ANDHRA PRADESH HIGH COURT

Garimell Satyanarayana

Vs.

East Godavarj Coconut

Writ Petns. Nos. 42, 62, 63, 64, 65 and 718 of 1955 and 739 of 1956

(Satyanarayana Raju and Basi Reddy, JJ.)

13.09.1958

JUDGMENT

Satyanarayana Raju, J.

1. These petitions filed under Article 226 of the Constitution, pray for the issue of write, of Mandamus or other appropriate write directing the respondents, namely (1) the State of Andhra Pradesh, and (2) the Market Committees, to forbear from enforcing the provisions of the Madras Commercial Crops Markets Act (XX of 1933) or the rules framed thereunder against the several petitioners. A common question of law arises in all these petitions concerning the legality and constitutional validity of Section 11 of the Act.

2. The Madras Commercial Crops Markets Act (hereinafter referred to as 'the Act') was originally enacted in 1933 by the Madras Legislature after the previous sanction of the Governor-General had been obtained to the passing of the Act. It was subsequently amended from time to time. As the Act was a "law in force" immediately before the formation of the Andhra State, its provisions govern the territories forming part of the Andhra State by virtue of the Andhra. State Act of 1953 and the adaptation of the Laws Order made by the Government of Andhra on the First November 1953.

3. The object of the Act, as stated in the preamble, is to provide for the better regulation of buying and selling of commercial crops and the establishment of Markets for commercial crops and make rules for their proper administration. For an appreciation of the contentions raised in the Writ petition, it is necessary to refer to the material provisions of the Act.

4. Section 2(i-a) defines 'commercial crop' as meaning cotton, groundnut or tobacco and as including any other crop or product, notified by the State-Government in the Official Gazette as a commercial crop for the purposes of this Act. Under Section 3 the State Government may, by notification in the Official Gazette, declare their intention of exercising control over the purchase and sale of such commercial crop or crops and in such area as may be specified in the notification and such notification shall state that any objections or suggestions which may be received by the State Government, within a period to be specified in the notification, which will

be considered by them. Under Section 4 the Government may declare the area specified in the notification under Section 3 or any portion thereof to be notified area for the purposes of the Act in respect of the commercial crop or crops. Section 4-A empowers the State Government to establish a market committee for every notified area, and it shall be the duty of the market committee to enforce the provisions of the Act and the rules and by-laws made thereunder in such notified' area as is entrusted to the Committee. The constitution of Market Committees is provided under Section 6 of the Act. Section 7 enacts that every market Committee shall be a body corporate. Section 9, empowers a market committee to employ such officers and servants as may be necessary for the management of the market and for the payment of their salaries. The form of contracts which may be entered into by a market committee is specified in Section 10. Then comes the material Section 11 which is in the following terms :

> "11(1). The market Committee shall, subject to such rules as may be made in this behalf, levy fees on the notified commercial crop or crops brought and sold in the notified area at such rates as it may determine :
> Provided that until the market committee has determined the rates of such fees, it shall levy fees at the rates specified in the Schedule to this Act or in the case of any crop or product notified by the State Government as commercial crop for the purpose of this Act, at the rates specified in this behalf in such notification. Explanation - For the purposes of this Sub-Section, all notified commercial crops leaving a notified area shall, unless the contrary is proved, be presumed to be bought and sold within such area.
> (2) The fees referred to in Sub-Section (1) shall be paid by the purchaser of the commercial crop concerned :
> Provided that where the purchaser of a commercial crop cannot be identified, the fee shall be paid by the seller.
> (3) Out of the fees levied under Sub-Section (1) in the commercial crop or crops bought and sold in any part of the notified area which constitutes a village as defined in Section 2 of the Madras Village Panchayats Act, 1950, such proportion as may be prescribed shall be paid by the market committee to the panchayat concerned."

5. Section 11-A empowers the market committee to levy subscription for collecting and disseminating among the subscribers, information as to any matter relating to crop statistics or marketing in respect of the commercial crop or any of the Commercial crops concerned.

