

I. T. C. Ltd. And Others

Vs

State of Karnataka and Others

Civil Appeals Nos. 605-2526, 3528-3632, 4356-5278, 6977-7173, 7514-8199, 8921-9939 of 1983;
Special Leave Petitions Nos. 3419-20 and 7087-7111 of 1983 and Writ Petition No. 6859 of 1982

(Syed M. Fazal Ali, A. Varadarajan, Sabyasachi Mukharji JJ)

03.05.1985

JUDGMENT

FAZAL ALI, J. -

1. I have carefully gone through the judgment of my learned Brother, Mukharji, J., on the question of fee levied by the Karnataka State on the agricultural produce brought to the market for sale in that State. The theory of nexus between the fee levied and the services rendered cannot be reduced to a ritualistic formula so as to close it in a strait-jacket nor can it be weighted in golden scales. All that is necessary is that there should be a direct nexus between realisation of fees and the services rendered. What would be the nature of the services, when and how it should be rendered and in what measure is entirely a matter for the market committees to decide or determine. So long as the money is realised even though on the higher side, but is spent on the extension and expansion of the markets, market yards, market facilities, godowns, rest houses, buildings, even roads leading up to the markets, that would be fully within the concept of a fee and could not be labelled as a tax on the purchas

2. I am not persuaded to accept the argument that the facts of the present case are fully covered by the decision of this Court in Kewal Krishan Puri v. State of Punjab. That case must be read in the light of the peculiar facts before the Court. I do not consider this to be an authority for all times to levy a fee of Rs. 2 or Re 1 per 100 in all cases irrespective of the merits of the case. The problem of marketing in a developing country like ours has assumed very large proportions and the market fees are required to provide excellent facilities for extension, expansion and development of markets. In doing so, the Government can construct roads by converting rural roads into tarred ones in order to provide all possible convenience to the purchasers and boost up the sales. What Kewal Krishan Puri case decided was that in the facts of that case there was no clear nexus between d to send the child to the recognised social or child welfare fee and the services rendered. In Southern Pharmaceuticals & Chemical

The Constitution did not contemplate it to be an essential element of a 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 stricto sensu is not always a sine qua non of a fee.

* *##

Our attention has been drawn to the observations in Kewal Krishan Puri v. State of Punjab :

The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee.

To our mind, these observations are not intended and meant as laying down a rule of universal application.

3. The one cardinal principle which flows from Kewal Krishna Puri case is that any fee or money realised should not be diverted to any other purpose except for the benefit of the purchaser/seller. In the instant case, though the fee appears to be on the higher side but there is unimpeachable evidence to show that the entire amount realised has not been spent on some other object or purpose but has been kept in reserve for developing the markets during the course of the coming 10-12 years. Though this period is large but it cannot be said that there is no nexus between the services rendered and the fee realised. Whether the development takes place immediately or in the course of a few years, so long as it is done within a reasonable period, it cannot be said that the fee amounts to a tax and is, therefore, ultra vires.

4. In Sreenivasa General Traders v. State of A. P., this Court observed as follows : (SCC p. 378-380, paras 29 & 31)

With greatest respect, the decision in Kewal Krishan Puri case does not lay down any legal principle of general applicability.

* * *##

The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions... In determining whether a levy is a fee, the true test must be whether its primary and essential agency processing the application for guardianship should then be 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. ... However, corelationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude.

5. I might observe here that the levying of market fee on the sale and purchase of agricultural products in the markets is not a static event but is an ever changing concept. It has to be modulated and adapted to the requirements and necessities of the society, the expanding needs of the nation and the ever increasing trends of the rise in prices. In other words, this is a dynamic concept which keeps on changing. For instance, it cannot be said that what is good for the 70 crores people of today will also hold good when the population jumps to 75 crores or even more in the course of another 5-10 years. Thus, it is impossible to lay down a hard and fast rule which would apply for all times to come. Therefore, the decision in Kewal Krishan Puri case cannot be held to be law for all times to come irrespective of the period nor was this decision meant to lay down any such principle. I, therefore, with due respect, agree with the observations made and the detailed survey done by Brother Mukharji, J. This disposes

6. Civil Appeal No. 629 of 1983. - This now brings me to the second important question, viz., whether the Karnataka Government was entitled to levy fee on the goods or the various products and sub-products of tobacco. The question is not free from doubt. Since the inception of this Court, which was the precursor of the Federal Court, it has been laid down that the various entries found in

the three Lists of the Seventh Schedule of the Constitution of India are demarcated fields of legislation and their contours and limits have been expressly described in the entries mentioned in the said three Lists. Each State is free and independent to legislate on the field which is covered by the State List (List II) or the Concurrent List (List III). So far as List I is concerned that is reserved purely for Parliament for any legislation to be made. So far so good. The most knotty and difficult problem arises when we find that there is some sort of an inconsistency or conflict or collision between the two Lists (Lists I

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

7. Two problems, however, may arise. The word 'Industries' is very wide and has been used in the other two Lists also. Where a particular industry falls clearly within the four corners of Entry 52 then the State has no jurisdiction legislate on that particular field if that field is occupied and the doctrine of occupied field would apply. Difficulty arises in borderline cases where an industry has been declared by the Centre under Entry 52 of List I and this entry overlaps, to a great extent, the corresponding entry in List II. The question arises as to whether the Central List would prevail or the State List.

8. In the instant case what has happened is that although the tobacco industry has been notified as having been taken over under Entry 52 of List I yet the Karnataka State Started levying fee on the tobacco or its products. In order to appreciate whether or not the field was fully occupied and there could not be encroachment on this fee by the Karnataka State a brief history of the Central legislation may be given.

9. As already mentioned, Entry 52 of List I authorises the Central Legislature (Parliament) to take over any industry it likes, tobacco being no exception. It is also not disputed that by virtue of the Tobacco Board Act, 1975, (for short, referred as '1975 Act') the Parliament chose to occupy the entire field of tobacco industry which includes all kinds of tobacco and its by-products and not merely Virginia tobacco. It may be necessary to extract a few relevant portions from the 1975 Act :

2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry.

3. (a) 'Board' means the Tobacco Board established under Section 4;

(d) 'dealer' means a dealer in tobacco;

(f) 'export' and 'import' mean, respectively, taking out of, or bringing into, India, by land, sea or air;

4. (3) The head office of the Board shall be at Guntur in the State of Andhra Pradesh and Board may, with the previous approval of the Central Government, establish offices or agencies at other places in or outside India.

7. (1) The Board may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

8. (1) It shall be the duty of the Board to promote, by such measures as it thinks fit, the development under the control of the Central Government of the tobacco

industry.

(2) Without prejudice to the generality of the provisions of sub-section (1), the measures referred to therein may provide for -

(a) regulating the production and curing of Virginia tobacco having regard to the demand therefore in India and abroad;

(c) maintenance and improvement of existing markets, and development of new markets outside India for Indian Virginia tobacco and its products and devising of marketing strategy in consonance with demand for the commodity outside India, including group marketing under limited brand names;

(cc) establishment by the Board of auction platforms, with the previous approval of the Central Government, for the sale of Virginia tobacco by growers or curers, and functioning of the Board as an auctioneer at auction platforms established by or registered with it subject to such conditions as may be specified by the Central Government;

(g) purchasing Virginia tobacco from growers when the same is considered necessary or expedient for protecting the interests of the growers and disposal of the same in India or abroad as and when considered appropriate;

(i) sponsoring, assisting, coordinating or encouraging scientific, technological and economic research for the promotion of tobacco industry;

(j) such other matters as may be prescribed.

14-A. (1) Where Virginia tobacco is sold at any auction platform established by the Board under this Act, it shall be competent for the Board or for any officer of the Board authorised by it in this behalf to levy fees, for the services rendered by the Board in relation to such sale, at such rate not exceeding two per cent of the value of such tobacco as the Central Government may, from time to time by notification in the Official Gazette, specify.

(2) The fees levied under sub-section (1) shall be collected by the Board or such officer, equally from the seller of the Virginia tobacco and the purchaser of such tobacco, in such manner as may be prescribed.

20. (1) The Central Government may, by order published in the Official Gazette, make provision for prohibiting, restricting or otherwise controlling the import or export of tobacco and tobacco products, either generally or in specified classes of cases.

(2) All tobacco and tobacco products to which any order under sub-section (1) applies, shall be deemed to be goods of which the import or export has been prohibited under Section 11 of the Customs Act, 1962 (52 of 1962), and all the provisions of that Act shall have effect accordingly.

10. By virtue of Notification No. 374(3) dated May 31, 1980 the Central Government made

applicable Sections 10 and 11 of the 1975 Act to the states of Maharashtra, West Bengal, Gujarat, Tamil Nadu and Uttar Pradesh. It may, however, be mentioned that by making Rule 35 in the Tobacco Board Rules, 1976 (enacted under Section 12 of the 1975 Act) the market committees were debarred from auctioning or dealing in tobacco or its products unless they were registered with the Board. It is also admitted that the market committees of the State of Karnataka had not been registered with the Tobacco Board under the 1975 Act and were, therefore, incapable of rendering any service at all. Though some markets are situated in Karnataka State but that, to my mind, makes no difference because the Central legislation applies to the whole country. This appears to be the constitutional scheme of the three Lists which separately demarcate their fields and it is now well settled that one cannot encroach on the other. For instance, take

11. The crucial point for determination in this case is whether the Karnataka State had any jurisdiction to encroach upon the limits of Entry 52 of List I and the Court will have to closely examine the encroachment or entrenchment and the extent of the same. Where the Court is of the opinion that the encroachment or entrenchment amounts to defeating the very object sought to be subserved by the Central legislation then the Central legislation must prevail. Where it is a borderline case and covered almost fully by List II but in the course of the implementation of the same there is an entrenchment or encroachment which is only minimal, the question of the doctrine of pith and substance will come into play and the State will be justified in legislating over the subject concerned.

12. In the instant case we are concerned only with List I (Union List) and List II (State List) of Seventh Schedule. The matter in dispute falls within the four corners of Entry 52 of List I and Entries 28 and 66 of List II. It is not disputed as discussed above that by virtue of the 1975 Act the Central legislation had taken within its ambit the entire tobacco industry. The matter does not rest here alone. It appears that the Central legislation made a provision for sale and distribution of tobacco products through the Tobacco Board and sellers were directed to be registered with the Board. Clause (cc) of sub-section (2) of Section 8 of the 1975 Act enjoins establishment of auction platforms with the approval of the Central Government for sale of tobacco products. Section 12 of the 1975 Act deals with registration of exporters, packers, auctioneers and dealers of tobacco and may be reproduced thus :

12. No person shall export tobacco or any tobacco products or function as a packer, auctioneer or, or dealer in, tobacco unless he registers himself with the Board in accordance with the rules made under this Act.

13. Section 13 states that Virginia tobacco shall be sold only at an auction platform registered with the Board and runs thus :

13. No registered grower or curer shall sell or cause to be sold Virginia tobacco elsewhere than at an auction platform registered with the Board in accordance with the rules made under this Act, or established by the Board under this Act.

14. By a letter dated September 15, 1983 the Tobacco Board rejected the application made by the Karnataka State to allow it to participate in auctioning the tobacco products. Appointment of a foreigner as guardian of a child which has been. It is manifest therefore that by virtue of the aforesaid steps taken by the Central legislation the field of tobacco stood completely occupied and there was no room for application of the doctrine of pith and substance nor would the question of incidental entrenchment arise in such cases.

15. I shall now discuss the law on the subject which has been well settled by a long course of decisions of the Federal Court, the Privy Council, House of Lords and this Court. Before doing that it may be necessary to extract the relevant provisions of Articles 245 and 246 of the Constitution which may be extracted thus :

245. Extent of laws made by Parliament and by the Legislatures of States. - (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States. - (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matter enumerated in list II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the state List.

16. A close and careful analysis of these two Articles shows that the Constitution strikes a just balance between the powers of the Parliament and the State Legislatures but reserves to itself the right to legislate in exceptional cases even in matters appearing in the State List. This in fine is the logical result and the necessary concomitant of clause (4) of Article 246.

17. It is also not disputed that under Section 2 of the 1975 Act the entire tobacco industry was taken over by the Central Government. Having thus narrated the admitted facts I would now proceed to the merits of the appeals. To begin with, I might indicate the cardinal principles justifying the competence of the respective Legislatures with respect to the entries concerned :

(1) Entries in each of the List must be given the most liberal and widest possible interpretation and no attempt should be made to narrow or whittle down the scope of the entries. This is a well settled principle of law and was reiterated in a recent decision of this Court in *S. P. Mittal v. Union of India* where this Court observed thus : (SCC p. 80, para 64) *afeguard that no court in a State will entertain an application for It may be pointed out at the very outset that the function of the Lists is not to confer powers. They merely demarcate the legislative fields. The entries in the three Lists are only legislative heads or fields of legislation and the power to legislate is given to appropriate Legislature by Articles 245 and 248 (sic 246) of the Constitution.*

(2) The application of the doctrine of pith and substance really means that where a legislation falls entirely within the scope of an entry within the competence of a State

Legislature then this doctrine will apply and the Act will not be struck down. The doctrine of pith and substance has been summarised in the case of Delhi Cloth & General Mills Co. Ltd. v. Union of India where Desai, J. speaking for the Court made the following observations : (SCC p. 192, para 33)

To resolve the controversy if it becomes necessary to ascertain to which entry in the three Lists, the legislation is referable, the Court has evolved the doctrine of pith and substance. If in pith and substance, the legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence.

(3) The consideration of encroachment or entrenchment of one List in another and the extent thereof is also well established. If the entrenchment is minimal and does not affect the dominant part of some other entry, which is not within the competence of the State Legislature, the Act may be upheld as constitutionally valid.

(4) The nature and character of the scope of the entries having regard to the touchstone of the provisions of Articles 245 and 246.

(5) The doctrine of occupied field has a great place in the interpretation as to whether or not a particular Legislature is competent to legislate on a particular entry. This means that when the field is completely occupied by List I, as in this case, then the State legislature is wholly incompetent to legislate and no entrenchment or encroachment, minimal or otherwise, by a State Legislature is permitted. In other words, where the field is not wholly occupied, then a mere minimal encroachment or entrenchment would not affect the validity of the State Legislation.

18. Thus, in my opinion, the five principles have to be read and construed together and not in isolation - where however, the Central and the State legislation cover the same field then the Central legislation would prevail. It is also well settled that were two acts, one passed by the Parliament and the other by a State Legislature, collide and there is no question of harmonising them, then the Central legislation must prevail.

19. There may also be cases where despite an entry being in List II, the Parliament may under the provisions of Article 246(3) take over that particular field and legislate on that subject which will debar the State Legislature from adding or passing any such legislation which has been taken over under Article 246(3).

20. Now to the authorities. nterdict it altogether. But we would direct by way of additional. As far back as 1941, the Federal Court, while interpreting the ideal provisions of the Government of India Act of 1935 in Subrahmanyam Chettiar v. Muttuswami Goundan observed thus :

In (1921) 2 AC 91, Lord Haldane after stating "the rule of exception" applicable to the heads of Sections 91 and 92, added :

Neither the Parliament of Canada nor the Provincial Legislature have authority under the Act to nullify, by implication any more than expressly, statutes which they could not enact.

* * *##

While the Federal Legislature is given power, it is expressly provided that "a Provincial Legislature has not power to make laws with respect to any of the matters enumerated in List I". . . On a very strict interpretation of Section 100, it would necessarily follow that from all matters in List II which are exclusively assigned to Provincial Legislatures, all portions which fall in List I or List III must be excluded. Similarly, from all matters falling in List III, all portions which fall in List I must be excluded. The section would then mean that the Federal Legislature has full and exclusive power to legislate with respect to matters in List I, and has also power to legislate with respect to matters in list III. A Provincial Legislature has exclusive power legislate with respect to List II, minus matters falling in List I, or List III; has concurrent power to legislate with respect to matters in List III, minus matters falling in ListI. In its fullest scope, Section 100 would then mean that if it happe

21. In the above case their Lordships relied on the leading case of *Great West Saddlery Co. v. King*. To the same effect is a decision of this Court in *Zaverbhai Amaidas v. State of Bombay* where the following observations were made :

The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State.

22. In *Deep Chand v. State of U. P.* same principles of repugnancy have been reiterated and the three principles laid down by Nicholas were fully approved by Subba Rao, J. thus :

Nicholas in his *Australian Constitution*, 2nd Edition, page 303, refers to three tests of inconsistency or repugnancy :

- (1) There may be inconsistency in the actual terms of the competing statutes;
- (2) Though there may be no direct conflict, a State Law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and
- (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter.

* * *##

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

- (1) Whether there is direct conflict between the two provisions :
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the state Legislature; and
- (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

23. In *Calcutta Gas Company (Proprietary) Ltd. v. State of W. B.* the same view seems to have been taken where the following observations were made :

It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject the construction which will rob one of the entries of its entire content and make it nugatory.

24. Thus, indeed if I accept the argument of the Karnataka Government, which seems to have found favour with Brother Mukharji, J., I would really be robbing the 1975 Act of its entire content and essential import by handing over the power of legislation to the State Government which per se has been taken over by Parliament under Article 246 by the 1975 Act.

25. The case of *State of Orissa v. M. A. Tulloch & Co.* appears to be a direct authority on the question at issue, viz., if the Central Act and the State Act collide the inevitable consequence would have to be that the Central Act will prevail over the State Act and the latter will have to yield. In this connection, this Court observed thus :

Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. . . . The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent Legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other Legislature whether passed, before or after would be overborne on the ground of repugnance.

26. To the same effect is another decision of this Court in *Sudhir Chandra Nawn v. WTO* where Shah, J. observed thus :

Exclusive power to legislate conferred upon Parliament is exercisable, notwithstanding anything contained in clauses (2) & (3), that is made more emphatic by providing in clause (3) that the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule, but subject to clauses (1) and (2). Exclusive power of the State Legislature has therefore to be exercised subject to clause (1) i.e. the exclusive power which the Parliament has in respect of the matters enumerated in List I. Assuming that there is a conflict between Entry 86 List I and Entry 49 List II, which is not capable of reconciliation, the power of Parliament to legislate in respect of a matter which is exclusively entrusted to it must supersede pro tanto the exercise of power of the State Legislature.

27. Practically the same view has been taken in *Baijnath Kedia v. State of Bihar* where the following observations were made : (SCC p. 847-48, para 13)

It is open to Parliament to declare that it is expedient in the public interest that the control should rest in Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the

field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. This proposition is also self-evident that no attempt was rightly made to contradict it.

28. Thus, it would appear that in view of the recent decisions, once the Centre takes over an industry under Entry 52 of List I and passes an Act to regulate the legislation, the State Legislature ceases to have any jurisdiction to legislate in that field and if it does so, that legislation would be ultra vires the powers of the State Legislature.

29. I might mention here a reference made by Brother Mukharji, J. to the fact that the Karnataka State Legislature passed an Act of 1980 by which the Tobacco Industry was taken within its ambit but, the assent of the President was not taken as required by Article 254(2). This takes us nowhere because in the first place as the assent of the President was not taken, the Karnataka Act of 1980 was wholly incompetent. Moreover even if the President's assent would have been taken it would not validate the Karnataka Act of 1980 so far as the Tobacco Industry is concerned because Article 254(2) applies only to matters contained in the Concurrent List and has nothing to do with matters enumerated in List I or List II. Thus, the Karnataka Act of 1980 would have absolutely no application to Entry 52 of List I which was fully occupied by the Central act of 1975 as referred to above. This circumstance, therefore, is of no consequence.

