ANDHRA PRADESH HIGH COURT

Sri Vijaya Cotton Traders

Vs.

State (A.P.)

Writ Petn. No.193 of 1980

(Alladi Kuppuswami C.J. and Jeevan Reddi, J.)

13.03.1981

JUDGMENT

Alladi Kuppuswami, C.J.

1. The petitioners in these Writ Petitions are merchants carrying on business in various parts of Andhra Pradesh. The main prayer in these Writ Petitions is to declare the Notification dated 21-1-1978 published in the Andhra Pradesh Gazette dated 23-2-1978 as null and void and to direct the concerned Market Committees not to collect market fees at the rate of 1% in respect of all notified commodities under section 12 (1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, (referred to in this Judgment as the Act) read with Bye-law No. 24 (1) of the Bye-laws of the Market Committee.

2. Under Section 12 of the Act, the market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee, as may be specified in the Bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration. The bye-laws of all the market committees initially provided for the levy of market fees at 0-25 Ps. per cent. Subsequently it was increased to 0.50 ps. Under Section 34 of the Act, a market Committee may, in respect of the notified area for which it was constituted, with the previous sanction of the Director of Marketing, make bye-laws for the regulation of the business and the conditions of trading therein. Section 33 of the Act enables the Government to make rules for carrying out the purposes of the Act. By Rule 86-D of the rules framed under the Act, it was provided that there should be a State Agricultural Marketing Advisory Board for the purpose of tendering advice to the Government in all matters relating to the utilization of Central Market Fund for the general improvement of the markets in the State, to consider different problems of the market committees arising out of the enforcement of the Act and the rules and to tender necessary advice from time to time, to review the working of regulated markets in general and suggest measures to bring about uniformity in marketing practices in all the regulated markets.

3. The State Advisory Board at its meeting held on 27th and 28th of January, 1976 resolved to recommend the enhancement of the existing rate of market fees to 1% so as to enable the market committees to build up adequate finances to meet the increasing cost towards land acquisition and establishment of markets with all modern infrastructure facilities. The Director of Marketing accordingly addressed a letter No. Rc. I (2) 736/76 dated 16-2-1976 to all the Agricultural Market Committees in the Andhra Pradesh State, inviting their attention to the resolution of the Advisory Board and requesting them to place the proposals of the enhancement of the existing rates of market fees to Re. 1-00% ad valorem before the market committees and communicate the consent of the committee for the enhanced rate under Section 12 (1) of the Act of 1966 read with bye-law No. 24 (1) of the Market Committee Bye-laws. Accordingly each market committee passed a resolution accepting the recommendations of the Advisory Board and resolving to enhance the market fee to Re. 1-00%. They also requested the Director for necessary sanction and approval of the existing Bye-law 24 (1) of the Market Committee which had at that time provided for levying of a market fee of 0-50 p.%. Thereafter the impugned notification was issued by the Director of Marketing, approving the amendment to the existing Bye-law 24 (1) of the Market Committees, which is in the following terms :

AMENDMENT

For the existing Schedule under Byelaw 24 (1), the following shall be substituted, namely
SCHEDULE

Sl No.	Notified Commodities	Rate of Market Fee in Rupees per cent.
1.	All notified Commodities.	Re. 1%
2.	Livestock.	Re. 1%

4. In pursuance of this notification, the market committees began to levy market fee at the rate of 1%. This led to the filing of these Writ Petitions by the aggrieved merchants in various parts of the State of Andhra Pradesh questioning the validity of the Notification and praying for the issue of an appropriate Writ directing the market committees not to levy and collect market fees at 1%.