6. Section 12 lays down that all moneys received by a market committee shall be paid into a fund to be called the 'Market Committee Fund', and all expenditure incurred by the market committee under or for the purposes of this Act shall be defrayed out of the said fund and that any surplus remaining after such expenditure has been met shall be invested in such manner as may be prescribed by rules. Section 13 enumerates the purposes for which the market committee fund may be expended.

7. In *Kutti Keya v. State of Madras*[1], it was contended that the Act and the Rules

[1]1954-1 Mad LJ 117

framed thereunder had become void and unenforceable by reason of their being repugnant to the

Constitution. After an elaborate consideration of the contentions raised before them, Rajainannar, C.J. and Venkatarama Ayyar, J., held that the provisions of that Act generally must be upheld under Article 19(6) of the Constitution as reasonable and as having been enacted in the interests of the general public. The learned Judges, however, declared that Section 5(4)(a) of the Act, which confers on the Collector an unlimited and uncontrolled discretion to grant or refuse licenses as he might choose, is void. Rule 37 which provides that buyers and sellers, whose names are not registered by the market committee, shall not buy or sell within the notified area, was also held to be void.

8. The provisions of the Act in Sections 11 and 11-A and Rule 28(1) and (3), providing for the levy of fees on notified commercial crops, bought and sold in the notified area at such rates as it might determine, were held to be not repugnant to Article 286(2) of the Constitution. But the learned Judges observed that the amounts collected were taxes notwithstanding that they were not brought into the consolidated fund of the State under Article 266(1) but constituted into a separate fund and the levy was only on a section of the public. The learned Judge observed that as actually no levy had been imposed under Section 11 on any of the petitioners, its legality did not arise for determination in those proceedings and that the point was raised only as leading on to the further contention that as the levy under Section 11 was illegal, the entire Act must fail.

9. The learned Advocates appearing for the petitioners have raised divergent contentions but they are all agreed that the levy of fees as contemplated by Section 11 of the Act is unconstitutional. The learned Advocate appearing for the petitioner in W.P. No. 42 of 1955 has contended that the levy in Section 11 is a tax and not a fee and it must be struck down as being ultra vires the powers of the State Legislature. He has argued that even if the imposition is held to be a fee, and not a tax, there being no direct, proximate and immediate service to the petitioners, it cannot be justified.
In these contentions, he is supported by the learned Advocates appearing for the petitioners in W.P. Nos. 718 of 1955 and 739 of 1956, who have argued that, if construed as a fee, it is so excessive that it does not bear a reasonable relation to the services rendered by the market, committee. The learned Advocates appearing for the petitioners in W.P. Nos. 1060 of 1956 and 1367 of 1957 have, however, argued that the observations made in the Madras decision with regard to Section 11 are obiter, that the levy under Section 11 is not a tax but a fee, and that as a fee, it is unconstitutional.

10. The learned Advocate-General, appearing for the respondents, has contended that the Act was passed in 1933 at a time when there was no distinction between a tax and a fee and the only requirement then was that where it was a tax the sanction of the Governor-General was necessary, and that the requirement having been complied with, the Act is valid both under Section 292 of the Government of India Act and Article 372 of the Constitution and that therefore the question of legislative competence does not arise. The learned Advocate-General has further argued that even assuming that the validity of Section 11, on the ground of want of legislative competence, is now open for determination, having regard to the general scheme and the purpose of the Act, the imposition must be held to be a fee and not a tax. He went a step further and has argued that even if the provision is regarded as authorizing the levy of a tax, it is perfectly valid because it is an ancillary and incidental provision in a legislation relating to a subject enumerated in the State List.

11. We shall deal at the outset with the last contention of the learned Advocate-General for if that contention is sound, it would render unnecessary the consideration of the other questions. He relied upon certain decisions in support of the contention. In *United Provinces v. Mst. Atiqa Begum*[2] Gwyer, C.J. said.

