Ram Chandra Kailash Kumar and Company and Others

Vs

State Of U. P. and Another

Civil Appeals Nos. 1841-46 of 1978

Dina Nath and Others

Vs

State of U. P. and Another

Civil Appeal No. 871 of 1978

Narendra Kumar Agarwal and Others

Vs

State of U. P. and Others

Civil Appeal No. 1921 of 1978

M/S. Kishan Lal Satya Prakash And Co.

Vs

State of U. P. and Others

Civil Appeal No. 1960 of 1978

M/S. Gokul Chand Phool Chand and Others

Vs

State of U. P. and Others

Civil Appeals Nos. 2169-73 of 1978

Shri Shiv Shankar Sarraf and Others

Vs

State of U. P. and Another

Civil Appeals Nos. 2178-87 of 1978

Bhagwan Das Ravi Kant And Others

Vs

State of U. P. and Others

Civil Appeals Nos. 2219-26 of 1978

M/S. Star Hide Co.

Vs

State of U. P. and Others

Civil Appeals Nos. 2260-61 of 1978

The Star Paper Mills Ltd. and Others

Vs

State of Uttar Pradesh and Others

Civil Appeals Nos. 2269, 2302, 2373-75 of 1978

Raghubir Saran Prem Chand and Others

Vs

State of U. P. and Others

Civil Appeals Nos. 2321, 2322, 2356, 2359, 2386, 2406-08, 2426-28, 2430-31, 2457, 2504 And 2507 of 1978, 142-44, 174, 230, 385-88, 429-38, 599, 635, 745, 821, 929, 1007-09, 1149-49-A, 1346, 1630-36, 1638, 1863, 1865, 1866, 1867 And 1869 of 1979 And 2270-72 of 1978

M/S. Ram Prasad Vishambhar Nath And Others

Vs

State of U. P. and Another

Civil Appeal No. 487 of 1979

Sohan Singh and Others

Vs

State of U. P. and Another

Writ Petitions Nos. 257 and 600 Of 1979

(V. R. Chandrachud, V. R. Krishna Iyer, N. L. Untwalia, P. N. shinghal, A. D. Koshal JJ)

25.03.1980

JUDGMENT

UNTWALIA, J. –

1. The Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 being U.P. Act 25 of 1964, hereinafter called the Act, was passed in that year. It led to the establishment of Market Areas, Principal Market Yards and Sub-Market Yards etc. and the levying of the fee in relation to transactions of certain commodities in the State of Uttar Pradesh. Various market committees were formed known as Mandi Samitis. In order to give effect to the working of the Act The Uttar Pradesh Krishi Utpadan Mandi Niyamavali, 1965, hereinafter called the Rules, were made by the Governor of Uttar Pradesh. The Act has been amended several times. But we were distressed to find that the rules were not accordingly amended as and when required to make them up-to-date in accordance with amended Act. Various traders carrying on business in the State of Uttar Pradesh within the jurisdiction of several market committees challenged the levy of fee in the High Court of Allahabad from time to time. There were several rounds of litigation in which they, by and large, failed. Finally many writ petitions were dismissed by the High Court by its Judgment dated September 21, 1978 (See Atma Ram Ratan Lal v. State of U.P., 1979 All LJ 126) on which date many writ petitions were also dismissed in limine. Civil Appeal 1841 of 1978 and about 103 more appeals are from the said judgment and order of the High Court. Immediately preceding the said judgment a longer and more elaborate judgment had been delivered by the High Court on April 29, 1977. Civil Appeal 871 of 1978 and Civil Appeal 1636 of 1976 are from the said judgment. Along with these 106 appeals, two writ petitions were also heard being Writ Petition 257 of 1979 and Writ Petition 600 of 1979. Thus in all 108 matters have been heard together and are being disposed of by this judgment.

2. At the outset it may be mentioned that because of the litigations cropping up from time to time between the traders and the market committees the working of the committees had not successfully proceeded so far, as, fees levied from time to time could not be realised in full. Sometimes illegal or unauthorised collections seem to have been made. Money justifiably realised also does not seem to have been fully utilised as it ought to have been done. In order to enable the market committees in their attempt to implement the law as far as possible and to save their attempt from being thwarted by any unnecessary litigation we allowed the parties to advance a full throated argument in this Court including some of the points which were not argued in the High Court or in support of which foundations of fact were lacking. In this judgment our endeavour will be to formulate the points of law and decide them as far as practicable so that in future the business of the market committees may be conducted in the light of this judgment leaving no scope for unnecessary litigation. Of course even in our judgment at places it would be indicated, and even apart from that, some genuine and factual disputed may crop up which in the first instance may be decided by the market committees, preferably a Board constituted by a particular committee for deciding such disputes and then, if necessary, by the High Court. We do hope that no further time will be lost by the State Government in amending the rules and making them up-to-date to fit in with the latest amendments in the Act.

3. The long title of the Act indicates that it is an Act "to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence, and control of markets therefore in Uttar Pradesh". From the Objects and Reasons of the enactment it would appear that this Act was passed for the development of new market areas and for the World Bank to give a substantial help for the establishment of various markets in the State of Uttar Pradesh. In other States the Act is mainly meant to protect an agriculturist producer from being exploited when he comes to the mandis for selling his agricultural produce. As pointed out by the High Court certain other transactions also have been roped in the levy of the fee, in which both sides are traders and

neither side is an agriculturist. This has been done for the effective implementation of the scheme of establishment of markets mainly for the benefit of the producers. But as pointed out recently by a Constitution Bench of this Court in the case of Kewal Krishan Puri v. State of Punjab ((1979) 3 1217 : (1980) 1 SCC 416) the fee realised from the payer of the fee has, by and large, to be spent for his special benefit and for the benefit of other persons connected with the transactions of purchase and sale in the various mandis. The earlier cases on the pint of fee have been elaborately reviewed in that judgment and certain principles have been culled out which will be adverted to hereinafter. While deciding the question of quid pro quo in relation to the impugned fees the High Court had got the advantage of the judgment of this Court. In that regard this judgment is a settlor on the point and we hope that the authorities and all other concerned in the matter will be guided by and follow the said decision in the matter of levy and utilisation of the market fee collected.

