Sreenivasa General Traders and Others

Vs

State of Andhra Pradesh and Others

Uppalapeda Venkataramiah and Others

Vs

Dadi Venkataramiah and Others

Coromandal Agro Product and Oil Ltd.

Vs

Agricultural Market Committee, Chirala

Writ Petitions Nos. 2727, 2840-42, 2765, 2868, Etc., Etc. of 1982, Etc., Etc. with Special Leave Petition No. 728 of 1981; and Civil Appeals Nos. 4013 of 1982; 1485, 2108 and 2469 of 1972; 10 of 1973 and 2502 of 1981

(E. S. Vankataramiah, A. N. Sen, R. B. Mirsa JJ)

06.09.1983

JUDGMENT

A. P. SEN, J. -

1. These petitions under Article 32 of the Constitution principally lay a challenge to the constitutional validity of the increase in the rate of market fee levied by the market committees in the State of Andhra Pradesh under sub-section (1) of Section 12 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 ('Act' for short) from 50 paise to rupee one on every one hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock are purchased or sold in their respective notified market areas on the ground that there was no quid pro quo i.e. there was no correlation between the increase in the rate of market fee and the service rendered.

2. There are also certain subsidiary questions raised in these petitions viz. : (1) The constitutional validity of sub-section (6) of Section 7 of the Act which prohibits the carrying on of any transaction of purchase or sale of notified agricultural produce, livestock or products of livestock in a notified market area or outside the market in that area as violative of Article 19(1)(g) of the Constitution. (2) As to the power of the market committees to levy market fee under sub-section (1) of Section 12 of the Act at rupee one per hundred rupees of the aggregate amount for which such agricultural produce, livestock or products of livestock is purchased or sold outside their markets out within their respective notified market areas. And (3) Whether under Rule 74(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 ('Rules' for short) if purchase or sale of paddy has suffered market fee in the hands of a rice miller, the subsequent purchase or sale of rice

by a miller to a trader, or by a trader to a trader, can be subjected to payment of market fee again.

3. Writ Petition No. 1286 of 1973 questions the validity of a notification issued by the State Government being G.O.M.S. No. 2095 dated October 29, 1968 declaring rice to be a notified agricultural produce under Section 2(i), and the notification issued by the State Government of Andhra Pradesh under sub-section (4) of Section 4 of the Act being G.O.M.S. No. 971 dated July 16, 1971 declaring an area of 20 kms. around Kothavalasa to be the notified market area of the Kothavalasa Agricultural Market Committee for the district of Visakhapatnam, as well as the constitutional validity of sub-section (6) of Section 7 of the Act and sub-section (1) of Section 12 of the Act. Civil Appeal No. 1485 of 1972 is directed against the judgment of the Andhra Pradesh High Court dated July 7, 1971 upholding the constitutional validity of sub-section (6) of Section 7 of the Act and sub-section (1) of Section 12 of the Act. Civil Appeal No. 2108 of 1972 is directed against the judgment of the Andhra Pradesh High Court dated July 27, 1971 upholding the increase in the rate of market fee from 13 paise per quintal to 25 paise per hundred rupees by the Agricultural Market Committee, Guntur in the year 1970 on the ground that there was no quid pro quo i.e. there was no correlation between the service and the increase in the rate of market fee. Civil Appeal No. 2502 of 1981 is directed against the judgment of the Andhra Pradesh High Court dated April 21, 1981 upholding the levy of market fee at 50 paise per hundred rupees on cotton seeds by an agro-based industry engaged in the business of manufacture and sale of cotton seed oil. Civil Appeal No. 4013 of 1982 is directed against the judgment of the Andhra Pradesh High Court dated September 17, 1982 upholding the increase in the rate of market fee from 50 paise per hundred rupees to rupee one by the Agricultural Market Committee, Guntur upon the basis that there need be no quid pro quo to justify the levy of such market fee.

4. It appears that initially in the year 1970 the bye-laws of all the market committees throughout the State provided for the levy of market fee at 25 paise for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock was purchased or sold. Subsequently, in 1972 the rate of market fee was increased to 50 paise per hundred rupees of the value of such agricultural produce, livestock or products of livestock. The State Advisory Board at its meting held on January 27 and 28, 1976 resolved to recommend the enhancement of the existing rate of market fee to rupee one per hundred rupees so as to enable the market committees to build up adequate finances to meet the increasing costs towards acquisition of land and establishment of markets with modern infrastructure facilities. The Director of Marketing accordingly addressed a letter dated February 16, 1976 to all the agricultural market committees in the State inviting their attention to the resolution of the Advisory Board and requesting them to place the proposal for the enhancement of the existing rate of market fee from 50 paise to rupee one before the market committees and communicate their consent for levy of the enhanced rate of market fee under sub-section (1) of Section 12 of the Act read with bye-law No. 24(i) of the concerned market committee bye-laws. Accordingly, all the market committees throughout the State accepted the recommendation of the Advisory Board and resolved to enhance the market fee from 50 paise to rupee one requesting the Director to forward the amended bye-law No. 24(i) to the State Government for their approval. The State Government of Andhra Pradesh by notification dated January 1, 1978 published in the Andhra Pradesh Gazette dated February 23, 1978 accorded their approval to the amended bye-law. In pursuance of the impugned notification the market committees throughout the State began to levy market fee at rupee one per hundred rupees.

5. Some of the petitioners challenged the increase in the rate of levy of market fee from 50 paise to rupee one by filing petitions under Article 226 of the Constitution before the Andhra Pradesh High Court. All these writ petitions were disposed of by the High Court by its judgment in Sri Vijaya

Cotton Traders v. State of A.P. [AIR 1981 AP 203 : (1981) 1 APLJ (HC) 421 : (1981) 2 Andh WR 45] by which it negatived many of the submissions advanced before us. Aggrieved by the decision of the High Court, the petitioners applied to this Court for grant of special leave under Article 136. After hearing learned counsel appearing for them at considerable length, the Court dismissed the special leave petitions by its order dated May 1, 1981. Undaunted by the dismissal of the special leave petitions, these petitioners along with others have now filed petitions under Article 32 of the Constitution and secured a rule nisi on the pretext that similar questions were involved in Civil Appeal No. 2108 of 1972 and Writ Petition No. 1286 of 1973.

6. The pattern of working of the market committees in the State is more or less the same although the circumstances in which each market committee is placed may differ. Facts as far as they can be gleaned from some of the writ petitions where counters have been filed may be briefly stated. The Malakpet Agricultural Market Committee, Hyderabad has in its counter in Writ Petition No. 2911 of 1981 furnished sufficient material to show the nature of services rendered by the Market Committee. It has established and has under its control various markets in the twin cities of Hyderabad and Secunderabad viz. (i) Osmanganj Market for the purchase and sale of foodgrains and other notified agricultural produce, (ii) Jambagh Market for sale of fruits, (iii) Miralam Mandi and Sabzi Mandi for the sale of vegetables in Hyderabad, and Hissamgunj Market in Secunderabad for the purchase and sale of foodgrains and vegetables. In all these markets, the Committee is providing necessary facilities to the traders and producers of agricultural produce. The Market Committee during the financial year 1981-82 incurred an expenditure of Rs. 8.28 crores for the construction of godowns, shops, platforms, formation of internal roads, approach roads, construction of press building etc. So far as the Malakpet area is concerned, the Osmanganj Market was not sufficient for regulating the transactions of sale and purchase of agricultural produce. The Market Committee therefore permitted the traders of Malakpet to carry on their business from their respective licensed premises, subject to the supervision and control of the functionaries of the Market Committee. Due to the location of the present markets in busy and congested places, it was not possible to extend the market areas any further. The Committee therefore acquired an area of 41 acres 22 guntas at Malakpet on a permanent lease from the Andhra Pradesh Housing Board in April 1980. It also applied for acquisition of 20 acres 20 guntas at Bahadurpura, 70 acres at Mansoorabad and 50 acres at Kukatpally. The aforesaid construction work for expansion of the markets was in progress when the writ petitions were filed. It appears from the statement of income and expenditure for the years 1978-79, 1979-80 and 1980-81 that the income from the market fee even after its increase from 50 paise to rupee one is not sufficient to meet the expenditure of the Market Committee.