> "The subjects dealt with in the three Legislative Lists are not always set out with scientific definition. It would be practically impossible for example to define each item in the Provincial List in such a way as to make it exclusive of every other item in that list, and Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. .....I think however that none of the items in the Lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which, can fairly and reasonably be said to be comprehended in it. I deprecate any attempt to enumerate in advance all the matters which are to be included under any of the more general descriptions; it will be sufficient and much wiser to determine each case as and when it comes before this Court."

12. In *State of Bombay v F.N. Balasara*[3] the following observations occur :

> "It is well-settled that the validity of an Act is not affected if it incidentally trenches on matters outside the authorised field, and therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another Legislature."

13. In *Prafulla Kumar v. Bank of Commerce, Ltd., Khulna4,* it has been held that if an enactment according to its true nature, its pith and substance, clearly falls within one of the matters assigned to the provincial Legislature, it is valid notwithstanding its incidental encroachment of a Federal Subject. This decision of the Privy Council was followed by the Federal Court in *Miss Kishori Shetty v. The King*[5]*,*

14. As was pointed out by the Supreme Court when the validity of an Act is called in question, the first thing for the Court to do is to examine whether the Act is a law with respect to a topic assigned to the particular Legislature which enacted it. If it is, then the Court is next to consider whether, in the case of an Act passed by a Legislature of a State, its operation extends beyond the boundaries of the State, for under the provisions conferring legislative powers on it, such legislature can only make a law

[2]1941-1 Mad LJ FC (Sup) p. 65 at pp. 77 and 78 : (AIR 1941 FC 16 at P. 25)
[3]1951-2 Mad LJ 141 at p. 147 : (AIR 1951 Supreme Court 318 at p. 322)
[4] AIR 1947 PC 60
[5] AIR 1950 FC 69

for its territories or any part thereof and its laws cannot, in the absence of a territorial nexus, have any extra-territorial operation. If the impugned law satisfies both these tests, then finally the Court has to ascertain if there is anything in other part of the Constitution which places any fetter

on the legislative powers of such Legislature.

15. There is no generic difference between a tax and a fee but our Constitution has for legislative purposes, made a distinction between them. While there are various entries in the legislative lists as regards various forms of taxes, there is an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of the matters that is included in it, (Vide the Sirur Mutt Case; Commr. of *Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*[6],

16. Article 366 clause (28) gives an inclusive definition of 'taxation.' It reads :

> "Taxation - includes the imposition of any tax or impost, whether feneral or local or special, and "tax" shall be construed accordingly."

17. The Constitution has given an enumeration of the subjects into three categories : List 1 with reference to matters which fall exclusively within the competency of the Union; List 2 with regard to matters which fall exclusively within the competency of the State; and List 3 with regard to matters in respect of which the Union and the State have concurrent powers.

18. The power to enact a law with respect to a tax on a subject must, to be intra vires, be one relating in fact to that subject. Entries 82 to 92-A of List I enumerate various kinds of taxes which the Union is competent to legislate upon. Entry 97 of the said List vests a residuary power in the Union Legislature in respect of any other matter not enumerated in List II or List III including any tax not mentioned in cither of those Lists. Similarly entries 45 to 63 of List II give an enumeration of the various impositions which are within the legislative competence of the State. Entry 96 of List I, entry 66 of List IT and entry 47 of List III (Concurrent List) specifically provide for the imposition of fees in respect of any of the matters enumerated in the three lists. The absence of a similar provision in regard to the levy of taxes in respect of any of the matters enumerated in the Lists gives a strong indication that the levy of tax was not meant to be exercised as an ancillary or incidental power.

19. The subjects dealt with in Lists I and II are meant to be exclusive, and all residuary power with regard to taxation is vested in the Union under Entry 97. Where the power of taxation is intended to be conferred on the Union or State, the Lists specify the subjects with regard to which that power can be exercised. We find it difficult to extract the power of taxation as ancillary or incidental to the subjects specified in the Lists.

20. We are fortified in this conclusion by a recent decision of their Lordships of the Supreme Court in *Sundararamier and Co. v. State of Andhra Pradesh*[7], where it was observed :

[6]1954-1 Mad LJ 596
[7] AIR 1958 SC 468

> "The above analysis - and it is not exhaustive of the entries in the Lists - leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence."