5. Before dealing with the several contentions raised by the Writ Petitioners in support of their Writ Petitions, it is desirable to set out the relevant provisions of the Act. Act No. 16 of 1966 was enacted to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. Under Section 3 of the Act, the Government is empowered to declare their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification. The area so notified is called a 'notified area', vide Section 2 (xi) of the Act. After considering the objections and suggestions, the Government is authorized to publish a final notification declaring the area to be a 'notified area'. The Government also, under Section 4, is empowered to constitute a Market Committee for every notified area which shall be a body corporate having perpetual succession and a common seal. The duty of enforcing the provisions of the Act and the Rules and Bye-laws is entrusted to the market committee under Section 4 (2) of the Act. Section 4 (3) empowers the market

committee to establish in the notified area such number of markets as the Government may, from time to time direct for the purchase of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government from time to time. Similarly, under Section 3 (b), the market committee may establish markets for the purchase and sale, solely of vegetables of fruits. Under Section 3 (c), the market committee shall declare, by notification, the limits of every market established by it, and this is known as the 'market area.' After the establishment of a market by the committee, the Government, under Section 4 (4), shall declare the market area and such other area adjoining, thereto as may be specified in the notification, to be a notified market area.

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

> Provided that the market committee may exempt from the provisions of this sub-section any person who carries on the business of purchasing or selling any notified agricultural produce livestock or products of livestock not exceeding such value as may be prescribed: Provided further that a person selling notified agricultural produce, livestock or products of livestock grown, reared or produced by him, shall be exempt from the provisions of this sub-section, but the Government may, for special reasons to be recorded in writing, withdraw such exemption in respect of any such person.
> xx xx xx
> (2) Nothing in sub-section (1) shall apply to a person purchasing notified agricultural produce, livestock or products of livestock for his own domestic consumption.
> (3) omitted as unnecessary. xx xx
> (4) xx xx
> (5) xx xx
> (6) Notwithstanding anything in subsection (1) no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area.

7. Section 12 is the most important section in connection with these writ petitions and may be set out in full :

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

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

Explanation II :- In the determination of the amount of fees payable under this Act, fractions of ten paise equal to or exceeding five paise shall be counted as ten paise and other fractions of ten paise shall be disregarded.

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

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

8. Section 14 provides for the fund called "Market Committee Fund" in which all monies received by the market committee shall be paid into a fund called the Market Committee Fund all expenditure incurred by the Committee under the Act, shall be defrayed out of the said fund. Section 14 also provides that the surplus if any may be invested in such manner as may be prescribed. Section 15 enumerates the purposes for which the Market Committee Fund may be expended.

9. Section 16 provides for a Central Market Fund for the whole of the State. Every market committee has to contribute ten per cent of its annual income to the Central Market Fund, which is vested in the Government. Section 16 (2) of the Act enumerates the purposes for which the fund may be administered and applied by the Director of Marketing.

10. In exercise of the powers conferred by Section 33 of the Act, rules have been framed in G.O. Ms. No. 1900 Food and Agriculture (Legislation) dated 17th October, 1969. Chapter IV of the rules deals with the powers and functions of the market committee, and Chaptar V deals with the regulation and trading. Chapter VI relates to the levy and collection of market fees, and Chapter VIII, with market committee works.

11. The main contention of the petitioners in these Writ Petitions is that the levy of market fee at the rate of Re. 1/- per cent, is invalid as the said fee does not satisfy the tests of a valid fee as laid down in the decisions of the Supreme Court and of this Court and other High Courts in India.

12. The distinction between a tax and a fee has been clearly set out in innumerable decisions of the Supreme Court, the earliest of which is the well known case of Shirur Mutt in *H.R.E. Madras v. L.T. Swamiar of Shirur Mutt*[1], Subsequent to this decision, the Supreme Court had occasion to consider the characteristics of a fee in a number of cases. It is sufficient however, to refer only to those decisions which deal with market fees. In *Arunachala Nadar v. State of Madras*[2], dealing with the Madras Commercial Crops Markets Act, the Supreme Court observed that the Act, Rules and the Bye-laws framed thereunder, have a long-term target of providing a network of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers

[1] AIR 1954 SC 282

[2] AIR 1959 SC 300

of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. . . . . The result of the implementation of the Act would be to

eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities. Enactments similar to the Madras Commercial Crops Markets Act, have been made in almost all the States in India including the State of Andhra Pradesh. The validity of these enactments and the market fee levied in pursuance of such enactments, has been the subject of attack in a number of cases. It is unnecessary to deal with all the decisions in regard to market fees in view of the elaborate and extensive discussion on the subject in the very recent decision of the Supreme Court in *Kewal Krishan v. State of Punjab*[3], After reviewing all the prior decisions, the Supreme Court summarized the 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 as follows:-

> (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) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.
> (3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.
> (4) That while conferring some special benefits on the 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 benefits 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 neighborhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

In the light of these principles it has to be seen whether the levy of market fee at Re. 1/- per cent by the various Market Committees, with which we are concerned, is valid and whether the above conditions laid down by the Supreme Court are satisfied, in the present

[3] AIR 1980 SC 1008

case.