4. We shall now at the outset refer to the relevant provisions of the Act as they stood in the year 1978 and some of the rules framed thereunder. Wherever necessary reference will be made to the unamended provisions of the Act.

5. In clause (a) of Section 2 of the Act "agricultural produce" has been defined to mean :

Such items of produce of agriculture, horticulture, viticulture eqiculture, sericulture, pisciculture, animal husbandry or forest are specified in the schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, further includes gur, rab, shakkar, khandsari and jaggery.

The 'Board' means the State Agricultural Produce Markets Board contented under Section 26-A. Clause (e) defines "commission agent" "Arhatiya" to mean :

> Person who, in the ordinary course of business, makes or offers to make, a purchase or sale of agricultural produce, on behalf of the owner or seller or purchaser of agricultural produce, for Arhat or commission.

Under clause (k) "Market Area" means as area notified as such under Section 6, or as modified under Section 8. Clause (o) defines "Principal Market Yard" to mean the portion of a Market Area, declared under Section 7. Clause (p) must be read in full :

> "Producer" means a person who, whether by himself or through hired labour, produces, rears or catches any agricultural produce, not being a producer who also works as a trader, broker or Dalal, commission agent or Arhatiya or who is otherwise ordinarily engaged in the business of storage of agricultural produce :
>
> Provided that if a question arises as to whether any person is a producer or not for the purposes of this Act, the decision of the Director, made after an enquiry, conducted in such manner as may be prescribed, shall be final.

Under clause (w) "Sub-Market Yard" means a portion of a Market Area, declared as such under Section 7. Clause (y) defines a "trader" to mean :

> A person who in the ordinary course of business is engaged in buying or selling agriculture produce as principal or as a duly authorised agent of one or more principals, and includes a person, engaged in processing of agricultural produce.

6. Action under Section 5 was taken by the State Government declaring its intention to regulate and control sale and purchase of agricultural produce in any area and thereafter declaration of market area was made under Section 6. Under the present impugned notification, which was issued on April 11, 1978 making if effective from May 1, 1978, almost the whole of Uttar Pradesh has been declared to be market area dividing it into 250 area and indicating in Schedule B of notification 115 commodities in respect of which the fee could be levied by the market committees. Under Section 7 declarations of Principal Market Yard and Sub-Market Yards have been made. Most of such area declared so far are the markets or the mandis where the traders are carrying on their businesses. It is proposed to establish Principal Market Yard and Sub-Market Yards separately in every market area and a question of asking the traders to carry on their business only in such market yards is under consideration of the government. The State Government under Section 8 has got the power to alter any market area and modify the list of agricultural product. Section 9 provides for the effects of declaration of market area. Chapter III of the Act deals with the establishment, incorporation and constitution of the market committees. The most important section is Section 17 which provides for the powers of the committee. Clause (i) authorises a committee to issue or renew licences under the Act on such terms and conditions an subject to such restrictions as may be prescribed Clauses (iii) authorises a committee to levy and collect, (a) such fees as may be prescribed for the issue or renewal of licences, and (b) market fee at the rate and in the manner provided therein. Clause (b) of Section 17(iii) has undergone drastic changes from time to time and that enabled the appellants to advance certain serious argument to challenge the levy of the fees especially when the rules were not correspondingly amended. We shall advert to this aspect of the matter later in this judgment at the appropriate place. Section 19 provides for the Market Committee Fund and its utilisation. Section 19-B was introduced in the Act by U.P. Act 7 of 1978 w.e.f. December 29, 1977 providing for the establishment of 'Market Development Fund' for each committee. The rule-making power of the State Government is to be found in Section 40.

7. From the rules no provision is necessary to be specifically referred here except to point out that the State Government will be well advised to provide a machinery in the rules for the adjudication of disputes which may be raised by the persons liable to pay the market fee in relation to their factum or quantum of liability. We are not impressed with the argument advanced on behalf of the market committees that no such disputes actually exist or likely to exist which require any machinery of the market committee for its adjudication. At places hereinafter in this judgment we shall point out the nature of disputes which are likely to arise and which have got to be decided in the first instance by a machinery of the market committee such as a Board or the like. It would be just and proper and also convenient for all concerned if the disputes are thereafter taken to any court of law.

8. Chapter VI of the Rules deals with levy and collection of fees. Rule 66 dealing with the levy of market fee and Rule 68 providing for its recovery on reference to the provisions of Section 17(iii) will be alluded to hereinafter to point out the chaotic conditions in which the rules have been left in spite of the amendment in Section 17(iii)(b) of the Act. Rule 67 provides for licence fee and in none of these appeals we are concerned with the question of levy or quantum of the licence fee. Chapter VII deals with the transaction of business in Market Yards.

9. Several sets of arguments were advanced on behalf of the trader appellants in the various appeals by their respective learned counsel. Three sets of arguments were advanced on behalf of the various market committees and a separate argument was addressed to us on behalf of the State. In some of the appeals the State and/or the market committee are the appellants. The points urged on behalf of the trader-appellants, although too numerous broadly speaking are the following :

(1) Big areas consisting of towns are villages have been notified as market areas without rendering any service. That is contrary to the whole object of the Act and the concept of fee.

(2) No market area or market yard has been validly created.

(3) No Mandi Samiti (market committee) has been validly appointed.

(4) No machinery has been provided in the Rules for the adjudication of disputes.

(5) Fixation of minimum of 1% to be charged as market fee by all the market committees under Section 17(iii)(b) of the Act was illegal as the requirement of and the services to be rendered to the various market committees could not be on the same footing.

