Kewal Krishan Puri and Another

Vs

State of Punjab and Another

Civil Appeal No. 1083 of 1977

M/s. Bharat Ice and General Mills

Vs

State of Punjab

Civil Appeal No. 1616 of 1978

M/s. Sangha Gupta Rice and General Mills Etc. and Others

Vs

State of Punjab

Writ Petitions Nos. 4436, 4470, 4472, 4481, 4485, 4564, 4420, 4450, 4460, and 4484 of 1978

M/s. Prahlad Rai Dwarka Dass and Others

Vs

State of Haryana and Others

Civil Appeals Nos. 1700-1761 of 1978

M/s. Sharda Cotton Ginning and Pressing Factory and Others

Vs

State of Haryana and Others

Civil Appeals Nos. 1762-1763 of 1978

M/s. Hans Raj and Brothers

Vs

State of Haryana and Others

Civil Appeal No. 1626 of 1978

Mata Deen Suresh Chand

Vs

State of Haryana and Others

Civil Appeal No. 1627 of 1978

M/s. Rathi Brothers and Others

Vs

State of Haryana and Others

Writ Petitions Nos. 4420, 4450, 4460 and 4485 of 1978

(CJI Y. V. Chandrachud, P. N. Bhagwati, R. S. Pathak, N. L. Untwalia, Syed M. Fazal Ali JJ)

04.05.1979

JUDGMENT

UNTWALIA, J. –

1. In these groups of civil appeals and writ petitions, broadly speaking, the question which falls for determination is the validity of certain provisions of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961), hereinafter referred to as the Act, and the Rules framed by the States of Punjab and Haryana under the said Act as also the validity of the fixation of market fees from time to time by the various Market Committees in the States aforesaid under the direction of the Punjab State Agricultural Produce Marketing Board and the Haryana State Agricultural Produce Marketing Board. All these cases have been heard together and are being disposed of by a common judgment.

2. In the erstwhile composite State of Punjab the Act was passed in the year 1961 to consolidate and amend the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in the State. Under Section 3 of the Act the State Agricultural Marketing Board was constituted for the entire area of the composite State, which later, in the year 1966 came to be bifurcated into the States of Punjab and Haryana. Under the various provisions of the Act, which will be noticed shortly hereinafter, market areas and market yards were declared putting restrictions on the traders to carry on their trade under a licence granted by the various Market Committees established and constituted in accordance with Sections 11 and 12, within the specified boundaries of areas. The traders were required to take out licences on payment of a licence fee. Under Section 23 of the Act a Market Committee was required and authorised to levy an ad valorem basis fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding the rate mentioned in Section 23 from time to time for every one hundred rupees.

3. In the composite State of Punjab and even after the bifurcation of the States for about a period of three years the maximum rate of market fee which could be levied under Section 23 was 50 paise for every one hundred rupees. Various Market Committees levied a fee of 50 paise per hundred rupees and no dealer made any murmur or grievance of it. In the bifurcated State of Punjab by Act 25 of 1969 the rate of 50 paise was raised to Rs. 1. It was further raised to Rs. 1.50 by Act 28 of 1973. Thereafter by Ordinance 4 of 1974 which was replaced by Act 13 of 1974 the rate was raised to Rs. 2.25. Several dealers filed a number to writ petitions in the High Court of Punjab and

Haryana challenging the increase in the rate of market fee from time to time, the last one being by Act 13 of 1974. Similarly in the State of Haryana the rate of 50 paise was raised to Rs. 1 by Haryana Amendment Act 28 of 1969. It was further raised to Rs. 1.50 by Act 21 of 1973. By Ordinance 2 of 1974 which was replaced by Act 17 of 1974 in the State of Haryana the fee was raised to Rs. 2 for every one hundred rupees, as against the rise of Rs. 2.25 in the State of Punjab. Several dealers of the State of Haryana also challenged in the High Court the levy and increase of market fee from time to time. All the writ petitions were heard together. The increase and levy of fee up to Rs. 2 by the various Market Committees in the State of Haryana was upheld and the writ petitions of the Haryana dealers were dismissed while those of the Punjab dealers were allowed and the increase of rate brought by Ordinance 4 and Act 13 of 1974 to the extent of Rs. 2.25 was struck down. This decision of the High Court is reported in M/s. Hanuman Dall and General Mills, Hissar v. State of Haryana (AIR 1976 P & H 1 : ILR (1976) 1 Punj 807). The date of the decision is November 8, 1974. In Punjab by Amendment Act 14 of 1975 Section 23 of the Act was again amended authorising the imposition of market fee at a rate not exceeding Rs. 2.20 per hundred rupees. Telegraphic instructions were issued by the Punjab Board to the various Market Committees directing them to charge Rs. 2 only with effect from August 23, 1975 after the passing of the Act 14 of 1975 on August 8, 1975. The increases in the rates of fee, the last one being in August, 1975, were again challenged in the High Court. But the Full Bench which finally heard the writ petition upheld the increases by its judgment delivered on January 28, 1977, which is reported in Kewal Krishan Puri v. State of Punjab (AIR 1977 P & H 347 : 1977 Tax LR 2209 : ILR (1972) 2 Punj 72). Civil Appeal 1083 of 1977 has been preferred in this Court from the said judgment of the High Court.

4. Both in the State of Punjab and the State of Haryana the rate of market fee was further raised from Rs. 2 to Rs. 3. It was unsuccessfully challenged in the High Court. The dealers have preferred appeals from the judgments of the High Court as also filed writ petitions in this Court. In the State of Punjab the fee was raised to Rs. 3 by Ordinance 2 of 1978 which must have been replaced by an Act. The Ordinance was promulgated on April 28, 1978. Writ Petition No. 4436 of 1978 has been filed in this Court challenging the previous increases in the fee along with the last increase of Rs. 3. The High Court upheld it by its judgment dated May 18, 1978. Special leave Petition (Civil) No. 2768 of 1978 was preferred from this judgment. Writ Petition No. 3849 of 1978 was filed in the High Court by a large number of dealers, which was dismissed in limine by order dated September 18, 1978. Civil Appeal No. 1616 of 1978 arises out of this writ petition. Several other dealers have filed separate writ petitions also being Writ Petitions Nos. 4470, 4472, 4481, 4485 and 4564 of 1978 challenging the increase of market fee in the State of Punjab.

5. In the State of Haryana the rate of fee was raised from Rs. 2 to Rs. 3 with effect from September 5, 1977 by Ordinance 12 of 1977 replaced by Act 22 of 1977. The Haryana State Marketing Board directed all the Market Committees in that State to collect market fee at Rs. 3 with effect from September 5, 1977. A number of writ petitions were filed in the High Court challenging the said increase and the High Court dismissed all the writ petitions by its judgment dated August 30, 1978. Civil Appeals Nos. 1700 to 1773 of 1978 and Civil Appeals Nos. 1626 and 1627 of 1978 are from the judgment of the High Court dated August 30, 1978. The said increase has also been challenged by filing writ petitions in this Court and they are Writ Petitions Nos. 4420, 4450, 4460 and 4484 of 1978.

6. Although by now there is a catena of cases of this Court pointing out the difference between "tax" and "fee" with reference to the constitutional provisions and otherwise also, the problem before us has presented some new angles and facets. We, therefore, think it advisable and necessary to review

many of the earlier decisions to pin-point the precise difference as far as practicable in order to resolve the rival contentions of the parties. The arguments of the learned counsel for the parties whenever thought necessary would be referred to at the appropriate places hereinafter in this judgment.

7. Clause (2) of Article 110 and clause (2) of Article 199 of the Constitution, the former occurring in the Chapter of Parliament and the latter in relation to the State Legislature, are in identical terms as follows :

> A Bill shall not be deemed to be a Money Bill by reason only that it provides ... for the demand or payment of fees for licences or fees for services rendered ...
>
> The Constitution, therefore, clearly draws a distinction between the imposition of a tax by a Money Bill and the impost of fees by any other kind of Bill. So also in the Seventh Schedule both in List I and List II a distinction has been maintained in relation to the entries of tax and fees. In the Union List entries 82 to 92-A relate to taxes and duties and entry 96 carves out the legislative field for fees in respect of any of the matters in the said list except the fees taken in any court. Similarly in the State List entries relating to taxes are entries 46 to 63 and entry 66 provides for fees in respect of any of the matters in List II but not including fees taken in any court. Entry relating to fees in List II is entry 47. Our Constitution, therefore, recognises a different and distinct connotation between taxes and fees.

8. The leading case of this Court which has been referred and followed in may subsequent decisions is the case of Commissioner, Hindu religious endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt ((1954) SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335). The point decided therein was that the provision relating to the payment of annual contribution contained in Section 76(l) of the Madras Hindu Religious and Charitable Endowments Act, 1951 is a tax and not a fee and so it was beyond the legislative competence of the Madras State Legislature enact such a provision. The meaning given to word "tax" by Latham, C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board (60 CLR 263) has been quoted with approval at page 1040 and has been often repeated in many other decisions. Generally speaking a fee is defined to be a charge for a special service rendered to individuals by some governmental agency. A question arises-"special service" rendered to whom, which kind of individuals ? Mr. V. M. Tarkunde who appeared for the Haryana Marketing Board stressed the argument that service rendered must be correlated to those on whom the ultimate burden of the fee falls. In our opinion this argument is neither logical nor sound. The impost of fee and the liability to pay it is on a particular individual or a class of individuals. They are under the obligation to submit accounts, returns or the like to the authorities concerned in cases where quantification of the amount of fees depends upon the same. They have to undergo the botherations and harassments, sometimes justifiably and sometimes even unjustifiably, in the process of discharging their liability to pay the fee. The authorities levying the fee deal with them and realize the fee from them. By operation of the economic laws in certain kinds of impositions of fee the burden may be passed on to different other persons one after the other. A few lines occurring at page 119 in the judgment of the Privy Council in the case of Attorney-General for British Columbia and Esquimalt v. Nansimo Railway Company ((1950) AC 87) may be quoted with advantage. They are as follows :

> It is probably true of many forms of tax which are indisputable direct that the assessee will desire, if he can, to pass the burden of the tax on the shoulders of

> another. But this is only an economic tendency. The assessee's efforts may be conscious or unconscious, successful or unsuccessful; they may be defeated in whole or in part by other economic forces. This type of tendency appears to their Lordships to be something fundamentally different from the "passing on" which is regarded as hall-mark of an indirect tax.