13. Before dealing with the main contention, it would be convenient to deal with certain arguments addressed on behalf of the petitioners in regard to the amendment of the bye-law No. 24 (1) by each of the Market Committees.

14. It is submitted on behalf of the petitioners that under Section 34 of the Act, the Market Committee is empowered to make bye-laws with the previous sanction of the Director of Marketing. In this case, no such previous sanction was obtained and hence the amendment of Bye-law No. 24 (1) is contrary to Section 34 of the Act, and is therefore invalid. It has already been stated that the Director of Marketing addressed a letter on 16-2-1976 to all the Agricultural Market Committees in the State of Andhra Pradesh inviting their attention to the resolution of the State Advisory Board at its meeting held on 27th and 28th January, 1976 to recommend enhancement of the existing rate of market fee to Re. 1/- per cent and requesting the Market Committees to communicate their consent for enhancing the rate and amending the Bye-law No. 24 (1) accordingly. In pursuance of this letter, each Market Committee passed a resolution resolving to enhance the market fee to Re. 1/-% and requesting the Director to accord necessary sanction and approval for the amendment of the existing Bye-law No. 24 (1). The Director, thereupon issued a Notification approving the amendment. Having regard to the above facts it is argued that there was no previous sanction by the Director to the amendment of the bye-law as required by Section 34 of the Act. All that happened was that the Director merely wrote a letter to the Market Committees suggesting the enhancement of the market fee and the amendment of the bye-law; the Market Committees thereupon passed a resolution to that effect and thereafter the Director approved the amendment to the bye-law. It is therefore clear according to the petitioners that there was no previous sanction for the amendment of the bye-law of the Director as required by Section 34. We are unable to agree with this contention. We consider that the communication of the Director dated 16-2-1976 requesting the Committees to enhance the market fee to Re. 1/- per cent and communicate their consent to enhance the market fee and to amend the bye-law, should be regarded as the previous sanction of the Director for the amendment of the bye-law. The Director himself has suggested that the market fee should be enhanced to Re. 1/- per cent and the bye-law should also be amended to give effect to such increase. We see absolutely no reason why the letter containing that suggestion should not be regarded as a previous sanction for the amendment of the bye-law.

15. Sri V. Jagannadha Rao, who appeared for the petitioners in some of the Writ Petitions drew our attention to *Jethmal v. State of Rajasthan*[4], Under Section 64 (1) of Rajasthan Panchayat Act, it was necessary to obtain previous sanction of the Government before imposing a tax. In the case before the Rajasthan High Court, the Panchayat passed a resolution for the imposition of tax, invited objections, considered them and asked the Government for sanction. It was held that such a sanction could not be previous sanction within the meaning of Section 64 (1) of the Rajasthan Panchayat Act. It was observed that the Panchayat, as soon as it wishes to impose a tax, should communicate its wishes to the Government and must get the sanction of the Government to take steps for the imposition of the tax and follow the procedure provided for such imposition. It is only when the sanction of the Government is received that the body imposing the tax is authorized to

[4] AIR 1959 Raj 75

take steps for publication of the tax intended to be imposed and for inviting objections to the tax. Thereafter it has to consider the objections and finally decide whether it would impose the tax

and at what rate. When this is decided, the final proposal is again submitted to Government for sanction and on receipt of the second sanction, the tax can be imposed from such date as may be fixed under the law. As the previous sanction was not obtained as required by Section 64 (1), it was held that the imposition of the tax by the Panchayat should be struck down. We do not think that the above decision has any application to the facts of the present case. As pointed out, the Director wrote a letter on 16-2-1976 suggesting that the Market Committees should impose a fee of Re. 1/- per cent and amend the bye-law No. 24 (1) accordingly; and this can legitimately be considered as a previous sanction by the Director. The Act or the Rules do not prescribe any particular form in which sanction should be given and we are satisfied that the communication addressed by the Director on 16-2-1976, can be considered to be a sanction within the meaning of Section 34 of the Act.