(6) There was no application of mind in issuing the Notification dated April 11, 1978 whereby 250 market areas were notified and 115 items of agricultural produce were specified.

(7) There could not be any multi point levy of any market fee either in the same market area or in different market areas.

(8) The retrospective operation of the law brought about as Section 17(iii)(b) by U.P. Act 7 of 1978 w.e.f. June 12, 1973 is bad.

(9) No market fee could be levied on goods not produced within the limits of a particular market area and if produced outside and brought in such area.

(10) No market fee could be levied both on paddy and rice. The rice millers have been illegally asked to pay market fee on their sale of rice. Similarly no market fee was payable on ghee either by the producer-trader of ghee or by its purchaser.

(11) Fee could be charged on sale of animals but could not charged on hides and skins as was being illegally done.

(12) Fee could be charged on wood or timber but could not be charged either on furniture manufactured from such wood or timber or on catechu (katha).

(13) Wood out and brought from the jungle by a manufacturer of paper such as Star Paper Mills, Sharanpur could not be sub-jected to levy of fee.

(14) Some of the items mentioned in the notification are kirana goods brought from outside the market area or even from other States for sale in different mandis. They cannot be subjected to the levy of market fee.

(15) No market fee could be charged on tobacco or tendu leaves not on bidis.

(16) No fee could be charged in a municipal area as no market committee can be constituted there nor in a nyaya panchayat.

(17) No market fee could be charged on rab salawat and rab galawat.

(18) No market fee can be charged if only goods are brought in a market area and dispatched outside it without there taking place any transaction of purchase and sale in respect of these goods.

(19) Any goods sold under any controlled legislation such as rice etc. cannot attract the levy of fee as there is no freedom to make any sale in respect of such commodity.

(20) If no licence is issued or taken under Section 9(1) of the Act then there is no liability to pay a market fee.

(21) No market fee can be levied on transactions of match-boxes, soyabin products, articles sold by Kisan Products Ltd. and Pan (betel leaves).

(22) No market fee can be charged from vendors of fruits and vegetables through their Commission Agents.

(23) Fee can be charged only on those transactions in which the seller is producer and not on any other transaction.

(24) Market fee can be charged only on those transactions in which the seller is the purchaser of agricultural produce and not on any other transaction.

Points Nos. 1 to 4

10. These four points are taken up together as there is no substance in any of them. Declaration of big areas as market areas does not offend any provision of law. Any area big or small including towns and villages can be declared as market area under Section 6 of the Act. As explained in the case of Kewal Krishan Puri ((1979) 3 SCR 1217 : (1980) 1 SCC 416) the whole of the market area is not meant where the traders or the licensees can be allowed to set up and carry on their business. The traders are required to take out licences under Section 9(2) read with Section 11 of the Act, for such place which is either a principal market yard or a sub-market yard or at any specified place in the market area. Nobody can be permitted to carry on his business anywhere in the market area as the market committee will not be able to control and levy fee throughout the market area. The question of rendering service and its correlation to the charging of fee has been elaborately discussed in the said decision and the following principles have been culled out (SCC pp. 434, 435, para 23)

(1) That the amount of fee realised must be earmarket for rending 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 purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and

reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensee it is permissible to render such service in the market which may be in the general interest of all concerned with the transaction 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 he 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 necessity to be established with arithmetical exactitued 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 neighborhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

At already stated market yards also have been established while issuing notifications under Section 7. By and large, the mandis where the traders are carrying on their business for the time being have been declared as market yards. When the market committees are able to construct their own market yards, as in some places they have been able to do, then a question will arise whether a trader can be forced to go to that place only carrying on his business in agricultural produce or he can be permitted to carry on his business in his old place. For the time being this question left open. Market committees have not been constituted yet in according with the provisions contained in Section 13 of the Act. They have constituted temporarily under Uttar Pradesh Krishi Utpadan Mandi Samitis (Alpakalik Vyavastha) Adhiniyam, 1972 which Act was a temporary Act and has been extended from year to year. But it is high time that market committees should be constituted in a regular manner on a permanent basis in accordance with the provisions contained in Chapter III of the Act. But the levy and collection of fee by the temporary market committees is not illegal a argued on behalf of the appellants. A machinery for adjudication of disputes is necessity to be provided under the rules for the proper functioning of the market committees. We have already observed and expressed our hope for bringing into existence such machinery in one form or the other. But it is not correct to say that in absence of such a machinery no market fee can be levied or collected. If a dispute arises then in the first instance the market committee itself or any sub-committe appointed by it can give its finding which will be subject to challenge in any court of law when steps are taken for enforcement of the provisions for realisation of the market fee.

Point No. 5

11. Under clause (b) of Section 17(iii) of the Act minimum and maximum limit of market fee chargeable has been fixed by the legislature. The minimum is 1% and the maximum is 1 1/2% of the price of the agricultural produce sold. The fixing of the minimum of 1% fee by itself is not illegal but it would be subject to the rendering of adequate services as explained by this Court in Kewal

Krishan Puri case ((1979) 3 SCR 1217 : (1980) 1 SCC 416). The facts placed before the High Court as also before us were too meager to indicate that services to the extent of the fee levied at 1% are not being rendered. In Puri case ((1979) 3 SCR 1217 : (1980) 1 SCC 416) we upheld the levy of market fee at 2% on the value of the goods sold. But there we found that the market committees were rendering greater services than are being rendered by the market committees of Uttar Pradesh. Yes charging of 1% fee as is being charged throughout the State of Uttar Pradesh by all the market committees is not illegal and does not go beyond the quid pro quo theory discussed in Puri case ((1979) 3 SCR 1217 : (1980) 1 SCC 416).