30. On a careful consideration, therefore, of the facts and circumstances of this case I express my respectful dissent with the view taken by Brother Mukharji, J., on this point and hold that so far as the case of the I. T. C. (C. A. 629 of 1983) is concerned, the Government of Karnataka has no jurisdiction to levy any market fee because that directly collides with the 1975 Act as indicated above.

31. This being the position, I, therefore, strike down that part of the Karnataka Act which takes in itself the power to levy market fee on tobacco or its products. Even if the products may be sold in the markets in Karnataka or near about the same place situated in that State, the power to levy fees will not belong to that State : it will remain with Centre which would regulate the sale and purchase of tobacco. It may be reiterated at the risk of repetition that an application for registration with the Tobacco Board was made by the Karnataka Government which was, however, rejected by the Board. This indirectly shows that the Government of Karnataka was aware that it could not encroach on the field which was fully occupied by the centre by virtue of the 1975 Act.

32. Before closing the judgment I would like to give a rough and ready example to illustrate my constitutional point of view in a figurative sense. Suppose there are two fields belonging to A and B. The area of A's field is 500 x 200 metres. There is another adjacent field belonging to B comprising 400 x 100 metres. A's possession covers every nook and corner of the entire field leaving nothing vacant. It is manifest that B cannot encroach or entrench on the field of A. Conversely, if A is in possession of the entire field leaving, however, a small portion (30 x 20) metres vacant, B would be justified in encroaching on that particular part of the vacant field. This is how we have to construe the provisions of the Central and State entries in List I and List II in accordance with the provisions of Articles 245 and 246 of the Constitution.

33. Having regard to these circumstances I allow the appeal of the I. T. C. (C. A. 629 of 1983) and quash the order of the market committees of Karnataka levying fee on tobacco and its products. To this extent, therefore, I dissent from the view taken by Brother Mukharji, J. for whom I have the greatest respect. There will, however, be no order as to costs and any fee realised will not be

refunded and it will be for the Centre and the State to adjust and work out the equities of adjustment.

VARADARAJAN, J.

The Mysore Agricultural Produce Marketing (Regulation) Act, 1966 came into force on May 1, 1968. Now known as the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, it will be hereinafter referred to as 'the Act'. Section 65(1) of the Act as it originally stood directed market committees in the State to levy and collect market fee from buyers in respect of specified agricultural produce at a rate which may not be more than thirty paise per one hundred rupees of the price of the agricultural produce in such manner and at such times as may be specified. Clause (2) of section 65 stated that for the purpose of clause (1) all notified agricultural produce leaving a yard shall, unless the contrary is proved, be presumed to have been bought within such yard by the person in possession of such produce. Pursuant to Section 65(1) the market fee appears to have been fixed by all the market committees in the State of Karnataka at thirty paise per one hundred rupees of the price paid to th

35. Section 2 of the Karnataka Agricultural Produce Marketing (Regulation) Amendment Act 20 of 1973 which came into force on October 23, 1973 amended Section 65 of the Act by substituting the words "thirty paise" in sub-section (1) of Section 65 of the act by the words "one rupee". That Amendment Act was passed in replacement of the Karnataka Ordinance 5 of 1973 which was repealed by Section 4 of that Act with the necessary saving clause by way of the proviso. The market committees accordingly raised the market fee to the maximum limit of one per cent of the sale price by amendment of the bye-laws. The enhancement of the market fee from thirty paise to one rupee per one hundred rupees of the price paid to buyers was upheld by the High Court in Vaman Rao v. Agricultural Produce Market Committee. Subsequently, the Act was further amended by the Karnataka Agricultural Produce Marketing (Regulation) amendment Act 24 of 1975 which came into force on May 19, 1975. Section 2 of that Amendment Act substituted Sectio

65. Levy of market fees. - (1) The market committee shall levy and collect market fees from every seller in respect of agricultural produce sold by such seller in the market area at the rate of one rupee per hundred rupees of the price of such produce sold.

(2) The market committee shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be specified in the bye-laws (which shall not be more than one rupee per one hundred rupees of the price of such produce bought) in such manner and at such times as may be specified in the bye-laws.

(3) Every market committee shall, notwithstanding anything contained in this Act, credit to the Karnataka Motor Vehicles Taxation Act, 1957, the market fees collected under sub-section (1) for being spent for the purpose of construction, repair, improvement and maintenance of rural roads in the State.

36. This amendment provided for the levy and collection of market fees by market committees on and from the seller of specified agricultural produce sold in the market area at one rupee per one hundred rupees of the price of such produce sold and for crediting the market fees so collected to the Roads and Bridges Fund constituted under the Karnataka Motor Vehicles Taxation act, 1957 for being spent for the construction, repair, improvement and maintenance of rural roads in the State.

37. The levy of market fees on sellers of specified agricultural produce by the amendment of Section 65 of the Act and the appropriation of the market fee collected under that sub-section from sellers to the credit of the Roads and Bridges Fund under sub-section (3) was challenged in Rajasekhariah case. In that case the High Court struck down the amended Section 65(1) and (3) of the Act and upheld the levy on buyers under Section 65(2) of the act in the judgment delivered on September 28, 1978 following decision dated December 17, 1974 rendered in Vaman Rao case so far as the levy on buyers is concerned.

38. On June 30, 1979 Karnataka Ordinance 2 of 1979 was promulgated making some amendments to Sections 63 and 65 of the Act. Section 63 which deals with the powers and duties of market committees was amended with retrospective effect from May 19, 1975 so as to substitute in clause (ii) of sub-section (1) of section 63 the words "transport and marketing" for the word 'marketing'. In sub-section (2) (a) of Section 63 with reference to the duties of the marketing committees after item (1) the amendment stated :

Provide either independently or along with some other authority necessary facilities for the transport of notified agricultural produce to the yard in such manner as may be prescribed.

39. Section 65 was amended (i) validating market fees levied and collected under sub-section (1) of Section 65 for the period from May 19, 1975 to September 28, 1978; (ii) omitting the amended sub-section (1) of Section 65 with effect from September 28, 1978; (iii) enhancing the maximum permissible limit of market fee levied and collected from buyers of specified agricultural produce under sub-section (2) of Section 65 from one per cent to two per cent; (iv) omitting sub-section (3) of Section 65 as if it never existed in the Statute.

40. The Karnataka Agricultural Produce Marketing (Regulation) Amendment Act 17 of 1980 which came into force on May 9, 1980 seems to have been passed in replacement of Ordinance 16 of 1979 which in turn was promulgated in replacement of Ordinance 2 of 1979. Section 42 of that Amendment Act validating the levy and collection of market fee during the period from May 19, 1975 to September 28, 1978 which was struck down in Rajasekhariah case reads :

42. Validation of levy of market fee etc. - (1) Notwithstanding anything contained in any decree, order or judgment of any court, or other authority any levy or collection of market fee made or purported to have been made, any action taken or thing done in relation to such levy or collection under the provisions of the principal Act before the commencement of this section shall be deemed to be as valid and effective as if such levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly -

(a) all acts, proceedings or things done or action taken by any market committee in connection with the levy and collection of such market fee shall, for all purposes be deemed to be or to have always been made, done or taken in accordance with law :

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such market fee; and

(c) no court shall enforce any decree or order directing the refund of any such fee.

(2) (c) The Karnataka Agricultural Produce marketing (Regulation) (Second

Amendment) Ordinance, 1979 (Karnataka Ordinance 16 of 1979) is hereby repealed.

(b) Notwithstanding such repeal, any action taken or any appointment, notification, order, scheme, rule, form or bye-law made or issued or deemed to have been taken, made or issued under the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Ordinance, 1979 shall be deemed to have been taken, made or issued under this Act as if this Act were in force at all relevant times and any reference therein to the said Ordinance shall be deemed to be a reference to this Act and they shall continue in force accordingly unless and until superseded by any action taken or any appointment, notification, order, scheme, rule, form or bye-law made or issued under this Act or any other law.

41. Section 20 of the Amendment Act 17 of 1980 amended Section 65 of the act thus :

In Section 65 of the Principal Act,

(1) for sub-section (1) the following sub-section shall be deemed to have been substituted with effect from 19th day of May, 1975, namely :

(1) In respect of agricultural produce sold in the market area there shall be levied and collected by the market committee thereof, from every seller market fees at the rate of one per cent of the sale proceeds of the produce so sold;

(2) Sub-section (1) as so substituted shall be and shall be deemed to have been omitted with effect from the 29th day of September, 1978;

(3) In sub-section (2) for the words "one rupee" the words "two rupees" shall be substituted;

(4) Sub-section (3) shall and shall be deemed always to have been omitted.

42. Thus the levy of market fee subject to a maximum of one per cent of the sale price of specified agricultural produce on sellers for the period from May 19, 1975 has been done away with effect from September 28, 1978 and sub-section (3) of Section 65 which provided for crediting the market fee levied and collected from sellers of specified agricultural produce to the Roads and Bridges Fund has been omitted as if it never existed in Section 65 of the Act by the Amendment Act 17 of 1980.

43. Pursuant to the amendment made to sub-section (2) of Section 65 of the Act enhancing the maximum limit of the market fees leviable on buyers under the section from one per cent to two per cent, all the market committees in the State of Karnataka except the Mangalore Market Committee amended the bye-laws for enhancing the levy under Section 65(2) of the Act from one per cent to two per cent.

44. The traders filed writ petitions in the High Court challenging the enhancement of the levy from one per cent to two per cent as well as the collection of the market fee from sellers during the period from May 19, 1975 to September 28, 1978. After the hearing of the writ petitions commenced in the High Court in October-November, 1981, Ordinance 22 of 1981 was promulgated dispensing with the requirement of the previous publication contemplated in Section 148 of the Act in relation to making of bye-laws and amendments thereof with retrospective effect. After the High Court

delivered the judgment in the writ petitions on January 25, 1982 upholding the enhancement of the market fee on buyers from one per cent to two per cent the market fee leviable under Section 65(2) on buyers has been reduced by all the market committees by the Circular NO. SMD-268/PGN-83 dated February 27, 1982 to one per cent pursuant to the declaration of the policy of the Government.

45. The principal challenge before the High Court was as to : (i), the constitutional validity of Section 65(1) of the Act as substituted by the Amendment Act 17 of 1980 which sought to validate the levy and collection of market fees from sellers of specified agricultural produce during the period of its operation between May 19, 1975 when Section 65(1) was introduced in the place of the old Section 65 by sub-section (2) of the Amendment Act 24 of 1975 and September 28, 1978 when it was struck down by the High Court in Rajasekhariah case; (ii) enhancement of the market fee from one per cent to two per cent of the price of the specified agricultural produce by amendment of the bye-law pursuant to the raising of the maximum limit from one per cent to two per cent by the Amendment Act 17 of 1980 on two grounds, namely, want of sufficient quid pro quo and violation of the requirement of prior publication and subsequent sanction of the amendment to the bye-law by the Chief Marketing Officer contemplated in Section 65(1) from sellers had actually been spent for the construction, improvement, repair and maintenance of rural roads, culverts and bridges and therefore, the Government was obliged to have recourse to the amendment and also to introduce Section 42 in the Amendment Act 17 of 1980 as not acceptable, and relying on the decision of this Court in Kewal Krishan Puri case the High Court held that rural roads are primarily and essentially intended for the benefit of the public and the class of market fee payers are, as part of the general public, entitled to the benefit of their user and the market fees cannot be levied on and collected from them for that purpose, more so because the rural roads constructed, improved, repaired and maintained with the market fees collected did not become the property of the market committees or shed their character as public roads. This appears to be the main reason for the High Court striking down Section 65(1) as substituted by Section

46. As regards Section 65(2) relating to market fees on buyers the High Court rejected the contention that the sub-section confers uncanalised and excessive power on market committees in the matter of fixing the rate of market fees and held that there are adequate statutory guidelines and safeguards.

47. On the question of the validity of the bye-law for enhancing the market fees from one per cent to two per cent the High Court found that after the maximum permissible limit of the market fee was raised under Section 65(1) by the Amendment Act 17 of 1980 from one per cent to two per cent from January 19, 1980 the Chief Marketing Officer issued instructions to the market committees for amending the bye-laws in order to raise the market fee from one per cent to two per cent and he subsequently sanctioned the enhancement after the bye-laws were accordingly amended by the market committees.

48. The learned counsel for the petitioners invited the attention of the High Court to the following passage occurring at page 517, para 952 of Volume 24 of Halsbury's Laws of England, third Edition :

A bye-law to be valid must be reasonable. Unless it is manifestly unjust, capricious, inequitable or partial in its operation, or involves oppressive gratuitous interference with the rights of those subject to it, the question of its reasonableness is one to be decided by the authority making it.

49. It was contended before the High Court that the very process by which the amendment to the bye-law for enhancing the market fee from one per cent to two per cent was made is without any

application of the mind of the market committees to the relevant criteria and it should, therefore, be struck down on that ground. It was contended that the amendment of Section 65(2) providing for enhancement of the maximum permissible limit of the market fee from one per cent to two per cent became effective from June 30, 1979 and that the market committees lost no time in mechanically raising the market fee from one per cent to two per cent without any application of the mind to the question whether such enhancement was justified having regard to the financial resources available and the funds required to meet the outlay on the services proposed to be provided in the near future and without preparing any budget estimates and balance sheet and considering them before deciding upon the quantum of enhancement and without giv

50. It was also contended for the writ petitioners before the High Court that in Section 148 as it originally stood then it was provided that subject to the provisions of the Act and the Rules made under Section 146 and with the previous sanction of the Chief Marketing Officer a market committee may, after previous publication in the prescribed manner, make bye-laws for the regulation of the business and the conditions of trading in the market area and that every bye-law made under that section shall be published in the prescribed manner. The question of increase in the rate of the market fee would perhaps fall under Item XXXIII of Section 148(2) which reads as :

Any other matter in respect of which bye-laws are required to be made or may be made under the Act.

It was submitted before the High Court that there was no compliance with the requirement of previous sanction and previous publication in the prescribed manner in regard to the amendment of the bye-law for enhancing the rate of market fee leviable under Section 65(2) from one per cent to two per cent. The High Court has observed that there was no answer to that criticism in regard to the validity of the amendment to the bye-law for raising the market fee from one per cent to two per cent and therefore the State Government promulgated Ordinance 22 of 1981 when arguments before the High Court were coming to a close amending Section 148 as also Sections 134 and 158 of the Act. The amendment introduced by that Ordinance omitted the words "after previous publication in the prescribed manner" which occurred in Section 148 of the Act with retrospective effect from the date of commencement of the Act. Section 3 of the amending Ordinance 22 of 1981 validated the bye-law notwithstanding the fact that the affected inter

51. However, the learned Judges themselves do not appear to have been quite happy about what had happened, for they have observed in para 61 of their judgment thus :

The question might, however, become a live issue if the market committees were to amend the bye-laws made under Section 65(2) of the Act in future without such an opportunity of hearing affected interests.

Even the learned Advocate-General appearing for the State and the learned counsel appearing for the market committees stated before the High Court, though according to them an obligation of hearing the affected interests was implicit in Section 65(2), that it would be eminently desirable that the market committees should adopt some reasonable procedure in that behalf and that the amendment to Section 148 made by the Ordinance was only intended to cure the defect in making the impugned bye-laws and avoid great public inconvenience which may result from the invalidation of the bye-laws and that there was no intention to make the deletion a permanent feature. They submitted that any reasonable procedure which may be suggested by the High Court would be adopted in practice even if there was no such legal compulsion. In view of that request by

the learned Advocate-General and learned counsel for the market committees the High Court has observed in its judgment thus :

It appears to us that before a market committee proposes to amend a bye-law to make an upward revision of the rate of fee, in future, the market committees must, first follow the directions of the Supreme Court at para 55 in Kewal Krishna Puri case. It would also be proper for the market committees to prepare a statement containing the particulars of the development works and services intended to be undertaken out of the market fee receipts together with cost - projections therefore, also setting out the likely period of execution. The plans and estimates for all civil engineering works should be prepared and sanctioned as prescribed in Rules 70 and 71 of the Rules framed under the Act. Then the market committees should notify the proposals calling for objections and suggestions may be, in addition to the publication on the notice board of the market committee's office, by appropriate publication in a daily newspaper, having circulation in the area. Those who wish to file objections or offer suggestions shall

52. Point No. 12 framed in para 7 of the judgment of the High Court relates to the question of justification for enhancement of the market fee payable under Section 65(2) of the Act from one per cent to two per cent and reads thus :

Whether the enhancement of market fees leviable under Section 65(2) of the Act from one per cent to two per cent brought about by amendment of the bye-laws of the market committees is unsupportable in law and fails for want of correlation with the value of services rendered to the payers of the fees.

The High Court has observed :

In 1974 when the levy had come to be challenged in Vaman Rao case the several market committees has filed financial projections for a 15 years period from 1974-75 to show the estimated income and expenditure. Just about that time all the market committees has occasion to prepare and furnish similar financial proposals to the Chief Marketing Officer in connection with certain proposals for development with the aid of a loan from the World Bank. As learned counsel wanted the Court to examine these proposals also having regard to the principles and guidelines laid down by the Supreme Court in Kewal Krishan Puri case we directed, by our order dated November 30, 1981, the Chief Marketing Officer to furnish in respect of each respondent market committee, a comprehensive statement in a tabular form, setting out the following amongst other particulars :

1. The year of establishment of the market committee.
2. Amount actually spent for capital or developmental works from the beginning till June 30, 1974.
3. The particulars (in metric tonnes) of the total annual arrivals of all notified agricultural commodities for the three years 1978-79, 1979-80 and 1980-81.
4. Average daily arrivals (in metric tonnes) for the years 1978-79, 1979-80 and 1980-81.

5. Total amount of market fee collected for the years 1978-79, 1979-80 and 1980-81.
6. Revenue expenditure incurred for the years 1978-79, 1979-80 and 1980-81.
7. Cash on hand or in bank or in the form of investments as on July 1, 1981.
8. Items of developmental works originally envisaged (for a period of 15 years during 1974-75 to 1988-89) together with itemwise estimated cost thereof; revised estimates, if any, itemwise; progress in execution in terms of financial outlays of work, itemwise in respect of each item up to July 1, 1981; balance remaining to be executed (in terms of money) with break up for the future years up to 1988-89 if the work is to be completed in instalments in future; any deletion of or alteration in the items of work envisaged in 1974-75; and any other additional developmental works proposed after 1974-75.

In response to this order, the Chief Marketing Officer has filed the statements which are at Exhibits R-1 to R-11. In addition, several of the respondent-market committees have filed statements which though not in the same form also contain similar information.

53. The petitioners before the High Court made fourfold submissions regarding those statements. They are :

- (1) Exs. R-1 to R-111 are totally at variance with the corresponding estimates furnished for the same period in 1974-75 and they have been prepared only in order to supply an artificial quid pro quo for enhancement of the levy and are merely show-pieces on paper to get over the present challenge;
- (2) the vagaries and disparities in the proportion of the proposed development from market yard to market yard are so glaring that no authority in the position of the Chief Marketing Officer would reasonably approve such uncoordinated and disproportionate development of the regulated markets;
- (3) many of the items of works envisaged in the development such as construction of shops, godowns and the like are unrelated to the concept of special service to the buyers and cannot be reckoned as qualifying for correlation. If these impermissible items are deleted from the estimates, the market committees would not be in a position to establish the requisite quid pro quo; and
- (4) a substantial part of the proposed financial outlays relates to what are called rural markets the outlays on which could not be reckoned as for rendering special service to the buyers.