7. It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a market committee by way of market fee and licence fee may exceed the expenditure and in another year when the development works are in progress for providing modern infrastructure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question whether there is quid pro quo i.e. there is correlation between the increase in the rate of fee from 50 paise to rupee one and the services rendered. The High Court in Sri Vijaya Cotton Traders case [AIR 1981 AP 203 : (1981) 1 APLJ (HC) 421 : (1981) 2 Andh WR 45], has dealt with the Nizamabad Agricultural Market Committee. It observed from the statement showing the details of income and expenditure for the three years 1977-78, 1978-79 and 1979-80 that there was a closing balance of about Rs. 39 lakhs at the end of the year 1977-78, of about Rs.

15 lakhs at the end of 1978-79 and of about Rs. 66 lakhs at the end of 1979-80. The Market Committee filed a counter-affidavit showing that it had taken up constructional works with a spill over for the year 1978-79, estimated at over Rs. 16 lakhs and had to complete new works costing about Rs. 21 lakhs. That apart, the expenditure for development of the eastern portion of the market yard at Shraddhanand Gunj, Nizamabad came to nearly Rs. 24 lakhs and that on the Western side came to Rs. 134 lakhs. It was stated that for the year 1977-78 the Committee derived a total income of Rs. 18 lakhs by way of market fees and licence fees and the expenditure was to the tune of Rs. 16 lakhs. At the end of the year 1977-78 a closing balance was Rs. 39 lakhs but it was not sufficient to meet the cost of land acquisition, cost for development works and providing of modern facilities. In these thousand and odd writ petitions, it is difficult to expect each and every market committee to file their counter but some of the market committees like the Agricultural Market Committee, Guntur, Kothavalasa, Bheemavaram and Amabajipeta have filed their counter showing the nature of services rendered. Learned counsel appearing for the State Government has filed a statement showing the income and expenditure of the market committees and a detailed chart indicating the nature of development works undertaken by each. It is clear from the material placed before us that the income from the market fee even after its increase from 50 paise to rupee one is not sufficient to meet the expenditure of the market committees.

8. In all fairness to learned counsel for the petitioners, we must state at the very outset that they do not challenge the levy of market fee of 50 paise per hundred rupees in the year 1972 and have confined their submissions questioning the increase in the rate of market fee from 50 paise to rupee one per hundred rupees of the price.

9. In support of these petitions, three main contentions were raised, namely : (1) Sub-section (6) of Section 7 of the Act which totally prohibits purchase or sale of any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area, encroaches upon the right of citizens to carry on trade or business and is repugnant to Article 19(1)(g) of the Constitution and is in consequence void. (2) The levy of market fee by the market committees under sub-section (1) of Section 12 of the Act on transactions of purchase or sale of any notified agricultural produce, livestock or products of livestock in the notified market area effected by the petitioners from their business premises therein but located outside the market proper is per se illegal and unconstitutional as such levy of market fee is not correlated to any service rendered to them. (3) If paddy is brought by the producer into the notified market area for purposes of the dehusking and is sold to the miller, no market fee is leviable on subsequent transaction of sale or purchase of rice by the miller to a trader, or by a trader to a trader, or by a trader to a consumer. At any rate, there should be no levy of market fee on sale of foodgrains by a trader to a consumer.

10. It is a common feature throughout the country wherever there is such marketing legislation whether be it the State of Andhra Pradesh or any other State, that there is the usual reluctance of the traders who deal in foodgrains etc. to shift from their established trading premises situate in a notified market area to the market proper. The petitioners before us are all merchants licensed under sub-section (1) of Section 7 of the Act to carry on the business of purchase and sale of notified agricultural produce, livestock and products of livestock by different market committees in various parts of the State. They are therefore subject to the restrictions contained in sub-sections (1) and (6) of Section 7 and the terms and conditions of their licence.

11. The object and purpose of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 as reflected in the long title is to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the

establishment of markets in connection therewith. The legislation is designed to eliminate middlemen in notified agricultural produce, livestock and products of livestock, to protect the producers of such agricultural produce, livestock and products of livestock from exploitation and to ensure to them a fair price for their produce. The material provisions of the Act may be referred to. Section 2 is the definition clause and defines the expression 'agricultural produce' in clause (i) to mean anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purposes of this Act. The term 'market' as defined in Section 2(vi) means a market established under sub-section (3) of Section 4 and includes market yard and any building therein. The expression 'notified area' as defined in Section 2(xi) means any area notified under Section 3, and 'notified market area' in clause (xii) means any area declared to be a market area by notification under Section 4. Under Section 3 of the Act, the State Government is empowered to declare their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notifications. After considering the objections and suggestions, if any, the State Government is authorised to publish a final notification under sub-section (3) thereof declaring such area to be a notified area. By sub-section (1) of Section 4, the State Government is empowered to constitute a market committee for every notified area which shall be a body corporate having perpetual succession and a common seal. The duty of enforcing the provisions of the Act and the rules and bye-laws is entrusted to a market committee under sub-section (2) thereof. Sub-section (3) of Section 4 empowers the market committee to establish such number of markets as the State Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock. Sub-section (3) of Section 4 provides such facilities in the market as may be specified by the Government from time to time by a general or special order. Sub-section (4) provides that the State Government shall, after the establishment of a market under sub-section (3), declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of the Act. Section 7 insofar as material provides as follows :

7. Trading etc., in notified agricultural produce, livestock and products of livestock in the notified area. - (1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee.

(2) Nothing in sub-section (1) shall apply to a person purchasing notified agricultural produce, livestock or products of livestock for his own domestic consumption.

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(5) A person to whom a licence is granted under sub-section (1) shall comply with the provisions of this Act, the rules and the bye-laws made thereunder and the conditions specified in the licence.

(6) Notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area.

Section 12 of the Act which provides for the levy of market fee and has an important bearing, reads :

12. Levy of fees by the market committees. - (1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee, as may be specified in the bye-laws for every hundred rupees of the aggregated amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I. - For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

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(2) The fees referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock :

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller.