Point No. 6

> (12) It is difficult to understand the significance of this point. The Notification dated April 11, 1978 indicates that in the various districts, the number of which is about 55,250 market committees have been constituted and about 115 items have been selected in respect of which market fee has been directed to be levied. None of the items so specified is such that it cannot be covered by the schedule which is a part of the Act. The definition of agricultural produce is very wide. It is not confined to items of agricultural produce only but includes items of produce of horticulture, viticulture apiculture, sericulture, pisiculture, animal husbandry or forest. Such items are specified in the Act which is undoubtedly a part of the Act. That being so challenge to the Notification dated April 11, 1978 on the ground that it was issued without any application of mind is devoid of any substance and must be rejected.

Point No. 7

13. It is clear and it was expressly conceded to on behalf of the market committees and the State that there cannot be any multi point levy of market fee in the same market area. The reason is obvious. Section 17(iii)(b), as amended by U.P. Act 7 of 1978 reads as follows :

> Market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one per centum and not more than one and held per centum of the price of the agricultural produce so sold, as the State Government may specify by notification, and such fee shall be realised in the following manner -
>
> (1) if the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the committee;
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> (2) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the committee;
>
> (3) if the produce is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the committee; and
>
> (4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee.

All the four sub-clauses of clause (b) are mutually exclusive. If produce is purchased from a

producer directly the trader shall be liable to pay the market fee to the committee in accordance with sub-clause (2). But if the trader sells the same produce or any product of the same produce to another trader neither the seller-trader nor the purchaser-trader can be made to pay the market fee under sub-clause (3). So far the position was not disputed by the market committee, rather it was conceded, and in our opinion, rightly. But some difficulty arises in regard to the products of the agricultural produce which has been subjected to the levy of market fee. This will be relevant when we come to consider the various agricultural produce in respect of which challenge was made on the ground that it amounts to multi point levy. At this stage we may explain our viewpoint by taking a few examples from the schedule appended to the Act. Wheat, an agricultural produce, is mentioned under the heading 'Cereals'. Suppose the transaction of wheat, namely, wheat purchased from a producer by a trader has been subjected to levy of market fee under Section 17(iii)(b)(2) no further levy of market fee in the same market area could be made, not even on wheat flour if flour were to be included in the schedule. The better example can be found in the items under the heading 'Animal Husbandry Products' wherein in the schedule under the heading 'Animal Husbandry Products' wherein in the schedule milk and ghee both are mentioned. Milk, of course, is not mentioned in the Notification dated April 11, 1978. But if it would have been mentioned then only the transaction of milk in a particular market area could be subjected to levy of fee ghee manufactured from milk could not be so subjected. But since milk is not mentioned in the notification the transaction of ghee can be subjected to the levy of fee in accordance with the principle to be discussed thereinafter. The greater difficult arises with respect to paddy and rice as both of them are mentioned in the schedule as well as in the notification. We shall show hereinafter that in a particular market area market fee cannot be levied both in relation to the transaction of purchase and sale of paddy and the rice produced from the same paddy. Fee can be charged only on one transaction. This finds support from the unamended rules as they are, wherein it is to be found sub-rule (2) of Rule 66. But we find nothing in the provisions of the Act or the Rules to warrant the taking of the view that in another market area the market committee of that area cannot levy fee on a fresh transaction of sale and purchase taking place in that area. Supposing the wheat is purchased in market area X by a trader from a producer, fee will be chargeable under Section 17(iii)(b)(2). If the same wheat is taken to another market area say R and another transaction of sale and purchase takes place there between a tracer and a trader the market fee will be leviable under sub-clause (3). It is also not correct to say that the agricultural produce in the market area in which the first levy is made. It might have been produced in another market area or even outside the Stage of Uttar Pradesh but if a transaction of sale and purchase takes place of an agricultural produce as defined in the Act and covered by the notification within a particular market area then fee can be charged in relation to the said transaction.

Point No. 8

14. In order to appreciate the implication of this point we have first to read and compare the provisions of Section 17 (iii)(b) of the Act as they stood before 1973, between 1973 and 1978 and after the amendment by Act 7 of 1978. The provision as enacted in U.P. Act 25 of 1964 read as follows :

> 17. A committee shall, for the purposes of this Act, have the power to -
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> (iii) levy and collect :
>
> (b) market fees on transactions of sale or purchase of specified agricultural produce in the principal market yard and sub-market yards from such persons and at such

rates as may be prescribed, but not exceeding one half percentum of the price of the specified agricultural produce sold or purchased therein.

15. The Rules which were framed in 1965 prescribed the rates of and the liability of the persons to pay the market fee. The relevant provisions of Rules 66 and 68 are quoted below :

66. Market fee. - Section 17(iii) - (1) The market committee shall have the power to levy and collect fees on the specified agricultural produce brought and sold in the market yard at such rates as may be specified in the bye laws but not exceeding one-half of one percentum of the price of the specified agricultural produce :

Provided that the market fee shall be payable by the seller.

68. Recovery of fee. - Section 17(iii) - (1) The market fee on specified agricultural produce shall be payable as soon as such produce is sold in the principal market yard or sub-market yards in accordance with the terms of and conditions specified in the bye-laws.

(2) The market fee shall be realised from the seller in the following manner :-

(i) If the specified agricultural produce is sold through the commission agent or directly to the trader, the commission agent or the trader, as the case may be, shall charge market fee from the seller in sale voucher in Form No. VI and deposit the amount of market fee so realised with the market committee in accordance with the directions of the committee issued in this behalf.

(ii) If the specified agricultural produce is sold directly by the seller to the consumer, the market fee shall be realised by the servant of the market committee authorized by it in this behalf.

(3) The licence fee shall be paid along with the application for licence :

Provided that in case the market committee refuses to issue a licence, the fee deposited by the applicant shall be refunded to him.

(4) The payment of market fee and licence fee shall be made to the committee in cash.