54. After considering the above proposals and estimates and the arguments advanced at length about them and after taking into consideration the proceedings of the National Seminar on Rural Markets Development held in New Delhi during December 1979 in which it is stated that in Karnataka the Panchayats manage the rural markets as agents of the market committees and 75 per cent of the revenues is given to the Panchayats for managing the markets and the remaining 25 per cent is taken by the market committees, the High Court has held that the outlays on the establishment of rural markets cannot be held to be impermissible for the purpose of reckoning correlation.

55. The High Court has observed :

Indeed, in the proposals for the development of the market committees, it is legitimate to expect a scientific consistency and adherence to some broad norms of development. Under the 'Act' the Chief Marketing Officer is required to sanction the budgets of these market committees. Any project for development must take into account, and be reasonably related to, factors such as the quantum of notified agricultural produce handled annually at the markets; the increase thereof expected in the reasonable near future; the market fee and other annual incomes; the potentialities for expansion and the like. Any proposals for growth and development are to be scientific; they ought to be sensible. In quite a few cases they prima facie appear to be neither. There ought to be some broad norms reconciling the actualities and potentialities of the markets on the one hand and the ambitions of development of the market committees and the financial outlays proposed thereon on the other. The criticism that the proposals for dev

It is no doubt true that uniform standards, though desirable, may not be practical in all cases and the requirement of a market which handles, say ten thousand tonnes of cotton every year might differ very widely from those of a market which may handle the same tonnage of some other notified produce which though in terms of weight may be equivalent but in terms of volume be very much lesser. A market which deals predominantly with some seasonal commodities may have its own special problems and requirements. But in some cases before us even where there are similarities in the nature of the produce and in other circumstances, the ambitions for development are irreconcilably disparate. Even amongst markets which are similarly situated from the point of view of the market fee income, quantum of produce handled and transacted, potentialities for expansion and levels of development already reached, the proposals reveal a wide divergence. There is admittedly no uniformity or standardisation of norms for growth even br

Indeed the Indian Standards Institution has standardised the pattern of regulated markets classifying them into 'A', 'B', 'C', 'D', and 'E', classes based on the quantum of the notified agricultural produce handled therein annually. The assessment of the marketing projects in Karnataka made by experts of the International Development Association in connection with the World Bank aid for development of the markets has classified and graded the markets based on certain well accepted common criteria. The cost-projections for various classes of markets are also made therein. The present proposals have obviously not kept any of them in view. One explanation was that the whole concept of marketing is expanding and these precipitous are not now apposite. However, the wide divergence in the plans for development lends some credence to the criticism of the petitioners that the estimates were not taken seriously even by the market committees or the C. M. O.

* * * * *###

But apart from such basic infrastructures which stand on a different footing, the benefit of utilitarian projects relating to and developed from fee resources must be available to the payers of the fee for at least a considerable part of the period covered by the financial estimates and projections. The logic of some of the market committees in this behalf, if pushed to its logical or illogical conclusions, would mean that the present generation of fee-payers would pay for services which would only be available to the next generation. In our opinion levy of fee cannot be justified on such wholly prospective services.

56. After considering in some detail the proposals and estimates on the assumption that they are correct the learned Judges of the High Court have observed :

The upshot of the above discussion is that though we are unable to hold, on the material placed before us by the petitioners, that the levy ought to fail for want of quid pro quo however, having regard to the infirmities noticed in the estimates and the financial projections of the proposed developmental works on the basis of which the enhancement is sought to be justified, we are also unable to say with any confidence and without reservations that the enhancement of fee, depending as it does on those estimates is totally justified. Some time-bound directions to which we will refer presently for a second look at the estimates by the statutory authorities are required to be issued in this behalf.

Indeed, having regard to the wide range of the apparently inexplicable disproportions in the developmental projects of the various market committees both the loaned Advocate-General and the learned counsel for the market committees, stated that there was obvious scope - in our opinion an imperative need - for some rationalisation of the pattern of development of market-yards based upon and related to the relevant factors such as quantum and nature of agricultural produce handled by the markets; potentialities of development of the market in the reasonably near future and the like. It is neither possible nor advisable to lay done exhaustively all the criteria that may become relevant to the task. However, the need for such an exercise to regulate the development to these market-yards on a scientific, rational and uniform basis was accepted by all the parties.

A time-bound schedule has to be prescribed for the Chief Marketing Officer, as the authority under the 'Act', approving the budgets, to evolve and standardise broad and general norms taking into account the observations made in the course of this order, both for infrastructural and developmental works and services, on a uniform a basis as may reasonably be feasible, for the various markets depending upon their classification to be made by the C. M. O. on the basis of such criteria as he may deem relevant and also to evolve corresponding cost patterns of the projects with suitable in-built indicia for escalation of cost-structures, from time to time, proportional to the rise in the price of material. These norms shall operate as broad and general guide-lines for the development of regulated markets and shall be kept in view of the market committees in planning developmental projects. Departure from these norms and standards shall, of course, be permissible on grounds of special requirements of individual regu

The learned Advocate-General and the learned counsel for the market committees concede that this exercise is necessary and beneficial as indeed the matter involved an outlay of nearly 145 crores of rupees in the next 8 years on the regulated markets.

Accordingly, the C. M. O. shall within 4 months from now evolve and standardise these norms and specifications and circulate the same to the market committees. Respondent market committees in categories 'C', 'D' and 'E' in para 80 supra will, within 3 months therefrom, revise their proposals for development in accordance with these norms and specifications, departures from standard specification being permissible if the special conditions peculiar to the particular markets so require and compel. The C. M. O. will again scrutinise these revised proposals and their cost-projections and if, upon such scrutiny, is of opinion that the present 2% market fee of any market committee in the category 'C', 'D' and 'E' supra is unjustified, the C. M. O. will make appropriate orders under Section 150 of the Act directing the market committee or committees concerned to amend their bye-laws to effect an appropriate downward revision in the quantum of the fee. Wherever the C. M. O. is

of the opinion, after an examination of

57. This is the gist of the discussion of learned judges of the High Court in regard to the above point No. 12 framed by them on the question whether enhancement of the market fees leviable under Section 65(2) of the Act from one per cent to two per cent brought about by the amendment of the bye-laws of the market committees is unsupportable in law and fails for want of correlation with the value of services rendered to the payers of the fee. The learned Judges have stated at the end of the point in para 7 of their judgment that the discussion relation to the point is in paras 75 to 110 and that the finding is in para 111. para 111 extracted above consists only of the direction given by the learned Judges of the High Court to the Chief Marketing Officer. The learned Judges have not expressed their opinion one way or the other in para 111 as regards the justification for the enhancement of the market fees leviable on buyers under Section 65(2) of the Act from one per cent to two per cent by amendment of the b

"... are unable to hold, on the material placed before us by the petitioners that the levy ought to fail for want of quid pro quo; however, having regard to the infirmities noticed in the estimates and financial projections of the proposed developmental works on the basis of which the enhancement is sought to be justified, we are also unable to say with any confidence and without reservations that the enhancement of the fee, depending as it does on those estimates is totally justified. Some time-bound directions to which we will refer presently, for a second look at the estimates of the statutory authorities are required in this behalf.

and they have given the same in para 109 of their judgment.

58. Dealing with the provisions of the Cardamom Act, 1965 and the rules made thereunder, in paras 34 to 38 of the judgment the High Court has held that the provisions of the Act insofar as marketing of cardamom is concerned, are repugnant to the provisions of the Cardamom Act (Central act 42 of 1965). But in paras 41 and 42 the High Court has held that the Tobacco Board Act, 1975 makes provision only in relation to Virginia tobacco and not all varieties of tobacco and the Act is not repugnant to the provisions of the Tobacco Board Act and all that is necessary is for the market committee to obtain auctioneer's licence under the provisions of the Tobacco Board Act. Proceeding on the basis that the Tobacco Board act is in relation only to Virginia tobacco and not all varieties of tobacco the High Court has observed that any intention of the "Superior Legislature" (meaning Parliament) to cover the whole filed and make a comprehensive law in regard to marketing of tobacco is not manifest in the Central enactment

59. I have set out above the gist of the High Court's decisions on the points regarding which alone arguments were advanced before this Court in the writ petitions, civil appeals an special leave petitions. They are :

(1) That the provisions of Section 65(1) of the Act as substituted by the Amendment Act 17 of 1980 an also the validating Section 42 of that Amendment Act insofar as it seeks to validate the levy of market fee on sellers of notified agricultural produce during the period from May 19, 1975 to September 28, 1978 are unconstitutional and void;

(2) That the Chief Marketing Officer shall within four months from the date of the judgment evolve and standardise the norms and specifications and circulate the same

to the market committees is direction given by the High Court. This was done by the High Court as it was conceded by the learned Advocate-General appearing for the market committees that the exercise suggested by the High Court in para 109 of the judgment is "necessary and beneficial as indeed the matter involved an outlay of nearly 145 crores of rupees in the next 8 years on the regulated markets";

(3) That the provisions of the Act are repugnant to the Cardamom Act, 1965 and the Rules framed thereunder but not the provisions of the Tobacco Board Act, 1975; and

(4) That a writ of mandamus be issued to direct the State Government and the market committees to refund to the writ petitioners who had approached the High Court and had the benefit of the issuance of writs of mandamus for the refund of the sellers' market fees actually paid under Section 65(1) in case where the mandamus issued had not been complied with by the respondents in the writ petitions in view of the validating provision contained in Section 42 of the Amendment Act 17 of 1980 on such writ petitioners filing their claims in writing before the market committees concerned, and in the second category of cases where the writ petitioners had not approached the High Court earlier their claims for refund of the market fee paid by them as sellers shall be confined to the market fees paid under section 65(1) within a period of 3 years immediately preceding the presentation of the writ petitions, and the same procedure as in the case of the other class of writ petitioners shall be followed.

60. Mr. Soli J. Sorabjee appearing for most of the appellants and the petitioners in the writ petitions and special leave petitions (namely traders) advanced arguments on all the above points. Mr. S. N. Kacker appearing for the appellants in Civil Appeals 1247 to 1474 of 1983 adopted the arguments of Mr. Sorabjee and supplemented it with his own. Mr. Bhatt appearing for the State advanced arguments in the State's appeals filed against the High Court's decision invalidating Section 65(1) as substituted by the Amendment Act 17 of 1980 and also Section 42 of that Amendment Act in the direction for the refund of the market fees collected under section 65(1) as substituted by that Amendment Act. Mr. A. K. Sen appearing for the market committees advanced arguments on the validity of the amendment of the bye-laws made for enhancement of the market fees on buyers leviable under Section 65(2) of the Act, while Mr. S. T. Desai, Dr. Y. S. Chitale and late Mr. P. R. Mridul appearing for the traders advanced arguments su

61. The submissions of Mr. Sorabjee in short are these :

62. The item of expenses envisaged for the rural roads has gone with the striking down of Section 65(1) and (3) of the act and the omission of clause (3) of Section 65 from the Act by the Amendment Act 17 of 1980 from the date of its commencement as if it never existed on the statute book. The amount collected under that sub-section will take care of the proposed expenditure envisaged in the estimates and projections for the improvement of the services in the regulated markets and therefore the enhancement of the market fee from one per cent to two per cent of the price of the specified agricultural produce is invalid. The reduction of the enhanced levy from two per cent to one per cent by the Circular No. SMD-268/RGN-83 dated February 27, 1984 issued pursuant to the State Government's decision shows that the State Government and the market committees prefer this course to the exercise suggested by the High Court to be completed within eight months of the judgment and that

there was no justification for the e

3. Amendment of Section 48. - In Section 148 of the principal Act, in sub-section (1), the words "after previous publication in the prescribed manner", shall be and shall be deemed always to have been omitted.

5(a) all acts, proceedings or things done or action taken by the State Government or by the market committees or by any other authority in connection with the levy or collection of market fee shall for all purposes be deemed to be and to have always been done or taken in accordance with law.

and Section 5(b) stated that :

"... no suit or other proceedings shall be instituted, maintained or continued in any court or before any authority for refund of any such market fee or for questioning the validity of any action or thing taken or done under the said bye-laws and no court shall recognise or enforce any decree or order declaring the said bye-laws or any action or thing taken or done thereunder as invalid on the ground that the bye-laws were made without giving reasonable opportunity to persons likely to be affected thereby to file their objections and suggestions, or otherwise without following the procedure prescribed.

Section 3, 5(a) and 5(b) have been replaced by sections 12 and 14 of the Karnataka Agricultural Produce marketing (Regulation) (Amendment) Act, 1982. The amendment of the bye-law made for enhancement of the market fee from one per cent to two per cent is not in accordance with law. The High Court has practically held so as can be seen from the direction given by it in para 61 of the judgment as to what should be done before a market committee amends its bye-laws to make an upward revision of the rate of market fee in the light of the submission made by the learned Advocate-General appearing for the State and the learned counsel appearing for the market committees that it will eminently desirable that the market committees should adopt some reasonable procedure in that behalf and that the amendment of Section 148(1) of the Act made by Ordinance 22 of 1981 was only intended to cure the defect in the making of the impugned amendment of the bye-law to avoid great public inconvenience which will result from the i

Without prejudice to the generality of the provisions of sub-section (1) and subject to priority being given to matters specified in sub-section (2), the measures referred to in sub-section (1) may also provide in relation to tobacco, other than Virginia tobacco, for all or any of the matters specified in clauses (c) to (g) of sub-section (2) and for this purpose any reference in those clauses to Virginia tobacco shall be construed as including a reference to tobacco other than Virginia tobacco.

Section 12 of that Act says that :

No person shall export tobacco or any tobacco products or function as a packer, auctioneer of, or dealer in, tobacco unless he registers himself with the Board in accordance with the rules made under this Act.

Rule 35 of the Tobacco Board Rules, 1976 relates to registration as exporter or

packer or auctioneer of, or dealer in tobacco.

63. Clauses (c) to (g) of Section 8(2) read thus :

(c) maintenance and improvement of existing markets, and development of new markets outside India for Indian Virginia tobacco and its products and devising of marketing strategy in consonance with demand for the commodity outside India, including group marketing under limited brand names;

(cc) establishment by the Board of auction platforms, with the previous approval of the Central Government, for the sale of Virginia tobacco by registered growers or curers, and functioning of the Board as an auctioneer at auction platforms established by or registered with it subject to such conditions as may be specified by the Central Government;

(d) recommending to Central Government the minimum prices which may be fixed for purposes of export of Virginia tobacco with a view to avoiding unhealthy competition amongst the exporters;

(e) regulating in other respects Virginia tobacco marketing in India and export of Virginia tobacco having due regard to the interests of growers, manufacturers and dealers and the nation;

(f) propagating information useful to the growers, dealers and exporters (including packers) of Virginia tobacco and manufacturers of Virginia tobacco products and other concerned with Virginia tobacco and products thereof; and

(g) purchasing Virginia tobacco from growers when the same is considered necessary or expedient for protecting the interests of the growers and disposal of the same in India or abroad as and when considered appropriate;

These clauses (c) to (g) would apply to tobacco other than Virginia tobacco also in view of Section 8(3) of the Tobacco Board Act.

64. Mr. Kacker adopted the arguments of Mr. Sorabjee and supplemented it with his own. His submissions are these :

65. Before sub-section (3) of Section 65 was struck down in Rajasekhariah case on September 28, 1978 several crores of rupees had been collected under Section 65(1) from May 19, 1975 when it was amended by Amendment Act 24 of 1975 to September 28, 1978 and that that amount must be sufficient to meet the estimates and projections envisaged in Exs. R-1 to R-111 and other statements prepared and produced by the market committees pursuant to the High Court's directions issued on November 30, 1981 having regard to the fact that sub-section (3) of Section 65 under which that amount had to be credited to the Roads and Buildings Fund has been struck down in Rajasekhariah case and that sub-section has been omitted from the Act as if it never existed in it. The market committees had surplus fund with them in 1979 and they had no scheme for effecting improvements to the regulated markets when they enhanced the market fee from one per cent to two per cent under sub-section (2) of section 65 of the Act by amending the by

66. On the other hand, Mr. A. K. Sen submitted his arguments which may be summarised thus :

67. As many as 4298 writ petitions were filed in respect of 93 market committees. Clear quid pro quo was established in respect of 73 market committees falling in categories 'A', 'B', 'C' and 'D' for enhancement of the market fee from one per cent to two per cent and no further enquiry was needed on the principles laid down in Kewal Krishan Puri case. The High Court found that reconsideration of the financial projections by the market committees was necessary only in regard to 8 out of the remaining 20 market committees, and it was entitled to give the directions which had been given to the Chief Marketing Officer to re-examine them. There is no repugnancy between the Act and the Tobacco Board Act, 1975.

68. Mr. Bhatt submitted that after Section 65(3) has been omitted from the Act as if it never existed in it there was no question of striking down Section 65(1) as substituted by the Amendment Act 17 of 1980, that Section 42 of that amendment act has validated the levy and there is no question of the refund of the market fee collected under Section 65(1) as the fee collected under the Act has to be used for the purposes envisaged by the Act and that in any event the refund could be only to the market committees and not to the traders.

69. It is necessary for me to refer to the arguments of Mr. S. T. Desai, Dr. Y. S. Chitale and late Mr. P. R. Mridul regarding the question of repugnancy of the provisions of the Act with those of the Tobacco Board Act, 1975 as may learned brother Murtaza Fazal Ali, J. has dealt with that question in his judgment and I agree with him in that regard. I wish to add that the learned judges of the High Court have disposed of this matter of repugnancy between the Act and the Tobacco Board Act, 1975 in two short paras 41 and 42 without much of a discussion under the belief that the Tobacco Board Act, 1975 concerns only Virginia tobacco and not other varieties of tobacco. They have held after some discussion in paras 34 and 38 of their judgment that the act is repugnant to the Cardamom Act which is almost similar to the Tobacco Board Act in its scope and operation. The consequence is that cardamom has to be taken out of the schedule to the Act. No appeal has been filed against that part of the High Court's judgment.

70. In the course of arguments both sides invited this Court's attention to a number of decisions. I think it is sufficient if reference is made to only five of them and also to the decision of this Court in Amarnath Om Prakash v. State of Punjab disposed of on November 19, 1984. The first of those decisions is of Mathew, Bhagwati and Untwalia, JJ. in State of Maharashtra v. Salvation Army. In that decision Mathew, J. speaking for the Bench observed : (SCC p. 520, para 23)

We do not think any such levy for investment or diversion of the surplus would be consistent with the principle behind the levy of fee. While we do not think it necessary that all available surplus in a year or for some years should always go in for reducing the rate of contribution for the subsequent year or years, we are of the view that the organisation cannot be allowed to accumulate an unreasonable amount - unreasonable in the sense that the amount might not be reasonably required for the proper and efficient working of the organisation in a foreseeable future. No hard and fast rule applicable in all contingencies can be formulated. The Court will have to draw a line somewhere when the surplus must be taken into consideration for reducing the levy of contribution. In drawing the line, the Court will have to look into the nature of the organisation, the potentiality for its growth, the multiplication in its work consequent on its expansion for rendering the services visualised by the Act and the necessit

71. This decision indicates what should be borne in mind when there is a complaint that the market fee already levied is excessive or before any further increase in the levy is made.

72. The second decision is that of a Bench of five learned Judge of this Court (Chandrachud, C.J. and Bhagwati, Untwalia, Murtaza Fazal Ali and Pathak, JJ.) in *Kewal Krishan Puri v. State of Punjab* where the purpose for which Marketing Development Fund and Market Committee Funds were levied and collected under the Punjab Agricultural Produce Markets Act, 1961 and justification for enhancement of the rate of market fee from two per cent to three per cent came up for consideration. This appears to be a leading decision on this subject. It has been relied upon not only by Mr. Sorabjee and Mr. Kacker but also by Mr. A. K. Sen. In that case, Untwalia, J. speaking for the Bench observed thus : (SCC pp. 434-54, paras 22-55).