The authorities, more often than not, almost invariably, will not be able to know the individual or individuals on whom partly or wholly the ultimate burden of the fee will fall. They are not concerned to investigate and find out the position of the ultimate burden. It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payer of the fee and what proportion went to others. But generally and broadly speaking it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers.

9. We may now extract some very useful and leading principles from the decision of this Court in Shirur Mutt ((1954) SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335) 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 that ordinarily there are two classes of cases where government imposes 'fees' 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 case "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 assessment, fees and taxes.

Finally at page 1044 the striking down by the High Court of the imposition of fee under Section 76 of the Madras Act was upheld on the ground :

> It may be noticed, however, that the contribution that has been levied under Section 76 of the Act has been made to depend upon the capacity of the payer and not upon the quantum of benefit that is supposed to conferred on any particular religious institution.

Benefit conferred on any particular religious institution would have been undoubtedly benefit conferred on the payer of the fee.

10. After the decision of this Court in Shirur Mutt case ((1954) SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335), Section 76 of the Madras Act was amended. The effect of the amendment came to be considered by this Court in the case of H. H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore ((1963) Supp SCR 302 : AIR 1963 SC 966). Pointing out the various differences between the earlier law and the amended one at pages 320-21 the imposition of fee was upheld.

11. In two other cases of this Court following the ratio of Shirur Mutt decision ((1954) SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335) the imposition of fee was upheld, vide Mahant Sri Jagannath Ramanuj Das v. State of Orissa ((1954) SCR 1046 : AIR 1954 SC 400 : 1954 SCJ 329) and Ratilal Panachand Gandhi v. State of Bombay ((1954) SCR 1055 : AIR 1954 SC 388 : 1954 SCJ 480).

12. We now proceed to consider some more decisions of this Court in which apparently some different phrases were used for explaining the meaning of the word 'fee' and its distinction from 'tax'. Both sides placed reliance upon those decisions. But if the phrases are understood in the context they were used and with reference to the facts of those cases it would be noticed that the leading principle has not basically undergone any change.

13. In the case of Hingir-Rampur Coal Co. Ltd. v. State of Orissa ((1961) 2 SCR 53 : AIR 1961 SC 459) the challenge was to the cess levied by the Orissa Mining Areas Development Fund Act, 1952. The petitioners' stand in the first instance was that the cess levied was not a fee but a duty of excise on coal and hence beyond the competence of the State legislature. Alternatively they contended that even if it was a fee it was beyond the competence of the State legislature for some other reasons not necessary to be mentioned here. The cess imposed was upheld as a 'fee' relatable to entry 23 of List II read with entry 66. In other words it was upheld as a 'fee' in respect of regulation of mines and mineral development. Gajendragadkar, J., as he then was, delivered the judgment on behalf of the majority and discussed the point at some length. At page 545 are to be found a few words which go directly against the contention of Mr. Tarkunde. Says the learned Judge : "... a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it". Mr. Tarkunde, however, relied upon a passage at the same page which runs thus :

> If specific services are rendered to a specific area or to a specific class of persons or

> trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee.

The above passage does not mean that the service rendered is unconnected with or not meant for the payer of the fee. As pointed out earlier, service rendered to an institution like a Math is a service rendered to the payer of the fee. Similarly services rendered to a specific area or to a specific class of trade or business in any local area must mean, and cannot but mean, that it is for the special benefit of the person operating in that area. The service rendered was to the mining area for the benefit of the mine-owners of that area. The area or trade does not pay the fee nor does it get the benefit in vacuum. The fee is paid by the person who is liable to pay it and service to the payer does not mean any personal or domestic service to him but it means service in relation to the transaction, property or the institution in respect of which he is made to pay the fee. Says the learned Judge at page 549 :

> It is true that when the legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy.

14. At pages 549-50 in the decision of Hingir-Rampur Coal Co. Ltd. ((1961) 2 SCR 53 : AIR 1961 SC 459) reference has been made in passing to the decision of the Australian High Court in Parton v. Milk Board (Victoria) (80 CLR 229). The majority which, amongst others, included Dixon, J., held the purported levy to be invalid because it was the imposition of a duty of excise, there being no element of quid pro quo to the person on whom the levy had been imposed. Since a few lines from the judgment of Dixon, J., occurring at pages 258-259 will be very helpful in tackling with the problem we are faced with, we may quote them here. They are as follows :

> It is an exaction for the purposes of expenditure out of a Treasury fund. The expenditure is by a government agency and the objects are governmental. It is not a charge for services. No doubt the administration of the Board is regarded as beneficial to what may loosely be described as the mild industry. But the Board performs no particular service for the dairyman or the owner of a milk depot for which his contribution may be considered as fee or recompense .... On the other hand it is a trading tax. "Customs and excise duties are, in their essence, trading taxes, and may be said to be more concerned with the commodity in respect of which the taxation is imposed than with the particular person from whom the tax is exacted." (Attorney-General For British Columbia v. Kingoome Navigation Co., (1934) AC 45, 59)

At page 554 is to be found the final conclusion of Gajendragadkar, J., which is crux of the matter. It runs :

> Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of quid pro quo in the scheme, the cess collected is constituted into a specific fund and it has not become a part of the consolidated fund, its application is regulated by a statute and is confined to its purposes, and there is a definite correlation between the impost and the purpose of the Act which is render service to the notified area.

15. In the case of Corporation of Calcutta v. Liberty Cinema ((1965) 2 SCR 477 : AIR 1965 SC 1107) the respondent was charged by the Calcutta Corporation a very high licence fee assessed according to the sanctioned seating capacity of the cinema house. The High Court quashed the imposition. In appeal to the Supreme Court the stand of the appellant Corporation was that the levy was a tax and section 548(2) of the Calcutta Municipal Act did not suffer from the vice of excessive delegation; while the respondent cinema contended that the levy was a fee and had to be justified as being imposed in return for services to be rendered. Alternatively the respondent submitted that if it was a tax it was invalid as it amounted to an illegal delegation of legislative functions. The majority view was expressed by Sarkar, J., as he then was, and the impost was upheld as a tax. In the minority opinion delivered by Ayyangar, J., it was held that even in the case of a licence fee a correlation between the fee charged and the service rendered was necessary to established. It was, therefore, held to be a tax but invalidly imposed under a power suffering from the vice of unconstitutional legislative delegation. In the cases before us the licence fees charged from the various traders in the market areas are not excessive and have not been attacked on any ground whatsoever. We are, therefore, not concerned to find out whether an element of quid pro quo is necessary in cases of all kinds of licence fees. Some licences are imperative to be taken only by way of regulatory measure, some are in the nature of grant of exclusive right or privilege of the State, such as, excise cases noticed by this Court in the case of Har Shankar v. Dy. Excise & Taxation Commr ((1975) 3 SCR 245 : (1975) 1 SCC 737). Some may be cases of licence fees where element of quid pro quo is necessary to be established. But what is important to be pointed out from the case of Liberty Cinema ((1965) 2 SCR 477 : AIR 1965 SC 1107) is that in the case of a fee of the kind with which we are concerned in this case the element of quid pro quo must be established. Otherwise the imposition of fee will be bad. In the majority opinion, it is stated at p. 490 :

> The conclusion to which we then arrive is that the levy under Section 548 is not a fee as the Act does not provide for any services of special kind being rendered resulting in benefits to the person on whom it is imposed. The work of inspection done by the Corporation which is only to see that the terms of the licence are observed by the licensee is not a service to him. No question here arises of corelating the amount of the levy to the costs of any service. The levy is a tax.

Ayyangar, J., also said at page 526 that there being no correlation between the fee charged and the service rendered the impugned levy was not authorised.

16. Mr. Tarkunde at one stage of the hearing endeavoured to submit, although the Solicitor-General appearing for the State of Punjab and Mr. H. L. Sibbal for the Punjab Marketing Board had made no such submissions, that the impugned impost could be justified as a tax. There was no lack of

legislative competence in imposing a tax of the kind under issue. Counsel further submitted that in almost all the cases in absence of quid pro quo the levy was held to be bad and unsustainable as a tax for want of legislative competence. On the other hand learned counsel for the appellants and the petitioners M/s. A. K. Sen, Anil B. Divan, B. S. Malik and A. K. Goel pointed out that at no point of time the respondent sought to justify the impost as a tax obviously because it would have then violated the provisions of the sales tax law which did not authorise the imposition of such a tax beyond a certain percentage, and as a tax it could not be but a sales tax. Finally this controversy was not pursued when we pointed out that at no stage the question was raised and no attempt at any stage was made to justify it as a tax. Obviously the Market Committees could not be competent under the Act to impose any tax on the sale and purchase of the agricultural produce in the market nor did it ever purport to do so. The nature of the impost and the power under which it was levied squarely and uniformly remained within the realm of the fee and fee of the kind which could not but be sustained on the establishment of the element of quid pro quo between the authority charging the fee and its payer.

17. The next case to be considered is the decision of this Court in Nagar Mahapalika, Varanasi v. Durga Das Bhattacharya ((1968) 3 SCR 374 : AIR 1968 SC 1119 : (1968) 2 SCJ 836) in which it was held that the annual licence fee charged from the rickshaw owners and the drivers by the Varanasi Municipal Board could be justified only on the basis of the element of quid pro quo. The fee was held to ultra vires and illegal because after excluding certain items of expenditure that balance did not constitute sufficient quid pro quo for the amount of the licence fee charged. It could not be sustained as a tax. Certain major items of expenditure incurred by the Municipal Board were attributable to the discharge of its statutory duty and, therefore, at page 386 it was said by Ramaswami, J. : "It is manifest that the licence fee cannot be imposed for reimbursing the cost of ordinary municipal services which the Municipal Board was bound under the statute to provide to the general public". The expenditure incurred by the Municipal Board for the benefit of the licensees constituted 44 per cent of the total income of the Municipal Board and hence it was held that there was no sufficient quid pro quo established in the circumstances of the case. In Delhi Cloth & General Mills Co. Ltd. v. Chief Commissioner, Delhi ((1970) 2 SCR 348 : (1970) 2 SCC 172) the High Court had found that 60 per cent of the amount of licence fees charged from the mills was actually spent on services rendered to the factory owners. On that basis sufficient quid pro quo was found to exist and the impost was upheld by this Court also. We may, however, add that the rule of 60 per cent cannot be of universal application. It is not a static rule. The cases of licence fees are, generally speaking, on some different footing. There is a substantial element of regulatory measure involved in them. Over and above that a good portion of the fee, may be in the neighbourhood of 60 per cent or more, must be correlated to the service rendered to the person from whom the fee is charged. But there may be cases where, as in the instant one, the licence fee charged by way of regulatory measure is not exorbitant or excessive. But the other kind of fee charged has got to be justified on the ground of existence of sufficient quid pro quo between the payer of the fee and the authority charging it. In such a case from a practical point of view it may be difficult to find out with arithmetical exactitude as to what amount of fee has gone in incurring the expenditure for the services. But, broadly speaking, a good and substantial portion of it must be shown as being spent for the service rendered.