16. It would thus be seen that before 1973, reading the provisions of the Act and the Rules, market fee was to be charged at such rates as specified in the bye-laws of a particular market committee. But it could not exceed 1/2 per centum of the price of the agricultural produce. We were informed at the Bar that almost every market committee had levied fee @ 1/2%. The liability to pay the fee was of the seller of the agricultural produce. Market fee was liable to be paid under Rule 68(2)(ii) even if the specified agricultural produce was sold directly by the seller to the consumer. This provision has been superseded now by an amendment in the Act brought about by U.P. Act 19 of 1979, whereby a proviso to the following effect has been added to Section 17(iii)(b) :

Provided that no market fee shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer.

17. Clause (b) of Section 17(iii) was amended by U.P. Act 13 of 1973 as re-enacted by U.P. Act 20

of 1974.

The said clause stood as follows after the said amendment :

> (b) market fees, which shall be payable by purchasers, on transactions of sale of specified agricultural produce in the principal market yard or a sub-market yard at such rates, being not less than one per centum and not more than one-and-a-half per centum of the price of the agricultural produce so sold, as the State Government may specify by notification in the Gazette;
>
> It would be noticed that by the said amendment in clause (b) the minimum rate fixed was 1 per centum and the maximum 1 1/2 per centum and the liability to pay the fee became that of the purchaser instead of the seller as prescribed earlier by the rules. Yet the rules continued as they were. Nonetheless it is plain that after the amendment there was a conflict between the rules and the statute the latter had to prevail.

18. In passing, reference may be made to the substitution of the words market area in place of the words "Principal Market Yard or the Sub-Market Yards" occurring in clause (b) by U.P. Act 6 of 1977 w.e.f. December 20, 1976. We have already adverted to this aspect of the matter and pointed out that transactions cannot take place in whole of the market area and although theoretically fee is chargeable in the whole of the area now but actually the rules and especially the Explanation to Rule 66 indicate that the transitions do take place in the principal market yard or market yards or some specified place or places in a particular market area. Then came the amended Section 17(iii)(b) of U.P. Act 7 of 1978, which has already been extracted above and it was made retrospective w.e.f. June 12, 1973. Under the present provision a liability to pay the fee is under four mutually exclusive clauses. The Rules which were framed in 1965 namely Rules 66 and 68 are so very different from the present provision of law that we had to express our distress in the beginning of this judgment for the failure of the government to amend the rules and bring it in conformity with the amended provisions of the statute from time to time. Anyway, the rules will apply as far as possible so long they do not come in conflict with the statute and even without the aid of the rules the provision in Section 17 (iii)(b) as it stands after the amendment brought about by U.P. Act 7 of 1978 is workable and can be given effect to. The State Legislature was competent to make retrospective amendment vide B. Banerjee v. Anita Pan ((1975) 2 SCR 774 : (1975) : (1975) 1 SCC 166 : 1971 BLJR 1038) and S.K.G. Sugar Ltd. v. State of Bihar ((1975) 1 SCR 312 : (1974) 4 SCC 827 : 1974 SCC (Tax) 311). It has also been pointed out in H. H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore (1963 Supp 2 SCR 302 : AIR 1963 SC 966) at pages 324-25 that retrospective imposition of a fee is valid. Of course, this cannot be a rule of universal application. In a given case and in a given situation the retrospective operation may be hit by Article 19. But in the present case we are inclined to take the view that the retrospectivity of the law as such is not bad and the only safeguard which we want to point out is this. If market fee has realised by any market committee in respect of transactions of sale of agricultural produce taking place between June 12, 1973 and coming into force of U.P. Act 7 of 1978, in accordance with the law as it prevailed then, no market fee under the amended law can be realised again. But if in respect of any transactions aforesaid market fee has not yet been realised then it can be realised in accordance with the amended provision of the law. The only hardship will be to persons covered by sub-clauses (1) and (3) wherein a provision has been made to pass on the burden of fee to others. In the case of sub-clause (1) the commission agent can realise the market fee from the purchaser and the seller-trader under sub-clause (3) can realise it from the purchaser. If market fees are realised from such persons in accordance with the amended provision of the law then in turn they may be able to realise it from

persons on whom they could pass on the burden. We are not disposed to hold the law bad only on that account.

Point No. 9

19. We have already alluded to this aspect of the matter earlier in our judgment and taken the view that market fee could be levied on transactions of goods not produced within the limits of a particular market area by the market committee of that area even though the goods are produced outside the State of Uttar Pradesh or outside the market area of that particular market committee provided the transactions take place within the limits of that market area. On the other had we find no provision in the Act or the Rules to limit the operation of the law in a particular market area only in respect of the agricultural produce produced in that area.