21. It is next contended by the learned Advocate-General that regarded as a tax, it is within the legislative competences of the State by reason of Entry Nos. 52, 54 and 60 in List II. The entries read :

> "52. Taxes on the entry of goods into a local area for consumption, use or sale therein.
> X. X X X XX
> 54. Taxes on the sale or purchase of goods other than newspapers.
> X X X XI
> 60. Taxes on professions, trades, callings and employments."

22. Under Section 11 the market committee is empowered to levy fees on the notified commercial crop or crops brought and sold in the notified area at such rates as it may determine, and ordinarily they are to be paid by the purchaser of the commercial crop concerned. It is not, therefore, a tax on the entry of goods into a local area, within the meaning of Entry No. 52. It is not a tax on the sale or purchase of goods nor is it a tax on a profession, trade, calling or employment. It is impossible, therefore, to bring the impost under Section 11 of the Act within any of the subjects enumerated in Entry Nos. 52, 54 and 60. Another submission made by the learned Advocate-General is that the Act was passed in 1933, before the Government of India Act of 1935 was passed, at a time when there was no distinction between a tax and a fee and the only requirement was that where it was a tax the sanction of the Governor-General was necessary, and that requirement was satisfied. The impugned section was substituted for the original section by the Madras Commercial Crops Markets (Amendment) Act (XXII of 1945). The original Section ran :

> "The market committee snail, subject to such rules as may be made in this behalf, levy fees on the commercial crop or crops bought and sold in the notified area....."

It will be seen that the power to 'levy fees' on the notified commercial crop or crops was introduced in the section in 1945. Section 11 in its present form was placed on the statute book after the Government of India Act of 1935 came into force. The Government of India Act of 1935 made a distinction between a fee and a tax. We are therefore unable to accede to this contention of the learned Advocate-General.

23. The point for determination is whether the levy is a tax or a fee ? As already stated, the Division Bench of the Madras High Court, consisting of Rajammiar, C.J., and Venkatarama Ayyar, J., have held in 1954-1 Mad LJ 117 that the amounts collected under Section 11 are taxes notwithstanding that they are not brought into the consolidated fund of the State, but constituted a separate fund and the levy is only on a section of the public. It is, no doubt, true that the legality of the levy under Section 11 did not directly arise for determination in the proceedings before the learned Judges and may in that sense be considered to be obiter. Even as an obiter dictum their opinion is entitled to the highest respect.

24. The question has, however, assumed a new orientation consequent upon two recent decisions of the Supreme Court rendered on 16-3-1954, where this question as to whether a particular levy

is a fee or a tax has been elaborately considered. The first of the decisions is the Sirur Mutt Case 1954-1 Mad LJ 596 and the other is *Sri Jagannath Ramanuj Das v. State of Orissa*[8] In the first of these cases, their Lordships of the Supreme Court held that the contribution levied under Section 76 of the Madras Hindu Religious and Charitable Endowments Act, is a tax and not a fee and consequently it was beyond the power of the State Legislature to enact that provision. In the latter case their Lordships upheld the constitutionality of Section 49 of the Orissa Hindu Religious Endowments Act.

25. Now, it will be useful to set out Section 76 of the Madras Act, and Section 49 of the Orissa Act. Section 76 : "(1) In respect of the services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding five per centum of its income as may be prescribed.

> (2) Every religious institution, the annual income of which, for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under Sub-Section (1), is not less than one thousand rupees, shall pay to the Government annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and half per centum of its income as the Commissioner may determine.
> (3) The annual payments referred to in Sub-Sections (1) and (2) shall be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned.
> (4) The Government shall pay the salaries, allowances, pensions and other beneficial remuneration of the Commissioner, Deputy Commissioners, Asst. Commissioners and other officers and servants (other than executive officers of religious institutions) employed for the purposes of this Act and the other expenses incurred for such purposes including the expenses of Area Committees an3 the cost of auditing the accounts of religious institutions."