18. Now we come to the decision of this Court in Indian Mica & Micanite Industries Ltd. v. State of Bihar ((1971) Supp SCR 319 : (1971) 2 SCC 236) wherein Hegde, J., speaking on behalf of a Constitution Bench of this Court, reviewed all earlier cases and pointed out at page 323 (SCC p. 239, para 7) that : "While a tax invariably goes into the consolidated fund, a fee is earmarked for the specified services in a fund created for the purpose". Concludes the learned Judge at pages 324-25

(SCC p. 241, para 11) :

> From the above discussion it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable correlationship with the service rendered by the government. In other words the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude.

Difference between a licence to regulate a trade, business or profession in public interest and in a case where a government which is the owner of a particular property may grant permit or licence to someone to exploit that property for his benefit for consideration has been pointed out at page 325. The State of Bihar had failed to place materials in the High Court to establish the reasonable correlationship between the value of the services rendered with the fee charged. For some special reasons the case was remanded. But one thing may be pin-pointed from a passage occurring at page 327 (SCC p. 242) that the expenses of maintaining an elaborate staff by the Excise Department were not only for the purposes of ensuring that denaturing is done properly by the manufacturer but also for the purpose of seeing that the subsequent possession of denatured spirit in the hands either of a wholesale dealer or retail seller or any other licensee or permit-holder is not misused by converting the denatured spirit into alcohol fit for human consumption and thereby evade payment of heavy duty. But the appellant before the Supreme Court or other similar licensees had nothing to do with the manufacturing process. They were only the purchasers of manufactured denatured spirit. In that context it was said (SCC p. 242, para 17) : "Hence the cost of supervising the manufacturing process or any assistance rendered to the manufacturers cannot be recovered from the consumers like the appellant". When we come to discuss even from the admitted facts in relation to the levy of impugned market fees, we shall point out that the authorities concerned as also the High Court laboured under the impression that the fee realized from the traders in the market could be spent for any purpose of development of agriculture by providing all sorts of facilities to the agriculturists including the facilities of link roads for the purpose of transport of their agricultural produce to the markets howsoever distant these link roads may be from the market proper on any other purchasing centre in the market.

19. In case of Secretary, Government of Madras, Home Department v. Zenith Lamp & Electrical Ltd. ((1973) 2 SCR 937 : (1973) 1 SCC 162 : 1973 SCC (Tax) 203) the character of court fees came up for consideration as to whether they are taxes or fees or whether they are sui generis. Although after referring to the various entries of the Seventh Schedule in the different lists it was noticed that court fees were not taxes and they were covered by separate entries of fees exclusively meant for courts, yet the broad principles of the requirement of quid pro quo were made applicable in the cases of court fees also. Even so, Sikri, C.J., speaking for the Court pointed out at page 982 (SCC p. 170, para 31) : "But even if the meaning is the same, what is 'fees' in a particular case depends on the subject-matter in relation to which fees are imposed". The learned Chief Justice further observed at the same page : "In other words, it cannot tax litigation, and make litigations pay, say for road building or education or other beneficial schemes that a State may have. There must be a broad correlationship with the fees collected and the cost of administration of civil justice". If the view taken by the High Court in the market fee cases were to hold good, then pushing it to the logical conclusion one will have to say that giving all sorts of facilities to the litigants for their travel from the village homes to the courts would also be a service to them. In cases of court fees one has to take a broad view of the matter to find out whether there exists a broad correlationship with the fees collected and the cause of administration of justice. Even mixing the amount of court fee collected

with the general fund will be permissible. It may not be kept in a separate fund or earmarked separately. The very fact that in relation to court fees there are separate entries in the Seventh Schedule e.g. entry 77 of List I and entry 3 of List II, indicates that even though the character of the levy is not very much different from that of the general types of fees, in the matter of approach for finding out the elements of quid pro quo quite a different test has got to be applied, as indeed, to some extent it has to be applied in many kinds of fees depending upon the totality of the facts and circumstances. Each case has to be judged from a reasonable and practical point of view for finding out the element of quid pro quo.

20. In the case of State of Maharashtra v. Salvation army, Western India Territory ((1975) 3 SCR 475 : (1975) 1 SCC 509 SCC (Tax) 145) Mathew, J., speaking for the Court after resume of some earlier decisions of this Court upheld to a certain extent the fee charged under the Bombay Public Trusts Act, 1950 on the ground that taking precautionary measures to see that Public Trusts are administered for the purpose intended by the authors of the trust and exercising control and supervision with a view to preserve the trust properties from being wasted or misappropriated by trustees are certainly special services for the benefit of the trust. Thus special benefits for the payer of the fee were established, as benefits to the trust were benefits to the trustees who are required to pay the fees out of the trust income. But then it was further pointed out that in spite of the accumulation of the surplus from 1953 onwards the authorities went on charging the fee of 2% which has assumed the character of a tax. After giving certain guide-lines the levy was declared to be without the authority of law after March 31, 1970.

21. Observations of one of us (Chandrachud, J., as he then was), speaking for the Court in the case of Government of A.P. V. Hindustan Machine Tools Ltd. ((1975) Supp SCR 394 : (1975) 2 SCC 274) at page 401 are quite opposite and may be usefully quoted here : (SCC p. 282, para 22)

> One cannot take into account the sum total of the activities of a public body like a Gram Panchayat to seek justification for the fees imposed by it. The expenses incurred by a Gram Panchayat or a Municipality in discharging its obligatory functions are usually met by the imposition of a variety of taxes. For justifying the imposition of fees the public authority has to show what services are rendered or intended to be rendered individually to the particular person on whom the fee is imposed. The Gram Panchayat here has not even prepared an estimate of what the intended services would cost it.

The levy of house tax was held to be lawful but the levy of permission fee had to be struck down as being illegal. In the instant case also it would be noticed that the Market Committees and the Market Boards assumed to themselves the liberty of utilizing and spending the realizations from market fees to considerable extent, as if it was a tax, although in reality it was not so. In Municipal Council, Madurai v. R. Narayanan ((1976) 1 SCR 333 : (1975) 2 SCC 497 : 1975 SCC (Tax) 386) endeavour was made as in the case of Nagar Mahapalika, Varanasi ((1968) 3 SCR 374 : AIR 1968 SC 119 : (1968) 2 SCJ 836) to justify the impost by the Municipal Council as a tax. Krishna Iyer, J., speaking for the court repelled that argument and since the impost could not be justified as fee the resolution of the Municipal Council was held to be invalid. In Chief Commissioner, Delhi Cloth v. Delhi Cloth and General Mills Co. Ltd. (AIR 1978 SC 1181 : (1978) 2 SCC 367 : 1978 SCC (Tax) 108) the question for consideration was whether the registration fee charged on the document satisfied the two conditions of fee which were enumerated in following language : (SCC p. 368-369, para 3)

> (i) there must be an element of quid pro quo that is to say, the authority levying the

> fee must render some service for the fee levied however remote the service may be;
>
> (ii) that the fee realised must be spent for the purposes of the imposition and should not form part of the general revenues of the State.

The second condition was found not to be fulfilled and hence the impost was held to be bad. We would like to point out that the first condition is rather couched in too broad and general a language. Rendering some service, however remote the service may be, cannot strictly speaking satisfy the element of quid pro quo required to be established in cases of the impost of fee. But then, as pointed out, in some of the cases noticed earlier the registration fee has been taken to stand on a different footing altogether. In the case of such a fee the test of quid pro quo is not to be satisfied with such direct, close or proximate correlationship as in the case of many other kinds of fees. By and large registration fee is charged as a regulatory measure.

22. The history of the marketing legislation was traced by Venkatarama Aiyar, J. in the case of P. P. Kutti Keya v. State of Madras (AIR 1954 Mad 621 : (1954) 1 MLJ 117). A number of writ petitions were disposed of by one judgment delivered on July 10, 1953. Appeals in some of these writ petitions were brought to this Court in the case of M. C. V. S. Arunachala Nadar v. state of Madras ((1959) Supp 1 SCR 92 : AIR 1959 300 : 1959 SCJ 297). Although the courts were concerned mainly with the question of the constitutional validity of the marketing law which is beyond any pale of challenge now, it would be interesting to note that the Madras High Court had taken the view that the funds raised from the merchants for construction of a market in substance amounted to an exaction of a tax. We are not going to approve such a narrow view in relation to the application of the amounts realized by market fees, yet we are not going to make it too broad either, so as to take within its sweep any remote service which may ultimately or tangentially be of some benefit of the grain trade in the market. Subba Rao, J., as he then was, speaking for the Court in Arunachala Nadar case ((1959) Supp 1 SCR 92 : AIR 1959 SC 300 : 1959 SCJ 297) traced the history of the marketing legislation at pages 95-96 and pointed out at page 98 :

> The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated markets by eliminating middlemen and bringing face to face the producer and buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings.

At page 102 is to be fund some discussion with regard to the licence fees which, says the learned Judge, "do not appear to be so high as to cripple the trader's business". The question of charge of the market fee apart from the licence fee did not fall for consideration in this case. The Bombay Marketing Statute came to be considered in the case of Mohammad Hussain Gulam Mohammad v. State of Bombay ((1962) 2 SCR 659 : AIR 1962 SC 97). Wanchoo, J., as he then was, speaking for the Court repelled the attack at page 669 on section 11 of the Bombay Act which gives power to the Market Committee subject to the provisions of the rules and subject to such maxima as may be prescribed to levy fees on the agricultural produce bought and sold by licensees in the market area. The attack was that the impost was in the nature of sales tax. It was repelled on the ground that :

> Now there is no doubt that the Market Committee which is authorised to levy this fee renders services to licensees, particularly when the market is established. Under the circumstances it cannot be held that the fee charged for services rendered by the Market Committee in connection with the enforcement of the various provisions of

> the Act and the provisions for various facilities in the various markets established by it, is in the nature of sale tax. It is true that the fee is calculated on the amount of produce bought and sold but that in our opinion is only a method of realising fees for the facilities provided by the committee.