Such as fee cannot be utilised for the purpose of rendering all sorts of facilities and services for the benefit of the agriculturists throughout the area. It may be very necessary to render such services to the agriculturists; rather, they must be rendered. But the laudable end in itself cannot justify the means to achieve that end if the means have got no sanction of the law.

* * *##

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

- (1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.
- (2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.
- (3) That while rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.
- (4) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.
- (5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.
- (6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.
- (7) At least a good and substantial portion of the amount collected on account of

fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

* * *###

The benefit of market fee, therefore, has to be correlated with the transactions taking place at the specified place in the market area and not in the whole of the area.

* * *###

Supposing a market has been established consisting of principal market yard or sub-market yards at a particular place where there is no facility for the carts or the trucks and other vehicles to go, then approach roads, and if necessary even culvert and bridges may be constructed, or repaired out of the Market Committee Fund. Such an expenditure within the limited limit will be with the object of facilitating the taking place of the transactions of purchase and sale in the market and will confer some special benefits to the traders apart from a share of the benefit going to the agriculturists who are not required to share any burden of the market fee. But as we have pointed out above, if one were to give a very wide meaning to this phrase of construction and repair of approach roads, culverts and bridges to say that such construction can be permitted anywhere in the market area for the facility of the agriculturists which ultimately will benefit the traders also, then the whole concept of correlation of fee a

* * *###

If many of the purposes mentioned in the Act, as we have shown above, are outside the ambit of the service element and fall within the realm of the governmental functions, then it is plain that to say by generalisation that the fee money can be spent for the purposes or objects of the Act is not quite correct.

* * *###

The High Court points out that the money cannot be spent in construction of the governmental activities for providing main roads in the State. How, then, the market committees can be made to contribute a very big chunk of their market fee income in construction of the link roads throughout all villages? To put the matter logically, if a link road is to be constructed from a village to the main road for enabling an agriculturist to transport his produce up to the main road then the market committee should be under an obligation to construct or at least to maintain the main road also in order to enable that agriculturist to reach the market which may be at a distance of say 20 miles from the link road. It is plain that construction of such link roads is as much a part of the government activity as that of the main roads.

* * *###

The impost must be correlated with the service to be rendered to the payers of the fees in the sense and to the extent we have pointed out above. Again the High Court fell into an error in paragraph 15 of the judgment when, while upholding the construction and repair of approach roads, culverts and

bridges in the larger sense of the terms, it said :

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

* * *###

It may be, as was submitted before us, that it is not imperative either for the market committees or the Board to prepare balance sheets because their accounts are audited by government auditors but for the purposes of rising the market fee any further, the balance sheet will give a true picture of the position along with the budgets and estimates. Then, and then only, there may be a legal justification for raising the rate of the market fee further to a reasonable extent.

73. The third decision is of Chinnappa Reddy, A. P. Sen and Baharul Islam, JJ. in *Southern Pharmaceutical and Chemicals v. State of Kerala* where Sen, J. speaking for the Bench has observed at page 542 thus : (SCC p. 409, para 25)

It is also increasingly realised that the element of quid pro quo stricto sensu is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax.

74. It has to be noticed that this observation was made by the learned Judge in a case in which the appellants who were manufacturers of medicinal and toilet preparations containing alcohol challenged the constitutional validity of certain provisions of the Kerala Abkari Act, 1967. In the earlier part of the judgment Sen, J. has observed : (SCC pp. 408-09, para 24)

The distinction between a 'tax' and a 'fee' is well-settled. The question came up for consideration for the first time in this Court in the *Commissioner, H. R. E. v. Lakshmindra Thirtha Swamiar of Shirur Mutt*. Therein, the Court speaking through Mukherjea, J. quoted with approval the definition of 'tax' given by Latham, C.J. in *Mathews v. Chicory Marketing Board*. In that case the learned Chief Justice observed :

A tax is a compulsory exaction of money by public authority for public purpose enforceable by law and is not payment for services rendered.

* * *###

Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency...

If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that levy of fees should on the face of the legislative provision, be co-related to the expenses incurred by government in rendering the services.

75. The same view was taken in *Mahant Sri Jagannath Ramanuj Das v. State of Orissa and Ratilal Panachand Gandhi v. State of Bombay*. Therefore, the aforesaid observation of Sen, J. that it is now

increasingly realised that the element of quid pro quo stricto sensu is not always a sine qua non of a fee and that it is needless to stress that the element of quid pro quo is not necessarily absent in every tax cannot be made applicable to the facts of the present cases which relate to market fees where the element of quid pro quo is absolutely necessary.

76. The fourth decision is of A. P. Sen, Venkataramiah and R. B. Misra, JJ. in *Sreenivasa General Traders v. State of A. P.* where Sen, J. speaking for the Bench has observed : (SCC pp. 380-81, para 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 spite 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 corrossiveness 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 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. . . . 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 eleme

77. The above decision arose out of proceedings taken under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. With respect, it is not possible to agree with the above observation that there is no generic difference between a tax and a fee and the element of quid pro quo in the stricto sensu is not always a sine qua non for a fee in view of my learned brother Sen's approval in *Southern Pharmaceutical and Chemicals* case of the distinction pointed out by Latham, C.J. in *Mathews v. Chicory Marketing Board* between a tax and fee and that it is absolutely necessary that levy of fee should on the face of the legislative provisions be correlated to the expenses incurred in rendering services and the learned Judge's observation in that decision that the same view was reiterated by this Court in *Mahant Sri Jagannath Ramanuj Das* case, *Ratilal Panachand Gandhi* case and also in view of the decision of the larger Bench of five Judges of this Court in *Kewal Krishan Puri* case that quid pro quo is a n

78. The fifth decision is of Desai and Chinnappa Reddy, JJ. in *Municipal Corporation v. Mohd. Yasin* where my learned brother Chinnappa Reddy, J. speaking for the Bench has observed : (SCC p. 225, para 9)

Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct a mere casual relation may be enough.

That was a case where the Delhi Municipal Corporation purported to enhance the fee for slaughtering animals in the slaughter houses from 25 paise to one rupee per animal in the case of sheep, goats and pigs and from one rupee to eight rupees per animal in the case of buffaloes. With respect, it is not possible to accept this view having regard to the decision of a large Bench of this Court in *Kewal Krishan Puri* case which is relied upon by both sides in these cases as stated above.

79. The last of the decisions to be mentioned is of Chinnappa Reddy, A. P. Sen and Venkataramiah, JJ. in *Amarnath Om Prakash v. State of Punjab* disposed of on November 19, 1984. That decision which relates to what had happened under the Punjab Agricultural Produce Market Act is referred to in the judgment of my learned brother Sabyasachi Mukharji, J. in his judgment in these matters. In

that case my learned brother Chinnappa Reddy, J. speaking for the Bench has observed that it is of fundamental importance that there should be a network of roadways if effective aid is to be given to farmers to transport and market their produce. Not exception could be taken to this observation. In Kewal Krishan Puri case while the construction of link roads has been welcomed by the learned Judges, it has been observed : (SCC p. 441, para 33)

Uplift of villages and helping the agriculturists by all means is the duty and the obligation of the State no doubt and it has to do it by incurring expenses out of the public exchequer consisting of the income from various kinds of taxes etc.

Referring to the observations of A. P. Sen, J. in Sreenivasa General Traders case Chinnappa Reddy, J. has observed in his judgment thus : (SCC p. 362, para 9)

He also drew attention to the increasing realisation that the element of quid pro quo in the strict sense was not always a sine qua non for fee. Nor was the element of quid pro quo necessarily absent in every tax. He further pointed out that an insistence upon a good and substantial portion of an amount collected on account of fee, say in the neighbourhood of two thirds or three-fourths, being shown with reasonable certainty as having been spent for rendering services in the market to the payer of fee, could not be a rule of universal application, and that it was a rule which has necessarily to be confined to the special facts of Kewal Krishan Puri case. Otherwise, it would affect the validity of marketing legislations undertaken throughout the county during the past half a century. We agree with the view of Sen, J. that the observations extracted by him from Kewal Krishan Puri case were not really necessary for that case and we also agree with the clarification of the observations made by Sen, J.

80. With respect, I am not able to see how and why the observation made in Kewal Krishan Puri case have to be confined to the special facts of that case. Kewal Krishan Puri case arose out of proceedings taken under the Punjab Agricultural Produce Markets Act, 1961 which is an Act for the better regulation of the purchase, sale, storage and processing of agricultural produce and for the establishment of markets for agricultural produce in that State. The objects of that act and the Act with which we are concerned in these cases are almost the same. The maximum rate of market fee which could be levied by the various market committees under Section 23 of the Punjab Act was fifty paise for every hundred rupees. The fee was raised from time to time. a number of writ petitions were filed in the High Court challenging the power of the Board to increase the levy. That is what has happened in these cases arising under the Act which relates to Karnataka State. The question whether quid pro quo was necessary and to wha

- (1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose;
- (2) That the element of quid pro quo may not be possible or even necessary to be established with arithmetical exactitude;
- (3) That at least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned in the judgment; and

(4) That if the market fee is sought to be raised proper budgets, estimates and balance-sheets, showing the balance of the money in hand and in deposit, the estimated income and expenditure etc. should be carefully prepared.

81. It may be that it is not imperative either for the market committee or the Board (Chief Marketing Officer in the present cases) to prepare balance-sheets because their accounts are audited by government auditors for the purpose of raising market fee any further. The balance-sheet will give a true picture of the position also with the budgets and estimates and then and only then there may be legal justification for raising the market fee to a reasonable extent. On drawing the correct balance-sheets and preparing correct estimates and budgets the authorities will be able to know the correct position to decide reasonably as to what extent the raising of the market fee can be justified taking an overall picture of the matter.

82. It may be noticed that even the High Court has given similar directions to the market committees and the Chief Marketing Officer to see whether there is justification for increasing the market fee from one per cent to two per cent on the invitation of the learned Advocate-General appearing for the State and the learned counsel appearing for the market committees as stated above.

83. Now that I have set out the facts and the decision of the High Court to the extent necessary and the arguments of the learned counsel for the parties and the law bearing on the questions involved as I understand the same I proceed to record my findings.

84. The principles of law laid down by the Bench of five learned Judges of this Court in Kewal Krishan Puri case so long as they have not been dissented from, varied or set aside by a larger Bench are binding, with respect, not only on smaller Benches of this Court but also undoubtedly on the High Courts and other subordinate courts and parties similarly placed. I have already pointed out that the facts and the points which arose for consideration in Kewal Krishan Puri case, Sreenivasa General Traders case and the present case are broadly similar. All these cases relate to market fees and the enhancement thereof. I have set out the seven points laid down by this Court in Kewal Krishan Puri case in the earlier part of my judgment and four of those points which have a direct bearing on these cases in the preceding paras. It is not necessary to establish the element of quid pro quo in regard to market fees with arithmetical exactitude, but an amount of fee must be earmarked for rendering services to the buyers

85. Point No. 12 in para 7 of the High Court's judgment relating to the question of enhancement of the market fee reads thus :

Whether the enhancement of market fee leviable under Section 65(2) of the Act from one per cent to two per cent brought about by the amendment of the bye-laws of the respondents market committees is unsupportable in law and fails for want of correlation with the value of services rendered to the payers of the fee.

86. The burden cast on the appellants is to prove the negative. The appellants are bound to succeed in the light of the decision in Kewal Krishan Puri case if they prove that the enhancement of the market fee made without complying with the law laid down in that case. That has been established by the appellants without any manner of doubt whatsoever.

87. As rightly contended by Mr. Kacker the High Court has erred in giving the direction dated November 30, 1981 to the Chief Marketing Officer for furnishing a comprehensive statement in

respect of each of the market committees in a tabular form as indicated in para 69 of the impugned judgment, set out in the earlier part of this judgment. The High Court has, thus, given an opportunity to the market committees to fill up the lacuna since the materials supplied thereafter by way of Exs. R-1 to R-111 and similar statements perused by the High Court were to available either on the date of the amendment of the bye-law enhancing the rate of the market fee from one per cent to two per cent or even on the dates on which the writ petitions were filed in the High Court. The High Court has erred in giving the direction and granting an opportunity to the market committees to fill up the lacuna. I do not agree with Mr. A. K. Sen that the High Court was entitled to do so.

88. The High Court has found even Exs. R-1 to R-111 and the other statements prepared and furnished pursuant to its order dated November 30, 1981 not sufficient to sustain the enhancement of the fee. This is clear from what the High Court has stated in paras 107 to 111 of its judgment which is extracted for ready reference :

107. The upshot of the above discussion is that though we are unable to hold, on the material placed before us by the petitioner, that the levy ought to fail for want of quid pro quo, however, having regard to the infirmities noticed in the estimates and the financial projections of the proposed developmental works on the basis of which the enhancement is sought to be justified, we are also unable to say with any confidence and without reservations that the enhancement of fee, depending as it does on those estimates is totally justified. Some time-bound directions to which we will refer presently for a second look at the estimates by the statutory authorities are required to be issued in this behalf.

108. Indeed, having regard to the wide range of the apparently inexplicable disproportions in the developmental projects of the various market committees both the learned Advocate-General and the learned counsel for the market committees stated that there was obvious scope. - in our opinion an imperative need - for some rationalisation of the pattern of development of market yards based upon and related to the relevant factors such as quantum and nature of agricultural produce handled by the markets; potentialities of development of the market in the reasonably near future and the like. It is neither possible nor advisable to lay down exhaustively all the criteria that may become relevant to the task. However, the need for such an exercise to regulate the development to these market yards on a scientific rational and uniform basis was accepted by all the parties.

109. A time-bound schedule has to be prescribed for the Chief Marketing Officer, as the authority under the Act, approving the budgets, to evolve and standardise broad and general norms, taking into account the observations made in the course of this order, both for infrastructural and developmental works and services, on as uniform a basis as may reasonably be feasible, for the various markets depending upon their classification to be made by the C. M. O. on the basis of such criteria as he may deem relevant and also to evolve corresponding cost patterns of the projects with suitable in-built indicia for escalation of cost-structures, from time to time, proportional to the rise in the price of material. These norms shall operate as broad and general guidelines for the development of regulated markets and shall be kept in view of the market committees in planning developmental projects. Departure from these norms and standards shall, of course, be permissible on grounds of special requirements of individual

110. The learned Advocate-General and the learned counsel for the market committees concede that this exercise is necessary and beneficial as indeed the matter involved an outlay of nearly 145 crores of rupees in the next 8 years on the regulated markets.

111. Accordingly, the C. M. O. shall within 4 months from now evolve and standardise these norms and specifications and circulate the same to the market committees. Respondent-market committees in categories 'C', 'D' and 'E' in para 80 supra will, within 3 months therefrom, revise their proposals for development in accordance with these norms and specifications, departures from standard specification being permissible if the special conditions peculiar to the particular markets so require and compel. The C. M. O. will again scrutinise these revised proposals and their cost-projections and if, upon such scrutiny, is of opinion that the present 2 per cent market fee of any market committee in the category 'C', 'D' and 'E' supra is unjustified, the C. M. O. will make appropriate orders under Section 150 of the Act directing the market committee or committees concerned to amend their bye-laws to effect an appropriate downward revision in the quantum of the fee. Wherever the C. M. O. is of the opinion, after an ex

What the High Court has stated in paras 107 to 110 and in the first sentence of para 111 would apply to all the market committees which had enhanced the market fee from one per cent to two per cent, and the Chief Marketing Officer has been given four months' time from the date of the judgment to evolve and standardise the norms and specifications and to circulate the same to the market committees. After giving such a direction the learned Judges of the High Court have given some other direction to the market committees falling in categories 'C', 'D' and 'E' mentioned in para 80 of their judgment, namely "within three months therefrom they should revise their proposals for development in accordance with the norms and specifications. Then the Chief Marketing Officer will again scrutinise these revised proposals and their cost projections, and if upon such a scrutiny he is of the opinion that the present two per cent of market fee of categories 'C', 'D' and 'E'. The learned Judges of the High Court have observed in para 107 of their judgment that having regard to the infirmities noticed in the estimates and financial projections of the proposed developmental works on the basis of which the enhancement is sought to be justified they "are unable to say with any confidence and without reservations that the enhancement of the fee depending, as it does, on these estimates is totally justified", and that some time-bound directions to which they would refer for having a second look at the estimates of the statutory authorities are required to be issued. There is nothing in these observations of the High Court to indicate that they are confined to only 8 or 4 of the market committees falling in categories 'C', 'D' and 'E'. The learned Judges of the High Court have no doubt observed in the first sentence in para 107 that on the materials placed before them by the writ petitioners they cannot hold that the levy ought to fail for want of quid pro quo

89. In view of what has been stated above about the enhancement of the market fee the question whether the amendment of the bye-laws for raising the rate of the market fee from one per cent to two per cent has been validly made or not becomes academic and is, however, considered for the sake of completeness. According to Section 148(1) of the Act as it stood on the date of the amendment of the bye-laws for enhancing the rate of the market fee from one per cent to two per cent and on the dates on which the writ petitions were filed in the High Court "subject to the provisions of this Act and the rules made thereunder under Section 146 and with the previous sanction of the Chief Marketing Officer a market committee may, after previous publication in the prescribed manner, make bye-law for regulation of the business and the conditions of trading in the market area. Every bye-law made in this section shall be published in the prescribed manner". As stated earlier, the question of market fee would fall under Sect

3. Amendment of Section 148. - In Section 148 of the principal Act, in sub-section (1), the words "after previous publication in the prescribed manner", shall be and shall be deemed always to have been omitted.

5. Validation. - Notwithstanding anything contained in any judgment, decree or order of any court or other authority, any bye-law made or purporting to have been made, and levy or collection of market fee made and any action or thing taken or done in relation to such levy or collection under the provisions of the principal Act, before the commencement of this Ordinance shall be deemed to be as valid and effective as if such bye-law or levy or collection or action or thing had been made, taken or done under the principal Act as amended by Sections 2 and 3 of this Ordinance and accordingly, -

(a) all acts, proceedings or things done or action taken by the State Government or by the market committee or by any other officer of the State Government or of the market committee or by any other authority in connection with the levy or collection of the market fee shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law; and

(b) no suit or other proceedings shall be instituted, maintained or continued in any court or before any authority for refund of any such market fee or for questioning the validity of any action or thing taken or done under the said bye-laws, and no court shall recognise or enforce any decree or order declaring the said bye-laws or any action or thing taken or done thereunder as invalid on the ground that the bye-laws were made without giving reasonable opportunity to persons likely to be affected thereby to file their objections and suggestions, or otherwise without following the procedure prescribed.

90. Previous publication referred to in Section 148(1) as it originally stood before the amendment to the bye-laws for enhancing the rate of the market fee from one per cent to two per cent was made with a view to give a reasonable opportunity to the persons likely to be affected to file their objections or make their suggestions and for being heard in regard to the increase in the rate of the market fee and other relevant matters. That right is purported to have been taken away by Section 3 of the Ordinance, and Section 5(b) of the Ordinance validates the amendment to the bye-laws made without such previous publication without giving an opportunity to the affected interests of being heard in the matter. The High Court has found that in these cases the Chief Marketing Officer himself had given directions to the market committees to amend the bye-laws or enhancing the market fee from one per cent to two per cent and the bye-laws were amended by the market committees accordingly and that the Chief Marketing Officer

91. Section 65(1) of the Act as it originally stood provided for market committees to levy and collect market fees from buyers in respect of agricultural produce bought by (i) any trader or other person in the yard and (ii) any trader outside the market or sub-market in the market area, at such rate as may be specified in the bye-laws (which will not be more than thirty paise per one hundred rupees of the price of the specified agricultural produce) in such manner and at such times as may be specified in the bye-laws. Section 65(2) laid down that for the purposes of sub-section (1), all notified agricultural produce leaving a yard shall, unless the contrary is proved, be presumed to have been bought within such yard by the person in possession of such produce. Section 65 was amended by Amendment Act 24 of 1975 which came into force on May 19, 1975. Section 2 of that Amendment Act substituted Section 65 of the principal Act as amended by Act 20 of 1973 by a new section which read as :

Section 65. Levy of market fees. - (1) The market committee shall levy and collect

market fees from every seller in respect of agricultural produce sold by such seller in the market area at the rate of one rupee per one hundred rupees of the price of such produce sold.