16. Another decision relied upon by the petitioners in this connection is *Bhikam Chand v. State*[5], where that High Court had to consider the validity of bye-laws made under Section 37 of the Rajasthan Agricultural Produce Markets Act, which is similar to Act No. 34 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act. In that case, the Director of Agriculture sent the model bye-laws as approved by him and requested the Market Committees to frame bye-laws accordingly. The model bye-laws were then considered by various Market Committees and they purported to pass them. The learned Judges held that the several Marketing Committees have to first apply their mind to the model bye-laws and after making changes wherever they considered it necessary, to seek the previous sanction of the competent authority. Thereafter, on receipt of the sanction, it was for the Marketing Committees again to consider and pass the bye-laws in the light of the previous sanction that they might have received. As this was not done, it was held that the bye-laws were null and void. The decision in *Jethmal v. State of Rajasthan (AIR 1959 Rajasthan 75)* (supra), was followed. We do not agree with the observations of the Rajasthan High Court that it is necessary for the Market Committees to first consider the bye-laws suggested by the Director, then make amendments and again submit them to the Director for approval in every case.

17. There is no warrant for such a procedure in the Act or the Rules. Further the facts in the present case are distinguishable. We are not here concerned with the case of the Committees considering a whole set of bye-laws. All that was recommended to them was the increase of market fee from 0-50 ps. or half a rupee per cent to one rupee per cent. It was a simple matter which the Market Committees had to consider in the light of the recommendations of the State Advisory Board and the communication of the Director and if they agreed with such a course, their action in amending the bye-law cannot be said to be invalid on the ground that there was no previous sanction of the Director. A reference was also made to the decision in *Sreerammulu Chetty v. The State*[6], in which the Court had to consider Section 19 (4) of the Madras General Sales Tax Act which provided that certain rules are to be made only after previous publication. The decision has no application to the facts of the present case.

[5] AIR 1966 Raj 142, 150
[6] AIR 1958 And Pra 354 (FB)

18. Reliance was also placed on the decision of this Court in *Minerva Talkies v. State of Andhra Pradesh*[7], where a Bench of this Court had to consider Section 81 (1) (b) of the Andhra

Pradesh Municipalities Act which provided that "Every Council may, by resolution, and with the previous sanction of the Government also levy a tax on advertisements." In that case, the Government issued a G.O. in the following terms:

> "In the circumstances stated by the Director of Municipal Administration in his letter second read above (R.O.C. No. 79955/67 dated 20-10-1967) the Government hereby accord sanction as required under clause (b) of sub-section (1) of Section 81 of the Andhra Pradesh Municipalities Act, 1965, to all the Municipal Councils in the State for the levy of a tax on advertisements with effect from 1-4-1968 subject to the rules issued with the G.O. first read above (G.O. Ms. No. 470, M.A., dated 24th July, 1967) The Municipal Council shall however, pass a resolution for the purpose before the tax is levied."

Thereafter a resolution was passed by the Municipality. This resolution was struck down on the ground that there was no previous sanction for it. It was observed that admittedly at the time when the said G.O. was issued, there was no resolution passed by any Municipality. The Kakinada Municipality had not any occasion to consider the question as to whether tax on advertisements should be levied or not. It is only in pursuance of this G.O. that the Municipality published a notice in the papers inviting objections and after considering the objections, the impugned resolution was passed. This resolution was admittedly not forwarded to the Government for sanction. The contention of the advocate appearing for the Government, that a previous general sanction as was accorded in the G.O. was sufficient, was negatived. It was held that the approval or sanction must have been prior to the levy of the tax and the process suggested in section 81 could not be topsy-turvied by giving a direction. The distinction between direction and sanction must be clealy borne in mind. In our view, the facts in the present case are distinguishable. This is not a case where the Statute requires previous sanction of the Government for an imposition. Section 3A deals with making of bye-laws and provides that the Committee should do so after obtaining the previous sanction. Further in this case there was already a bye-law authorizing imposition of market fee at a particular rate and the suggestion of the Director of Marketing in this case was only that the market fees should be enhanced. The suggestion was accepted and the bye-law was amended and again it was sent to the Director of Marketing Committees who approved the amendment made to the existing bye-law by the Market Committee. In these circumstances it is legitimate to treat the communication of the Director as a previous sanction within the meaning of Section 34.