Point No. 10

20. Apropos this point attention is first to be focussed on the definition of the word 'producer' in clause (p) and 'trader' in clause (y) of Section 2 of the Act which have already been quoted. A producer who produces agricultural produce generally does not indulge in trading activities so as to become a trader within the meaning of clause (y). He is covered by clause (p) only. If a person is simply a trader indulging in trading activities he is covered by the definition in clause (y). We have coined the expression producer-trader for a person who is both a producer of agricultural produce and himself trades in it. For the purposes of the Act he cases to be a producer and becomes a trader only as the definition indicates. While discussing the question of levy of market fee on paddy and rice this aspect of the matter is important and therefore we thought it appropriate to highlight it at this stage. By and large in the notification dated April 11, 1978 there is hardly any duplication of any item of agricultural produce. As for example, under Group D "Animal Husbandry Products", milk has been omitted although it is to be found in the schedule appended to the Act. From milk can be prepared ghee or khoya and items 1 and 2 in Group D are the said articles. Hides and skins can be had from the animals, so wool is obtained from the sheep. But in case of paddy and rice mentioned as items 3 and 4 in Group A-I "Cereals", there is a duplication as rice is obtained from paddy. We would, therefore, like to clarify the position of law in this regard. If paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the agriculturist-producer under sub-clause (2) of Section 17(iii)(b). He cannot be asked to pay market fee all over again under sub-clause (3) in relation to the transaction of rice. Nor will it be open to the market committee to choose between either of the two in the example just given. Market fee has to be levied and collected in relation to the transaction of paddy alone. Otherwise, there will be a risk of violation of Article 14 if it is left to the sweet-will of the market committee in the case of some rice millers to charge market fee on the transaction of paddy and in case of others to charge it when the sale of rice takes place. If, however, paddy is brought by the rice miller from another market area, then the market committee of the area where paddy is converted into rice and sold will be entitled to charge market fee on the transaction of sale in accordance with sub-clause (3). We now take the example of a producer-trder who is an agriculturist and produces paddy in his own filed but owns a rice mill also in the same market area. He mills the paddy grown by him into rice and sells it as such. It is plain that in his case no market fee can be charged on paddy because there is no transaction of sale and purchase of paddy and market fee can be charged only on the sale of rice by him in accordance with sub-clause (3) and he will be entitled to pass on the burden to his purchaser. Disputes of facts were raised before us as to whether paddy had been subjected to the charge of market fee or not and whether the same paddy has been milled into rice. We did not enter into this

disputed question of fact, and as observed above, after clarifying the law we direct the market committees to levy market fee in the light of this judgment. It will be open to any trader to go to the High Court again, if necessary, for the redress of his grievance in connection with a disputed question which may arise even after our judgment.

21. In relation to the transactions of ghee we had two types of dealers before us - (1) a dealer who purchases milk or cream from the villagers and others and manufactures ghee in his plant and (2) a dealer who purchases such ghee from the manufacturer of ghee and sells it to another trader in the same market area. The first dealer will be liable to pay market fee because he is the producer of ghee within the meaning of the Act and at the same time a trader in ghee also. When he sells ghee to another dealer in ghee who is simply a dealer then under sub-clause (3) of Section 17(iii)(b) the manufacturing dealer will be liable to pay market fee to the market committee on the transaction of ghee. But he will be entitled to pass on the burden to his purchaser. Apropos the market committee, however, the liability will be of the manufacturing dealer. If milk, butter or cream would have been included in the notification then the charging of fee in relation to the first transaction of sale and purchase of such commodities would have been attracted in the light of the principle of law we have enunciated above with reference to paddy and rice. But in the case of Group D such commodities are not mentioned in the notification.

Point No. 11

22. An attempt was made on behalf of the hides and skins dealers to show that hides and skins cannot be an agricultural produce within the meaning of the Act. They are obtained from the carcass of an animal and not from a living animal. Argument stressed was that under Group G in the Schedule appended to the Act Animal Husbandry Products only can come. Item 11 hides and skins, item 12 bones, item 13 meat etc. are not products of Animal Husbandry. Some authoritative books were cited before us on "Words and Phrases" to show the meaning of 'Animal', 'Husbandry' and 'Animal Husbandry'. Animal Husbandry means that branch of agriculture which is which is concerned with farm animals especially as regards breeding, care and production. We are not impressed by this argument. The definition clause (a) of Section 2 uses the expression 'animal husbandry' by way of a descriptive one without strictly confining to the products of animal husbandry as the addition of the words "specified in the schedule" indicates. In the schedule under the group 'husbandry products' are mentioned all these items. We may also add that one may breed and rear animals in a farm for the purpose of obtaining hides and skins after they are butchered. Market fee is, therefore, leviable on the transactions of hides and skins as no market fee can be charged on transactions of sale and purchase of animals in a market area in the State of Uttar Pradesh, the same having not been included in the notification. Had it been included in the notification, then no market fee could be charged in the same market area of hides and skins. It could only be charged in relation to the transaction of purchase and sale of animals.

Point No. 12

23. For discussing this point we have to refer to Group E of the Notification dated April 11, 1978 which deals with forest products. The items mentioned in the said group are (1) Gum, (2) Wood, (3) Tendu leaves, (4) Catechu and (5) Lac. Market fee can be charged on purchase of wood by a trader from a producer. No fee can be charged on the sale of furniture manufactured by the purchaser of wood. It was also conceded on behalf of the market committees that market fee was not being charged on the sale of furniture. It it has been so charged it will be refunded. Furniture is not an item mentioned in the group of forest products. Therefore, this question does not present any

difficulty at all. Difficulty cropped up in relation to the charging of market fee apropos the transaction of catechu. According to the market committee catechu is a product from timber or trees like gum or lac. It trickles down from the trees. On the other hand, according to the catechu dealers by processing of khar trees catechu is produced. We leave this question of fact to be decided by the market committees concerned in the first instance and then by a court of law. If catechu is a product of khar trees by some processing as prima facie it appears to us to be so, then it is plain that market fee can be charged only on the purchase of khar wood and on the sale of catechu.

Point No. 13

24. This item presented some difficulty in solution. A licence is granted to a paper mill and to other kinds of dealers for cutting wood from the jungle and bringing it to their factories for manufacture of various articles such as paper etc. It was argued that there was no transaction of sale and purchase involved in the above operation. Moreover the wood is cut from the jungle area which although has been roped in the market area but no service is rendered in that jungle area by any market committee. In our opinion, in the licence is involved sale of wood and a right to go to that land to cut that wood. The wood may be used by the manufacturer for manufacturing furniture or may be used in the manufacture of paper or any other commodity. That is immaterial. The owner of the jungle wherefrom the wood is cut and brought will be a producer within the meaning of the Act and the licensee-producer of that wood would be a purchaser of an agricultural produce within the meaning of sub-clause (2) of Section 17(iii) (b) of the Act liable to pay market fee. It matters little what use is made of the wood by him. The question of quid pro quo and service cannot be decided by a dichotomy of service to every payer of fee as held by this Court in Keval Krishan Puri. case ((1979) 3 SCR 1217 : (1980) 1 SCC 416). The matter has to be judged in a broad sense and not in the sense of rendering service to every individual payer of the fee.