12. Under the scheme of the Act, the market committee is enjoined by sub-section (1) of Section 14 to pay into a fund called the "Market Committee Fund" all moneys received from the traders as market fee on transactions of sale or purchase of agricultural produce taking place within the notified market area and they are to be credited in the nearest Government treasury or in a Bank, with the previous sanction of the State Government. All expenditure incurred by the market committee under and for purposes of the Act have to be defrayed out of the said Fund and any surplus remaining after such expenditure, has to be invested in such manner as may be prescribed. Under sub-section (2), every market committee has to pay to the State Government out of its Fund the cost of any special or additional staff employed by the Government with their consultation. Where such additional staff is employed for the purposes of one or more market committees, the State Government has to apportion the cost of such special or additional staff among the market committees concerned in such manner as they think fit. Under sub-section (3), the market committee may grant loans to another market committee out of its surplus funds, with the previous sanction of the State Government, at such rates of interest as may be prescribed. The proposes for which the Market Committee Fund may be expended are set out in Section 15 which reads :

(i) the acquisition of site for the market;

(ii) the establishment, maintenance and improvement of the market;

(iii) the construction and maintenance of buildings, necessary for the market and for the health, convenience and safety of the persons using the market and maintenance of buildings under the control of the market committee;

(iv) the provision and maintenance of standard weights and measures;

(v) the pay, pensions, leave allowance, gratuities, compassionate allowances and contribution towards leave allowances, pensions or provident fund of officers and

servants employed by the market committee;

(vi) the 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) the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock;

(viii) schemes for the extension or cultural improvement of notified agricultural produce, livestock and products of livestock within the notified area, including the grant, subject to the approval of the Government, of financial aid to the schemes for such extension or improvement within such area, undertaken by other bodies or individuals;

(ix) propaganda for the improvement of agriculture, livestock and products of livestock and thrift;

(x) the expenses of, and incidental to, the conduct of elections;

(xi) the promotion of grading services;

(xii) measures for the preservation of foodgrains;

(xiii) such other purposes as may be specified by the Government by general or special order.

13. Sub-section (1) of Section 16 of the Act provides that there shall be formed for the whole of the State a fund to be called the 'Central Market Fund'. Every market committee is required to contribute 10 per cent of its annual income to the Central Market Fund and the contribution so paid shall be placed to the credit of the said Fund. Sub-section (2) of Section 16 provides that the Central Market Fund shall be vested in the State Government and deposited in the Government treasury at Hyderabad. It is administered and applied by the Director of Marketing for all or any of the purposes set out therein viz. :

(i) grant-in-aid of the market committees for the first year after their constitution under this Act;

(ii) grant-in-aid of a deficit market committee for a period not exceeding three years;

(iii) grant of loans to the market committees at such rates of interest as are charged on loans granted by the Government for development purposes; and

(iv) such other similar or allied purposes as may be specified by the Government by general or special order.

14. In exercise of the powers conferred by Section 33 of the Act, the State Government of Andhra Pradesh have framed the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969. Chapter IV of the Rules deals with the powers and functions of the market committees and Chapter V deals with the regulation of trading. Chapter VI relates to the levy and collection of

market fee, Chapter VII regulates the manner in which the Market Committee Fund shall be maintained and Chapter VIII the manner in which the market committees shall function. The Act and the Rules provide for a complete scheme for the establishment and regulation of markets for the purchase and sale of notified agricultural produce, livestock and products of livestock in the State of Andhra Pradesh. We are here concerned with Chapter V.

15. Marketing legislation which seeks to enable producers to get a fair price for the commodities by eliminating middlemen and providing a regulated market, cannot be said to impose 'unreasonable restriction' on the citizens right to do business unless it is clearly established that the provisions are too drastic to achieve the object for which it was enacted. In order to make effective such legislation for the control of a market, it would be reasonable for the legislature to control transactions between traders and also the sale of produce grown outside the market area, if sold in the market area. In M.C.V.S. Arunachala Nadar v. State of Madras [1959 Supp 1 SCR 92 : AIR 1959 SC 300 : 1959 SCJ 297], Subba Rao, J. speaking for the Court, upheld the validity of the Madras Commercial Crops Markets Act, 1933 which provided for the establishment of certain controlled markets for the sale of commercial crops and provided that after the establishment of such markets, no person would be allowed to establish any other market within the specified distances of the controlled markets so that the growers of such crops would be obliged to resort to the controlled markets only for the sale of their produce. The learned Judge thus explained the scheme, in these words :

> ....., the Madras Commercial Crops Markets Act was passed on July 25, 1933. The preamble introduces the Act with the recital that it is expedient to provide for the better regulation of the buying and selling of commercial crops in the Presidency of Madras and for that purpose to establish markets and make rules for their proper administration. 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 the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings.

The learned Judge brought out the purpose and object of the legislation and stated :

> The Act, Rules and the Bye-laws framed thereunder have a long term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities.

The Act did not directly prohibit the business of middlemen engaged in the trade of selling

commercial crops, but the result of the operation of the Act was to eliminate the middlemen. It was held that both the restriction as to the place where transactions of purchase or sale of commercial crops would be effected and the total or substantial elimination of middlemen was a reasonable restriction in order to prevent the exploitation of the poor cultivators engaged in the production of commercial crops which necessitated such marketing legislation. In Mohammad Hussain Gulam Mohammad v. State of Bombay [(1962) 2 SCR 659 : AIR 1962 SC 97] and Mohammadbhai Khudabux Chhipa v. State of Gujarat [1962 Supp 3 SCR 875 : AIR 1962 SC 1517], this Court held following the view in Arunachala Nadar case [1959 Supp 1 SCR 92 : AIR 1959 SC 300 : 1959 SCJ 297], that the Bombay Agricultural Produce Markets Act, 1939 did not violate Article 19(4)(g) and further upheld the levy of market fee as a fee charged for services rendered by the market committees. Following the decision in Arunachala Nadar case [1959 Supp 1 SCR 92 : AIR 1959 SC 300 : 1959 SCJ 297] the regulatory provisions of such marketing legislation throughout India have been upheld as imposing reasonable restrictions in the interests of the growers of agricultural produce in particular and of the community at large. The specific question whether a fee levied by a market committee under the Bihar Agricultural Produce Markets Act, 1960 was a fee or a tax came up for consideration before the Court in Lakhan Lal v. State of Bihar [(1968) 3 SCR 534 : AIR 1968 SC 1408 : (1969) 1 SCJ 247]. In that case the entire area under the jurisdiction of the Gaya Municipality and several villages around it were declared as the market area for the sale and purchase of certain agricultural produce. The Court repelled the contention that the market committee had not established any market inasmuch as a market must be a well defined site fully equipped as a market and made no provisions for rendering services, and observed :

> According to counsel, a market must be a well defined site with market equipment and facilities. The argument overlooks the definition of market in Section 2(h). The market consists of market proper, and the market yards. The market yards are well defined enclosures, buildings or localities but the market proper is under Section 2(k) read with Section 5(2)(ii) a larger area. For establishing a market it is sufficient to make a declaration under Section 5(2) fixing the boundaries of the market proper and the market yards on the recommendation of the market committee made under Rule 59(2). Under Section 18(i) the market committee must provide for such facilities in the market as the State Government may from time to time direct. It is not shown that the market committee refused to carry out any direction of the Government. The market committee may in view of Sections 28(2) and 30(i) acquire and own lands and buildings for the market, but it is not always obliged to do so. The market is established on the issue of a notification under Section 5(2) declaring the market proper and the market yards.

The Court then rejected the contention that the fees levied by the market committee were in the nature of a tax as the committee did not render any services to the users of the market and therefore the levy of fee was illegal, and stated :

> The market committee has taken steps for the establishment of a market where buyers and sellers meet and sales and purchases of agricultural produce take place at fair prices. Unhealthy market practices are eliminated, market charges are defined and improper ones are prohibited. Correct weighment is ensured by employment of licensed weighmen and by inspection of scales, weights and measures and weighing and measuring instruments. 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,

> arrivals and despatches of agricultural produce. It has provided a grading unit where the technique 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 of 25 naye 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].

The observations are of some relevance as the Bihar Act is more or less on similar lines as the Act with which we are concerned.