19. Another submission that was made in this connection was that as the market fee imposed has to be commensurate with the services rendered, and as the services rendered by each Market Committee may vary from Committee to Committee and from time to time, each Market Committee has to consider independently what the fee should be and then make a bye-law for imposing that levy. On the other hand in this case, all the Market Committees made a uniform levy of 1%, following the direction of the Director of Marketing. This would show that the Market Committees did not apply their minds at all

[7](1972) 1 Andh WR 216

and they merely proceeded on the footing that it was their duty to obey implicitly the directions of the Director of Marketing, and increased the fee to 1% from +%. It was argued that under the Act, the duty of levying market fee is entrusted to the Market Committee and that authority

cannot act on the dictation of a higher authority, thus abdicating its functions. We are not inclined to agree with this submission. From the mere fact that the Market Committees agreed with the suggestion made by the Director of Marketing, it does not follow that they did not apply their minds. We find that this suggestion was placed before the Committees and it was discussed and passed by the Committees. We have no reason to assume that they did not apply their minds independently and merely followed the direction of the Director of Marketing. On the other hand, in the case of the resolution passed by the Nizamabad Market Committee. for instance, we find that one member had opposed the suggested increase. This clearly shows that there was a discussion and different opinions were expressed but ultimately the suggestion was accepted. With reference to the contention that there was a uniform increase by the Market Committees irrespective of the different circumstances existing in each Market Committee and the difference in the services rendered by the Market Committees, it has to be noticed that this general increase became necessary in view of the increase in the price of land as well as in the cost of buildings. A large part of the expenses of all the Market Committees, is being spent for acquiring sites for the Markets, constructing buildings thereon, laying roads and providing equipment for weighment etc. As there has been a uniform increase in the price of land, cost of construction of buildings etc. throughout the State, it naturally became necessary for all the Market Committees to increase the rate of fees from +% to 1%. The need for the increase viz. the rise in prices of land buildings and commodities etc., was common to all the Market Committees and therefore there was a uniform increase. The criticism, that all the Market Committees uniformly increased the levy to 1% without any distinction being made between the needs of the Committees, is not justified.

20. We now turn to the main contention urged on behalf of the petitioners that the levy of market fees at 1% is excessive and out of all proportion to the services rendered by the Market Committees to the traders from whom the fee is collected and is therefore ultra vires. Sri Siddartha Shanker Ray who addressed the main arguments on this aspect, appeared for the Nizambad Market Committee. He submitted that there is nothing to show that the fee collected at the rate of 1% was necessary to meet requirements of the Market Committee to render services to traders and that no facts have been placed to satisfy the Court as to how the money was to be applied and what factors were taken into account for increasing the fee. On the other hand he submitted that even the statement of accounts filed by the Market Committee, showed that there was a huge surplus and that the annual expenditure was much less than the income derived by levying the fee at 1%. He also stated that there is no clear enumeration about the special services to be rendered, that there was no proper budget giving the estimated income and expenditure and that there were no concrete plans or works to be undertaken in the near future. He drew our attention to the statement showing the details of income and expenditure for the three years 1977-78 1978-79 and 1979-80. This statement shows that there was a closing balance of about 39 lakhs of rupees at the end of the year 1977-78, about 51 lakhs of rupees at the end of 1978-79 and about 66 lakhs of rupees at the end of 1979-80. He therefore submitted that this showed that the income derived from the fees at 1% was out of all proportion to the expenditure incurred by the Market Committee.