(2) The market committees shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be specified in the bye-laws (which shall not be more than one rupee per one hundred rupees of the price of such produce bought) in such manner and at such times as may be specified in the bye-laws.

(3) Every market committee shall, notwithstanding anything contained in this Act, credit to the Karnataka Roads and Bridges Fund constituted under the Karnataka Motor Vehicles Taxation Act, 1957, the market fees collected under sub-section (1) for being spent for the purpose of construction, repair, improvement and maintenance of rural roads in the State.

92. Market fee was levied on the sellers for the first time under Section 65(1) as substituted and the entire collection made under that sub-section had to be credited to the Karnataka Roads and Bridges Fund for being spent for the purposes of construction, repair, improvement and maintenance of rural roads in the State. Sub-sections (1) and (3) of Section 65 of the Act, as substituted by Amendment Act 24 of 1975 were struck down on September 28, 1978 by the decision in Rajasekhariah case. Subsequent to that decision Section 65 of the principal Act as substituted by Amendment Act 24 of 1975 was amended by Section 20 of Amendment Act 17 of 1980 thus :

Section 20. Amendment of Section 65. - In Section 65 of the principal Act, -

(1) for sub-section (1), the following sub-section shall be and shall be deemed to have been substituted with effect from 19th day of May, 1975 namely :

(1) In respect of the agricultural produce sold in a market area, there shall be levied and collected by the market committee thereof, from every seller, market fees at the rate of one per cent of the sale proceeds of the produce of sold;

(2) Sub-section (1) as so substituted shall be and shall be deemed to have been omitted with effect from the 28th day of September, 1978;

(3) in sub-section (2), for the words "one rupee", the words "two rupees" shall be substituted;

(4) sub-section (3) shall be and shall be deemed always to have been omitted.

93. The result of the amendment was that the levy and collection of market fees on and from sellers of agricultural produce at one per cent of the price of the agricultural produce sold in the market area had been restricted to the period from May 19, 1975, the date on which Amendment Act 24 of 1975 which substituted the new Section 65 in the place of the original Section 65 came into force up to September 28, 1978, the date on which the substituted sub-sections (1) and (3) of section 65 were struck down in Rajasekhariah case, and the substituted sub-section (3) was omitted by Amendment Act 17 of 1980 as if it never existed in the statute. Section 42 of amendment Act 17 of 1980 relates to validation of market fees etc. and reads :

Section 42. - Notwithstanding anything contained in any decree, order or judgment of any court, or other authority, any levy or collection of market fee made or purported to have been made, any action taken or thing done in relation to such levy or collection under the provisions of the principal Act before the commencement of this section shall be deemed to be as valid and effective as if such levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly, -

(a) all acts, proceedings or things done or action taken by any market committee in connection which the levy and collection of such market fee shall, for all purposes, be deemed to be or to have always been made, done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such market fee; and

(c) no court shall enforce any decree or order directing the refund of any such fee :

* * *##

94. The market fee levied on and collected from sellers under the substituted Section 65(1) of the Act went to the credit of the Karnataka Roads and Bridges Fund under sub-section (3). Sub-section (3) had been omitted by Amendment Act 17 of 1980 as if it never existed in the statute as mentioned above. The High Court, following this Court's decision in Kewal Krishan Puri case has held that rural roads are essentially and primarily intended for the benefit of the public and that the class of market fee payers as part of the general public is entitled to the benefit of their user and the fee cannot be levied on and collected from them for being spent for the purpose of construction, repair, improvement and maintenance of such roads, more so because rural roads, even if constructed, repaired, improved or maintained from the market fee collected under the Act, do not become the property of the market committees and shed their character as public roads. Expenditure of market fees for construction of roads, main o

95. In the Act there is no provision in regard to the market fee like Section 23-A of the Punjab Agricultural Produce Markets Act sub-section (1) therefore reads thus :

Notwithstanding anything contained in any judgment, decree or order of any court it shall be lawful for a market committee to retain the fee levied and collected by it from a licensee in excess of that the fee levied and collected by it from a licensee in excess of that leviable under Section 23 if the burden of such fee was passed on by the licensee to the next purchaser of the agricultural produce in respect whereof such fee was levied and collected.

In Civil Appeals 4500-4501 of 1984 decided on November 19, 1984 this Court has held that what Section 23-A of the Punjab Act does is to prevent unjust enrichment by means of a refund to which the person claiming it has no moral or equitable entitlement. The market fee collected from sellers under the substituted Section 65(1) must have been credited to the Karnataka Roads and Bridges Fund and used for the purpose of construction, repair, improvement and maintenance of rural roads which are undoubtedly for the benefit of the general public. The excess fee collected under Section 65(2) of the Act also must have been utilised for the purposes contemplated by the Act. The persons from whom they have been collected, sellers and buyers,

would naturally have passed on the levy to those who purchased the agricultural produce from them and the levy must have ultimately been borne by the consumers of the produce. Any refund would go to unjust enrichment of the persons from whom they have been collected. In these circu

96. To summarise, my findings are :

(1) Section 65(1) of the Act as substituted by Amendment Act 24 of 1975 and Act 17 of 1980, and section 42 of Amendment Act 17, of 1980 insofar as it seeks to save what has been done under Section 65(1) of the Act are unconstitutional and have been rightly struck down by the High Court;

(2) Enhancement of the rate of market fee leviable under Section 65(2) of the Act by amendments of the bye-laws from one per cent to two per cent of the price of he notified agricultural produce is invalid in law for non-compliance with the law laid down in Kewal Krishan Puri case.

(3) There is no correlation between the enhancement of the rate of the market fee leviable under Section 65(2) from one per cent to two per cent and the services rendered or proposed to be rendered by the market committees and, therefore, the enhancement is invalid in law;

(4) Amendment of the bye-laws made for enhancement of the rate of the market fee leviable under Section 65(2) of the Act from one per cent to two per cent is invalid in law;

(5) The provisions of the Act are repugnant to the Tobacco Board Act, 1975 and, therefore, tobacco is liable to be removed from the schedule; and

(6) There shall be no refund of the market fees collected under the substituted Section 65(1) or excess fee collected under Section 65(2) either by the State Government or by any of the market committees.

97. The appeals, writ petitions and special leave petitions are disposed of accordingly. The market committees shall pay costs of Rs. 15,000 to the parties represented by Mr. Sorabjee and Rs. 10,000 to the parties represented by Mr. Kacker.

SABYASACHI MUKHARJI, J.

Some writ petitions out of a large number of petitions, early 4298 in number rising out of The Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the 'Act') were taken up by the High Court of Karnataka for hearing and disposed of by one common judgment as one or more of the contentions in those petitions were common, and all the petitions were heard together by the High Court of Karnataka so as to afford opportunities to learned counsel appearing in the cases to address arguments. These were disposed of by a common order which was representative of the contentions urged at the hearing of the argument. The learned Judges directed that the remaining writ petitions which had been heard along with those cases would be disposed of, in convenient batches, following the findings on the various contentions recorded in that order.

99. The appeals arise out of the said order. In these appeals we were concerned with the provisions

of the Act as well as (1) the challenge to the constitutional validity of Section 65(1) of the Act as substituted by the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act, 1980 (hereinafter referred to as the 'Amending Act') which sought to validate the market fee levied on the "sellers of notified agricultural produce" under Section 65(1), for the during the period of its operation, prior to its being struck down by the Karnataka High Court in *Rajasekhariah v. Tiptur Agrl. Produce Marketing Committee*; (2) to the enhancement of market fee from 1% to 2% effected by the various market committees by amending the bye-laws after permissible maximum levy of the fee on the buyers under Section 65(2) was raised to 2% by the said Amending Act, the challenge being both on the ground that the amendment of bye-laws was made in violation of the mandatory requirements of prior publication and prior sanction

100. On May 1, 1968, the act came into force. Section 65 of the Act as originally stood directed the market committees to levy and collect market fees from the buyers in respect of agricultural produce by -

(i) any trader or other person in the yard, and

(ii) any trade outside the market or sub-market in the market area.

101. Section 65 of the Act was amended on October 20, 1973 by the Karnataka Act 20 of 1973 raising the maximum fee leviable by a market committee from 30 paise to one rupee.

102. On December 17, 1974, the enhancement of the market fee from 30 paise to one rupee made by the amendment of the bye-laws by some of the market committees was challenged by the trade-buyers of the agricultural produce before the High Court of Karnataka in Writ Petition 537 of 1974 and the connected writ petitions in the case of *K. S. Vaman Rao v. Agricultural Produce Market Committee*, and the High Court by its judgment dated December 17, 1974 held that the levy authorised by the section was in the nature of a fee and after scrutinising the estimate of expenditure of each of the market committees spread over a period of 15 years and the amount recoverable by way of fees thereto held that there was correlation between the services rendered and the amount of fees collected.

103. On May 19, 1975, Section 65 of the Act was substituted by a new section (Act 24 of 1975.) The substituted section reads as follows :

65. Levy of Market Fees. - (1) The market committee shall levy and collect market fees from every seller in respect of agricultural produce sold by such seller in the market area at the rate of one rupee per one hundred rupees of the price of such produce sold.

(2) The market committee shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be specified in the bye-laws (which of such produce bought) in such manner and at such times as may be specified in the bye-laws.

(3) Every market committee shall, notwithstanding anything contained in this Act, credit to the Karnataka Motor Vehicles Taxation Act, 1957, the market fees collected under sub-section (1) for being spent for the purpose of construction, repair, improvement and maintenance of rural roads in the State.

104. By Act 14 of 1976 passed on January 24, 1976 which replaced and earlier Ordinance, Section 65(1) was amended by insertion of a proviso to Section 65(1) as under :

Provided that the State Government may, by order in public interest, exempt any market committee from such levy and collection in respect of any agricultural produce.

105. On June 1, 1976, by the Amending Act 43 of 1976, the following changes were made :

(a) By Section 2 of the amending Act, the word "marketing" was substituted for the words "buying and selling", in the long title to the Act.

(b) By section 3 of the amending Act, the word "marketing" was substituted for the words "buying and selling" in the preamble to the Act.

(c) By Section 4 of the amending Act a new Clause 18(A) was inserted as under :

18(A) "Marketing" means buying and selling of agricultural produce and include grading, processing, storage, transport, packaging, market information and channels of distribution.

106. On or about 1978 judgment was delivered by the High Court of Karnataka in the case of Rajasekhariah v. Tiptur Agricultural Produce Marketing Committee. By the said judgment, the High Court struck down Section 65(1) and (3) of the Act which authorised the levy and collection of market fee on the sellers of agricultural produce, and the High Court in the said judgment also considered the levy of market fee at the rate of 1% on the buyers of the agricultural produce levied and collected by certain market committees and upheld such levy on the buyers of agricultural produce following the earlier judgment dated December 17, 1974 in Vaman Rao case mentioned hereinbefore.

107. On or about June 30, 1979 Ordinance 2 was promulgated which brought about the following changes :

(a) Section 63 of the Act which deals with powers and duties of the market committees was amended with retrospective effect from May 19, 1975 so as to provide that in Clause (ii) of sub-section (1) of Section 63, the words "Transport and Marketing" shall be substituted for the word 'Marketing' in the said Clause. Clause (ii) of sub-section (1) of Section 63 was amended to provide for "it shall be the duty of the market committee to provide such facilities for transport and marketing of agricultural produce therein".

(b) In sub-section (2) of Section 63 of the Act and in clause (a) thereto, the following was inserted after item (1) :

(ia) Provide either independently or along with some other authority necessary facilities for the transport of notified agricultural produce to the yard in such manner as may be prescribed.

(c) Section 65 of the Act was amended to provide for the following consequences :

(i) The market fee levied and collected under sub-section (1) of Section 65 of the Act for the period May 19, 1975 to September 28, 1978 was validated.

(ii) Sub-section (1) of Section 65 was deemed to have been omitted with effect from September 28, 1978.

(iii) Sub-section (2) of Section 65 of the Act providing for the levy of market fee on the buyers of the agricultural produce was amended by enhancing the maximum permissible levy thereto from 1% to 2%.

(iv) Sub-section (3) of Section 65 of the Act which dealt with the crediting of the market fee levied and collected under sub-section (1) was always deemed to have been omitted.

108. Pursuant to the amendment of sub-section (2) of Section 65 of the Act enhancing the maximum market fee leviable thereto from 1% to 2%. all the market committees in the State (except that of Mangalore) amended the bye-laws by enhancing the market fee leviable under sub-section (2) of Section 65 of the Act from 1% to 2% and on such enhancement of the market fee from 1% to 2%, all the buyers-traders filed writ petitions before the High Court assailing the said enhanced levy.

109. By Karnataka Ordinance 14 of 1979, on November 2, 1979, the earlier Ordinance, namely Ordinance 2 of 1979 was repealed. Another Ordinance on the same lines as Ordinance 2 of 1979 was promulgated on November 3, 1979. On May 9, 1980, Karnataka Act 17 of 1980 containing the same changes were brought as noticed in the Ordinance mentioned before.

110. Hearing of these writ petitions before the High Court commenced in October-November, 1981. Section 148 of the Act was amended by Karnataka Ordinance 22 of 1981 during the hearing of these writ petitions and by the said Ordinance the conditions of previous publication contemplated in Section 148 of the Act was dispensed with retrospective effect. We shall have to advert to these provisions subsequently.

111. Judgment was delivered by the High Court of Karnataka on January 25, 1982 in these writ petitions. Thereafter the rate of market fee payable under Section 65(2) of the Act was reduced from 2% to 1% by all the market committees by Circular dated February 27, 1984. As mentioned hereinbefore, these appeals challenge the said judgment.

112. Several contentions were urged before the learned trial judge and some of these contentions were pressed before us. One of the questions posed was, whether Section 65(1) of the Act (as substituted by the Amending Act 17 of 1980) read with section 42 of the said Amending Act retrospectively validating the levy and collection of market fees on the sellers at one per cent for the period between May 19, 1975 and September 28, 1978 was constitutionally valid. By the said amending Act it was provided that the following sub-sections shall be deemed to have been substituted with effect from May 19, 1975, namely :

(1) In respect of the agricultural produce sold in a market area, there shall be levied and collected by the market committee thereof, from every seller, market fees at the rate of one per cent of the sale proceeds of the produce so sold;

(2) Sub-section (1) as so substituted shall be and shall be deemed to have been omitted with effect from the 28th day of September, 1978.

113. It was contended on behalf of the petitioners before the High Court that Section 65(1) as substituted by Act 17 of 1980 read with Section 42 of the Amending Act, seeking to validate the collection of market fee on 'sellers' made under the old Section 65(1) was constitutionally invalid. It must be kept in view that this validation had become necessary in view of the judgment of this Court in Rajasekhariah case striking down sub-sections (1) and (3) of Section 63 of the Act as these then stood. The present substituted Section 65(1) read with Section 42 of the Amending Act sought to validate the collections of market fee on sellers made when the earlier Section 65(1) was operative.

114. The High Court in the case do Rajasekhariah case struck down Section 65(1) (3) on grounds as follows :

(a) That though the fees levied under sub-section (1) of Section 65 were required to be spent on construction, repair, improvement and maintenance of rural roads, the construction or repair or improvement and maintenance of rural roads was not one of the obligatory functions of the market committees under the Act; and the construction and maintenance of rural roads, which were public roads, were the primary responsibility of the State and its instrumentalities such as the authorities under the Karnataka Municipalities Act, 1976; Karnataka Municipalities Act, 1964; etc.

(b) Secondly, having regard to the essential element in the concept of fee requiring some special benefit by way of quid pro quo, to flow to the class of person on whom fee is levied, the construction and maintenance of public roads could not be said to constitute or provide any such special benefit to the payer of the fee who, as members of the public were entitled to the use and benefit of public roads and that they could not be compelled to pay a fee for what they, in common with the general public, were otherwise entitled to as of right.

115. Pursuant to the judgment in Rajasekhariah case, the State was exposed to the liability for refund of fee collected for the period between May 19, 1975 when sub-sections 65(1) and (3) were introduced by the Amending Act 24 of 1975 and September 28, 1978 when that judgment was pronounced. By the Act 17 of 1980, this levy was ought to be validated and the fee retained by the State Government.

116. After discussing rival submissions and after discussing the legal principles and the decisions in the cases of *Misrilal Jain v. State of Orissa*, *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, *Ahmedabad Corporation. v. New Shorock Spg. and Wvg. Co. Ltd.*, *I. N. Saksena v. State of M. P.*, and *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, the High Court of Karnataka distinguished fee and tax and then referred to the case of *Kewal Krishan Puri v. State of Punjab*. Reliance was also placed on the observations of this Court in *Southern Pharmaceuticals and Chemicals v. State of Kerala* and then the Court addressed itself to the question whether construction of rural roads for which fee was levied on the sellers can be said to be a special service primarily and directly intended for the benefit of the class which paid the fee.

117. After discussing, several decisions the Karnataka High Court felt that the second major defect noticed in the law in the case of Rajasekhariah case namely, that the construction of rural roads could not qualify for being reckoned as special service to a class of persons paying the fee and as

the same had not been cured or removed by the law which sought to validate the levy and in view of these circumstances, the Court came to the conclusion that Section 65(1) as substituted by Section 20 of the Amending Act 17 of 1980 as well as Section 42 of the Amending Act was not constitutionally valid and was liable to be struck down.

118. As mentioned before several other contentions and submissions were urged before the learned trial Judge but before us the following main submissions were urged : (1) There was no quid pro quo between the imposition of fees and the services rendered, (2) Insofar as the Amending Act 17 of 1980 sought to validate the taxes realised following the defects mentioned in Rajasekhariah case is valid or not, and, if not, whether the appellants were entitled to refund of any amount? (3) Is imposition of market fee on tobacco valid ? (4) Is the deletion of the provisions for previous publication in Section 148 proper and valid ?

119. I will, however, notice the other contentions briefly raised in those writ petitions.

120. It was contended that the Act as amended by Act 17 so far as marketing of cardamom was concerned, was repugnant to the Cardamom Act, 1965. The High Court held that Karnataka Legislature was not entitled to impose market fee so far as cardamom was concerned. It may be noted before the High Court that the inclusion of Cardamom in the A t was contended to be bad in view of Entry 52 of List I and Entry 33 of List III but it appears the question was not considered in the light of Entry 52 of List I and Entry 28 of List II in the present case. The High Court, further found that the rules framed under the Cardamom Act were at variance with the present Act. So far as sugar-cane was concerned it was held that sugar-cane was outside the pale of the present Act. The Government has not appealed against the findings so far as cardamom was concerned. Insofar as the High Court held that sugar-cane was outside the pale of the Act, no argument impugning that finding was canvassed before us.

121. It was for the first time by the Amending Act 17 of 1980 that tobacco was enumerated as an agricultural produce for the purpose of the Act. It may be borne in mind that the Amending Act 17 of 1980 for the first time enumerated tobacco for the purpose of the Act. The amending Act was not reserved for the consideration of the President.