16. The contention is that the provision contained in sub-section (6) of Section 7 of the Act which prohibits the carrying on of any transaction of purchase or sale of agricultural produce, livestock or products of livestock in a notified market area, outside the market in that area, infringes the right of a citizen to trade "as and where he wills" and therefore must be struck down as obnoxious to Article 19(1)(g) of the Constitution. It is urged that the limitation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be void. The contention is obviously based on the following passage in Halsbury's Laws of England, Third Edn., Vol. 32, p. 15, para 9 which explains what freedom of business signifies :

> It is the general principle of the common law that a man is entitled to exercise any lawful trade or calling as and where he wills; and the law has always regarded jealously any interference with trade, even at the risk of interference with freedom of contract, as it is public policy to oppose all restraints upon liberty of individual action which are injurious to the interests of the State.

17. The fundamental right of all citizens to practise any profession or to carry on any occupation or trade or business guaranteed under Article 19(1)(g) has its own limitations. The liberty of an individual to do as he pleases is not absolute. It must yield to the common good. Absolute or unrestricted individual rights do not and cannot exist in any modern State. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all.

18. In order to determine the reasonableness of a restriction imposed upon the right guaranteed by Article 19(1)(g), the Court must have regard to the nature and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. In other words, the pursuit of any lawful trade or business may be made subject to such conditions and restrictions as may be deemed essential by the legislature to be in the interests of the general public. Sub-section (6) of Section 7 undoubtedly restricts the freedom of a citizen to trade "as and where he wills"; indeed it was enacted for the very purpose of controlling business in agricultural produce, livestock and products of livestock by the establishment of regulated markets in connection therewith. It is difficult to conceive how the restriction imposed by

sub-section (6) of Section 7 which interdicts that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the marketing in that area, can be said to be arbitrary or of an excessive nature beyond what is required in the interests of the community. In Arunachala Nadar case [1959 Supp 1 SCR 92 : AIR 1959 SC 300 : 1959 SCJ 297], the Court repelled the contention based on a similar provision that a person who is having a licence to trade in or about the place where the market is fixed, will be deprived of his livelihood unless he resorts to the market and therefore it was an unreasonable restriction upon his right to do business. It was observed that such a provision was necessary for preventing the business in such agricultural produce being diverted to other places and the object of the scheme being defeated.

19. It is obviously in the interests of the producers of agricultural produce that they can get the best competitive prices in an open market and that they have not to pay the middlemen. Sale or purchase of agricultural produce in such a market under the supervision and control of the market committee is likely to be in ready cash and therefore advantageous to the producers and the use of standard weight must eliminate the possibility of his being victimized by malpractices. Supervision of the operations in the notified market area can be more conveniently done if business is carried on in a specified area or areas intended for that purpose. The Act is an integrated one and it regulates the buying and selling of notified agricultural produce, livestock and products of livestock from a centralised place. The petitioners being licensed traders under sub-section (1) of Section 7 are bound by sub-section (5) thereof to comply with the provisions of the Act, the Rules and the bye-laws framed thereunder. They are therefore subject to the restriction contained in sub-section (6) of Section 7 of the Act. The non obstante clause in sub-section (6) of Section 7 provides that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area. Having regard to the purpose and object of the legislation, it must be held that the restriction imposed by sub-section (6) of Section 7 of the Act is a reasonable restriction within the meaning of clause (6) of Article 19 on the fundamental right of a citizen to carry on trade or business under Article 19(1)(g). We must say that learned counsel for the petitioners did not pursue this argument further in view of the clear exposition of the law in Arunachala Nadar case [1959 Supp 1 SCR 92 : AIR 1959 SC 300 : 1959 SCJ 297]. They only tried to impress that purchase or sale of foodgrains or products of livestock between a retailer and a consumer should not be brought within the purview of sub-section (6) of Section 7. This is already taken care of by sub-section (2) of Section 7 of the Act which provides that nothing in sub-section (1) shall apply to a person purchasing notified agricultural produce, livestock or products of livestock for his own domestic consumption.

20. That takes us to the contention that there is no liability cast on the petitioners to pay market fee on transactions of sale and purchase of notified agricultural produce, livestock and products of livestock taking place from their business premises in the notified market area, but outside the market in that area. Alternatively, the contention is that there is no correlation between the service and the increase in the rate of market fee from 50 paise to rupee one per hundred rupees of the price. It is suggested that there were amounts held in surplus by almost all the market committees and therefore there was no lawful justification for the increase in the rate of market fee. There is no warrant for any of the contentions.

21. The contention that there is no liability on the petitioners to pay market fee on transactions of sale and purchase of notified agricultural produce, livestock and products of livestock proceeds on a wrongful assumption that they can still carry on such trade from their premises in the notified market area, but outside the market in that area. In view of the express prohibition contained in sub-

section (6) of Section 7, the petitioners cannot carry on such trade by not resorting to the market proper. It is pertinent to observe that a prevention of the provisions of sub-section (6) of Section 7 by persons engaged in the business of purchase and sale of notified agricultural produce, livestock and products of livestock is a penal offence under sub-section (1) of Section 23 of the Act. The petitioners cannot be heard to say by committing a breach of sub-section (6) of Section 7 that since they effect their transactions in the notified market area, but outside the market, there is no liability to pay market fee because there is no quid pro quo i.e. services are not rendered outside the market.

22. There is a fallacy underlying the argument that since the services are rendered by the market committees within the market proper, there is no liability to pay a market fee on purchase or sale taking place in the notified market area but outside the market. The duty of a market committee constituted under sub-section (1) of Section 4 of the Act does not end with establishing such number of markets in the notified market area under the first part of sub-section (3) but also extends to the providing of such facilities in the market as the Government may from time to time by general or special order specify under the second part of sub-section (3). In exercise of their powers under Section 33 of the Act, the State Government have framed the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969. Chapter V relates to 'Regulation of Trading'. It would appear that Rules 48 to 53 are the machinery provisions for controlling the trade in notified agricultural produce, livestock and products of livestock in a notified area while Rules 54 to 73 impose restrictions on the carrying on of all such trade in such area. It is clear from the provisions of Section 15 of the Act that the services to be rendered by the market committee and facilities to be provided are not confined to the market proper but extend throughout the notified area. We find that Chinnappa Reddy, J. speaking for himself and Jeevan Reddy, J. in Immedisetti Ramkrishnaiah & Sons, Anakapalli v. State of A.P. [ILR 1976 AP 878 : AIR 21976 AP 193] repelled a similar contention and observed :

The argument proceeded on the assumption that sales and purchases of notified agricultural produce, livestock and products of livestock in a notified market area could take place even outside the market. That is an unfounded assumption. Section 7 (6) of the Act prohibits sales or purchases of notified agricultural produce, livestock and products of livestock outside the market. It says "notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area outside the market in that area". Another unfounded assumption of the learned counsel was that the activities of the market committee and the facilities provided by it were confined by Act to the market area only. The establishment, maintenance and improvement of the market is one of the purposes for which the market committee fund might be expended under Section 15 of the Act. The other services such as the provision and maintenance of standard weights and measures, the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock, schemes for the extension or cultural improvement of notified agricultural produce including the grant of financial aid to schemes for such extension or improvement within such area undertaken by other bodies or individuals, propaganda for the improvement of agricultural produce, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the foodgrains, etc., are not services which are confined to the market area only. They are services which are required to be performed by the market committee and which may be rendered throughout the notified market area without being confined to the market.