Point No. 14

25. This point also presented some difficulty. But on a parity of reasoning mentioned so far in connection with the other items, we have got to hold that such kirana goods as are included in the notification brought from outside a particular market are or even from outside the State of Uttar Pradesh are chargeable to market fee when their sale takes place in a particular market area. In Group A-VI spices are mentioned including certain kirana items such as ripe chilies, sonf, turmeric etc. They are sold by the kirana dealers. Sometimes they purchase them from the agriculturists in the same market area. In relation to those transactions they will be liable to pay market fee under sub-clause (2) of Section 17(iii)(b). More often than not such articles are brought from outside and sold by the kirana merchants. If they are sold to consumers, no market fee can be levied in view of the proviso added in the year 1979. If they are sold in wholesale, then the transaction can be subjected to the levy of market fee because in a particular market area they enter into the first transaction of sale in respect of the specified agricultural produce.

Point No. 15

26. Market fee can be charged on transaction of tobacco as it is included in Group A-V of the notification. As in the case of other items so in this case also the fee will be leviable if tobacco is purchased in the same market area from an agriculturist in accordance with sub-clause (2). Otherwise it would be leviable under sub-clause (3). Similar is the position in regard to tendu leaves which is mentioned in Group E. Bidi cannot be treated as an agricultural produce as it is not an admixture of tobacco and tendu leaves within the meaning of Section 2(a) of the Act. It was

conceded on behalf of the market committee that no market fee was being charged on the transactions of bidi. But if a bidi manufacturer purchases tobacco and tendu leaves in the market area and uses them in the manufacture of bidi, he will be liable to pay market fee in relation to the transaction of tobacco and tendu leaves.

Point No. 16

27. This point has been stated merely to be rejected. There is no substance in this point. Our attention was drawn to some provisions in the municipal Acts and the zila parishad Acts to show that no market committee could be constituted in a municipal area or a nyaya panchayat. We do not consider it necessary to deal with this point in any detail. We merely reject it as being devoid of any substance.

Point No. 17

28. Gur, rab, shakkar, khandsari and jaggery are expressly included in the definition of agricultural produce given in clause (a) of Section 2 of the Act. We are here concerned with the question as to whether rab galawat and rab galawat and rab salwat are rab within the meaning of Section 2(a) or are bye-products of molasses received at the time of manufacture of khandsari. According to the case of some of the appellants who deal in these commodities they are the bye-products and market fee has already been charged on rab and therefore the fee cannot be charged again on rab galawat and rab salawat. Disputes of facts were raised in this connection before us on behalf on the market committees. On the materials placed before us it was clear to us that rab galawat and rab salawat cannot be subjected to a separate charge of market fee apart from the transaction of rab. Market fee can be levied on the first transaction of rab taking place in any market area in accordance with any of the sub-clauses of Section 17(iii)(b), as it may be applicable. It cannot be again charged on the second transaction of rab galawat or rab salawat even assuming that it is rab. But on the materials placed before us it appeared to us that rab galawat and rab salawat are not rab in the original form but they are obtained at one stage or the other in the process of manufacture of khandsari. Any way the question of fact may be decided, as we have indicated in respect of the other items in the first instance by the market committee and thereafter by the High Court, if necessary, in a fresh writ petition. It will bear repetition to say that the only transaction which can be subjected to levy of market fee in a particular market area is the first transaction of rab and no other transaction of rab galawat and rab salawat.

Point No. 18

29. This point urged on behalf of the appellants is well founded and must be accepted as correct. On the very wordings of clause (b) of Section 17(iii) market fee is payable on transactions of sale of specified agricultural produce in the market area and if no transaction of sale takes place in a particular market area no fee can be charged by the market committee of that area. If goods are merely brought in any market area and are despatched outside it without any transaction of sale taking place therein, then no market fee can be charged. If the bringing of the goods in a particular market area and their despatch therefrom are as a result of transactions of purchase and sale taking place outside the market area, it is plain that no fee can be levied.

Point No. 19

30. This point has no substance and has got to be rejected. As held in Vishnu Agencies (Pvt.) Ltd. v.

C.T.O. ((1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31) on a review of earlier decisions even if a commodity is sold pursuant to the controlled regulations still some small area is left to make it a transaction of sale. It may well be that no freedom is left to the parties in a large area of the transaction yet it its a transaction of sale.

Point No. 20

31. This point also must be rejected. A pure and simple producer as defined in clause (p) of Section 2 is not required to take any licence for selling his agricultural produce nor is he required to pay market fee under any of the sub-clauses of Section 17(iii)(b). But if he is a producer-trader in the sense we have explained above, then he will be required to take out a licence in accordance with Section 9(2) of the Act and nobody can be permitted to carry on any trade in agricultural produce in the market area without a valid licence. Merely for his lapse of not taking out a licence he cannot escape the liability to pay the market fee. Market fee will still be chargeable from the trader, as, in Section 17(iii)(b) it is not stated that market fee can be charged only from the licenses. The proviso to clause (p) of Section 2 will be attracted only if a question arises as to whether any person is a producer or not for the purposes of the Act and in that event the decision of the Director made after an inquiry conducted in the manner prescribed by the rules shall be final. The proviso has nothing to do with a case of a producer-trader. If a question arises whether a person is merely a producer or producer-trader the Director will have no power to decide this question. Such a question will have to be decided by the market committee itself which will be subject to the final decision of a court of law.