Since the market was not found to have been properly established it was held that the Market Committee could not enforce any of the provisions of the Act or the Rules or the bye-laws. therefore, the question of the rate of market fee did not fall for consideration. The Bihar statute came up for consideration of this Court in the case of Lakhan Lal v. state of Bihar ((1968) 3 SCR 534 : AIR 1968 SC 1408 : (1969) 1 SCJ 247). Bachawat, J., upheld the validity of the various actions taken by the State Government under the Act and the Rules and finally said at page 539 :

> But there is no material on the record to show that the government acted unreasonably or that the market is so wide that the sale and purchase of agricultural produce within it cannot be effectively controlled by the Market Committee or that the growers within the area cannot conveniently bring their produce to the market yards.

In contrast in the present case the whole of the State has been divided into different market areas, although the principal market yard is only one in one area with some sub-market yards appertaining to it. We do not mean to suggest in pointing out this difference that the declaration of the whole market area is unreasonable. But the market fee has to be realized from the traders on the purchase of the agricultural produce in the market which consists of the market yards and some purchasing centres established at some other places in the area due to the urgency or exigency of the situation. Such a fee cannot be utilised for the purpose of rendering all sorts of facilities and services for the benefit of the agriculturists throughout the area. It may be very necessary to render such services to the agriculturists; rather, they must be rendered. But the laudable end in itself cannot justify the means to achieve that end if the means have got no sanction of the law. In the Bihar case ((1968) 3 SCR 534 : AIR 1968 SC 1408 : (1969) 1 SCJ 247) it was found at page 540 :

> The Market Committee has appointed a dispute sub-committee for quick settlement of disputes. It has set up a market intelligence unit for collecting and publishing the daily prices and information regarding the stock, arrival and despatches of agricultural produce. It has provided a grading unit where the techniques of grading agricultural produce is taught. The contract form for purchase and sale is standardised. The provisions of the Act and the Rules are enforced through inspectors and other staff appointed by the Market Committee. The fees charged by the Market Committee are correlated to the expenses incurred by it for rendering these services. The market fee 25 naya paise per Rs. 100 worth of agricultural produce and the licence fees prescribed by Rules 71 and 73 are not excessive. The fees collected by the Market Committee form part of the market committee fund which is set apart and earmarked for the purposes of the Act. There is sufficient quid pro quo for the levies and they satisfy the test of "fee" as laid down in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt ((1954) SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335).

It would be noticed that even the rate of 25 paise per hundred rupees had to satisfy all these tests. In the instant cases we are concerned with the rates of market fee which are much higher than the Bihar rate. Correlative service also, therefore, must satisfy the tests of rendering more services in

the market area. The fund cannot be permitted to be utilised for an end, such as, augmenting the agricultural produce etc., if it has no reasonably direct or close connection with the services rendered to the payers of the fee.

22. 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 expended 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 purposes 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 services 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.

24. In the light of the principles culled out and enunciated above, we now proceed to examine the relevant provisions of the Act and the Rules framed thereunder as in force in the States of Punjab and Haryana. We shall examine the relevant provisions with reference to the Punjab Act and the Rules and will only refer to those of Haryana when some difference of some significance or consequence has got to be pointed out.

25. Under clause (f) of Section 2 of the Act "dealer" is defined to mean any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the

purchase, sale, storage or processing of agricultural produce notified under sub-section (1) of Section 6 or purchases, sells, stores or processes such agricultural produce.

Clause (hh) inserted by Punjab Act 40 of 1976 says :

> "licensee" means a person to whom a licence is granted under Section 10 and the rules made under this Act and includes any person who buys or sells agricultural produce and to whom a licence is granted as Kacha Arhtia or commission agent or otherwise but does not include a person licensed under Section 13.

As per clause (i) :

> "market" means a market established and regulated under this Act for the notified market area, and includes a market proper, a principal market yard sub-market yard.

The definition of "market proper" is to be found in clause (k) to mean

any area including all lands with the buildings thereon, within such distance of the principal market or sub-market yard, as may be notified in the official gazette by the State Government, to be a market proper.

> "Notified market area" in clause (l) means any area under Section 6 and clause (n) provides :

> "principal market yard" and "sub-market yard" mean an enclosure, building or locality declared to be a principal market yard and sub-market yard under Section 7.

As already stated the State Agricultural Marketing Board is constituted under Section 3 and while enumerating the powers and duties of the Board it is provided in sub-section (9) that "the Board shall exercise superintendence and control over the committees". The provision of "Declaration of notified market area" is to be found in Section 6(1) which empowers the State Government to declare the area notified under Section 5 or any portion thereof to be a notified market area for the purposes of the Act in respect of the agricultural produce notified under Section 5 or any part thereof. As already pointed out the whole of the State was intended to be divided in various market areas and was also declared as such under Section 6. Under sub-section (3) of Section 6 after the declaration of the notified market area no person can establish or continue any place for the purchase, sale, storage and processing of the agricultural produce except under a licence granted in accordance with the provisions of the Act, the Rules and the bye-laws. A dispute arose between the parties before us as to whether the licence is granted for the whole of the area or for particular places therein. On examining Form B in the Rules meant for grant of licence under Section 10 we find that the licence is granted for one or more places of business specified in column 6 situated in a particular notified market area named at the top of the licence. There will be no sense in specifying the place of business in the licence if the licensee is to be permitted to establish his place of business anywhere in a notified market area which is too big and extensive for the control and supervision of a particular Market Committee. Market yards are declared under Section 7 and for each notified market area there can be one principal market yard and one or more sub-market yards as may be necessary. The marginal note of Section 8 is : "No private market to be opened in or near places declared to be markets". There is some difference in the provisions of the Act as introduced by the Haryana amendment in relation to the establishment of notified market area, declaration of market yards and the inhibition on any person to establish or continue any place for the purchase "sale,

storage and processing of any agricultural produce". There was also a controversy before us as to the exact interpretation of the language of the two statutes in relation to such inhibition. But for the purposes of the cases before us it is not necessary to further encumber the judgment by attempting to reconcile by harmonious construction the various provisions of the two Acts in relation to this matter. Suffice it to say that there is no special provision in the statute for establishment of markets or markets proper as per the definition contained in clauses (i) and (k) of Section 2 of the Act, yet it is reasonable to assume that the intention of the legislature is to constitute the market yards as the market proper and ordinarily and generally the market would be the same but may include some other places where transactions of purchase of agricultural produce by the traders from the producers has been allowed in order to avoid rush in the precincts of the market proper. But one thing is certain that the whole of the market area in no sense can be equated with market or market proper. Nobody can be allowed to establish a purchasing centre of his own at any place he likes in the market area without there being such a permission or authority from the Market Committees. After all the whole object of the Act is the supervision and control of the transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. The supervision and control can be effective only in specified localities and places and not throughout the extensive market area.

26. We have already pointed out that there is no separate notification or declaration establishing a market or market proper. But Rule 24(1) in both the States framed under the Act provides that : "All agricultural produce brought into the market for sale shall be sold by open auction in the principal or sub-market yard". This also indicates that market is generally the principal and sub-market yards. The benefit of market fee, therefore, has to be correlated with the transactions taking place at the specified place in the market area and not in the whole of the area.

27. Sections 9 to 10-A deal with the procedure of taking out licences. The State Government is empowered under Section 11 to establish a Market Committee for every notified market area and to specify its headquarters. The question of constitution of committees is dealt with in Section 12. The duties and powers of a Market Committee are enumerated in Section 13. It would be seen from clause (a) of sub-section (1) of Section 13 that it is the duty of the committee to establish a market in the notified market area "providing such facilities for persons visiting it in connection with the purchase, sale, storage, weighment and processing of agricultural produce concerned as the Board may time to time direct". This also indicates that the committee is primarily concerned with providing facilities in the market for persons visiting it and in connection with the transactions taking place there.

28. Now we come to the most important section viz. Section 23. It reads as follows :

> A committee shall, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding three rupees for every one hundred rupees :
>
> Provided that -
>
> (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
>
> (b) a fee shall be leviable only on the parties to a transaction in which delivery is

actually made.

There is a slight variation in Section 23 as amended by Haryana Act 21 of 1973. Therein some market fee may be charged on the agricultural produce even brought for processing by licensees in the notified area. But we are not concerned with the charge of such a fee in any of these cases.

29. Rule 29 of the Punjab Rules says :

> (1) Levy and collection of fees on the sale and purchase of agricultural produce. - Under Section 23 a committee shall levy fees on the agricultural produce bought or sold by licensees in the notified market area at the rate to be fixed by the Board from time to time.
>
> Provided that no such fees shall be levied on the same agricultural produce more than once in the same notified market area. A list of such fees shall be exhibited in some conspicuous place at office of the committee concerned :
>
> # * * * * *##
>
> (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 of 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.
>
> The Haryana Rule is substantially the same.

30. Reading Section 23 along with Rule 29 it would be noticed that the power of the committee to levy fees is subject to the rules as may be made by the State Government. The fee is levied on ad valorem basis at a rate which cannot exceed the maximum mentioned in Section 23 by the legislature. But the power to fix the rate from time to time within the maximum limit has been conferred on the Board and the committee is merely bound to follow it. One of the arguments before us on behalf of the appellants and the petitioners was that it was the Board which fixed the rate of Rs. 2 first thereafter Rs. 3 per hundred rupees. The committee abdicated its function in this regard and, therefore, the levy of fee is contrary to the principle of law laid down by this Court in the case of State of Punjab v. Hari Krishan Sharma ((1966) 2 SCR 982 : AIR 1966 SC 1081 : (1967) 1 SCJ 724). But the distinction between the said case and the present one is that under the former there was no provision in Section 5(1) of the Punjab Cinemas (Regulation) Act of 1952 that the power of the licensing authority to grant licence was subject to any rule, the rule in its turn providing an overriding power in the State Government in the matter of grant of licence. The control of the government provided in sub-section (2) was of a limited kind. On the other hand Section 23 in express language controls the power of committee to levy fees subjects to the rules. The power given to the Board to fix the rate of market fees from time to time under Rule 29 is not ultra vires the provisions of the Act, as in our opinion sub-section (9) of Section 3 confers on the Board to exercise superintendence and control over the committees, which power, in the context and the scheme of the marketing law, will take within its ambit the power conferred on the Board under Rule 29(1).