23. In Sri Vijaya Cotton Traders case [AIR 1981 AP 203 : (1981) 1 APLJ (HC) 421 : (1981) 2 Andh WR 45], Alladi Kuppuswami, C.J. speaking for himself and Jeevan Reddy, J. followed the earlier

decision in Immedisetti Ramkrishnaiah & Sons case [ILR 1976 AP 878 : AIR 21976 AP 193] and held that the services to be rendered and the facilities to be provided by the market committees extend throughout the notified market area without being confined to the market proper. The view expressed by the High Court in these two cases is clearly in consonance with the scheme of the Act. It appears that taking advantage of the ad interim orders issued by this Court staying prosecution under sub-section (1) of Section 23 of the Act, the petitioners who are big merchants engaged in the business of purchase and sale of agricultural produce, livestock and products of livestock throughout the State, are with impunity committing breach of the prohibition contained in sub-section (6) of Section 7 of the Act. We trust that the market committees in various parts of the State shall take immediate steps to shift all these traders to the markets proper of the respective notified market areas in the interests of the general public and shall also strictly enforce the provisions of the Act, the Rules and the bye-laws framed thereunder.

24. We are unable to appreciate that there is irreconcilable conflict between sub-section (6) of Section 7 and sub-section (1) of Section 12. These provisions are meant to achieve two distinct and separate objects and they operate on two different planes. Sub-section (6) of Section 7 imposes a restriction on a trader licensed to deal in notified agricultural produce, livestock and products of livestock that no purchase or sale in such commodities shall take place in any notified area, outside the market in that area. The constitutional validity of sub-section (6) of Section 7 is beyond question as a reasonable restriction in the interests of the general public. It would frustrate the very object and purpose of the legislation if such a restriction was not imposed on the traders. Sub-section (1) of Section 12 is a charging provision and it empowers a market committee to levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which such commodities are purchased or sold, whether for cash or deferred payment or other valuable consideration. Explanation I thereto by a legal fiction provides that all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area. Sub-section (2) of Section 12 casts the liability to pay market fee on the purchaser of such agricultural produce, livestock or products of livestock.

25. It was contended that many of the petitioners are foodgrains dealers licensed under the Andhra Pradesh Foodgrains Dealers Licensing Order, 1964 issued under sub-section (1) of Section 3 of the Essential Commodities Act, 1955 and that they are required under the terms of their licence to carry on their business from their licensed premises, maintain stock register, exhibit price-list etc. The petitioners having been licensed as dealers under sub-section (1) of Section 7 are bound by the terms and conditions of their licence and also they are subject to the restrictions imposed by sub-section (6) of Section 7. They must comply with the provisions of the Act, the Rules and the bye-laws framed thereunder, and effect all sales of notified agricultural produce, livestock and products of livestock under the supervision and control of the market committee established under the Act.

26-27. Arguments in these proceedings have revolved around certain observations of Untwalia, J. in Kewal Krishan Puri v. State of Punjab [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] where he, speaking for the Court, after referring to the judgment of Mukherjea, J. (as he then was) in the leading 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], known as the Shirur Mutt case, and the dictum of Latham, C.J. in Matthews v. Chicory Marketing Board [60 Com LR 263] upon which it was base, and the subsequent decisions on the subject, drew a distinction between a tax and a fee. Stress was particularly laid on these observations

which, torn out of context, tend to suggest that there must be actual quid pro quo between the payer and the market committee i.e. there must be actual correlation between the service rendered by a market committee and the payer of the market fee, and that such service must be in relation to each transaction. Emphasis was placed on the following observations of Untwalia, J. in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] :

> 1. ....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. (p. 1230 G&H) (SCC p. 425, para 8)
>
> 2. ....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. (p. 1232 G) (SCC p. 426, para 13)
>
> 3. ....it (Service) means service in relation to the transaction, property or the institution in respect of which he is made to pay the fee. (p. 1233 D) (SCC p. 427, para 13)
>
> With utmost respect, these observations of the learned Judge are not to be read as Euclid's theorems, nor as provisions of a statute. These observations must be read in the context in which they appear.

28. It is however strenuously urged on the strength of these observations made in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] that the market committees have not placed all relevant material to show with reasonable certainty that at least a good and substantial portion of the amount collected on account of fees, maybe in the neighbourhood of two-thirds or three-fourths, was being spent for rendering services to the petitioners, nor was there any material to show that a substantial portion of the fee realised was actually spent for rendition of any special benefit to them. In relation to the transactions of purchase and sale of agricultural produce, livestock and products of livestock effected by the petitioners, it was urged that the market committees did not provide any additional facilities to justify the increase in the rate of levy of market fee. There was therefore no quid pro quo between the increase in the rate of fee from 50 paise per hundred rupees in the price to rupee one and the services rendered. To say the least, the contention is wholly devoid of substance.

29. There was quite some discussion at the Bar as to the binding effect of the aforesaid observations made by this Court in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008]. With greatest respect, the decision in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] does not lay down any legal principle of general applicability. The decision in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] is clearly distinguishable on facts. In that case, there was sufficient material showing that the income from the market fee in the State of Punjab had become a source of revenue, and therefore the increase in the rate of market fee from Rs. 2 per hundred rupees to Rs. 3 was quashed. It appears that the income of almost all the market committees was to the tune of several lakhs of rupees per year and every market committee was required under sub-section (2)(a) of Section 27 to pay 30 per centum of its income to the Punjab State Agricultural Marketing Board as its contribution to the Marketing Development Fund maintained under Section 25 of that Act. Due to the progressive increase in the rate of market fee from 0.50 p. to Rs. 2 per hundred rupees during

the course of a few years, both the State Agricultural Marketing Board as well as the market committees throughout the State were left with huge surplus funds. The State Government in exercise of the powers vested under Section 26(xvii) and Section 28(xvii) directed the State Agricultural Marketing Board and the market committees throughout the State to contribute rupees one crore to Guru Gobind Singh Medical College at Faridkot. In the year 1974 under the directions of the State Government, all the market committees were required to deposit the surplus amounts lying with them with the State Agricultural Marketing Board and the Board advanced an interest-free loan of rupees five crores to the Punjab State Cooperative Supplies and Marketing Federation, known as 'Markfed'. Apart from these unauthorised expenditure, the judgment reveals that there were surplus funds to the tune of rupees nine crores with market committees and each of them was required to make huge donations of Rs. 50,000 and above to many educational institutions. Besides, the statement of income and expenditure of the Board for the year 1975-76 showed that a sum of Rs. 1,28,000 was spent on general improvement of the municipal areas and a sum of Rs. 95 lakhs and odd was spent on setting up a gober gas plant. It would appear that the increase in the rate of market fee from Rs. 2 to Rs. 3 in the year 1978 was largely brought about to compensate the market committees for having contributed rupees one crore to the Medical College at Faridkot. The decision really turned on the provisions of clause (xvii) of Sections 26 and 28 of the Punjab Agricultural Produce Markets Act, 1961 which permits diversion of the monies lying in the Market Committee Fund and the Marketing Development Fund by the market committees and the State Agricultural Marketing Board with the sanction of the Board or the State Government, as the case may be, for any purpose calculated to promote the general interests of the Board or the committees, or the national or public interest. The decision of the Court was rendered by Untwalia, J. in these words : (SCC p. 441, para 34)

....how ill-conceived the second part of clause (xvii) is.... 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.

30. In the ultimate analysis, the Court held in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] that so long as the concept of fee remains distinct and limited in contrast to tax, such expenditure of the amounts recovered by the levy of a market fee cannot be countenanced in law. A case is an authority only for what it actually decides and not for what may logically follow from it. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case in which such expressions are to be found. It would appear that there are certain observations to be found in the judgment in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008], which were really not necessary for purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value. The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely (SCC p. 435, para 23) : "At least a good and substantial portion of the amount collected on account of fees, maybe in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter.

31. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a

tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. If authority is needed for this proposition, it is to be found in the several decisions of this Court drawing a distinction between a 'tax' and a 'fee'. See : The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335]; H. H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore [1963 Supp 2 SCR 302 : AIR 1963 SC 966]; The Hingir-Rampur Coal Co. Ltd. v. State of Orissa [(1961) 2 SCR 537 : AIR 1961 SC 459]; H. H. Shri Swamiji of Shri Admar Mutt v. Commissioner, Hindu Religious and Charitable Endowments Department [(1980) 1 SCR 368 : (1979) 4 SCC 642 : 1980 SCC (Tax) 16]; Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala [(1982) 1 SCR 519 : (1981) 4 SCC 391 : 1981 SCC (Tax) 320] and Municipal Corporation of Delhi v. Mohd. Yasin [AIR 1983 SC 617 : (1983) 3 SCC 229 : 1983 SCC (Tax) 154].

32. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spent of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case [1954 SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335] was not drawn to Article 226 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax : Constitutional Law of India by H. M. Seervai, Vol. 2, Second Edn., p. 1252, paras 22, 39.

33. Viewed from this perspective, the conclusion is inevitable that the observation made in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] that "At least a good and substantial portion of the amount collected on account of fees, maybe in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee" was not intended to lay down a rule of universal application but it was a decision which must be confined to the special facts of that case. Otherwise it may affect the validity of many similar marketing legislations undertaken during the past 50 years relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith and the levying of a market fee in lieu thereof towards the cost of rendering such service by different States on the

recommendations made in the Report of the Royal Commission on Agriculture in India, 1928 and of those of many high-powered bodies of experts constituted from time to time by the Centre and the different States. In the subsequent decision in Ram Chandra Kailash Kumar and Co. v. State of U.P. [(1980) 3 SCR 104 : 1980 Supp SCC 27], Untwalia, J. speaking for the Court has considerably narrowed down his observations in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] at p. 116 of the Report (SCC p. 36, para 3) saying that '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'. If the quantum of quid pro quo was to be quantified to the extent as indicated in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] for the levy of a fee or cess, it may affect many other beneficent legislations brought in by the Centre and the States for rendering service to a specified area or a specified class of persons or trade or business in any local area. There are many other observations in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] which were really not necessary for purposes of the decision in that case and need to be clarified. The word 'fee' cannot be said to have acquired a rigid technical meaning during the past three decades and should not be given such a narrow construction.

34. The levy of market fee under sub-section (1) of Section 12 of the Act is correlated to the purposes mentioned in Section 15 of the Act. All the moneys received by a market committee from the traders as market fee on transactions of sale or purchase of agricultural produce, livestock and products of livestock taking place within the notified market area have to be paid into a fund called the Market Committee Fund under sub-section (1) of Section 14 of the Act. All expenditure incurred by the market committee under and for purposes of the Act have to be defrayed out of the said Fund and any surplus remaining after such expenditure, has to be invested in such manner as may be prescribed. Under sub-section (2) thereof, every market committee has to pay to the State Government out of its fund the cost of any special or additional staff employed by the Government with their consultation. Under sub-section (3) the market committee may grant loans to another market committee out of its surplus funds, with the previous sanction of the State Government, at such rates of interest as may be prescribed. The purpose for which the proceeds of the Market Committee Fund can be expended are set out in Section 15 of the Act. There can be no doubt that the purposes mentioned viz. acquisition of site for the market, establishment, maintenance and improvement of the market, construction of buildings, maintenance of standard weights and measures, promotion of grading services, measures for the preservation of foodgrains etc., etc. are all purposes which are extremely beneficial to the growers and the traders.

35. In the present case, there is no allegation anywhere by any of the petitioners, nor was any contention advanced that there was any unauthorised expenditure by any of the market committees for purposes not authorised by the Act. There is only a bare assertion on their part that there are surplus funds available with the market committees and therefore the increase in the rate of market fee from 50 paise per hundred rupees to rupee one was without lawful justification. From the material on record it is quite apparent that the income from the market fee derived by some of the market committees is not sufficient to meet the expenditure incurred by them. That apart, when the petitioners concede that they do not challenge the levy of market fee at 50 paise per hundred rupees in the year 1972, there can be no basis for challenging the increase in the rate of market fee from 50 paise to rupee one in 1978. Surely the cost of rendering services has correspondingly increased with the fall in the value of rupee. In the economic sense, 50 paise of 1972 is certainly equivalent to at least rupee one of today, if not more.

36. There is no material placed on record by the petitioners to show that the market committees are

rendering no service. Under the scheme of the Act, there are certain obligatory duties of a market committee. Sub-section (3) of Section 4 provides that every market committee shall establish in the notified area such number of markets as the Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide, such facilities in the market as may be specified by the Government from time to time by a general or special order. Chapter V provides for various regulatory measures in Rules 54 to 73 for the control of a market in that correct weighments would be secured, storage facilities provided and equal powers of bargaining assured so that the growers may bring their agricultural produce, livestock and products of livestock to the market and sell them at a reasonable price. There was not a whisper during the course of the arguments that the market committees were not providing the services as enjoined by Rules 54 to 73. All that was said is that there was no due observance of the directions issued by the State Government and the Food and Agriculture Department GOMs. No. 719 dated December 27, 1979 drawing the attention of the market committees to certain basic amenities like drinking water for users of the market, drinking water for the cattle, sheds for use of the users of yards etc. We were not referred to any specific instance where any of the market committees have not provided these basic amenities. Much emphasis was however laid on the second part of the aforesaid G.O. which reads :

> The Governor of Andhra Pradesh also directs the market committees to provide the other facilities mentioned below at the market yards in course of time as and when funds permit.
>
> 1. Rest House for Ryots.
>
> 2. Electrification of Market Yard.
>
> 3. Auction-cum-Weighing shed.
>
> 4. Auction Platforms.
>
> 5. Internal Roads.
>
> 6. Telephone Booth.
>
> 7. Canteen.
>
> 8. Office Building.
>
> 9. Godown for use of Producer-Seller.
>
> 10. Approach Roads.
>
> 11. Library-cum-Club Building.
>
> 12. Resting House for Traders.

37. It will be noticed that these facilities are to be provided by the market committees in course of time 'as and when funds permit'. It is needless to stress that the question of providing these facilities would depend on the financial capacity of each market committee. That would depend on whether there are sufficient funds available at its disposal in the market committee fund. We are not

impressed by the submission that if a market committee does not have sufficient funds to provide the special amenities, it should borrow loans from the State Government under sub-section (1) of Section 18 of the Act or the State Government should provide grant-in-aid to such market committee under sub-section (2)(iii) of Section 16 of the Act. If any particular market committee persistently makes default in not performing the duties imposed on it by or under the Act, or neglects or refuses to carry out any general or special direction issued by the State Government under sub-section (3) of Section 4 as regards providing of facilities or abuses its powers, the petitioners have the remedy to take up the matter with the State Government. The State Government has ample power under Section 22 of the Act to direct the supersession of such a market committee.

38. It is obvious that the phrase 'payer of the fee' used by this Court in the authorities referred to above represents collectively the class of persons to whom the benefit is directly intended by the establishment of a regulated market in notified agricultural produce, livestock or products of livestock and not the actual individual who belongs to that class i.e. the trader. No doubt, the petitioners initially pay the market fee under sub-section (2) of Section 12 of the Act, but there is passing on of liability by them to the consumer as part of the price. The observation in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008], as to the service to the 'payer of the fee' must, therefore, be understood as meaning service to the users of the market. The services are rendered to the users of the market i.e. the growers of agricultural produce, livestock or products of livestock and persons engaged in the business of purchase or sale of the same.