122. On a consideration of the provisions of the Tobacco Board Act, 1975 and the present Act, after discussing various contentions, the High Court held that there was no repugnancy and conflict as between the provisions of Tobacco Board Act, 1975 and the present Act.

123. One of the main contentions urged before the High Court and reiterated before us was whether the Act insofar as it provided for regulating the marketing of tobacco is unconstitutional as being repugnant to the Central Act and on the same topic marketing of tobacco is regulated by Tobacco Board Act, 1975. It should be borne in mind that there was a declaration under Section 2 of the Central Act namely Tobacco Board Act, 1975 pursuant to Entry 52 of List I regarding tobacco. It was contended that tobacco after the declaration under Section 2 of the Tobacco Board Act became part of Entry 2 of List I and it was submitted that once the declaration was made, any legislation by the State after such necessarily be unconstitutional because that field or area according to the appellants was excluded form the legislative competence of the State Legislature. Entry 52 of List I reads as follows :

Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

124. There has been a declaration by the Union that the control of tobacco industry has been taken over in public interest. Thereafter Tobacco Board Act, 1975 being Act 4 of 1975 was passed for the development under the control the Union of the tobacco industry. Chapter II of the said Act deals with the establishment and constitution of the Board. Section 7 permits the Board to appoint committees as might be necessary for the efficient discharge of its duties and performance of its functions under the Act. Sub-section (2) of Section 7 enjoins that the board shall have powers to co-opt members. Section 8 of the Tobacco Board Act, 1975 deals with the functions of the Board and empowers by sub-section (1) of Sections 8 of the Tobacco Board the duty to promote, by such measures as it thinks fit, industry. Sub-section (2) of Section 8 of the said Act lays down different functions of the Board and, inter alia by clause (a) permits regulating the production and curing of Virginia tobacco having regard to the demand

establishment by the Board of auction platforms, with the previous approval of the Central Government, for the sale of Virginia tobacco by registered grower or curers, and functioning of the Board as an auctioneer at auction platforms established by or registered with it subject to such conditions as may be specified by the Central Government.

125. Section 10 provides for registration of the growers of Virginia tobacco. Section 13 provides that no registered grower or curer shall sell or cause to be sold Virginia tobacco elsewhere than at an auction platform registered with the Board in accordance with the rules made under this Act or established by the Board under this Act. Section 14 deals with the application, cancellation, fees and other matters relating to registration. Section 14-A deals with the power to levy fees for the services rendered by the Board in relation to such sale at such rate not exceeding two per cent of the value of such tobacco as the Central Government may specify.

126. Section 11 provides that no person other than a registered curer shall cure or undertake the curing of Virginia tobacco unless he registers himself as a curer with the Board in accordance with the rules made under the Act.

127. Chapter V deal with the control by Central Government of import and export of tobacco and tobacco products. There are provisions under Section 21 for the issuance of directions by the Central Government and by Section 22 of returns and reports. Chapter VI deals with the penalties and offences by the companies. Section 31 provides that the provisions of the said Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. Section 32 provides for the power of the Central Government to make rules. Section 1 provides that the Act will come into force on such date as the Central Government may by notification in the Official Gazette appoint and proviso of sub-section (3) of Section 1 empowers that different dates may be appointed for different provisions of the Act and for different States or different parts thereof. Under sub-section (3) of Section 1 of Tobacco Board Act, 1975, by Notification dated May 31, 1980, the Central Government appointed May 31,

128. Section 13 of the Tobacco Board Act is important because it empowers that no registered grower or curer shall sell or cause to be sold Virginia tobacco elsewhere than at an auction platform registered with the Board in accordance with the rules made under the Act. There was some confusion at the stage of the argument as to on what date it has come into force or even if it has not specifically come into force in the State of Karnataka, by the passing of the Act itself, the Centre has sufficiently expressed its intention to occupy the field so as to exclude the operation of any activity by the State. Our attention has, however, been drawn to a notification being Notification No. S. O. 665(E) dated August 31, 1984 whereby Section 13 of the said Act came into force in the

State of Karnataka from September 1, 1984. I have already noted the provisions of Section 13 of the said Act. It may be mentioned that this notification as such would be of no assistance to us because this notification came into force subs

129. The High Court was of the view that unlike the law governing the marketing of cardamom and sugar-cane, the Tobacco Act did not cover the marketing of tobacco in its entirety but only covered a part of the two legislations could coexist and operate cumulatively. The High Court was of the view that any intention of the superior Legislature to cover the whole field to make a comprehensive law with regard to marketing of tobacco was not manifest in the legislation. The High Court noted that it was not disputed during the arguments that the only provision on what might be called the area of marketing covered under the Tobacco Act was the one requiring the auctioneers of tobacco to hold a licence for establishment of auction platforms. The High Court was of the view that as long as the market committees became such licensees, there was no further requirement under the Tobacco Board Act which could be said to render the provisions of the 'Act' regulating marketing of tobacco under the Act repugnant to or irrec

130. The High Court took the view that on the limited aspect of marketing provided for Tobacco Board Act, 1975 it only made provisions in relation to Virginia tobacco and not for all varieties of tobacco. The High Court therefore was of the view that the provisions of the Act were not repugnant to the Tobacco Board Act, 1975 and all that was necessary for the market committees was to obtain auctioneer's licence under the provisions of Tobacco Act and/or to get the necessary qualifications so as to be able to obtain necessary licence. The High Court came to the conclusion that provisions of the Act in relation to the regulation of tobacco were not repugnant to the Act. The High Court further noted that neither the Union of India nor the Tobacco Board had been impleaded as parties to the writ applications before the findings on these contentions were strenuously challenged before us on behalf of the appellants. On behalf of the appellant, it was urged that tobacco was covered by Entry 52 of List I by virtue of

131. Reference was made to the decision in the case of *Bajjnath Kedia v. State of Bihar*.

132. I need not detain myself on the permissibility of the regulation of marketing of cardamom under the Act, because the same was not canvassed before us.

133. So far as the point relating to 'wood' and 'forest produce' was concerned, the High Court felt that this point was concluded by the pronouncement of this Court in *Ram Chandra Kailash Kumar & Co. v. State of U. P.* In any event we are not concerned with this controversy as the same was not canvassed before us.

134. It was contended that Section 65(2) of the Act gave an uncanalised and excessive power to the market committees in the matter of specifying the rate of fee. The upper limit for the levy was fixed at 2 per cent. It could only be related to the notified agricultural produce sold in the market. The concept of fee is itself a further limitation. The High Court therefore was unable to accept the submission that Section 65(2) was bad for excessive delegation of legislative powers.

135. It was contended that they bye-laws were unreasonable and without proper criteria. Reliance was placed before the High Court on the decision in the case of *Maneka Gandhi v. Union of India* and *Ajay Hasia v. Khalid Mujib Sehravardi*. The High Court has, however, found that the legislative measure could not be invalidated on the ground that the relevant criteria was not shown to have been taken into account in making the legislation. Reliance was placed in *Tulsipur Sugar Co. v.*

Notified Area Committee and in the said case on the observations of Megarry, J. in *Bates v. Lord Hailsham of St. Marylebone* to the following effect :

Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation whether primary or delegated. Many of those affected by delegated legislation, and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy.

136. I am in respectful agreement with the aforesaid view. It may further be noted that a minister or any other body in making legislation was not subject to the rules of natural justice. See in this connection Prof. Wade's *Judicial Review of Administrative Action*, 4th Edn., page 185 at 192 (De Smith). Though we are in general agreement with the aforesaid view, the High Court, however, did not detain itself on this point because the High Court was of the view that the fixation of market fee was challenged not because the persons concerned were not heard but because there was no *quid pro quo*.

137. The High Court felt that the challenge to the doctrine of *ultra vires* on the basis that hearing of interests affected was an imperative requirement, not in compliance with rules of natural justice but as a duty implicit in the nature of the power. Section 148(1) of the Act as it originally stood provided that a market committee could frame bye-laws after previous publication in the prescribed manner and also with the previous sanction of the Chief Marketing Officer. The contention was that no procedure having been prescribed by the rules, the concepts implicit in previous publication and incorporated in Section 23 of the General Clauses Act, 1897 were attracted. It was urged that there had been no compliance with the requirement of previous sanction and publication contemplated in this section. As the narration of events indicated before, an Ordinance was introduced namely Karnataka Ordinance 22 of 1981 during the period when the arguments in these cases were coming to a close before the High Court. The

138. On behalf of the market committees and the Government, it was contended on a proper construction of Section 65(2) of the Act, such an implication of a duty to hear affected interests, did not at all arise. Any argument of such a statutory implication could not survive the amendment made by Ordinance of December 17, 1981 which, in turn, clearly took away the obligation of prior hearing.

139. The High Court was of the opinion that the authorities relied on before it indicated that the opportunity of consultation and hearing of affected interests were merely informal and extra-judicial. The High Court referred to the observations in *Wade's Administrative Law* and referred to certain decisions.

140. The High Court was of the view that the persons affected did not have any right to be heard before the statutory rules or bye-laws were made unless the right was conferred by the statutes.

141. The High Court ultimately came to the conclusion that in the batch of cases, this was not of much importance on the ground that by specific and express provisions of Section 5(a) of the amending Ordinance which validated these bye-laws notwithstanding the fact that affected interests were not heard in any manner.

142. The Advocate-General stated before the High Court that though there was no obligation, it would be eminently desirable to consult or ascertain the views of those who would be affected and the High Court, therefore, observed that before a market committee proposed to amend a bye-laws to make an upward revision of rate of fee, in future, the market committee could follow the directions of this Court in Kewal Krishan Puri case and the High Court suggested certain means. ultimately, the High Court came to the following conclusions :

(a) Section 65(2) of the Act did not confer an unguided, arbitrary power and there was no excessive delegation of legislative power to the market committees and therefore not vitiated on that account.

(b) The question whether, upon a proper construction, Section 65(2) must be held to imply an obligation on the part of the market committees to hear affected interested parties before the rate of fee was fixed, was left open with certain observations made in that judgment.

(c) The contention that challenged the bye-laws for want of previous sanction under Section 148(1) of the Act was not accepted.

143. It had been contended before the High Court that there was discrimination on the ground that there was levy of the same rate of fee on all types of produce. The High Court repelled this contention relying mainly on the decision of this Court in the case of Ganga Sugar Corporation Ltd. v. State of U. P.

144. One of the main contentions urged before the High Court was that there was no quid pro quo. The High Court examined this contention with reference to the factual details.

145. The High Court referred to the decision in the case of Kewal Krishan Puri and observed that the following seven principles were laid down by this Court :

(1) The amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

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

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

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

(5) While spending the amount of market fees for the purpose of augmenting the agricultural produce, facility to transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on

the ground that such services in the longer run go to increase the volume of transaction in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

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

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

146. The High Court by an order dated November 30, 1981 had directed the Chief Marketing Officer to furnish in respect of each marketing committee a comprehensive statement in a tabulation form setting out certain factors which were relevant for determination of this question. These factors have been mentioned in the judgment of the High Court. Such statements or similar statements were duly filed.

147. The High Court noted that out of 33 market committees which were involved, 2 were tobacco markets. Market committees whose routine recurring annual revenue expenditure was somewhere in the nature of 45 to 60% of the market fee receipt formed one group. The High Court felt that in the case of these market committees even though revenue expenditure did not sufficiently establish the requisite degree of correlation, it was reasonable to assume that having regard to the extent of infrastructural facilities available in most of the modest allocations on future development works of non-controversial kind will bring about the correlation required to pass the test of market fee.

148. The High Court observed that the market committees where the routine recurring annual revenue expenditure itself was over 60% of the receipts of market fee at 2% thereby established a broad and substantial correlation. In the case of these markets, the High Court felt that no further investigation was required.

149. In this class of cases were included 33 market committees. Their names are tabulated at page 140 of the High Court judgment (page 314 of the Paper Book). These market committees were classed as Category 'A'.

150. The High Court at page 315 of the Paper Book (page 141 of the judgment) tabulated other markets and the High Court felt that in case of those markets, estimates for developmental work need not also be subjected to minute examination. These markets were 16 in number and mentioned in the judgment of the High Court namely, (1) Doddaballapur, (2) Gubbi, (3) Sira, (4) Jamkhandi, (5) Kundgoi, (6) Lakmeshwar, (7) Siruguppa, (8) Aurad, (9) Gulbarga, (10) Nalwar, (11) Shorapur, (12) Yadgir, (13) Yelburga, (14) Kollegal, (15) Bhadravati and (16) Manvi. These are classed as Category 'B'.

151. The next category was market committees whose routine annual revenue expenditure plus proposed outlays on infrastructural and developmental works which were indubitably relatable to services to the buyers showed a broad correlation. These were about 14 in number and mentioned at pages 142-143 of the judgment (pages 315-316 of the Paper Book). These market committees were classed as Category 'C'.

152. In Category 'D', the High Court mentioned ten markets where there were proposals for outlays on account of permissible items of expenditure vis-a-vis the buyers' fee.

153. Then the High Court in Category 'E' dealt with markets whose financial estimates required to be individually examined. These were the regulated markets of Bangalore, Hubli, Sagar, Bijapur, Raichur, Gadag, Tiptur and Siddapur. The High Court was of the opinion that correlation of fee and services could not be reckoned on the basis of receipts and expenditure for one or two years only.

154. The High Court noted and in our opinion rightly, that these regulated markets were yet in developmental stage, a stage which should be marked by rapid growth. The initial planning and the infrastructure must be taken into account, not only potentialities for growth and expansion in the immediate near future but also long range possibilities. But apart from such basic infrastructure, which stood on a different footing, the benefit of utilitarian projects relatable to and developed from fee resources must be available to the payers of the fee for at least a considerable part of the period, covered by the financial estimates and projections. The High Court noted that if the logic of some of the market committees in this behalf, is pushed to its logical or illogical conclusions, would mean that the present generation of fee-payers would pay for services which would only be available to the next generation. The High Court was of the view that levy of fee could not be justified on such wholly prospective serv

155. The High Court then dealt in detail with the category of markets mentioned hereinbefore classed as Category 'E'.

156. It was contended that buyers of different kinds of produce were different, therefore service to one kind of buyers would not be service to the other kind of buyers. Such argument based on the dichotomy of service as between buyers of different kinds of goods for example, buyers of rice and buyers of vegetables, was rightly rejected by the High Court. Such an argument ignored practical and working problems.

157. On a detailed examination of the factual position, the High Court was of the view that it should go by financial projections made. These aspects were directed to be examined by the Chief Marketing Officer and the market committees in terms of certain directions that the High Court gave which I shall mention later.

158. The High Court, however, felt that on the basis of the estimate as these stood the enhanced levy could not be quashed.

159. So far as Hubli market committee was concerned, the High Court dealt with it in detail. Amongst the items which were specially mentioned was an item of outlay of Rs. 150 lacs proposed for construction of large godowns; second item was of Rs. 60 lacs for construction of shops and small godowns; and the third item was the proposed outlay on the 'museum' and the fourth item was the estimated outlay of Rs. 75 lacs for acquisition of 466 acres of land.

160. After detailed examination of these projects, the High Court was of the view that the market committees would perhaps be in a position to establish a broad and general correlation of 66% on the basis of its present proposals and the High Court came to the conclusion that these were not unreasonable.

161. As mentioned hereinbefore, there was an outlay of Rs. 75 lacs on the acquisition of land. The provision of Rs. 75 lacs was a modest estimate and it could not be said to be unreasonable. SO far as

the outlay on museum was concerned, it was an essential amenity for dissemination of ideas and it was therefore valid.

162. The High Court then examined in detail the markets of Sagar, Bijapur, Raichur, Tiptur, Gadag and Siddapur. The High Court for the reasons recorded and taking all factors into consideration came to the conclusion that though there was room for criticism, on the whole, however taking all the relevant factors into consideration, it could not be said that the projections were unreasonable.

163. I am in agreement with the High Court that there was limitation on the powers of the Court in a controversy of this nature. In ascertaining whether the necessary correlation between the services and fee existed or not, what was required to be examined was only a broad and general correlation and not an equivalence with arithmetical accuracy and precision. The Court was neither equipped for, nor should it permit itself, the role of inspecting auditors much less should it assume the role of technical experts. The other aspect which should be borne in mind was that in scrutinising the items of work and services undertaken by market committee, in cases of this kind where the controversy was confined to the existence of correlation, the exercise was not whether the items of work should or should not be undertaken by the market committees. The question was somewhat different. The courts merely examined whether the outlays on the concerned works and services qualified as a special service vis-a-vis the 'Fee'.

164. The High Court as a result of the discussion of the aforesaid markets came to the conclusion that it was unable to hold on the materials placed before it that the levy ought to fail for want of quid pro quo. However, having regard to the infirmities noticed in the estimates and the financial projections of the proposed developmental works on the basis of which the enhancement was sought to be justified, they were unable to say with any confidence and without reservations that the enhancement of fee, depending as it did on those estimates was totally justified. The High Court was of the opinion that some time-bound programme was necessary to be given for a second look at the estimates. At the invitation of the Advocate-General and the counsel for the market committees, the High Court was of the opinion that there was obvious scope and imperative need for giving some directions and the High Court gave certain directions which are contained in paragraphs 109 onwards of the judgment of the High Court. This

165. The High Court came to the following conclusions :

(a) that the provisions of Section 65(1) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 and Section 42 of the Karnataka Act 17 of 1980 insofar as and to the extent these sought to validate the levy of market fee on sellers for the period between May 19, 1975 and September 28, 1978 were declared unconstitutional and void :

(b) the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, insofar as these sought to provide for the regulation of marketing of cardamom was concerned, were held to be repugnant to the provisions of Cardamom Act, 1965;

(c) the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, insofar as these sought to regulate the marketing of sugar-cane was concerned, were held to be repugnant to the provisions of the sugar-cane (Control) Order, 1956, a statutory order made under Section 3 of the Essential Commodities Act, 1955;

(d) the High Court directed that Chief Marketing Officer should, within four months from the date of the judgment of the High Court, evolve and standardise specifications and norms with regard to the infrastructural and developmental requirements for the market yards and sub-market yards and communicate the same to the market committees in terms indicated. If, upon such scrutiny, the market fee under Section 65(2) now being levied at 2% was found, in respect of any market committee, to be excessive and without quid pro quo, the Chief Marketing Officer should make orders under Section 150 directing a suitable reduction in the quantum of the market fee of the market committees concerned.

166. So far as the prayer for issue of mandamus directing refund of sellers' market fee paid under Section 65(1) sought by producer-sellers and trader-sellers who had earlier approached the High Court was concerned, the High Court directed that mandamus should issue. Insofar as producer-sellers and other petitioners who were trader-sellers who had paid sellers' fee under Section 65(1) of the Act, a mandamus to the State Government and to the concerned market committees was directed to be issued in terms indicated in the judgment of the High Court.

167. With the other directions of the High Court for refund and otherwise, it is not necessary to detain ourselves.

168. The following broad questions were canvassed before us for consideration in these appeals :

(1) Whether the government and the market committees had been able to establish that there was quid pro quo and as such levy of fee and the increase of fee from 1 per cent to 2 per cent was justified ? It may be mentioned that after this judgment, the levy was decreased from 2 per cent to 1 per cent again.

(2) Whether there could or should be refund of any of these amounts to any of the parties ?

(3) Whether the High Court had come to any definite conclusion in respect of the eight market committees mentioned hereinbefore ?

(4) Whether the High Court had abandoned its jurisdiction in not coming to a definite conclusion about the required correlation to sustain quid pro quo for the imposition of market fees ?

(5) Whether the High Court was competent to give directions to the market committees in the manner it had done ?