Section 49 : (1) Every Math or temple and every specific endowment attached to a math Or temple the annual income whereof exceeds Rs. 250 shall, for meeting the expenses of the Commissioner and the other officers and servants working under him pay annually a contribution at the following rates :

> Explanation - A math or temple or a specific endowment attached to a math or temple, the annual income whereof does not exceed Rs. 250/- shall not be liable to pay any contribution for meeting the expenses of the Commissioner :
> Provided that the Provincial Government, may, for special reasons, increase or decrease the rates of contribution payable under this Sub-Section as they deem fit.

[8]1954-1 Mad LJ 591

> (2) Religious endowments, the administration of which is governed by a scheme settled under Section 92 of the Code of Civil Procedure , 1908, shall notwithstanding anything to the contrary contained in such scheme, be liable to pay the contribution under this Section."

26. There was no provision in the Madras Act that the money raised by levy of contributions should be earmarked or specified for defraying expenses that the Government has to incur for performing the services. All the collections made under Section 76 went into the consolidated fund of the State and all the expenses had to be met not out of these collections but out of the general revenues. What is more, there was a total absence of any correlation of the expenses incurred by the Government and the amounts raised by contribution. In the Orissa Act, on the other hand, the contribution levied by Section 49 is demanded only for the purpose of meeting the expenses of the Commissioner and his office and the collections made are not merged in the general public revenue and are not appropriated in the manner laid down for appropriation of expenses for other public purposes. They are constituted into a fund which is specifically set apart for the rendering of services involved in carrying out the provisions of the Act. On the basis of this distinction it was held that the levy of contributions under Section 76 of the Madras Act was a tax while the levy under Section 49 of the Orissa Act was a fee. The former was held to be unconstitutional and the latter was upheld.

27. These two decisions of the Supreme Court read in juxtaposition bring out in bold relief the essential distinction between a tax and a fee. In the words of their Lordships:

> "There is no generic difference between a tax and a fee and both are different forms in which the taxing power of a State manifests itself. A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax.... Thus, a tax is a common burden and the only return which the tax-payer gets is the participation in the common benefits of the State.

Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payments are demanded. Thus in fees there is always an element of Quid Pro Quo which is absent in a tax. Two elements are thus essential in order that payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this, by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes. Judged by this test, the contribution that is levied by Section 49 of the Orissa Act will have to be regarded as a fee and not a tax. The payment is demanded only for the purpose of meeting the expenses of the Commissioner and his office which is the machinery set up for the administration of the affairs of the religious institution. The collections made are not merged in the general public revenue and are not appropriation of expenses for other public purposes. They go to constitute the fund which is contemplated by Section 50 of the Act and this fund, to which also the provincial Government contributes both by way of loan and grant, is specifically set apart for the rendering of services involved in carrying out the provisions of the Act. We think, therefore, that according to the principles which this Court has enunciated in the Madras appeal mentioned above, the contribution could legitimately be regarded as fees and hence it was within

the competence of the Provincial Legislature to enact this provision. The fact that the amount of levy is graded according to the capacity of the payers though it gives it the appearance of an income-tax, is not by any means a decisive test."

28. The question for consideration then is, whether Section 11 is ultra vires or unconstitutional. It is not contended that the Act is ultra vires in the sense that it is beyond the competence of the State Legislature. Having regard to the object of the Act, as stated in its preamble, and its broad scheme, which is to regulate the buying and selling of commercial crops in specified areas, the Act undoubtedly comes within the purview of the subjects enumerated in Entry No. 14 of List II, viz., "Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases;" Entry 28, which provides for weights and measures except establishment of standards, which is also one of the purposes for which provision is made in the Act, and entry 32 viz., "Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific religious and other societies and associations; co-operative societies." Every one of the provisions of the Act would be within the ambit of the legislative power on the assumption that the vires of the Act is to be judged with reference to the Constitution.

29. The concept of a welfare State is that the State is entitled to make a levy even against the will of the people sought to be benefited. Therefore, the fact that the person sought to be benefited by the Act, does not consider it to be so, is of no relevance.