39. The contention that the increase in the rate of market fee levied by the market committees in the State under sub-section (1) of Section 12 of the Act from 50 paise to rupee one was illegal and invalid on the ground that there was no quid pro quo i.e. there was no correlation between the increase in the rate of market fee and the service rendered must therefore fail.

40. There still remains the question that if purchase or sale of paddy has suffered market fee in the hands of a rice miller, whether subsequent purchase or sale of rice by a miller to a trader or by a trader to a trader should again be subjected to payment of market fee. The contention is that under Rule 74(1) of the Andhra Pradesh (agricultural Produce and Livestock) Markets Rules, 1969 no such market fee is payable on rice produced from paddy. The same is the contention with regard to cotton seed extracted from cotton. Rule 74(1) of the rules reads as follows :

74. Market Fees. - (1) The fees leviable under sub-section (1) of Section 12 on notified agricultural produce, livestock and products of livestock, if paid to a market committee within the State shall not be collected by another market committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of another market committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the course of commercial transactions between the licensed traders, and the licensed traders and consumers subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought :

> Provided that the fees shall be levied on notified agricultural produce, livestock or products of livestock when such agricultural produce, livestock or products of livestock are sold in auction or in any other manner prescribed in the bye-laws in the market either directly or through commission agents even though purchased already in the same market or some other market or place within the State.

It is contended that the whole object and purpose behind Rule 74(1) is to prevent multi-point levy of market fee on the same commodity. The submission that no such fee is payable on rice is also based on the following observations of Untwalia, J., speaking for the Court in Ram Chandra case [(1980) 3 SCR 104 : 1980 Supp SCC 27] (SCC p. 46, para 20) :

> 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.

41. The learned Judge then went on to say (SCC p. 46, para 20) :

> 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).

42. The view that no market fee is payable on purchase or sale of rice stems from the premise that since paddy is de-husked into rice there cannot be levy of market fee at both the stages i.e. on purchase of paddy by a rice miller from a producer and again on purchase or sale of rice by a rice miller to a trader or by a trader to a trader. The question is whether the fee is payable at both the stages ? It would all depend upon the scheme of each Act. The decision in Ram Chandra case [(1980) 3 SCR 104 : 1980 Supp SCC 27], turned on a constriction of sub-clause (2) of Section 17(iii)(b) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, as amended by U.P. Act 7 of 1978. It was conceded in that case on behalf of the State Government and the market committees that there cannot be any multi-point levy of market fee in the same market area. Under sub-clause (2) of Section 17(iii)(b) of that Act if an agricultural produce is purchased from a producer directly, the trader is liable to pay market fee but when the trader sells the same produce or any products of the same produce to another trader, neither the seller nor the purchaser can be made to pay the market fee under sub-clause (3). The scheme of the Act with which we are concerned appears to be entirely different. Under sub-section (1) of Section 12 of the Act, a market committee is empowered to levy market fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. It would appear that every purchase or sale of any notified agricultural produce, livestock or products of livestock attracts the levy of market fee. One is apt to think that rice and paddy are the same commodity and therefore there is double taxation but, in reality, it is not so. There is distinction between 'paddy' and 'rice' and although paddy is milled into rice by the process of de-husking, they are two separate and distinct commercial commodities and have both been separately specified as notified agricultural produce in Schedule II of the Rules as items 1 and 2 respectively. On the plain language of sub-section (1) of Section 12 of the Act, the market fee is leviable both on purchase of paddy by a rice miller from a producer and also on purchase or sale of rice by a miller to a trader or by a trader to a trader because there is service rendered by a market committee at each of the stages.

43. It appears that the State Government in the Food and Agriculture Department by its memo dated March 23, 1978 informed the Director of Marketing, Andhra Pradesh that it had been decided to amend Rule 74 in order that no market fee shall be leviable on the sale or purchase of agricultural produce manufactured or extracted from the agricultural produce in which such fee was already levied. Pending such amendment, he was directed to advise the market committees not to press for

recovery of arrears of market fee on purchase or sale of rice when such fee had already been collected on purchase or sale of paddy. The matter was however re-examined by the State Government with reference to the provisions contained in sub-section (1) of Section 12 of the Act. The State Government were of the view that market fee was leviable under sub-section (1) of Section 12 on paddy if it is sold in the notified market area and it is also leviable on rice if it is put to sale irrespective of the fact that whether market fee was paid earlier on paddy or not. That view proceeded upon the basis that the market committee is required to supervise and control the sale of such commodities at both the stages and was therefore entitled to recover market fees both on paddy and rice. The accordingly issued GOMs. No. 136 dated March 26, 1981 to the following effect :

> Government on reconsideration decided that rice need not be exempted from the levy of market fees even if the paddy from which the rice is extracted was subject to market levy, orders were accordingly issued in the Memo second above that market fees should be levied both on paddy and rice.

The preliminary notification proposing to amend Rule 74 of the A.P. (Agricultural Produce and Livestock) Markets Rules, 1969 issued in G.O. first read above and published at pages 227-229 of the rules supplement to Part II of the A.P. Gazette No. 23 dated June 15, 1978 is hereby cancelled.

44. The concept of paddy and rice being two different commercial commodities and the language of sub-section (1) of Section 12 of the Act do tend to support the argument addressed on behalf of the State Government that market fee is leviable on both sale of paddy by a producer to a rice miller and on purchase and sale by a miller to a trader or by a trader to a trader. The question however is whether in view of Rule 74(1), a market committee is deprived of its power to levy market fee on purchase or sale of rice if purchase or sale of paddy has already suffered such levy. That would of course be subject to proof of payment of the market fee on paddy as enjoined by Rule 74(1).

45. The question is not by any means free from difficulty; but after carefully considering the argument which has been addressed to us, we have come to the conclusion that Rule 74(1) deals with the right to claim exemption. It is said on behalf of the petitioners that Rule 74(1) was introduced by (sic to) prevent multi-point levy of market fee on the same agricultural produce.

46. According to the terms of Rule 74(1) read with the proviso thereto, the fees leviable under sub-section (1) of Section 12 on any notified agricultural produce, livestock and products of livestock, if paid to a market committee within the State, shall not be collected by another market committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of such other market committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the course of commercial transactions between the licensed traders and the licensed traders and consumers. This is however subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought. The normal function of a proviso is to except something out of the main enacting part or to qualify something enacted therein which but for the provision would be within the purview of the enactment. Proviso to Rule 74(1) is added to qualify or create an exception. By reason of the provision to Rule 74(1), no exemption is claimable when the purchase or sale of any notified agricultural produce, livestock and products of livestock takes place by auction or in any other manner prescribed in the bye-law of the market either directly or through commission agents even though purchased in the same market or some other market or place within the State. In other words, Rule 74(1) read with the proviso means that if the notified agricultural produce, livestock or products of livestock is sold within the market maintained by a market committee, it is liable to pay

a market fee of each such sale. It does not matter whether such agricultural produce, livestock and products of livestock has already been subject to payment of market fee within the notified market area of another market committee. According to plain English language, the exemption under Rule 74(1) is available only if the purchase or sale of such agriculture produce, livestock and products of livestock takes place outside the market within the notified market area but not if the sales are effected in any manner whatsoever within the market.