32. In support of the argument reliance was placed upon the decision of this court in Raunaq Ram Tara Chand v. State of Punjab ((1976) 1 SCR : (1975) 2 SCC 354). But that case is distinguishable because of the language of Rules 29 and 31 of the Punjab Agricultural Produce Market Rules framed in accordance with the Punjab Agricultural Produce Markets Act, 1961. Both the rules aforesaid clearly stated that the fee could be charged from the licensees only. Not only that even the charging Section 23 of the Act itself stated :

> A committee may, 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 brought or sold by licensees in the notified market area at a rate not exceeding rupee one fifty paise for every one hundred rupees, provided ....

On the other hand in Section 17(iii)(b) of the U.P. Act and Rules 66 and of the Rules charging of market fee in terms is not found to be chargeable from the licensees only. The traders cannot escape their liability to pay account of their default of taking out licences.

Point No. 21

33. This point is also well founded and must be accepted as correct. Market fee can be charged only on the transactions of purchases of wood and if a manufacturer of matchsticks purchases wood from the producer for the purposes of manufacturing the sticks he will be required to pay market fee on such purchase of wood only and not on the sale of matchstick or match boxes. Similarly market fee will be leviable on the transaction of purchase of soyabin and not on transaction of sale of soyabin products. Exactly the same will be the position with regard to the articles sold by Kisan Products Ltd. and the sale of Pan. Agricultural produce purchased by the dealers will be chargeable to market fee and not the sale of the products after one kind of processing or the other.

Points No. 22

34. Under this head the submission on behalf of the fruit and vegetable merchants was that they bring their products to the market and sell them in wholesale through their commission agents. No market fee, therefore, should be charged from them. In our opinion the argument so placed on behalf of the merchants is misconceived. Under sub-clause (1) of Section 17(iii)(b) of the Act when fruits and vegetables are sold through a commission agent by the producer then the commission agent is liable to pay the market fee and he can realise it from the purchaser of fruits and vegetables. The burden does not all on the producer. The liability in the first instance is of the commission agent and finally of the purchaser of the articles.

Points Nos. 23 & 24

35. Reliance was placed upon a decision of the Mysore High Court (now Karnataka) in the case of K. N. Marudaradhya v. Mysore State (AIR 1970 Mys 114 : 18 Law Rep 5 : (1969) 1 Mys LJ 533) but the view taken by the Mysore High Court was dissented from by the Patna High Court in the case of Mangalchandra Ramchandra v. State of Bihar (1971 BLJR 1038). One of us (Untwalia, J.) delivering the judgment of the Patna High Court stated at page 1053 thus :

At this stage I would discuss a Bench decision of the Mysore High Court on which great reliance was placed on behalf of the petitioners in support of their contention that no fee can be levied on transaction of buying and selling between a dealer and a dealer even though such transactions take place within the market area or the market proper. The decision of the Mysore High Court is in the case of K. N. Marudaradhya v. Mysore State (AIR 1970 Mys 114 : 18 Law Rep 5 : (1969) 1 Mys LJ 533). At page 126 (column 2) from paragraph 33 starts the discussion on the point at issue. To the extent the decision goes to hold that the purchase in respect of which the fee could be levied or collected is the earliest purchase, that is to say, the fee can be levied only on one purchase and not on subsequent purchases, with respect I am inclined to agree with that view expressed in paragraph 33 to 38. But while discussing the point, Iyer, J., has confined this earliest purchase of the agricultural produce belonging to the producer only. There does not seem to be a pointed discussion of the question whether the first purchase from a dealer could be subjected to levy or not. But by necessary implication, as I read the judgment, it seems, their Lordships of the Mysore High Court took the view that such a deal cannot be subjected to the levy of fee. With great respect, in that regard, I strike my note of dissent from the view expressed by the Mysore High Court. Firstly, merely because the object of the legislation is the protection of the agriculturist, the plain meaning of the section cannot be cut down. Secondly, they have relied upon the practice prevailing around the area under different State statutes as mentioned in paragraph 36. If I may say with respect, law could not be so decided on the basis of any practice. Of course, the interpretation given to the statute can be supported by reference to practice. Thirdly, I am inclined to think that the Supreme Court decision in the case of Krishna Coconut Company (Krishna Co-count Co. v. E.G.C. & T.M. Co., (1967) 1 SCR 974 : ALR 1967 SC 973.) does not lend support to the limited view expressed by the Mysore High Court.

We approve of the Patna view and in the set-up of the U.P. Act after an elaborate discussion we have pointed out as to in what kind of transaction who is liable to pay the market fee. In the U.P. Act even traders under certain circumstances have been made liable to pay such fees. Similarly the argument that market fee can be charged only on those transactions in which the seller is the producer of agricultural produce and not on any other transaction is also devoid of any substance.

Conclusions

36. For the reasons stated above, we hold that market fee should be regularised and be charged in the light of this judgment. If anything has been realised from the traders or any other persons which goes contrary to this judgment the same should be refunded by the market committee concerned within six months from today. This may not be treated as a precedent for all cases of this type. The form of the order in relation to the refund of the market fee may vary from case to case depending upon the facts and circumstances of each case. Market fee due from the traders in the light of this judgment should also be charged and paid within a period of six months from today. If there is any disputed question of fact to be decided by the market committee then it should be decided as quickly as possible leaving the person concerned to agitate the matter in a court of law, preferably in the High Court, within a short time thereafter. The High Court will proceed to decide the matter in the light of our judgment. We do hope that services are being rendered and will continue to be rendered by the various market committees in the light of the judgment of this Court in Kewal Krishan Puri case ((1979) 3 SCR 1217 : (1980) 1 SCC 416). If in regard to any particular market committee it is found that services are not being rendered or in future lapses are made then it will be open to the payers of fees to reagitate the matter in the High Court in the light of that judgment.

37. For the reasons stated above the appeals and writ petitions are partly allowed and partly dismissed in the manner indicated above. There will be no order as to costs in any of them.

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