30. There are various kinds of fees which it is not possible to enumerate and a scientific or mathematical formulae to distinguish a tax from a fee is not possible. The levy of a fee under Section 11 of the Act is correlated to the purposes mentioned in Section 13. The provision in Section 13 that "the market fund shall be expended for the following purposes only", emphasizes the fact that the fund cannot be expended for any other purpose.

31. Now, the purposes mentioned in Section 13 are :

> "(i) the acquisition of a site or sites for the market;
> (ii) the maintenance and improvement of the market;
> (iii) the construction and repair of buildings which are necessary for the purposes of such market and for the health, convenience and safety of the persons using it;
> (iv) the provision and maintenance of standard weights and measures;
> (v) the pay, pensions, leave allowances, gratuities, compassionate allowances and contributions towards leave allowances, pensions or provident fund of the officers and servants employed by the market committee;
> (vi) the expenses of and incidental to elections;
> (vii) the payment of interest on loans that may be raised for purposes of the market and the provision of a sinking fund in respect of such loans;
> (viii) the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the commercial crop or crops concerned;
> (ix) schemes for the extension or cultural improvement of the commercial crop or crops concerned within the notified area, including the grant, subject to the approval of the State Government, of financial aid to schemes for such extension or improvement within such

area, undertaking by other bodies or individuals;
(x) propaganda in favor of agricultural improvement and thrift;
(xi) such other purposes as may be authorized by the State Government in this behalf by general or special order."

32. All of them are related, and none of them is extraneous to the object and intendment of the Act. If it is postulated that the existence of a market committee is necessary for the purpose of regulating the buying and selling of commercial crops, it follows that that committees must have a habitation. Purposes (i) to (iii) mentioned In Section 13, which provide for the acquisition of a site or sites for the market, the maintenance and improvement of the market and the construction and repair of buildings which are necessary for the purposes of such market and for the health, convenience and safety of the persons using it, are all correlated to the main purpose.
The provision and maintenance of standard weights and measures is also in the interests of the buyer and the seller. The market committee must have a staff. Clause (v) provides for the payment of salaries of the officers and servants employed by the Committee. The committee is to be elected. The expenses of and incidental to the election are also comprised within the purposes of the Act. The payment of interest on loans that may be raised for purposes of the market if undoubtedly within the scope of the Act. The collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect, of the commercial crop or crops concerned, is conceived in the interests of both the seller and the buyer. The schemes for the extension or cultural improvement of the commercial crop or crops concerned are intended to improve the standard of the produce. This is in the interests of both the buyer and the seller. Propaganda in favor of agricultural improvement and thrift is an ancillary provision. Therefore, it is seen that all the purposes mentioned in Section 13, for which the funds of the market committee are to be expended, have an element of quid pro quo or service to the persons from whom the fee is collected fee in the sense that it is a sort of return to the persons from what it is levied and collected.

33. The complaint of the petitioners is that most of the purposes mentioned in Section 13 are beneficial to growers of commercial crops and that they do not benefit the buyer. It is not necessary that, every one of the purposes should be beneficial to both the seller and the buyer. It may benefit one or the other. The quid pro quo which the buyer receives from the market committee may not be in the same sense in which the expression is used in the Contract Act. The contention that the service rendered should be in the mathematical proportion to this amount paid, is not a correct concept. If it can be justified as a sort of return, which certainly it is, then it is valid. Again, the wishes of the person from whom the fee is collected, are not decisive of the question. The purposes enumerated in Section 13 are beneficial because the Legislature thinks them to be so, not because the concerned individual requires them.

34. Undoubtedly, the Government does some positive work for the benefit of persons and fees are levied as the return for the won done or services rendered. The money thus paid is set apart and appropriated specifically for the purpose of such work and is not merged in the public revenues for the benefit of the general public. There is no doubt that the market committee fund is earmarked for the particular purposes enumerated in Section 13; and even if the amount is to be collected by the Government, it would still be a fee. It is an a fortiori case where the fund is to belong to a corporate body distinct from the Government, to be expended for specified purposes.