(6) Whether in respect of marketing of tobacco, the State Government was entitled to legislate or whether in view of the fact that there was a declaration under Entry 54 of List I of the Schedule VII, the State Legislature had no competence to legislate on this point and as such the impugned legislation was ultra vires ?

(7) Whether the amendment of Section 148 of the Act as mentioned aforesaid whereby the opportunity of previous publication was deleted was valid or not ?

169. It is necessary now to deal with the contentions that arise in these appeals as enumerated hereinbefore. The rationale and the necessity for the imposition of fees in contradistinction of 'tax'

have been recognised for a long time. Our Constitution has recognised the distinction between 'taxes' and 'fees'. Entry 66 of List II of Schedule VII speaks of 'fees' in respect of the matters enumerated in List II. Similarly, Entry 96 of List I of Schedule VII speaks of 'fees' in respect of matters mentioned in List I. Entry 97 of List I speaks of 'tax'. The classic distinction between the two was reiterated in the observation of C.J. Latham in the case of *Matthews v. Chicory Marketing Board*. A 'tax' is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for service rendered. In the case of *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, this Court reiterated that "The distinction between a tax and a fee lies

170. From time to time in several decisions the need for the imposition of fees by the market committees has been emphasised and examined. Rajamannar, C.J. and T. L. Venkatarama Aiyar, J. in the case of *P. P. Kutti Keya v. State of Madras* dealt with the marketing legislation and need for the same and referred to the report of the Royal Commission on Agriculture in India. The decision of the Madras High Court was affirmed by a Constitution Bench of this Court in the case of *Arunachala Nadar v. State of Madras* where Subba Rao, J. referred to the background of the marketing legislation. It is not necessary to deal in detail with the said decisions.

171. Most of these decisions were reviewed by this Court in judging the validity of fees imposed in the case of *Kewal Krishan Puri*. Several principles deduced from the decision in *Kewal Krishan Puri* case have been noted hereinbefore. Prior thereto the question was considered in the case of *government of A. P. v. Hindustan Machine Tools Ltd.* which was noted in *Kewal Krishan Puri* case. *Kewal Krishan Puri* case specifically noted that the element of quid pro quo might not be possible or even necessary to be established with arithmetical exactitude even broadly and reasonably it must be established by the authority which charged the fees that the amount was being spent for rendering services to those on whom fell the burden of the fee. At least a good and substantial amount collected on account of fees might be in the neighbourhood of two-third or three-fourth must be shown with reasonable certainty as being spent for rendering services to those from whom the fees are realised. The Court, however, noted that while

172. This question was examined in the case of *H. H. Shri Swamiji of Shri Amar Mutt v. Commissioner, Hindu Religious & Charitable Endowments Department*. The correlation was again reviewed in the decision in the case of *Ram Chandra Kailash Kumar & Co. v. State of U. P.*

173. This question was again examined by this Court in the case of *Municipal Corporation v. Mohd. Yasin*. There this Court reiterated that the mere fact that there were others besides those paying the fees were also benefited did not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees might even be secondary as compared with the primary motive of regulation in the public interest. The Court was not expected to assume the role of a cost accountant. It is neither necessary nor expedient too weight to meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlation was all that was necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax. Chinnappa Reddy, J. in the said decision observed at page 235 of the report as follows : (SCC p. 235, para 9)

What do we learn from these precedents ? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hallmark of the distinction

between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the prima

174. In the case of Southern Pharmaceuticals & chemicals, Trichur v. State of Kerala this view was again reiterated at page 542 of the report, A. P. Sen, J. observed as follows : (SCC p. 409, para 25)

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 are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a 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 stricto sensu is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax.

175. The learned Judge at page 543 of the report observed that the traditional concept of quid pro quo was undergoing a transformation.

176. It is not necessary, however, for the purpose of this case to express any opinion as to whether the traditional concept of quid pro quo is undergoing any transformation and if so to what extent ? Even on the basis of traditional concept it is well-settled that thought here must be some special services to the payers of the fees, to be a fee it is not necessary that all the services must be to the payers of the fees nor can the correlation between payment of fee and services rendered be established with mathematical exactitude. It is permissible in the modern set-up to take into account projections into future and not only the present services can be utilised for justifying the imposition of fee. All planning, projects into the future for its existence and survival.

177. Any incidental benefit to those other than the payers of the fee is not decisive of the fact whether it is a 'tax' of a 'fee'. It is necessary to find out the primary object and essential purpose of the imposition. If the primary object and essential purpose of the imposition be service of some special kind to the users of the market or payers of fee, other consequences or other benefits to others do not in the least affect the position. The concept of benefit to the users of market must be looked at from a broad commonsense point of view, taking an integrated view. In today's world you cannot build a good market if the accesses through which the produce comes to the market are not maintained. However, at what point the roads will begin and at what point the roads will end to be able to justify the roads necessary to maintain solely the market, appears to be highly theoretical and unreal question in the modern concept of integrated development.

178. In the case of Sreenivasa General Traders v. State of A. P., a bench of three Judges of this Court had to deal with this question. The said decision reiterated the distinction between a fee and a tax and observed that a tax was levied as part of a common burden, while a fee was for payment of a specific benefit or privilege although the special advantage was secondary to the primary motive of regulation in public interest. According to this decision in determining whether a levy was of fee, the true test must be whether its primary and essential purpose was to render specific services to a specified area or class; it might be of no consequence that the State might ultimately and directly be

benefited by it. There must, however, be a reasonable relationship between a levy of fee and the services rendered to the payers of fees. According to this decision, Kewal Krishan Puri case did not lay down any legal principle of general applicability. Sreenivasa General Traders case was approved by another decision

179. Prior to all this, in the case of State of Maharashtra v. Salvation Army, Western India Territory, this Court had to consider the question of fee under Bombay Public Trust Act, 1950. The Court noted that fee was defined as a charge for a special service rendered to individuals by the Government or some other agency like a local authority or statutory corporation. The amount of fee levied was supposed to be based on expenses incurred in rendering the services, though in many cases the cost was arbitrarily assessed. This Court noted that fees were generally uniform but absence of uniformity was not a criterion on which alone it could be said that levy was in the nature of a tax. As a fee was regarded as a sort of return or consideration for services rendered, it was necessary that levy should be correlated to the expenses incurred in rendering the services. This Court in Salvation Army case reiterated that it might not however be possible to prove in every case that the fees collected always approximated

180. As has been noted estimates had been filed on behalf of the various market committees before the High Court. These estimates were criticised on behalf of petitioners-appellants as being totally at variance with the corresponding estimates furnished for the same period and furnished for 1974-75. The present estimates and projections, it was submitted on behalf of the appellants, were prepared only with a view to supply an artificial quid pro quo for the enhanced levy and were merely show-pieces on paper to get over the present challenge. It was further contended that having regard to the pace of growth and performance levels over the past seven years out of the fifteen years period, it was unreasonable to expect that the huge developmental activities now projected for the next eight years really intended to be acted upon.

181. Secondly, it was submitted that the disparities and variance in the proportion of the proposed development from market yard to market yard were so glaring that no authority in the position of the Chief Marketing Officer could reasonably approve of such uncoordinated and disjointed development of the regulated markets.

182. Thirdly, it was urged that many items of work envisaged in the development schemes such as construction of shops, godowns and the like were unrelated to the concept of special service to the buyers and could not be reckoned as qualified for correlation, and that if these impermissible items were deleted from the estimates, the market committees would not be in a position to establish the requisite quid pro quo.

183. Fourthly, it was said that a substantial part of the proposed financial outlays related to development of what were called "Rural Markets" and these outlays were ineligible to be reckoned as special service to the buyers.

184. The High Court in its judgment analysed these submissions and contentions carefully with reference to the financial statements and projections filed by the market committees and these statements were discussed at considerable length by the High Court.

185. In the context of the said contentions urged on behalf of the appellants, the High Court had examined the said statements and projections and recorded findings on these in its judgment. The High Court had also given certain directions. It was, therefore, submitted that the market fee on

buyers of the agricultural produce was originally levied at 30 p. which was increased to 1% and was further increased from 1% to 2% and the said enhancement of market fees was thus challenged by the appellants on the ground of non-existence of quid pro quo and the respondents-market committees attempted to justify the enhanced levy of 2% on the basis of the statements and projections mentioned hereinbefore. The High Court noted that there were certain inaccuracies and lack of particulars in the projections but the High Court ultimately came to the conclusion that on the materials placed before it on the basis of the principles of law as discussed by the High Court, it could not be said that there was no quid pro quo. On

186. The contention of learned counsel for the appellant was that the findings of the High Court with reference to the eight committees in category 'E' were untenable. On the other hand on behalf of the respondents it was submitted that out of the 93 market committees, in respect of 73 market committees, falling under categories A, B, C & D, a clear quid pro quo was established and no further enquiry was needed on the principles laid down by this Court.

187. Having examined the nature of the transactions and the principles of law applicable to this case as I have noted before, I am of the opinion that the High Court was right in its conclusion.

188. The proper principles discernible from these decisions are; (1) there should be relationship between service and fee, (2) that the relationship is reasonable cannot be established with mathematical exactitude in the sense that both sides must be equally balanced, (3) in the course of rendering such service to the payers of the fee if some other benefits accrue or arise to others, quid pro quo is not destroyed. The concept of quid pro quo should be judged in the context of the present days - a concept of markets which are expected to render various services and provide various amenities, and these benefits cannot be divorced from the benefits accruing incidentally to others, (4) a reasonable projection for the future years of practical scheme is permissible, and (5) services rendered must be to the users of those markets or to the subsequent users of those markets as a class. Though fee is not levied as a part of common burden yet service and payment cannot exactly be balanced. (6) The primary object and

189. Having regard to the detailed analysis of the expenditure of the various market committees, we agree with the conclusion of the High Court that it could not be said that the expenditure and appropriation of fee was so disproportionate to the projects actual and projected that it could be said that the levy lost the character of fee. An analysis of the High Court's judgment would indicate that out of 93 market committees about which the High Court was concerned, in respect of 73 market committees falling under categories A, B, C & D, a clear quid pro quo was established on a reasonable view. In respect of the 20 market committees falling in category E, the High Court found that with regard to the 8 committees only, final projections for the purpose of correlating the fees charged and the services rendered required individual consideration. These were Bangalore, Hubli, Sagar, Bijapur, Raichur, Tiptur, Gadag and Siddapur. The High Court found that the projected expenditure was relatable to and referable to

190. The High Court examined in detail the estimates of each of the market committees. The High Court felt that even if some of the items of expenditure which were specifically challenged and which the High Court noted were not strictly permissible, on the basis of the remaining works there was ground to hold that there was requisite measure of correlation between fees collected and intended to be collected and services rendered and intended to be rendered but the High Court felt that for proper working of statutory bodies like the market committees, general directions about the future expenditure should be given.

191. As we have mentioned hereinbefore, at the invitation of Advocate-General and the counsel for the market committees, the High Court gave certain directions. It is not necessary in disposing of these appeals to deal in detail with the specific directions given. The High Court was competent to give these directions. We accept the submissions urged on behalf of the respondents that these directions were within the competence of the High Court while dealing with the grievances made under Article 226 of the Constitution to ensure that appropriate statutory authorities acted according to law after properly ascertaining the facts and for the purpose of rendering full justice to the parties. (See for the nature of directions the High Court is capable of giving under Article 226 of the Constitution *Bandhua Mukti Morcha v. Union of India*. See also the decision in the case of *State of Kerala v. Kumari T. P. Roshana*. In the case of *Kewal Krishan Puri v. State of Punjab* this Court had given certain directions for fut

192. For the purpose of how the Court can mould its directions in order to give relief in a particular situation, we may refer to the nature of directions given by the American Supreme Court, in abolishing racial discrimination and the judicial efforts made with attending difficulties, and how the Supreme Court of America formulated by trial and error the process of making the relief effective to the discussions in Corwin's *The Constitution and What It Means Today*, 14th Edn., pages 504-511.

193. Therefore, the High Court, while finding that there was a correlation between the services rendered and the fees charged with regard to the eight market committees, directed the Chief Marketing Officer to make certain enquiries on certain principles of correlation and directed the surplus, if found, on such enquiry, to be appropriately adjusted in the future by way of reductions of fees.

194. Pursuant to the above directions in respect of eight marketing committees, the Chief Marketing Officer went into the facts. After the marketing committees had submitted their budgets and the projections, these have been approved by the Chief Marketing Officer. After such approval, the concerned marketing committees have passed appropriate resolutions for giving effect to the norms laid down and the projects approved. This has been stated in the affidavit filed by the Chief Marketing Officer in reply to special leave petition. (See the affidavit filed by the Chief Marketing Officer in the *Belgana Marketing Committee* petition). This, in our opinion is a constructive approach.

195. Courts of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing something being done. "Thou shall not do't" used to be the previous form of remedy encouraged by courts. But the new attitude is towards positive affirmative actions, directing people or authorities concerned that "thou shall do't" in this manner. While it is true that if a law is bad, the Court must strike it down, if the law by and in its true perspective of a social purpose if implemented in a particular manner could be valid, then the Court can and should ensure that implementation should be done in such particular manner and give directions to that effect. In the instant case the High Court having found, with which finding we are in agreement, that basically and essentially the fee was justified on the theory of *quid pro quo*, the Court was entitled to give positive direction in the manner the money should be spent.

196. Another argument on this aspect was that estimate of Tiptur Market Committee showed that there was a surplus of Rs. 72 lacs in the year ending 1982. It was contended that so long as this surplus remained, there was no case for increasing market fee from 1% to 2%. It was also submitted that according to the projections filed and the estimated expenditure for the future up to 1988-89

there would be a surplus of about Rs. 3 crores at the end of 1988-89. But reading the projections properly it appears that though estimated earning would be Rs. 3.26 crores at the end of 1988-89, at the same time the estimate showed the projected expenditure from 1981-82 to 1988-89 would amount to Rs. 4.28 crores. These projections are not imaginary and if the market committee, in the present trend of inflation and need for modern markets, had taken these projections into consideration, the same cannot be condemned as unreasonable. Thus looked at, it appears that the extra expenditure of estimates showed a projected loan for

197. In the aforesaid view of the matter, we are of the opinion that the High Court was right in holding (a) that the quid pro quo necessary to be established in these types of fees has been established, (b) that the projections have been properly taken into consideration and they are reasonable projections, (c) the directions given by the High Court were within the competence of the High Court to meet the ends of justice.

198. In the premises the first question reserved for our consideration must be answered by saying that the High Court is right in holding that the increase was justified. Necessarily point No. 3 must also be answered by saying that the High Court had come, in the facts and circumstances of the case, to a definite conclusion of this aspect in respect of eight market committees mentioned hereinbefore. The High Court had not abandoned, for the reasons mentioned hereinbefore, its jurisdiction in not coming to a definite conclusion about the requisite correlation to sustain the quid pro quo for the imposition of the market fee. I am also of the opinion that the High Court was competent for the reasons indicated hereinbefore to give directions to the market committees in the manner it had done. Point Nos. 1, 3, 4 & 5 mentioned hereinbefore are therefore disposed of in favour of the respondents in the manner indicated hereinbefore.

199. So far as to the question of refund of the amount of the market fees to any of the party is concerned, I will briefly have to note the position arising out of the judgment of the High Court.

200. It was contended on behalf of the appellants that Section 65(1) as substituted by Act 17 of 1980, read with Section 42 of the Amending Act, seeking to validate the collection of market fee on 'sellers' made under the old Section 65(1) of the Act is constitutionally invalid. The validation became necessary as mentioned hereinbefore in view of the judgment of the Karnataka High Court in the case of Rajasekhariah. The present substituted Section 65(1) read with Section 42 of the Amending Act seeks to validate the collection of market fee on sellers made when the earlier Section 65(1) was operative. We have set out the relevant provisions and the background of the challenge to the Act.

201. The High Court of Karnataka in its impugned judgment has set out exhaustively the grounds upon which the said High Court had previously in Rajasekhariah case struck down Section 65(1) (3) of the Act. Pursuant to the judgment in Rajasekhariah case, the State was exposed to the liability to refund the fee collected for the period from May 19, 1975 when Section 65(1) and (3) were introduced by the Amending Act 24 of 1975 and September 28, 1978 when that judgment was pronounced. By the said Act of 1980, the levy was sought to be validated and the fee retained by the State Government. The High Court noticed the relevant substitution. First, by virtue of sub-section (1) (2) of Section 19 of the Amending Act, the amendment had been deemed to have come into force on May 19, 1975 - in other words making it retrospective. Secondly by clause (ii) of sub-section (1) and item (ii) of clause (a) of sub-section (2) of Section 63 as amended, the expression 'Marketing' was substituted by the words "transport and marketi

202. Thirdly, Section 20 of the Amending Act brought about certain changes in the structure of Section 65 while making such amendment retrospective with effect from May 19, 1975 - being the date on which it was originally introduced.

203. The High Court has set out Section 42 of the Amending Act which validated the levy of market fee etc. It was urged before the High Court that the market fee collected from the sellers between May 19, 1975 and September 28, 1978 under the old Section 65(1) had gone to the credit of and merged in the "Karnataka Roads and Bridges Fund" constituted under the Karnataka Motor Vehicles Taxation Act and the market fees have obviously been spent for the purposes and objects of "Karnataka Roads and Bridges Fund", and by deleting Section 65(3) - even if it be with retrospective effect - the events that have factually happened pursuant to Section 65(3) when it was operative, could not be reversed. The effect of the amendment was not, it was submitted before the High Court, to put the funds back into the coffers of the respective market committees enabling them to spend them for such of the purposes authorised by the Act as would afford correlation by way of service to the fee. It was further contended that all that

204. Learned Advocate-General contended that the only ground on which the previous judgment invalidated the levy on the sellers was that the market committees were not statutorily charged with the duty of constructing and maintaining rural roads, and now that, the duty of providing, either independently or along with any other authority, necessary facilities for transport, which included the making of roads in the market area leading to and from the market yards, the defect noticed in the law has been removed and the legal basis for the levy supplied. Learned Advocate-General submitted that as a result of Rajasekhariah case the State was exposed to a liability to refund several crores of rupees which had been realised by way of sellers' fee under Section 65(1), and which according to him, had, in fact, been spent for providing facilities for transport in the form of construction, improvement and repair and maintenance of rural roads.

205. The High Court noticed the relevant provisions and the principles of law which should govern the power of the Legislature to cure any defect in law with retrospective effect and to validate acts done or taken under defective law which were declared invalid by the courts on any ground.

206. It is well-settled that if such validating law cures the constitutional vice from which the earlier legislation suffered, the validation must be given effect to.

207. These principles are well-settled by the decisions of this Court in the cases of *Misrilal Jain v. State of Orissa*, *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, Municipal Corporation v. New Shorock Spg. & Wvg. Co. Ltd.*, and *I. N. Saksena v. State of M. P.* The tests are well-settled and it is not necessary to reiterate those. The validity of a validating law has to be judged mainly by judging, firstly whether a Legislature possesses competence over the subject matter i.e., whether by validation, the Legislature exercises competence over the subject matter and secondly whether by validation the Legislature has removed the defect which the court had found in the previous law and thirdly whether it consistent with the provisions of Part III of the Constitution.

208. The High Court was of the view that facilities for rural roads could not be a ground for collection of fees. The High Court was further of the view that this was concluded by the decision of this Court in *Kewal Krishan Puri* case.