47. On a reasonable construction of Rule 74(1), the legal consequences as set forth must ensue. If paddy is subjected to levy of a market fee on purchase or sale by the producer to a rice miller in a notified market area by a market committee within the State and is taken into the notified market area of another market committee for being processed, i.e. de-husked into rice and sold by a rice miller to a trader or by a trader to a trader in the course of a commercial transaction, there cannot be any levy of market fee on such purchase or sale of rice in another notified market area. If that be so, then it must logically follow that the subsequent sale of rice in the notified area of the market committee cannot be subjected to levy of market fee on purchase or sale of rice by a miller to a trader or by a trader to a trader, if sale or purchase of paddy within such notified market area has suffered the levy of market fee. This is of course subject to the qualification that such sale or purchase has taken place in the notified market area, but outside the market in that area as enjoined by the proviso to Rule 74(1).

48. Learned counsel for the State strenuously contends the taking up of this view because of its serious ramifications on the income of the market committees throughout the State. It is no doubt true that this would result in the market committees being deprived of the power to levy market fee on several items of notified agricultural produce, livestock or products of livestock shown separately in Schedule II of the rules, but that is a consequence which cannot be avoided on the language of Rule 74(1). The exemption from payment of market fee under Rule 74(1) is however claimable on production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought. The burden of establishing the necessary facts to attract the exemption would lie on the petitioners. Unless the requirements of Rule 74(1) are satisfied, the petitioners are not entitled to any relief.

49. There is very little that we could add in the connected matters. The question as to the constitutional validity of sub-section (6) of Section 7 of the Act and sub-section (1) of Section 12 of the Act which is common to Writ Petition No. 1286 of 1973, Civil Appeal No. 2108 of 1972 and Civil Appeal No. 4013 of 1982 stands disposed of. The question regarding the validity of the notification issued by the State Government declaring rice to be a notified agricultural produce under Section 2(i) of the Act and that declaring the notified market area of Kothavalasa Market Committee for the district of Visakhapatnam under sub-section (4) of Section 4 of the Act has not been pressed at the hearing. There are however certain aspects in these connected matters which have to be dealt with.

50. Civil Appeal No. 2108 of 1972 : The High Court by its judgment dated July 27, 1971 has upheld the increase in the rate of market fee by the Agricultural Market Committee, Guntur from 13 paise per hundred rupees to 25 paise in the year 1970 on the ground that the relevant bye-law by which increased rate of market fee had been levied had not been published and that the levy of fee at 25 paise per hundred rupees was excessive and not commensurate with the facilities provided. The High Court found no substance in any of the contentions since the relevant bye-law had been published in the Official Gazette and that the increase in the rate of levy of market fee to 25 paise had been upheld in its earlier judgment in a batch of writ petitions viz. 1214 of 1970 etc. dated July

19, 1971.

51. Civil Appeal No. 2502 of 1981 : The High Court by its judgment dated April 21, 1981 dismissed a batch of writ petitions. The contention of the appellant Coromandal Agro Products and Oils Limited which is an agro-based industry engaged in the manufacture of cotton seed oil was that the levy of market fee by the Agricultural Market Committee, Chirala on purchases of cotton seed made by it in the notified market area in and around Chirala through brokers and commission agents could not be subjected to levy of market fee under sub-section (1) of Section 12 inasmuch as cotton purchased by such commission agents had already borne the levy of market fee. In the writ petition, the appellants had alleged in paragraph 2 :

> The Company purchases cotton seed which is the principal raw material in and around Chirala through brokers and commission agents and do not effect any direct purchases.

It then averred in paragraph 3 :

> Most of the purchases of raw material viz., cotton seed are from the cotton and ginning millers who have paid cess to the market committee at the stage of purchase of cotton (kapas).

52. The appellants contended that the cotton from which cotton seed was manually separated had already suffered market fee and therefore the levy of such market fee on the same commodity for the second time was illegal and tantamount to double taxation. In the petition for special leave, the appellants relied upon the aforesaid order referred to earlier by which it had been notified that if paddy had once been subjected to levy of market fee, then no market fee was leviable in respect of sale or purchase of rice. The appellants contend that there is no reasonable ground or rationale in taking cotton (kapas) and cotton seed differently. Thus the levy of market fee in respect of cotton seeds purchased by the appellants from the cotton and ginning millers was violative of Article 14 of the Constitution. At the hearing of the appeal, learned counsel for the appellant placed reliance on Rule 74(1). For reasons already stated, it is open to the appellant to make a claim for exemption from payment of market fee on cotton seed purchased by it from the cotton and ginning mills under Rule 74(1). The burden of establishing the necessary facts to attract the exemption would lie on the appellants. Unless the requirements of Rule 74(1) are satisfied, the appellants are not entitled to any relief.

53. Civil Appeal No. 4013 of 1982 : The High Court by its judgment dated September 17, 1982 has upheld the judgment and decree of the II Additional District Judge, Guntur, reversed that of the Subordinate Judge, Guntur and dismissed the suit brought by the appellant for declaration and permanent injunction. The appellant is an association of merchants licensed as traders under sub-section (1) of Section 7 of the Act in the notified market area of the Agricultural Market Committee, Guntur engaged in the business of export sale of gingelly seeds, pulses, coriander etc. The Market Committee started recovery proceedings for realisation of arrears amounting to over Rs. 3 lakhs from its members. Thereupon the members of the appellant-association filed Writ Petition No. 1045 of 1973 in the High Court contending the Market Committee had no right to recover market fee on gingelly seeds, pulses and coriander since no storage facilities were available in the market area for these commodities. The High Court by its judgment dated March 20, 1974 dismissed the writ petition upholding the validity of the levy of market fee under sub-section (1) of Section 12 of the Act. It found on the material on record that the Market Committee was providing various amenities

such as roads, sheds, telephone, canteen etc. in the market area, located in an area admeasuring 3 acres of land and had also been rendering services as enjoined by the Act and the rules and was therefore entitled to recover market fee. It also adverted to the fact that the Market Committee had acquired 23.69 acres of land at a cost of Rs. 2.25 lakhs and construction works of godowns, auction platforms, office buildings, approach roads etc. were in progress and were likely to be completed by the end of December 1975. Having failed in the High Court, the appellant as an association of the merchants brought a suit for declaration and perpetual injunction seeking the same relief. The Subordinate Judge, Guntur decreed the suit brought by the appellant but the learned Additional District Judge, Guntur reversed his judgment and dismissed the suit. The High Court has upheld the decision of the learned Additional District Judge. The High Court distinguished the decision of this Court in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008] on the ground that it related to enhancement in the rate of market fee from Rs. 2 per hundred rupees to Rs. 3 whereas the appeal before it arose out of the suit challenging the initial levy of market fee by the Agricultural Market Committee, Guntur. It was not the case of the plaintiff that the levy of market fee at rupee one per hundred rupees was excessive and not commensurate with the services rendered. Learned counsel appearing for the appellant commented adversely on certain observations made by the learned single Judge as regards the obligation of the market committees to provide facilities tending to show that there is correlation between the levy of market fee and the services rendered as being opposed to the concept of fee as laid down in Kewal Krishan Puri case [(1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008]. It is not necessary for us to deal with this contention as the High Court on merits was fully justified in upholding the decision reached by the learned Additional District Judge. The learned District Judge after dealing with the evidence has held undisputedly that a market had been established in an area of over 5 acres of land and within a distance of one kilometre a new market had been established over an area of 24 acres. On the evidence on record he found that the Market Committee had constructed platforms, godowns, sheds, rest house etc. in the newly acquired area. In view of this the establishment of a market, according to the learned District Judge, was itself a service which justified the Market Committee to recover market fees and it was not necessary to provide separate storage facilities for gingelly seeds, pulses and coriander. The conclusion reached by the learned District judge was the only conclusion possible. The High Court was therefore right in dismissing the second appeal.

54. The result therefore is that all the writ petitions and the connected appeals must fail and are dismissed with costs.

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