35. It is then contended by the learned counsel appearing for the petitioners that some of the market committees have not been established yet and the fee sought to be collected is unrelated to any present service rendered or contemplated to be rendered by the market committees. In other words, the contention is that there is no direct, proximate or immediate service. The fees collected by the market committee are paid into a fund, known as the market committee fund. From out of the moneys in this fund the market committee has to purchase a site and the acquisition of a site is a pre-requisite for the construction of a building for the habitation of the market committee and its officers and servants and alone for facilitating the transactions of buying and selling. If so much is conceded, it follows that the fund is utilized for the purpose mentioned in Section 13. The contention that the benefit must be proximate, contemporaneous or immediate has no valid basis. Without the constitution of the fund, the purposes mentioned in Section 13 cannot be achieved.

36. It is then suggested that the committee can profitably raise loans from the Government in the first instance and redeem those loans at a later date from the moneys collected under the Act. This may be a useful suggestion to make but it has no relevancy in the matter of deciding the validity of the levy and collection of fees under Section 11 of the Act.

37. It is finally argued that if the levy under Section 11 is to be con trued as a fee, it is so excessive that it does not bear a reasonable relation to the services rendered or intended to be rendered. The proviso to Section 11 provides that until the market committee has determined the rates of such fees to be levied thereunder, it shall levy fees at the rates specified in the Schedule to the Act. The schedule gives the following rates :

> "I. Cotton kapas per candy of 784 lb. or part thereof. ... ... 3 annas.
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> Cotton lint - Loose or pressed in bales per candy of 784 lb. or part thereof. ... 5 annas.
> II. Groundnut pods (unshelled nuts)per bag of 80 lb. or part thereof. ... 2 pies.
> Groundnut kernels per bag of 177 lb. or part thereof. ... 6 pies.
> III. Tobacco.Suncured leaf per candy of 500 lb. or part thereof. ... 2 annas.
> Flue cured leaf per candy of 500 lb. or part thereof. ... 4 annas.
> Dust and primings per candy of 500 lb. or part thereof ... 1 anna.
> Jutty flue cured gulla scrap per candy of 500 lb. or part thereof. ... 1 anna.
> Suncured - Strips per candy of 500 lb. or part thereof. ... 3 annas.
> Fluecured - Strips per candy of 500 lb. or part thereof. ... 5 annas."

38. The rate of fees provided in this schedule can by no means be termed excessive or unreasonable. We are, therefore, unable to accede to this contention.

39. It is argued that there are a plethora of fees under various names provided under the Act, viz., licence fee under Section 5(1), the fee contemplated by Section 5(3), the registration fee provided under Section 18(2), weighment and licence fee and eventually the fee under Section 11. We are here concerned only with the question as to whether the fee levied under Section 11 is valid and it is no part of our present purpose to pronounce upon the wisdom of the Legislature. In fact, that other fees are collected does not render the levy of fee under Section 11 unconstitutional.

40. Before concluding, it is necessary to refer to another contention raised by the petitioners, which was not ultimately persisted in and that is that the levy amounts to a double taxation and is therefore prohibited under Article 265 of the Constitution. A similar contention was raised in Cantonment Board, *Poona v. Western India Theatres Ltd*[9]*.,* where it has been held that there is nothing an the Constitution which prevents double taxation being levied and that instances are not wanting in this country in which taxes are levied twice upon the same thing, once for the benefit of the State Government and in the second instance for the benefit of the Local Self-Government bodies, for example, the Dist. Local Board or the Municipality, Indeed Article 276 of the Constitution preserves that I right, in the following words :

> "(1) Notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings, or employments shall be invalid on the ground that it relates to a tax on income."

41. This disposes of all the common contentions of law raised in the Writ petitions and they will be posted for consideration on the merits.

42. The learned counsel for the petitioners in W.P. Nos. 42, 62, 63, 64, 65 and 718 of 1955 and 739 of 1956 state that they are not raising any further contentions. They are therefore dismissed with costs.
Order accordingly.

[9] AIR 1954 Bom 261