21. In the counter affidavit filed on behalf of the Market Committee, it is stated that the Committee has taken up constructional works with a spillover for 1978-79, estimated at over 16 lakhs of rupees and new works have to be completed worth about 21 lakhs of rupees. The expenditure for development of eastern side yard portion of Shradhanand Gunj, Nizamabad, came to nearly 24 lakhs of rupees and of the Western Side yard at 134 lakhs of rupees. It is stated that for the year 1977-78, the Committee got a total income of about 18 lakhs of rupees by way

of market fees and license fees and the expenditure was nearly 16 lakhs of rupees. It is further stated that the sum of rupees 39 lakhs as balance at the end of the year 1977-78, is not sufficient to meet the cost of land acquisition. In general it is stated that the Committee is utilizing the amount for developmental works and modern facilities are provided. It is true that the Committee was having a large balance at the end of the years 1977-78, 1978-79 and 1979-80 but it must not be forgotten that the establishment and development of a market is a long-drawn process which involves acquisition of a site and construction of buildings. In cases of land acquisition, it may take time for awards being passed and compensation being paid. There is also the prospect of appeals being filed by the owners and compensation being increased by Civil Court on reference and by the High Court on appeal. It is also well-known that the cost of land as well as construction is increasing at a tremendous rate. It is therefore in the interest of the Market Committee to have sufficient balance to meet these expenses from time to time. It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income may exceed the expenditure and in other years when works begin to progress rapidly, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration and decide whether the fee is commensurate with the services rendered or whether it is out of all proportion to the services rendered. An overall picture has to be taken. In this connection, it has to be noticed, as pointed out in the counter affidavit that the market fee levied in the State is much less than what is levied in other States. Even in the latest decision of the Supreme Court in *Kewal Krishan v. State of Punjab*[8], the levy or fees at 2% was held to be justified and it was only when the fee was sought to be increased to 3%, it was struck down. We are not therefore satisfied, that the fees derived at the rate of 1% is not commensurate with the services rendered.

22. Sri S.S. Ray, strongly relied on the decision of the Supreme Court in *State of Maharashtra v. Salvation Army*[9]. The Salvation Army was called upon to pay a contribution of 2% of the sums which it received from various sources under Section 58 of the Bombay Public Trusts Act which prescribed that every public trust shall pay to the Public Trusts' Administration Fund annually such contribution as may be prescribed. It was found that the contribution at the rate of 2% on the gross income of the trusts assumed the character of tax as that merely augmented the income of the Charity Organization. On facts it was found that there was very large surplus in the account of the Public Trusts Administration Fund. It was therefore held that if the Organization is allowed to go on increasing its surplus year after year out of the amount of fee collected, it would demonstrate that the fee levied was unjustifiably disproportionate to the service rendered. But the Supreme Court itself pointed out in the same decision, it is not

[8] AIR 1980 SC 1008
[9] AIR 1975 SC 846

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. No hard and fast rule applicable in all contingencies can be formulated. The Court will have to look into the nature of the organization, the potentiality for its growth, the multiplication in its work consequent on its expansion for rendering the services visualized by the Act and the necessity for capital expenditure in the near future. It therefore follows that each case has to be decided according to the particular facts and circumstances of that case. As we have observed, in this case, the Market Committees are still in their infant stages and they have considerable developmental activities ahead of them and it is

necessary for them to acquire sites, build markets and provide other amenities. It cannot be said that in these circumstances that the mere existence of surplus for a few years, would necessitate a reduction in the market fee and at any rate the increase in the rate of market fees is uncalled for. While we have considered the facts relating to the Nizamabad Market Committee, we have also considered the cases of other Market Committees which are the subject matter of other Writ Petitions and the above observations equally apply to those Market Committees.

23. Another argument that was advanced was that in many of these markets, services are rendered not only in the market but outside the market areas. It is true, as has been held in *Kewal Krishan v. State of Punjab*[10], that the benefit rendered by the Market Committee, has to be correlated to the transactions in the market area but that does not mean that all the services must be performed within the market area. They may be performed outside but still they may be related to transactions within the area.

24. In *I.R. Sons v. State*[11], to which one of us viz Jeevan Reddy J. was a party, it was held that the services to be rendered and the facilities provided by the Market Committee extend throughout the notified market area without being confined to the market area and therefore Section 12 cannot be said to be *ultra vires* on the ground that it authorises levy of fees on transactions taking place outside the markets established by the Market Committee though within the notified market area. It may be that in view of the decision of the Supreme Court in *Kewal Krishan v. State of Punjab*[12], some of the observations in the Judgement in *I.R. Sons v. State*[13], may be considered to be too wide; but we do not find anything in the Judgment of the Supreme Court which is contrary to the view expressed by the division bench that the services to be rendered and the facilities to be provided by the Market Committee extend throughout the notified market area without being confined to the Market area.