31. It is further to be pointed 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 is it a tax on the transaction of purchase of sale. The levy is an impost on the buyer of the agricultural produce in the market in

relation to transactions of his purchase. The agriculturists are not required to share any portion of the burden of this fee. In case the buyer is not a licensee then the responsibility of paying the fees is of the seller who may realise the same from the buyer. But such a contingency cannot arise in respect of the transactions of sale by an agriculturist of his agricultural produce in the market to a dealer who must be a licensee. Nor was any such eventuality occurring in any of the cases before us brought to our notice. Probably such an alternative provision meant to be made for outside buyers who are not licensees when they buy the agricultural produce from or through the licensees. Anyway we are not concerned with that question.

32. Under Section 27(1) :

> All moneys received by a committee shall be paid into a fund to be called the Market Committee Fund and all expenditure incurred by the committee under or for the purposes of this Act shall be defrayed out of such fund, and any surplus remaining after such expenditure has been met shall be invested in such manner as may be prescribed.

Every Market Committee is obliged under sub-section (2)(a) of Section 27 to pay out of its fund to the Marketing Board as contribution such percentage of its income derived from licence fee, market fee and fines levied by the courts as specified in sub-clauses (i) and (ii). The purpose of this contribution as mentioned in sub-section (2)(a) is to enable the Board to defray expenses of the office establishment of the Board and such other expenses incurred by it in the interest of the committees in general. The income of almost all the Market Committees were lakhs of rupees per year and, therefore, each is required to pay 30 per centum of its income to the Board by virtue of the amendment brought about by Punjab Act 4 of 1978. Under Section 25 all receipts of the Board are to be credited into a fund to be called the Marketing Development Fund. Purposes for which the Marketing Development Fund may be expended are enumerated in Section 26 and the purposes for which the Market Committee Funds may be expended are catalogued in Section 28. We think we shall have to lead both the sections in full one by one. First we refer to Section 28, which runs as follows :

> Subject to the provision of Section 27, the Market Committee Funds shall be expended for the following purposes :
>
> (i) acquisition of sites for the market;
>
> (ii) maintenance and improvement of the market;
>
> (iii) construction and repair of buildings which are necessary for the purposes of the market and for the health convenience and safety of the persons using it;
>
> (iv) provision and maintenance of standard weights and measures;
>
> (v) pay, leave allowances, gratuities, compassionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents while on duty, medical aid, pension or provident fund of the persons employed by the committee.
>
> (vi) payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans;

(vii) collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the agricultural produce concerned;

(viii) providing comforts and facilities, such as shelter, shade parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads; culverts, bridges and other such purposes;

(ix) expenses incurred in the maintenance of the offices and in auditing the accounts of the committees;

(x) propaganda in favour of agricultural improvements and thrift;

(xi) production and betterment of agricultural produce;

(xii) meeting and legal expenses incurred by the committee;

(xiii) imparting education in marketing or agriculture;

(xiv) payments of travelling and other allowances to the members and employees of the committee, as prescribed;

(xv) loans and advances to the employees;

(xvi) expenses of and incidental to elections; and

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the committee or the notified market area or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest.

33. Let us first scan these clauses one by one on the footing that the Market Committee Fund will ordinarily and generally and almost wholly be created out of the income of a particular Market Committee on account of market fees realised by it from the traders in the market. A portion of it may be on account of fines, licence fees, from weighment, arbitration fees etc. But those amounts compared to the huge realisations on account of market fees would be almost negligible. By and large the purposes enumerated in clauses (i) to (ix) are relatable to the service to be rendered in the market in relation to the transactions of purchase and sale of the agricultural produce. We shall deal with the problem of payment of interest on loans that may be raised for purposes of the market as mentioned in clause (vi) shortly hereinafter. Apropos clause (viii) the attention of all concerned must be focussed here because the last part of this clause had led the authorities and also the High Court to think that construction of link roads, culverts and bridges anywhere in a notified market area is covered by this clause. In our opinion it is not so. In the context of the language of all the clauses preceding clause (viii) and clause (viii) itself it is plain that what is meant by "construction and repair of approach roads; culverts, bridges" is only for the purpose of the facility of going into the market from the nearest public road. Supposing a market has been established consisting of principal market yard or sub-market yards at a particular place where there is no facility for the carts or the trucks and other vehicles to go, then approach roads, and if necessary even culverts and bridges may be constructed, or repaired out of the Market Committee Fund. Such an expenditure within the limited limit will be the with the object of facilitating the taking place of the transactions

of purchase and sale in the market and will confer some special benefits to the traders apart from a share of the benefit going to the agriculturists who are not required to share any burden of the market fee. But as we have pointed out above, if one were to give a very wide meaning to this phrase of construction and repair of approach roads, culverts and bridges to say that such construction can be permitted anywhere in the market area for the facility of the agriculturists which ultimately will benefit the traders also, then the whole concept of correlation of fee and its character of having an element of quid pro quo will dwindle down and become an empty formality. Uplift of villages and helping the agriculturists by all means is the duty and the obligation of the State no doubt it has to do it by incurring expenses out of the public exchequer consisting of the income from various kinds of taxes etc.

34. One may not have any serious objection to the items of expenditure mentioned in clauses (xii), (xiv), (xv) and (xvi). But the other clauses do require some careful examination. Obviously clause (x) and clause (xi) cannot form the items of expenditure out of the market fees. In face of the view of the law expressed by us above the propaganda in favour of the agricultural improvement and expenditure for production and betterment of agricultural produce will be in the general interest of agriculture in the market area. The whole of the State is divided into market areas. So long as the concept of fee under our Constitution remains distinct and limited in contrast to tax such expenditure out of the market fee cannot be countenanced in law. The first part of clause (xiii) may be justified in the sense of imparting education in marketing to the staff of the Market Committee. But imparting education in agriculture in general cannot be correlated with the market fee. The first part of clause (xvii) is too vague to merit any discussion on the language of the clause itself until and unless we are faced with concrete examples of such expenditure. But how ill-conceived the second part of clause (xvii) is, is abundantly clear from the decision of the Punjab High Court mentioned above and to be discussed shortly hereinafter. Is it permissible to spend the market fees realised from the traders for any purpose calculated to promote the national or public interest ? Obviously not. No Market Committee can be permitted to utilise the fund for an ulterior purpose howsoever benevolent, laudable and charitable the object may be. The whole concept of fee will collapse if the amount realised by market fees could be permitted to be spent in this fashion. We may, however, mention one matter pointedly in connection with the Market Committee Fund. Under Section 32 the committee may borrow money for carrying on the purposes for which it is established on the security of any property vested in and belonging to the committee. It may obtain a loan from the State Government or the Board. In the various figures and charts submitted before us it was shown that the Market Committee had raised money by loan and other methods. That also will form the Market Committee Fund. Technically and legally, therefore, one may not have any objection to the expenditure of such money for the purposes mentioned in clauses (x), (xi), (xiii) and (xvii). As we indicated above clause (vi) provides for payment of interest on loans, but that is confined to loans that may be raised for purposes of the market and not for any other purpose, whereas, the power of the committee to raise loans under Section 32 is very wide. The Act, however, is silent as to wherefrom interest will be paid or the principal will be returned in regard to the amount of loan raised for a purpose other than the purpose of the market. Since we find that the matter has proceeded at various stages in the High Court as also in this Court under a great confusion of the correct position of law, we do not propose to expenses any opinion in this regard at this stage. Nor do we propose to strike down any clause of Section 28 as being unconstitutional merely on the ground that the expenditure authorised therein goes beyond the scope of the purpose of the utilisation of the market fees. The authorities have to bear this in mind and on a proper occasion the matter will have to be dealt with by courts in the light of this judgment where a concrete case comes of raising of a loan, spending the money so raised which cannot be reasonably

connected with the purposes for which the market fee can be spent, as to whether such a loan can be repaid or interest on it can be paid out of the realizations of the market fees.

35. One of the points mooted before us was as to how far the Market Committees can be compelled to part with 30% of their income in favour of the Marketing Board. If so, for what purposes the Board fund, namely, the Marketing Development Fund can be expended. It is to be remembered that market fee is levied by each and every Market Committee separately in its own area and if a good substantial portion of this fee has got to be expended for rendering services in the area to the payers of the fee in relation to the transactions taking place therein, then logically speaking it flows from it that any money paid to the Board out of the collections of the market fee has also got to be expended in the very same area of the particular Market Committee. But such a strict construction from a practical point of view is not possible. The Board in the State is the central controlling and superintending authority over all the Market Committees, the primary function of which is to render service in the market. Parting 30% income by a Market Committee in favour of the Board is not so excessive or unreasonable so as to warrant any interference with the law in this regard on the ground of violation of the principle of quid pro quo in the utilisation of the market fee realised from the traders in the market area. We would, however, like to emphasise that the Marketing Development Fund can only be expended for the purposes of the Market Committees in a general way, or to be more accurate, as far as practicable, for the purposes of the particular Market Committee which makes the contribution.

36. We shall now read Section 26 of the Act providing for purposes for which the Marketing Development Fund may be expended. It reads as follows :

> The Marketing Development Fund shall be utilised for the following purposes :
>
> (i) better marketing of agricultural produce;
>
> (ii) marketing of agricultural produce on co-operative lines;
>
> (iii) collection and dissemination of market rates and news;
>
> (iv) grading and standardisation of agricultural produce;
>
> (v) general improvements in the markets or their respective notified market areas;
>
> (vi) maintenance of the office of the Board and construction and repair of its office buildings, rest-house and staff quarters;
>
> (vii) giving aid to financially weak committees in the shape of loans and grants;
>
> (viii) payments of salary, leave allowance, gratuity, compassionate allowance, compensation for injuries or resulting from accidents while on duty, medical aid, pension or provident fund to the persons employed by the Board and leave and pension contribution to government servants on deputation;
>
> (ix) travelling and other allowances to the employees of the Board, its members and members of Advisory Committees;
>
> (x) propaganda, demonstration and publicity in favour of agricultural improvements;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the Board;

(xiii) imparting education in marketing or agriculture;

(xiv) construction of godowns;

(xv) loans and advances to the employees;

(xvi) expenses incurred in auditing the accounts of the Board;

(xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the committee; or the national or public interest.