209. I have set out hereinbefore the principles to be governed in case of judging the correlation between 'service' and 'fee' and the changing pattern of this concept. Construction of rural roads

giving facilities for going to the market is a special service primarily and directly intended for the benefit of the users of market. Market could not be reached and people cannot go and come from the market if there are no good rural roads to reach those markets. This view has been recently reiterated by this Court after discussing several authorities in the case of *Amar Nath Om Parkash v. State of Punjab* where it was held that it was of fundamental importance that there should be a network of roadways if effective aid was to be given to farmers to transport and market their produce. In this connection reliance may be placed also on the observations of this Court in the case of *Municipal Corporation v. Mohd. Yasin* where it was reiterated that the fact that others besides those paying the fees are also benefited di

210. Judged by this concept, in my opinion, the High Court was in error in view of the principles we have discussed about the concept of fee and therefore rural roads for construction, improvement and maintenance of which sellers' fees have been applied could be said to be an obligation of the market committee. Now that has been made the function and obligation of the market committees by the amendment with retrospective effect which we have noticed before. The learned Advocate-General had stated before the High Court that the funds from the "Karnataka Roads and Bridges Fund" collected from these fees have in fact been spent for the rural roads, the facilities for which are for the benefit of the users of the markets. In the facts and circumstances it should be presumed and assumed that the funds spent by the "Karnataka Roads and Bridges Fund" under the Motor Vehicles Act have in fact been spent as an agency of the market committees in discharge of the functions and obligations of these committees. In view o

211. The contribution to the "Karnataka Roads and Bridges Fund" maintainable under Motor Vehicles Act having been made as an agency of the market committees for the construction of these roads which facilitated the purpose of the market committees as amended by the Amending Act, I am, therefore, of the opinion that the High Court was in error in holding that the second major defect noticed in the law authorising the levy on the sellers in *Rajasekhariah* case namely construction of rural roads would not qualify being reckoned as a special service to the class of persons paying the fee, had not been cured or removed by the law which sought to validate the levy. The Act which sought to validate the levy contributed to the "Karnataka Roads and Bridges Fund" was for the maintenance of rural roads which, as I have noticed, forms an integral part of the facilities for marketing of the goods. I am therefore unable to sustain the findings of the High Court of Karnataka that Section 65(1) as substituted by Section 20 o

212. In any event I am of the opinion that there should not be any refund in the facts and circumstances of the case. Section 42 of the Amending Act has specifically provided against refund of levy of fees already collected, I am therefore of the opinion that such a provision was valid. At no stage was it claimed or stated that the traders had paid market fees themselves. The appellants before this Court are buyers in the market but they themselves are trading in the commodities purchased by them. On further sale of the commodities as traders they have recovered the fees from their purchasers. For this purpose reliance may be placed on the observations of this Court in the decision in the case of *D. Cawasji & Co. v. State of Mysore*. Most of these have been discussed in the recent decision of this Court in the case of *Amar Nath Om Parkash* and in that view of the matter and in view of Section 42 of the Amending Act which provided for the validation of the levy of market fee and which provided further by Sectio

213. The next question that arises is whether the amendment of the bye-laws enhancing the market fee was invalid for want of compliance with the mandate of Section 148 of the Act requiring previous publication and previous sanction of the Chief Marketing Officer. The High Court had

exhaustively discussed this matter and I have referred to this discussion before and had come to the conclusion that Section 65(2) did not confer any arbitrary power and there was no excessive delegation of legislative power to the market committees and therefore not vitiated on that account. The question whether on a proper construction of Section 65(2) there was any obligation on the part of the marketing committee to hear the parties was left open with certain observations and directions contained in paragraph 61 of the judgment of the High Court. I am in respectful agreement with that direction of the High Court.

214. So far as the High Court held against the contentions of the appellants that bye-laws were invalid for want of previous publication or for want of consulting the interests affected, I am also in respectful agreement for the reasons discussed by the High Court which need not to be reiterated again, with that view. The principle of *audi alteram partem* has application only to judicial, quasi-judicial and administrative functions and not to any legislative functions - see *Tulsipur Sugar Co. Ltd. v. Notified Area Committee*, S. A. De Smith's *Judicial Review of Administrative Action*, 4th Edn., pages 181 to 183. In any event the rule of '*audi alteram partem*' is inapplicable in exercise of the States' power of taxation - See *Avinder Singh v. State of Punjab*. This disposes of point No. (7).

215. This next contention canvassed before us was whether in view of the Tobacco Board Act, 1975, hereinafter referred to as the Central Act and the issue of the Notification dated August 31, 1984 by which Section 13 of the Central Act was made applicable in the State of Karnataka, insofar as the Central Act dealt with the marketing of tobacco, the State Legislature was not competent to pass this enactment. It was submitted that tobacco was covered by Entry 52 of List I by virtue of the declaration under Section 2 of the Central Act. It was submitted that the High Court has erred by not acting in the parity of reasoning adopted in respect of Cardamom Act. As I have noticed that in case of Cardamom Act, 1965, the High Court was of the opinion in the impugned judgment that the said Act was not within the competence of the State Legislature, yet neither the market committees nor the State Government had preferred any appeal in respect of that finding. It was sought to be impressed before this Court that the sam

216. Two broad principles should be borne in mind in deciding the controversy of this nature. One is whether a particular legislation or enactment is within the competence of particular Legislature must be judged after finding out the pith and substance, in other words the true nature and character, of the legislation in question and secondly the entries in the list should be given liberal and generous construction. All the entries should be construed in harmonious manner so as to avoid conflict. In case of conflict, however, in respect of entries where both the State and the Centre can legislate, the Central legislation would prevail over the State legislation in view of the provisions of Articles 245 to 254 of the Constitution. It was submitted that the effect of the declaration under Section 2 of the Central Act pursuant to Entry 52 of List I is that the Parliament has exclusive competence to legislate upon every aspect or activity pertaining to 'tobacco' including marketing thereof and the State would ha

217. It is well-settled that the cardinal rule of interpretation is that the words should be read in their ordinary natural and grammatical meaning. But words in a constitutional document conferring legislative powers should also be construed most liberally and in their widest amplitude. See *Navinchandra Mafatlal v. CIT*. On behalf of the appellants reliance was placed on the observations in the case of *Baijnath Kedia v. Bihar State* that once a declaration was made, any legislation by the State after such declaration trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. See *Kannan Devan Hills Produce Co. v. State of Kerala and Ganga Sugar Co. Ltd. v.*

State of U. P. where dealing with the sugar industry, this Court observed that it was undisputed that sugar industry was a controlled industry, within the meaning of Entry 52, List I of Schedule VII and, therefore, the legislative power

218. It was urged that in the instant case declaration under Section 2 of the Central Act was in respect of the tobacco industry and not any particular type of tobacco as held by the High Court that it was only Virginia tobacco. Therefore, there was no warrant for restricting or limiting the width and amplitude of the words "tobacco industry" and confining it to a particular type or kind of tobacco.

219. So far as it was submitted that the Central Act was not concerned with Virginia tobacco only but covered other tobaccos the High Court was in error. On the construction of the Central Act read with the rules it appears to us that the said Central Act and the declaration made by Section 2 of the said Act covers all kinds of tobaccos.

220. It is well-settled principle that Article 246 recognised the principle of parliamentary supremacy in the field of legislation in case where both Legislatures have competence to legislate. The constitutional scheme is that Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. A State Legislature has exclusive power to legislate with respect to matters in List II, excluding the matters falling in List I and has also concurrent power to legislate with respect to matters falling in List III excluding matters falling in List I. The dominant position of the Central Legislature with regard to matters in List I and List III is established. See in this connection the decision in *A. L. S. P. P. L. Subrahmanyam Chettiar v. Muttuswami Goundan*. Justice Sulaiman in that case observed that the rigour of that literal interpretation of Section 100 of the Government of India Act, 1935 with which Federal Court was concern

221. It was submitted on behalf of the appellants that the power of the State Legislature with respect to matters in List II was made subject to the power of Parliament to legislate with respect to matters in List I and it therefore followed that if any entry in List I and List II appeared to overlap, if these appeared partly to cover the same field, the field of legislation covered by the entry in List I must be considered to be taken out of the scope of the entry in List II and reserved to be only dealt with by Parliament. In other words, to that extent the power of the State Legislature must be considered to be curtailed and the field must be held to have been occupied by the Centre.

222. In the present case the Central Act, it was urged, fell within Entry 52 of List I. To the extent that Karnataka State Act, by amending the Schedule bought tobacco within the provisions of the State Act, it was urged that it was beyond the competence of the State Legislature and it had encroached upon the Union List.

223. It was, further, submitted that in any event the competence of the Parliament to legislate in respect of a matter which is exclusively entrusted to it must supersede pro tanto the exercise of power of the State Legislature. Reliance was placed on *Sudhir Chand Nawn v. WTO*. But in resolving the rights of component units of federal or quasi-federal set-up (to which category, however, the Indian constitutional set-up belongs-no Constitutional pundit has yet been able to say) earnest endeavour should be made to avoid a conflict between two competing entries, as too liberal an interpretation given to both of them might create a clash. Therefore it was urged that the competence of the Karnataka State Legislature with regard to marketing of tobacco and levy of market fee thereon under Entry 28 read with Entry 66 of List II which is "markets and fairs" stood

pro tanto superseded by the exercise of the parliamentary power under Entry 52 read with Entry 96 of List I.

224. It was urged that in the case of *Ch. Tika Ramji v. State of U. P.*, this Court rejected the contentions that all sugar-cane legislation linked to sugar industry was sugar legislation. Furthermore, on the facts of the case, the Court came to the conclusion that the impugned Act did not concern itself at all with the controlling or licensing of sugar industry or with the production or manufacture of sugar or with trade and commerce in sugar and, therefore, there was no trenching upon the Union List by the impugned State Act. Reliance was placed on the observations at pages 422-23 of the said decision, mentioned hereinbefore. Reliance was also placed at pages 7823-84 in the case of *Ganga Sugar Corpn. Ltd. v. State of U. P.*

225. It was submitted on behalf of the appellants that the State Legislature lost its competence because the field was occupied by Parliament in view of the declaration under Section 2 of the Central Act. It was evident, it was urged, that the intention to cover the whole field has been expressed by the Central Act and as intended, the Central Act is a complete and exhaustive Code in respect of tobacco. Consequently, the enactment of the subsequent State legislation was overborne on the ground of repugnancy. Reliance was placed on the decision in the case of *State of Orissa v. M. A. Tulloch & Co.*

226. The following submissions were placed before us on the ground of repugnancy :

(1) There may be inconsistency in the actual terms of the competing statutes. (See *R. v. Brisbane Licensing Court*).

(2) There may be no direct conflict and the State law may be inoperative because the Commonwealth law or the award of the Commonwealth Court was intended to be a complete exhaustive Code (*Clyde Engineering Co. Ltd. v. Cowburn*).

(3) Even in the absence of intention, a conflict may arise when both State Legislature and Commonwealth seek to exercise their powers on the same subject [*Victoria v. Commonwealth*; *Wenn v. Attorney-General (Vict.)*; *Nicholas : Australian Constitution*, 2nd Edn., at p. 303; *Ch. Tika Ramji v. State of U. P.*; *Deep Chand v. State of U. P.*; *Ex-Parte Mclean* and the observations of Justice B. N. Rau in the Calcutta decision of *G. P. Stewart v. Brojendra Kishore Roy Choudhury*]. As Sir B. N. Rau mentioned in *Stewart v. Brojendra Kishore* - the principles deducible from these cases seem to be - if the dominant law has expressly or impliedly evinced its intention, an intention to cover the whole field, then a subordinate law in the same field is repugnant and, therefore, inoperative; whether and to what extent in a given case the dominant law evinces such an intention must necessarily depend on the language of the particular law.

227. Applying these tests, it would be apparent, it was submitted by the appellants that the State Act was repugnant to the Central Act.

228. It was finally submitted that any event without prejudice to other submissions that so far as tobacco was concerned, no service had in fact been rendered by the market committees nor could they in law be rendered because of legal constraints imposed by the provisions of the Central Act and, in particular, Section 12 and Rule 35 of the Tobacco Board Rules, 1976. By virtue of Section

12, the market committees could not auction or deal in tobacco at all unless these were registered with the Board in accordance with the Central Act.

229. It was evident from the letters dated September 15, 1983 and September 23, 1983 at pages 462 and 466 of the Paper Book that the market committees had not been and even today registered under the Central Act and were therefore incapable of rendering any service at all. For this reason there was complete failure of quid pro quo and therefore there cannot be any charge of fees by enacting State Legislation on tobacco.

230. It appears that the principles of repugnancy in Indian Constitution are well-settled. These are as follows :

(1) A legislation, which in its pith and substance, falls within any of the entries of List I of the Seventh Schedule to the Constitution, would be exclusively within the competence of the Parliament.

(2) A legislation falling exclusively, in its pith and substance, within any of the entries in List II of the Seventh Schedule, would be within the exclusive competence of the State Legislature.

(3) A Central law which in its pith and substance, falls within any entry in List I would be valid even though it might contain incidental provisions in List II which may contain incidental provisions in List II which may contain ancillary provisions which might touch on an entry of List I incidentally.

(4) A State law, which in its pith and substance, within any entry in List II would be valid even though it might incidentally touch upon a subject falling within List I.

(5) A Central law, which in its pith and substance, dealt with a subject falling within List II would be bad and ultra vires the Constitution. Similarly, a State law which in its pith and substance dealt with a matter falling within List I would be invalid and ultra vires the Constitution.

(6) The concept of repugnancy arises only with regard to laws dealing with subjects covered by the entries falling in List III, in respect of which both Parliament and State Legislature are competent to legislate. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III would be invalid if its provisions were repugnant to a law passed on the same subject by Parliament. The repugnancy arose only if both the laws could not exist together. Repugnancy does not arise simply because Parliament and the States pass law on the same subject. There cannot be any repugnancy in respect of State laws passed in respect of matters falling in pith and substance in List II or in respect of Central laws passed on subjects falling in List I. Parliament cannot legislate on a State subject and State cannot legislate on a Central subject. If either trenches upon the field of the other, the law will be ultra vires. See in this connection *Hoechst Pharmaceuticals Ltd. v. State of*

231. In the present case the Karnataka Marketing Act deals with the subject of market in Entry 28 read with Entry 66 of List II. Such Acts are covered by Entry 28 of List II exclusively unlike Entries 23, 24, 26 and 27. It is important to bear in mind that Entry 28 is not subject to withdrawal into List I by Parliament as under Entries 52 and 54 of List I and Entry 33 of List III. The State Act is not on

a subject in List III. Therefore, there cannot be any question of repugnancy. Section 31 of the Central Act makes it clear that it does not derogate from any law but enacts something in addition.

232. In the High Court, counter-affidavits were filed to establish the quid pro quo and rendering of the services to the traders including tobacco merchants by the respective six market committees. In fact before the High Court, no contention, as it appears from the judgment impugned, was at all advanced on the question of services to tobacco trade in the markets concerned. In fact they are entitled to the same services as other traders as provided by the Act. The provisions of the Marketing Act and Tobacco Board Act and the Rules are not inconsistent.

233. It is therefore necessary to note the true nature and character of the Acts namely the Karnataka Agricultural Produce Marketing Act, 1966 and the Central Act. The Marketing Act is an Act as the preamble states, for the better regulating of buying and selling of agricultural produce and establishment and administration of markets for agricultural produce and whereas it was thought expedient to provide for the better regulation of buying and selling of agricultural produce and establishment of markets for agricultural produce and matters connected therewith that the State Act was passed. I have noted some of the salient features of the Act. The Act was to regulate the sale and purchase of agricultural produce and 'tobacco' was introduced by Act 17 of 1980 as one of the agricultural produces and thereby it was sought to be brought within its purview. The Act constituted different market committees. It laid down the functions, duties of the market committees and matters incidental thereto. It imposed obligat

234. Clause (cc) of sub-section (2) of Section 8 of the Central Act authorised the Board to establish auction platforms with the approval of the Central Government for sale of tobacco and for the functioning of the Board as an auctioneer and that the platforms established by or registered with the Board subject to such conditions as may be specified by the Central Government. Section 12 of the Central Act provides that no person shall export tobacco or any tobacco products or function as a packer, auctioneer of, or dealer in, tobacco unless he registers himself with the Board in accordance with the Rules made under the Act. Section 13 of the Central Act states that no registered grower or curer shall sell or cause to be sold Virginia tobacco elsewhere than at an auction platform registered with the Board in accordance with the Rules made under this Act or established by the Board under this Act. Section 31 of the Central Act specifically mentions that the same is in addition to, and not in derogation of, the

235. Rule 35 of the Tobacco Board Rules provides for registration as exporter, or packer or auctioneer of or dealer in tobacco and lays down certain provisions. By virtue of Section 12 of the Central Act, the market committees cannot auction or deal with tobacco at all unless they are registered with the Board in accordance with the Act.

236. In a letter written on September 15, 1983 in respect of an 'application made by the Marketing Committee, Honsur, State of Karnataka, the Tobacco Board refused the application on certain grounds mentioned in that letter. That indicated that it was thought that the market committees should apply to the Tobacco Board for registration, yet on October 13, 1983, Tobacco Board applied to the market committee for the grant of licence to it. The position is not clear - but it is fully manifest that both Acts can operate in their respective fields and there is no repugnancy if both the Acts are considered in the light of their respective true nature and character. While giving due weight to Centre's supremacy in the matters of legislation, the States' legitimate sphere of legislation should not be unnecessarily whittled down - because that would be unwarranted by the spirit and basic purpose of the constitutional division of powers -not merely allocation of power by the

Constitution but invasion by parliamentary

237. While it is true that in the spheres very carefully delineated the Parliament has supremacy in the sense that in those fields, parliamentary legislation would hold the field and not the State legislation - but to denude the State Legislature of its power to legislate where the legislation in question in pith and substance i.e. in its true nature and character, belongs to the State field, one should be chary to denude the State of its powers to legislate and mobilise resources - because that would be destructive of the spirit and purpose of India being a Union of States. States must have power to raise and mobilise resources in their exclusive fields. In the instant case by complying with the State Act, the Central Act can function to serve the purpose and object of the Central Act, but if only the Central Act was to prevail, the State Act of marketing for coffee would become non-entirely unnecessary and undesirable. The Marketing Act is essentially an Act to regulate the marketing of agricultural prod

238. The contentions on behalf of the appellants therefore, on this point have to be rejected. As to should obtain licence or as to who would have to be registered, the market committee or the Tobacco Board is a question which should be settled by proper adjudication.

239. Some argument has been built upon the fact that though more or less identical in nature, in respect of the Cardamom Act, 1965, it was held that the State Legislature was not competent to enact the Cardamom Act, 1965 in view of the declaration under Entry 52 of List I of the Seventh Schedule. It was therefore suggested that it would not be correct to take inconsistent views in respect of this Act as against the Tobacco Board Act. As noticed before, the contention of validity of the Cardamom Act on the ground of Entry 28 of List II of the Seventh Schedule was not canvassed. Furthermore, it was held that the rules under the Cardamom Act which were framed were in variance with the present Act. The Government had accepted the findings of the High Court so far as Cardamom Act is concerned. Had it been otherwise and had it been examined by this Court for the reasons which are noted herein, what would have been the result it is difficult to state. In any event, in this background that cannot be any reason far l

240. Insofar as the High Court directed the refund as indicated before, the appeals by the Government are allowed to that extent and the orders of the High Court are set aside. The other appeals by the parties, are, for the reasons mentioned hereinbefore, dismissed. Parties will bear and pay their own costs throughout.

ORDER

241. In view of the majority decision all the civil appeals, special leave petitions and writ petition except Civil Appeal 629 of 1983 (Karnataka Market Fee matters) are dismissed without any order as to costs.

242. Civil Appeal 629 of 1983 (I. T. C.) however is allowed and the judgment of the High Court is set aside. There will, however, be no order as to costs in this case and any fee realised will not be refunded.

</html