. K. Goel and *R. A. Gupta* for the Appellants in CA 3222/79, for the Petitioner in WP 892/79, 918/79, 921/79.

A. K. Goel and *S. K. Goel* for the Petitioner in WP 979/79.

B. Datta and *K. K. Manchanda* for the Petitioner in WP 980/79. G

Sarwa Mitter, Ved Prakash Goel and *B. S. Malik* for the Petitioner.

M. P. Jha, Gyan Chand Dhuriwala and *Sanjee Walia* for the Petitioner in WP 1057-58/79.

M. P. Jha and *P. C. Khunger* for the Petitioner in W.P. 1095/79. H

N. D. Garg and *T. L. Garg* for the Petitioner in WP 1234/79.

A *R. K. Garg* (WP 892/79 and CA 3220/79) *Gian Singh* and S. C. Patel for the Respondents 2-3 in CAs. 3220/79, 3221, 3222, 3223, 3224 and for the Respondent in WP 892/79, 921, 979, 981, 1057-58/79, 1273, 997 and for Respondent in CA 3230, 3225/79.

Hardev Singh and *R. S. Sodhi* for the Respondent in WP 918/
B 79 and 980/79, 1095 and 1234/79.

Adarsh Goel and *Gyan Sudha Misra* for the Petitioner in WP 1273/79.

The Order of the Court was delivered by

C KRISHNA IYER, J. This big bunch of writ petitions shows how litigation has a habit of proliferation in our processual system since cases are considered in isolation, not in their comprehensive implications and docket management is an art awaiting its Indian dawn. The facts, being admitted, obviate debate. All these appellants and
D writ petitioners had paid market fees at the increased rate of 3 per cent (raised from the original 2 per cent) under Haryana Act No. 32 of 1977. Many dealers challenged the levies as unconstitutional, and this Court, in a series of appeals (C.A. Nos. 1083 of 1977 etc.) (1) ruled that the excess of 1 per cent over the original rate of 2 per cent was *ultra vires*. This cast a consequential liability on the
E market committees to refund the illegal portion. They were not so ordered probably because they could not straightway be quantified. The petitioners who had, under mistake, paid large sums which, after the decision of this Court holding the levy illegal, have become refundable, demand a direction to that effect to the market committees concerned. There cannot be any dispute about the obliga-
F tion or the amounts since the market committees have accounts of collections and are willing to disgorge the excess sums. Indeed, if they file suits within the limitation period, decrees must surely follow. What the period of limitation is and whether Art. 226 will apply are moot as is evident from the High Court's judgment, but we are not called upon to pronounce on either point in the view we take.
G Where public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the *dharma* of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our
H jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of 'alternative remedy', since the root principle of

(1) Kewal Krishan Puri *v.* State of Punjab [1979] 3 S.C.R. 1217.

law married to justice, is *ubi jus ibi remedium*. Long ago Dicey wrote : A

> "The saw *ubi jus ibi remedium*, becomes from this point of view something more important than a mere tautological proposition. In its bearing upon constitutional law, it means that the Englishmen whose labours gradually formed the complicated set of laws and institutions which we call the Constitution, fixed their minds far more intently on providing remedies for the enforcement of particular rights or for averting definite wrongs, than upon any declarations of the Rights of Man or Englishmen....The Constitution of the United States and the Constitutions of the separate States are embodied in written or printed documents, and contain declaration of rights. But the statesmen of America have shown an unrivalled skill in providing means for giving legal security to the rights declared by American Constitutions. The rule of law is as marked a feature of the United States as of England." B C D

Another point. In our jurisdiction, social justice is a pervasive presence; and so, save in special situations it is fair to be guided by the strategy of equity by asking those who claim the service of the judicial process to embrace the basic rule of distributive justice, while moulding the relief, by consenting to restore little sums, taken in little transactions, from little persons, to whom they belong. E

When we reminded counsel on both sides of these guidelines of Good Samaritan jurisprudence and desired consensual disposal of these cases, we gratifyingly found welcome echo and we appreciatively record this stance. F

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. A similar situation arose in *Newabganj Sugar* G H

Mills case(1) where this Court devised a new procedure to deal with a new situation where equity demanded redistribution but procedural expensiveness and cumbersomeness effectively thwarted such legal actions by the "small" many. Situations without precedent demand remedies without precedent.

We indicated to counsel that the procedure adopted in the *Newabganj Sugar Mills* case (supra) may usefully be adapted to the present case. In broad principle, counsel did agree, and we proceed on that footing, that we devise a scheme of refund by the market committees and redistribution, to the extent indicated above, of small amounts to those from whom unwarranted collections had been made, may be unwittingly, by the traders who are appellants or petitioners.

Article 226 grants an extra-ordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects.

> "Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest...."(2)

Keeping in mind these guidelines we make the following directions:

I. Subject to the directions given below, all the sums collected by the various market committees who are respondents in these various writ petitions or appeals shall be liable to be paid into the High Court of Punjab and Haryana within one week of intimation by the Registrar of the amount so liable to be paid into the court.

II. A statement of the amounts collected in excess (1%) shall be put into this court by the dealers with copies to the various market committees aforesaid *within* 10 *days from today,* and if there is any difference between the parties it shall be brought to the notice of this Court in the shape of miscellaneous petitions. On final orders, if any, passed thereon by this Court, those amounts, as so determined, shall be treated as final.

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(1) [1976] 1 S.C.R. 803.

(2) 27 Am. Jur. 2/d Equity p. 626.

III. The Registrar of the High Court shall issue public notice and otherwise give due publicity to the fact that dealers who have not passed on the liabilities to others and others who have contributed to or paid the excess one per cent covered by these writ petitions and appeals may make claims for such sums as are due to them from him within one month or such other period as he may fix. The Registrar shall scrutinise such claims and ascertain the sums so proved. He will thereupon demand of all the market committees concerned payment into the Registry of such sums in regard to which proof of claims have been made. On such intimation, the market committees shall pay into the Registry the amounts so demanded by the Registrar within one week of such intimation. The amount shall be paid together with interest at 10 per cent per annum from today upto the date of deposit with the Registrar.

IV. It shall be open to the Registrar to make such periodical claims on appropriate proof by claimants on the lines stated above.

V. He will devise the mechanics of processing the claims as best as he may and, in the event of dispute, may refer to the High Court for its decision of such disputes, *if he thinks it necessary*. Otherwise, he may dispose of the objections finally.

VI. If any further directions regarding the mechanics of the claim of refund or otherwise are found necessary from this Court, the High Court will report about such matter to this Court and orders made thereon will bind the parties.

VII. If parties eligible for repayment of amounts do not claim within one year from today the Registrar will not entertain any further claims. It will be open to such parties to pursue their remedies for recovery for any sums that may be due to them.

VIII. Each State Marketing Board will deposit within 10 days from today a sum of Rs. 5,000/- before the Registrar for the preliminary expenses of publicity and other incidentals for the implementation of the directions given above. Any unexpended amount, at the end of one year, will be repaid to the respective State Marketing Board.

IX. We further direct that the unclaimed amounts, if any, shall be permitted to be used by the respective Marketing Committees for the purposes falling within the statute as interpreted by this Court in the CA No. 1083/77.

A These appeals and writ petitions are disposed of on the above lines, the winners being both the sides before us, the invisible small consumers and above all, justice, equity and good conscience to the inarticulate community, which is the functional triumph of law in action within hailing distance of each other.

B We wind up with a word of satisfaction that each one has had his meed and in recognition thereof we direct the parties to bear their own costs.

N.V.K.