37. On a parity of the reasoning which we have applied in the case of Market Committee Fund we may point out that the Marketing Development Fund constituted primarily and mainly out of the contributions by the Market Committees from realisations of market fees, can also be expended for the purposes of the market in the notified market area in relation to the transactions of purchase and sale of the agricultural produce and for no other general purpose or in the general interests of the agriculture or the agriculturists. On that basis we may, as at present advised, hold as valid the purposes mentioned in clauses (i), (ii), (iii), (iv), first part of clause (v), clauses (vi), (viii), (xi), (xii), first part of clause (xiii) clauses (xiv), (xv) and (xvi). At the same time we hold that the Marketing Development Fund constituted out of the market fees cannot be expended for the purposes mentioned in second part of clause (v), clauses (x), (xi), second part of clause (xiii) and clause (xvii). We do not propose to strike down those provisions as being constitutionally invalid as the purpose of the law will be served by restricting the operation of Section 26 in the manner we have done.

38. We now proceed to examine the decisions of the High Court in the light of the principles of law enunciated above. The first decision in the case of M/s. Hanuman Dall and General Mills (AIR 1976 P & H 1 : ILR (1976) 1 Punj 807) is the decision of a Division Bench of the High Court. It should be recalled that by this judgment delivered on November 8, 1974 the High Court maintained the raising of the market fee from Rs. 1.50 to Rs. 2 in Haryana but struck down the rise from Rs. 1.50 to Rs. 2.25 in Punjab. In the cases before us a lot of new materials contained in new statements and charts were field before us on either side. We shall examine only a few of those materials and that too very cursorily as in our view no useful purpose will be served, nor is it possible to do so for the first time in this Court, by their thorough examination. The very basis of the materials submitted on either side seems to be not well grounded on a correct appreciation of law. Too many disputes of facts have been raised before us. It is not possible to resolve all of them nor do we find that it will be useful to do that exercise. We shall presently show that even on the materials placed before the High Court and so on the findings recorded by it, many of which do not seem to be in dispute, the requirement of law is not satisfied to the extent it is essential in a case of this nature.

39. In the case of Hanuman Dall and General Mills (AIR 1976 P & H 1 : ILR (1976) 1 Punj 807) the High Court examined many of the leading and important judgment of this Court which we have reviewed earlier and also placed reliance upon an earlier Division Bench decision of the same High Court in Ram Sarup v. Punjab State (ILR (1969) 1 P & H 756). In para 31 of the judgment at page 12 the view of the High Court "that the amount of fees so collected are not to be spent exclusively

for rendering services to the payers of the fees but can also be utilised for carrying out the purposes or objects of the Act under which they are levied," is not quite correct. In the same paragraph the High Court felt constrained to add that the amount cannot, however, be utilised for purposes which have no connection with the main purposes of the Act for which fee is levied, nor can it be spent for carrying out the governmental functions of the State. If many of the purposes mentioned in the Act, as we have shown above, are outside the ambit of the service element and fall within the realm of the governmental functions, then it is plain that to say by generalisation that the fee money can be spent for the purposes or objects of the Act is not quite correct. The High Court has extracted Section 28 of the Act has failed to scan the effect of the various purposes in some of the clauses.

40. After referring to the income and expenditure statements of Market Committee, Hissar from 1969-70 to 1973-74 the conclusion of fact drawn at page 15 is that the market fee constitutes more than 80% of the income of the Market Committee and the amount spent on "works" is nearly one-half of the total expenditure. The further is "the major item on which the amount has been spent under the head 'works' consists of the amount deposited with the public works department, Hissar, as contribution for construction of village link roads". On that finding itself it is manifest that Public Works Department was carrying out the governmental functions of construction of roads including village link roads spread throughout the whole of the notified market area of Hissar. The said link roads could not be taken to be approach roads within the meaning of clause (viii) of Section 28 of the Act as seems to be the view of the High Court. The error of law becomes writ large in the last sentence occurring in paragraph 34 of the judgment at page 15 which says :

> In any case, the construction of roads within the notified market area is a work of public importance and promotes the general interest of the committee and the notified market area which is one of the purposes enumerated in clause (xvii) of Section 26 of the Act.

The High Court further proceeds to say :

> After giving my careful consideration I am of the opinion that the expenditure on the construction of link roads for which amounts were deposited with the Public Works Department is fully justified as it is for the benefit of the growers, the licensed dealers and the general public and promotes the interests of the notified market area.

The High Court seems to be of the view that since transportation is very essential for the development of a market and to enable the growers of the agricultural produce to bring the same to the market, the construction of link roads becomes an essential purpose of the Market Committees. It may be so but the purpose cannot be allowed to be achieved at the cost of the market fee realised from the dealers. The High Court points out that the money cannot be spent in construction of the governmental activities for providing main rods in the State. How, then, the Market Committees can be made to contribute a very big chunk of their market fee income in construction of the link roads throughout all villages ? To put the matter logically, if a link road is to be constructed from a village to the main road for enabling an agriculturist to transport his produce up to the main road then the Market Committee should be under an obligation to construct or at least to maintain the main road also in order to enable that agriculturist to reach the market which may be at a distance of say 20 miles from link road. It is plain that construction of such link roads is as much a part of the governmental activity as that of the main roads.

41. It is interesting find out from paragraph 36 of the judgment that the Market Committees were

made to pay donations to educational institutions imparting general education. The Market Committee, Hissar, spent Rs. 1,07,794 on the water supply scheme for a village. Even the High Court was constrained to disapprove of this. It also spent a sum of Rs. 6,00,000 for the construction of a Panchayat Bhawan. Many other instances are mentioned in paragraph 37 of the judgment which shows that the Market Committees were getting enormous income from market fees and they were made to squander away a good portion of that money unauthorisedly, although none of the purposes in itself was objectionable or bad. Rather, they were very laudable. But taking an overall view of the matter the High Court felt persuaded in the case of Haryana to uphold the maximum limit of Rs. 2 by adding "no interference seems to be called for at this time". In the case of Punjab, however, the allegation of the petitioners before the High Court was that the Market Committees were collecting lakhs of rupees every month and the Marketing Board was collecting crores of rupees. The Marketing Board was asked to contribute one crore of rupees to the Guru Gobind Singh Medical College which had been recently established at Faridkot. A good portion of the money was already paid and the High Court was constrained to observe that "the State Government shall be well advised to compensate the Agricultural Marketing Board and the Market Committees for the misutilisation of their funds for this unauthorised purpose". The High Court held at page 19, column 2 :

> In the historical background, set out above, I am convinced that the enhancement in the amount of fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees was not genuine and it was made with a view to enable the Market Committees and the Agricultural Marketing Board to reimburse themselves for the amounts which they were directed to contribute to Guru Gobind Singh Medical College at Faridkot. The Market Committees were having enough income and could meet their legitimate requirements from the amounts of fees which were being realised prior to the enhancement.

The enhancement of fee from Re. 1 to Rs. 1.50 was upheld but the further increase to Rs. 2.25 was knocked down.

42. We may note here that in the batch of appeals we heard there was no appeal from the judgment of the High Court in the case of Hanuman Dall and General Mills (AIR 1976 P & H 1 : ILR (1976) 1 Punj 807). We may reasonably assume, therefore, that the dealers of Haryana were reconciled for payment of the market fees up to the maximum limit of two rupees per hundred rupees. In the case of Punjab, as we traced the history at the very outset, the maximum fixed later was Rs. 2.20 by act 14 of 1975. But by telegraphic instructions issued by the Board the Market Committees were asked to charge Rs. 2 only with effect from August 23, 1975. This was challenged before the High Court but unsuccessfully in the case of Kewal Krishan Puri v. State of Punjab (AIR 1977 P & H 347 : 1977 Tax LR 2209 : ILR (1972) 2 Punj 72). Civil Appeal No. 1083 of 1977 is from this judgment of the High Court. The Full Bench judgment in this case also suffers more or less from the same kind of error in the approach of the legal problem as is to be found in the earlier Division Bench decision. In paragraph 13 of the judgment at page 352 the High Court repelled the attack on clauses (x), (xi) and (xiv) of Section 26 of the Act on the ground :

> The broad object of the legislation like the present one is only to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return of their produce. The legislation like the present one has its root in the attempt on the part of the nation to provide a fair deal to the growers of crops and also to find a market for its sale at proper rates without

> reasonable chances of exploitation. If this object is kept in view, then the clauses of which the constitutionality has been challenged, would certainly fall within the ambit of entry 28. Clauses (x), (xiii) and (xiv) would help the growers to make improvements in the production of agricultural produce with the result that their agricultural produce would find a better market resulting in getting them high price for their agricultural produce.

It is to emphasised at this stage that the question is not of the legislative competence to enact those clause, nor is there a question of the fee assuming the character of a tax and, therefore, its imposition being beyond the legislative competence of the State legislature. The precise and the short question is whether the Market Committees and the Board can be authorised to spend the amount realised by market fees, as fee and fee alone, for achieving all the objects of the Act when such expenditure cannot be justified and sustained on the will-known concept of fee as pointed out by this Court in several decisions. The impost must be correlated with the service to be rendered to the payers of the fees in the sense and the to the extent we have pointed out above. Again the High Court fell into an error in paragraph 15 of the judgment when, while upholding the construction and repair of approach roads, culverts and bridges in the larger sense of the term it said :

> If the approach roads, culverts or bridges are in such a bad shape that they would become hindrance in the mobility of the produce from one part of the notified market area to the principal market yard, then the worst sufferer would be the grower for whose benefit the Act has been enacted.

The full Bench approved the view of the Division Bench in the earlier case as is apparent from paras 17 and 18 of the judgment at pages 352 and 353.

43. We have said a bit earlier that the Market Committees and the Board laboured under a mistaken notion that they could spend the income from the market fee for all good purposes and objects of the Act in the general interest of agriculture and agriculturists in the village. We are going to extract some of the averments made in the affidavit of the Secretary of the Market Committee of Moga from the judgment of the High Court at pages 354 and 355 :

> Besides the above, the answering respondent has undertaken the cleaning of mandis, lining of village khala (water courses), link roads : constructions of culverts and bridges; supply of pesticides and spray pumps on subsidized basis as also the electrification of villages. All these activities are going to cost the answering respondent an amount of several lakhs of rupees.