25. In some of the Writ Petitions it was argued that the market area and the notified market area are too widely demarcated. It was pointed out by the learned counsel who appeared for the Market Committees in West Godavari and Krishna that in Tanuku, the entire Gram Panchayat Tanuku has been notified as a market area and an area within 8 K. Ms. surrounding the Taluk Office was notified as the market area. We are unable to agree with this contention that such a demarcation is contrary to law. Under Section 4 (3) (c) of the Act, after constituting markets, the Market Committee is empowered to declare the limits of every market established by it, which is referred to as the market area. This

[10] AIR 1980 SC 1008
[11] AIR 1976 And Prad 193
[12] AIR 1980 SC 1008
[13] AIR 1976 And Prad 193

section does not provide any limitation in regard to the limits of the market. Similarly under Section 4 (4), the Government has to declare by notification the market area and such other area adjoining thereto as may be specified in the notification, as a notified market area. The only limitation as far as this is concerned is that the other area must be one adjoining the market area and as long as it is adjourning the market area, there is no further limitation prescribed.

26. Mr. M. Jagannadha Rao, learned counsel for the petitioners in W. P. Nos. 5312 to 5326 of 1980 submitted that in the case of Alamuru, the notified market area is described to be 16 K. Ms. surrounding the Panchayat. He submitted that an area within 16 K. Ms. distance, cannot be considered to be an area adjoining the market. He drew our attention to Ecclesiastical Commissioner for England's conveyance and The Law of Property Act, 1925, In Re (1936) 1 Ch

D 430, in which the distinction between the expressions 'adjacent' and 'adjoining' is pointed out. It was observed that the word 'adjoining' means 'which lies near so as to touch in some part the land which it is said to adjoin. Of necessity it connotes contiguity.' In this case, there is nothing to show that the land within 16 K. Ms. is not contiguous with the market. We are not satisfied that any of the notifications either under Section 4 (3) (c) declaring the market area or under Section 4 (4) of the Act declaring the notified market area, are invalid for any of the grounds urged by the petitioners in the different writ petitions.

27. Sri Babulu Reddy who appeared in W. P. 3295/77 submitted that the petitioners were dealers in cotton seeds, that they purchased cotton seeds in large quantities within the notified market area of Adoni and that by Circular dated 19-11-1974, the Market Committee directed the petitioner to pay market fee on such purchases. It was argued that cotton seeds are product of Kapas and as Kapas is already subject to the levy of market fee, the levy of fee on seeds would constitute a second levy on an agricultural produce which is not permissible. It was also argued that cotton seed is not an agricultural produce and that any notification specifying cotton seed as an agricultural produce, is *ultra vires*
the rulemaking power and no market fee on cotton seed could be levied or collected.

28. We are unable to agree with the contention that cotton seed is not an agricultural produce. Under Section 2 (1) of the Act. 'agricultural produce' is defined as meaning, 'anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purpose of the Act." Cotton seed is in our view a thing produced from land in the course of horticulture. It is only removed from kapas (cotton) by a particular process; but both cotton as well as seed are things produced from land in the course of horticulture.

29. Similarly in W. P. No. 7781 of 1979 it was contended that rice is not an agricultural produce. Rice is found in and is a part of the paddy produced in the course of agriculture and hence it is a thing produced from land in the course of agriculture within the meaning of Section 2 (i). The same view was expressed by a Division Bench of this Court in *Chenchaiah Chetty v. Govt. of Andhra Pradesh*[14], where it was held that rice constitutes 'agricultural produce' within the meaning of Section 2 (i) of the Act and the demand of market fee in respect of transactions in rice is valid. We fully agree with the reasoning

[14] ILR (1975) Andh Pra 462

and conclusion of the learned Judges in that decision. For the same reason also we hold that cotton seeds are 'agricultural produce' within the meaning of Section 2 (i) of the Act. With reference to the argument that in the sale of paddy, it is subject to market fee and it would be inequitable if transaction in rice is subject to fee, it has been brought to our notice that there is a notification that if paddy has already been subject to levy of market fee, then no market fee should be levied in respect of sale or purchase of rice, vide Circular dated 27-4-1978.