Para 8 of the writ petition is denied. It is wrong to suggest that the Board and the answering respondent have already given Rs. 5 crores to the Markfed without charging any interest. The fact of the matter is that on account of the withdrawal of the Cotton Corporation of India from the various markets, the price of cotton came down suddenly. In order to provide and ensure a reasonable price to the farmer, the government asked the Markfed to enter the market. For this purpose, the Board contributed some amount of money. So far as the answering respondent is concerned, it has not contributed any money at all. The answering respondent believes that the Board has contributed any money at all. The answering respondent belives that the Board has contributed only an amount of Rs. 1.43 crores and not 5 crores.

It may, however, be submitted that the entire money collected by the Market Committees is being

used for the purposes envisaged under the Act.

The Market Committees have to provide facilities as envisaged under the Act. The petitioners had asked for the copies of balance sheets. The balance sheets were originally prepared when the accounts of the committees were being audited by "the Chartered Accountants". Now, the accounts are being audited by the Examiner, Local Fund Accounts which is a government agency. The preparation of balance sheets involved unnecessary expenditure and wastage of time and energy. Consequently, the practice of preparing balance sheets was given up a few years back.

These paragraphs were placed before us also from the records of Civil Appeal No. 1083 of 1977. After quoting the various paragraphs from counter-affidavit the High Court says in paragraph 20 of the judgment at page 355 :

> From the aforesaid specific averments made in the written statement, referred to above, it is clear that to carry out the purposes of the Act it had become necessary to enhance the rate of the market fee and such an enhancement stands fully justified.

When certain documents were placed before the High Court to show that the Board was indulging in activities which had no correlation to the object to be achieved under the Act and that the enhancement of the market fee could not be justified the high Court, in the first instance, did not feel inclined to put absolute reliance upon those documents as they were filed with the replication of the petitioners. But it did not stop there. It proceeded further at page 356, para 22 to say, on an impression of law which we have not countenanced, that :

> So far as Annexures W-11 and W-12 are concerned, any expenditure incurred by the Marketing Board on the setting up of the rice shellers or ginning factories or by the Market Committees on the construction of the link roads would not be inconsistent with the provisions of Act and object to be achieved under the Act. The setting up of the rice shellers would be for the benefit of the producers and, as earlier observed, construction of the link roads also would be for their advantage. So far a Annexure W-10 is concerned, there can be no gainsaying that giving of donation for Chief Minister's flood Relief Fund by the Board or the Market Committee would not be justified as the same has no correlation with the object to be achieved under the Act and in case any amount has been spent by the Committee in this respect, it would certainly be unauthorised and illegal. But, in the instant case, the petitioners have failed to show that any amount was contributed towards to Chief Minister's Flood Relief Fund and that the enhancement in the fee had any correlation with such a contribution. In this view of the matter, on the basis of Annexures W-10, W-11 and W-12, the enhancement in the fee to be levied by the committees cannot be struck down.

44. In several civil writ petitions filed in the High Court by the dealers of the various Market Committees of Haryana the challenge was to the raising of the rate of market fee from Rs. 2 to Rs. 3. The High Court rejected all those petitions by its judgment dated August 30, 1978 which is the subject-matter of appeal in Civil Appeal No. 1700 of 1978 and the analogous ones. After referring to the earlier judgments of the Court this judgment of the division Bench also proceeds on the same lines as it was bound to. To a large extent we are saved from the unnecessary botheration of examining the voluminously new materials placed before us in view of counter filed on behalf of the Haryana Marketing Board in the High Court portions of which are extracted in the judgment. It

will be useful to give that whole of the extract from the judgment of the High Court. It runs as follows :

> It is well known to every one that the recent floods in Haryana were unprecedented and created havoc in the State. Almost one-third of Haryana was submerged under water damaging the standing crops and uprooting the inhabitants making them homeless. The State has to resort to quick measures for removing the miseries of the people and to rehabilitate them .... The projected income from market fee in the year 1977-78 was Rs. 9 crores. But due to the floods at the old rate of 2% it is expected to be Rs. 7.77 crores. The committees will only be able to achieve the projected income of 1977-78 as anticipated in the beginning of the year only if the fee is charged at enhanced rate of 3%. Only with the projected income the Board will be able to provide the services envisaged by it to the farmers of the area. The Board allotted works amounting to Rs. 8.53 crores in the year 1976-77, out of which the Board will be able to complete the development works worth Rs. 5.62 crores up to March 31, 1978, leaving a spill-over of Rs. 2.91 crores for the year 1978-79. In addition to this spill-over, Board also anticipated to take new development works amounting to Rs. 3 crores during 1978-79. The projected income during the year 1978-79 taking into account the enhanced rate of market fee will be Rs. 6.20 crores whereas the expenditure will be to the tune of Rs. 8.97 crores including the development works, miscellaneous other services and the cost of establishment. The deficit of Rs. 2.77 crores had to be met by the Board by raising loan from other sources. Thus even this enhanced fee will not be sufficient to meet the expenditure which the Board proposes to incur for the purposes under the Act. Thus the enhancement of market fee from 2% to 3% is wholly reasonable and justified and has a reasonable correlation with the services rendered or to be rendered.

Quoting passages from the earlier judgments of the High Court, it upheld the levy of the fee at Rs. 3 per hundred rupees and dismissed all the writ petitions.

45. The challenge by the dealers of the Moga Market Committee by Civil Writ Petition No. 2015 of 1978 filed in the High Court failed as per the judgment of the High Court delivered on May 18, 1978 wherein the Full Bench decision was followed. Special Leave Petition No. 2768 of 1978 has been filed from the said judgment. The purposes enumerated in the Full Bench decision and repeated in this judgment also for the purpose of justifying the increase in the rate of fee from Rs. 2 to Rs. 3 per hundred rupees are the stereotype ones including Rural Integrated Development Scheme, night-shelter, link roads and bridges. Everybody seems to have allowed himself to be carried too far by the sentiment of the laudable object of the Act of doing whatever is possible to do under it for the amelioration of the conditions and the uplift of the villagers and the agriculturists. Undoubtedly the Act is primarily meant for that purpose and to the extent it is permissible under the law to achieve that object of utilising the money collected by the market fee, it should be done. But if the law does not permit carrying on of the sentiment too far for achieving of all the laudable objects under the Act, then primarily it becomes the duty of the court to allow the law to have an upper hand over the sentiment and not vice versa. We must not be misunderstood to say that we are against the sentiment expressed in the interests of the agriculturists. Nor are we opposed in the least to the achievement of all the laudable objects envisaged under the Act. Let them all be achieved by all means known to law by meeting the expenses after augmenting the public revenue or by diverting the expenditure from wasteful or unimportant channel to the more important one under the Act. But surely we cannot countenance the achievement of all those objects by utilising a good and

substantial portion of the market fee collections when the utilisation goes against the concept of quid pro quo which is very essential in case of fees. As we have already stated Civil Appeal No. 1616 of 1978 arises from the order of the High Court dated September 18, 1978 dismissing the connected writ petition filed by a few hundred dealers of various Market Committees in the State of Punjab challenging the increase of the market fee from Rs. 2 to Rs. 3. Before us in the writ petitions not only the increase of the rate from Rs. 2 to Rs. 3 has been challenged but the previous increases have also been challenged. For the reasons to be briefly stated hereinafter we do not feel persuaded to interfere with the charging of the market fee at Rs. 2 per hundred rupees by the various market Committees in the States of Punjab and Haryana. But surely on the facts as they are, the increase of the rate from Rs. 2 to Rs. 3 is not justified in law by any of the Market Committees in either of the two States.

46. Mr. Tarkunde drew our attention to the report of the Royal Commission submitted in 1928 and the recent report of the National Commission on Agriculture. It has been emphasised in those reports that in order to make the marketing system efficient and useful link and village roads should be constructed providing transport facilities for the transport of the agricultural produce to the marketing centres. There cannot be any doubt that in any scheme of development of agriculture and marketing in a wide sense, a chain of connections may be found between one activity or the other. It is not only in regard to agriculture but it is so in any other kind of production, distribution and marketing. Our attention was drawn also to the use of the word "secondary" or "indirect" in some of the decisions in relation to the element of quid pro quo. But in our opinion there is a misconception in understanding the true scope of the matter and not drawing the dividing line at the appropriate place for determining the real controversy. Examples of trust cases were given before us that control of the trusts is not for the personal benefit of the trustees but for the beneficiaries, although the liability to pay the fee is of the trustees. The misconception lies in the fact that the impost of fee is not a personal impost on any person in the sense that unconnected with any undertaking or property or the like, it is just an impost on his person. It is not so. When the trustee is charged fee for the benefit of the religious institutions and the beneficiaries it is a benefit to the trustee. Similarly, as pointed out in the Mining Act and the factory cases charge of fee from the mine owners in the area or the factory owners in the factory for the purpose of developing and protecting the mines and the factories is service to owners. If one were to push the example of a factory beyond the limit of the conception of fee, one could say that the fee charged from the factory owners can be utilised for pushing and augmenting the output of the raw materials required in the manufacturing process in the factory, it is also a benefit to the factory owner. Is it reasonably possible to travel as wide as that ? Neither the Royal Commission nor the National Commission suggested as to how the integrated development of marketing and the agricultural produce is to be financed. They were not concerned with that aspect of the matter. None can have any objection to the carrying out of the integrated development but it must be carried out by legal means raising the finance in a way known to law.

47. The improvements, checks, controls and regulations must be carried out in the market or in its vicinity. Much of the facilities provided in the market yards or around it will also be for the direct benefit of the producers. But then, being intimately connected with marketing operations the benefit to the producers must be deemed to be special or direct benefit to the traders also. Under the Marketing Rules the auction cannot be conducted by any person other than the person engaged by the committee [Rule 24(5)], and weighments and measurements of agricultural produce intended for sale are to be made through licensed weighmen or measurers in the principal or a sub-market yard [vide Rule 28(2)]. Reading these rules in the background of the recommendations of the Commissions, and even otherwise, it is plain that they are meant for the protection of agriculturists. But since they are intimately connected with the marketing operations, just like factory cases, they

are also meant for the special benefit of the traders. The literal meaning of the phrase "quid pro quo" is "one for the other" meaning thereby - "you charge the fee for the service". Service to the mining area, factory, market or marketing operations are services to the payer of the fee.

48. Mr. P. N. Lekhi, learned counsel for the State of Haryana placed some new material before us to show that big projects of development of marketing had been undertaken in India with the help of the World Bank loans. All very good. We wish God speed to all these projects. The only check which the law has to put is - "please don't spread your net too wide only on the traders. Keep it within bounds so long your levy has got the character of fee. You may raise funds by any other means known to law or to the economic world".

49. Now we refer to some additional documents placed before us. But before we do so we repeat what we have said above that the materials placed on either side before us is so voluminous and cumbersome that no definite finding with any accuracy could be arrived at on that basis as there seems to be disputes in regard to the nature and accuracy of many of the figures either on the receipt side or on the expenditure side. We have, however, referred to some of the admitted facts even from the judgments of the High Court. We may refer to a few more.

50. In the affidavit of Sri R. K. Singh, Director of Marketing, Punjab and Secretary of Punjab State Agricultural Board filed in the High Court giving rise to Civil Appeal No. 1083 of 1977, which is not a new material in that sense, it was stated in paragraph 6 :

> It is submitted that respondent 3 is duty bound to bring about general improvement of a notified market area, production and betterment of agriculture etc. under the Act and the answering respondent is duty bound to approve such expenditure under the Act. It is also submitted that electricity plays a major role in the production and betterment of agriculture and for the general improvement of area. In view of its importance respondent 3 sought and respondent 2 approved the expenditure on the electrification of the villages situate within the jurisdiction of respondent 3.

In the writ petition, respondent 2 was the Marketing Board and respondent 3 was the concerned Marketing Committee. In the same case in the High Court additional affidavit was filed by Shri Tirath Singh, Chairman of the Punjab Board. It is stated in paragraph 7 that apart from development works in the budget estimated in the year 1975-76, there were other development projects to be taken in hand some of which were enumerated in that paragraph. We may take up only two or three items out of the same to show in contrast how one will be within the limits of law and the others widely beyond it. Item No. (iii) reads as follows :

> To provide rest-houses, cattle sheds, cart sheds, light and water arrangements in all the market yards.

A good portion of these facilities will be utilised by the agriculturists who would be coming to the market yards for sale of their produce. Yet in the view we have expressed above it will be a service to trader directly connected with the marketing operations. In contrast we quote items (x) and (xii) :

> (x) Continuation of programme of link roads.
>
> (xii) Improvement of agricultural production by providing improved seeds, green manuring seeds, plant protection equipment, insecticides and pesticides.

One has to stretch one's imagination almost to a breaking point to say that the programme of link roads and improvement of agricultural production by the means mentioned in item (xii) can all be carried out by the impost of fee in the market.

51. In a new affidavit of Shri N. S. Bakshi filed in this Court in Civil Appeal No. 1083 of 1977 it is stated in paragraph 6 that in the entire Khanna market notified area there is one principal yard, two sub-yards and only two purchase centres and no weighing bridge or any weighing facilities has been provided by the committee. It is stated in paragraph 7 that "amount of Rs. 3 lacs lying with the Khanna Market Committee during March, 1978 in Banks was got deposited in the government Treasury under the orders and directions of the Board". These facts are disputed. But we are merely stating them for the future guidance of the authorities that they should proceed in the matter cautiously keeping in view the law laid down by this Court in earlier cases, such as, Salvation Army case ((1975) 3 SCR 475 : (1975) 1 SCC 509 : 1975 SCC (Tax) 145), and in the light of this judgment. In the additional affidavit of Shri K. K. Puri it is stated that from the information gathered it was learnt that the Punjab Board had spent about a crore of rupees by way of subsidy at 75 per cent for the metallic bins for the use of the villagers for their domestic use; a crore for air spray; five crores to the Punjab State Electricity Board, one crore given to Markfed, one and a half crores to Soil Conservation Department and yet nine crores were lying surplus with the various Market Committees. The figures may be exaggerated but are not quite groundless. We are merely quoting them for the future caution of the authorities concerned. Puri has further pointed out in paragraph 17 of his affidavit that in the Estimated Expenditure in the proposed Budget of the Moga Committee for the years 1976-77 and 1977-78 several lakhs of rupees were shown for insecticides and pesticides apart from other inadmissible expenses. We may again pin-point the difference. If insecticides and pesticides are for use at the place where actually the marketing operations are carried on it would be a justifiable expenditure. But if they are meant to be supplied to the agriculturists for use at their village homes or in their fields surely they cannot be valid expenditure out of the collections of the market fee.

52. Mr. Tarkunde filed an abstract of the statement of income from market fee and licence fee and expenditure incurred therefrom by the Market Committee, Hissar as worked out from Annexures R-I to R-V filed in the High Court. It would be seen from this abstract that in the year 1974-75 the income from market fee was Rs. 24,08,141 and from licence fee about Rs. 6000 only. A sum of Rs. 7,09,670 was contributed under Section 27 of the Act to the Board and a sum of Rs. 14,73,732 was spent on works including link roads. Similar was the position in the year 1975-76. In 1976-77 income from licence fee was only Rs. 16,000 and odd and income from market fee was Rs. 38,27,233. A big chunk to the tune of Rs. 12,19,383 went as contribution to Board and Rs. 24,47,408 were spent on works including link roads. Similar abstracts were given in respect of other Market Committees showing exactly the same position. Abstracts were also given to us by Mr. Tarkunde showing the income of the Haryana Board by contribution made by the various Market Committees and the expenditure incurred therefrom. In the abstract statement figures of expenditure both of admissible and inadmissible items had been clubbed together. It is, therefore, not possible to get any correct picture from these abstracts.

53. How admittedly the authorities concerned have travelled wide beyond limit for the application of the fee money will be apparent from the counter-affidavit of the Haryana Board filed in the High Court giving rise to Civil Appeal No. 1700 of 1978. In paragraph 10(i) it is state :

> The construction of link roads within the notified market area is a work of public importance and promotes the general interest of the farmers, traders and the notified

> market area which is one of the purposes enumerated in clause (xvii) of Section 28 of the Act.

In para 10(ii) it is admitted :

Thus the enhancement of market fee from 2 per cent to 3 per cent is wholly reasonable and has correlation with the services rendered or to be rendered. 65 per cent of its income had to be rightly deposited with the P.W.D. and the government, as the committee had got its link roads constructed through government agency and is still getting so constructed.

It is thus a clear admission that 65 per cent of the income has gone by way of contribution to the P.W.D. fund for construction of the link roads. It is in substance a contribution to the public exchequer for helping the government agency in performing its governmental functions and duties. In no way such a contribution can be justified out of the market fee income. From Annexure R-II appended to the aforesaid affidavit of the Board it would be seen that in the year 1974-75 a sum of Rs. 1,07,338 was given as aid to animal husbandry for the uplift of cattle wealth and its product. This illustrates to what extent the concept of fee in lieu of service has been stretched. A sum of Rs. 6,00,000 and odd was spent for improving the quality of cotton seeds for seeds purposes. In a Gober Gas Plant Rs. 15,55,000 were invested. This item was sought to be explained before us by Mr. Tarkunde that this expenditure was incurred with the help of the subsidy received from the State and the Central Governments. The scheme of the Gober Gas plant was launched for the promotion of interest of market area. It is not explained as to how it was connected with the marketing operations in the area and how much was the subsidy and what portion of the amount was spent out of the market fee income. Similarly in Annexure R-III from the statement of income and expenditure of the Haryana Board for the year 1975-76 it would appear that a sum of Rs. 1,28,70,662 was spent "on general improvement in M.C. and other notified area and construction of F.A.D.C.". Apart from that the other items of expenditure are a sum of Rs. 20,00,000 in purchase and acquisition of land for new mandis, and Rs. 10,00,000 and odd for purchase of land, construction of building for Board's office and staff quarters in the mandis. Again in this year a sum of Rs. 95,00,000 and odd is shown to have been spent of Gober Gas Plant. It may be inclusive of the figure of the earlier year. Then from Annexure R-IV, the statement for the year 1976-77, it will be found that a sum of rupees one crore was given as loan to Haryana Electricity Board. We have taken some of these items just by way of example to illustrate that the authorities took full liberty to treat the realisation from market fee as general realisation of tax which they were free to spend in any manner they liked for the purposes of the Act, the development of the area, for giving a fillip to agricultural production and so forth and so on. The sooner the authorities are made to realise the correct position in law the better it will be for all concerned.

54. But taking a reasonable and practical view of the matter and on appreciation of the true picture of justifiable and legal expenditure in relation to the market fee income, even though it had to be done on the basis of some reasonable guess work, we are not inclined to disturb the raising of an imposition of the rate of market fee up to Rs. 2 per hundred rupees by the various Market Committees and the Boards both in the State of Punjab and Haryana. After all, considerable development work seems to have been done by many Market Committees in their respective markets. The charging of fee Rs. 2, therefore, is justified and fit to be sustained. We accordingly do it. As pointed out earlier the dealers of Haryana did not feel aggrieved when the High Court maintained the raising of market fee to the extent of Rs. 2 per hundred rupees. We are, however, not inclined to uphold the raising of the fee from Rs. 2 to Rs. 3, as on the materials placed before us it is clear that this has been done chiefly because of the wrong impression of law that the amount of

market fee can be spent for any development work in the notified market area and specially for the development of agriculture and the welfare of the agriculturists. On the basis of the facts and figures placed before us from the High Court records and also some new materials filed here we have come to the conclusion that there was no justification in law in raising the fee from Rs. 2 to Rs. 3. The High Court was wrong in maintaining this rise on an erroneous view of the matter. We, therefore, allow the appeals and the writ petitions to the extent and in the manner indicated above and direct the Market Committees and the State Marketing Boards not to realize market fee at the rate of Rs. 3 per hundred rupees on the basis of their impugned decisions and actions which have been found to be invalid by us. We leave the parties to bear their own costs throughout.

55. Before we part with these cases we would like to observe that in future if the market fee is sought to be raised beyond the rate of Rs. 2 per hundred rupees, proper budgets, estimates, balance sheets showing the balance of the money in hand and in deposit, the estimated income and expenditure, etc. should carefully be prepared in the light of this judgment. It may be, as was submitted before us, that it is not imperative either for the Market Committees or the Board to prepare balance sheets because their accounts are audited by government auditors but for the purposes of raising the market fee any further, the balance sheets will give a true picture of the position along with the budgets and estimates. Then, and then only, there may be a legal justification for raising the rate of the market fee further to a reasonable extent. On drawing of the correct balance sheets and framing of the correct estimates and budgets the authorities as also the State Government will be able the know the correct position and to decide reasonably as to what extent the raising of the market fee can be justified taking an overall picture of the matter and keeping in view the reason behind the restrictions of sales tax law concerning the transactions of foodgrains and the other agricultural produce.

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