30. Sri C. Poornaiah who appeared for the petitioner in W. P. No. 690 of 1978 contended that the expression 'either processed or unprocessed' occurring in Section 2 (i) of the Act will only qualify the words forest produce or other produce of like nature. He submitted that 'produce of like nature' referred to therein, would only be produce ejusdem generis with forest produce and it is only forest produce and produce of like nature which processed or unprocessed would be

'agricultural produce'. We do not agree with this submission. The expression' 'produce of like nature', in our view, qualifies not only forest produce but also the previous words viz., 'anything produced from land in the course of agriculture or horticulture' and such things would be agricultural produce, whether they are processed or whether they are unprocessed.

31. The advocates for some of the petitioners contended that removing cotton seed from cotton or rice from paddy, cannot be said to be 'processing' within the meaning of the section. It is unnecessary to consider this contention as we are of the view, agreeing with the decision of this Court in *Chenchaiah Chetty v. Govt. of Andhra Pradesh*[15], that both cotton seed and rice would come within the expression, 'anything produced from land in the course of agriculture or horticulture' and it is not necessary for the respondents to rely on the subsequent part of the definition.

32. Lastly it was argued on behalf of the petitioners that Section 7 (6) of the Act infringes Article 19 (1) (g) of the Constitution. It is provided that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area. In other words, every person has to sell agricultural produce, livestock etc. in a notified market area only within the market. The area occupied by the market is a very insignificant one, and if all persons in the whole notified market area which would extend to several kilometres, are compelled to go to the market for transacting their business every time, it would be impossible for them to carry on business and hence Section 7 (6) is an unreasonable restriction on their right to carry on business. It was also submitted that even in a case where a dealer within the notified market area sells goods to an ordinary citizen for domestic consumption, he would still be compelled to come to the market to effect sale.

33. In *Arunachala Nadar v. State of Madras*[16], when it was pointed out to the Supreme Court that the grower was obliged to carry the goods to a centralised place if he has to dispose of his goods, the Supreme Court observed that the growers may have some difficulty in this regard but that is counterbalanced by the marketing facilities provided to them under the Act. It was observed that a provision limiting the area within which goods are to be sold or purchased is necessary for preventing business being diverted to other

[15] ILR (1975) Andh Pra 462

[16] AIR 1959 SC 300

places and the object of the scheme being defeated. It was also argued that small traders would be compelled to resort to distant markets, that some of them will be forced to give up their business and others would have to incur unnecessary expenditure which they could not afford. The Supreme Court pointed out that if small traders are exempted it would create loopholes in the scheme, through which the big trader may operate and thereby the object itself would be defeated and the Act is an integrated one. Similarly in *Muhammadbhai v. State of Gujarat*[17], the Supreme Court observed that transactions between traders and traders have to be controlled if the control in the interest of agricultural producers and the general public has to be effective. Taking the entire scheme of the Act, we are of the view that Section 7 (6) of the Act cannot be said to be an unreasonable restriction on the right to carry on business. We are however inclined to agree with the contention that Section 7 (6) would not apply to the case of transactions between dealers and consumers for domestic consumption. The learned Advocate-General fairly conceded that Section 7 (6) must be read as not applying to such sales. The Act is intended to regulate purchases and sales of agricultural produce and as pointed out by the Supreme Court in

Arunachala Nadar v. State of Madras[18], the main purpose of the Act is to provide facilities for correct weighment, storage and equal powers of bargaining between growers and traders. If Section 7 (6) is made applicable even to transactions between dealers and ordinary consumers for domestic consumption, it would lead to an impossible situation whereby every consumer will be forced to travel several miles to the market for buying the daily needs. We are therefore of the view, apart from the concession made by the learned Advocate-General that Section 7 (6) of the Act will not apply to purchases or sales by dealers in favour of consumers for domestic consumption.

34. On behalf of the petitioners in some of the Writ petitions, it was submitted that market fee is being levied at the check posts when the goods are being brought into the notified market area and such a levy is illegal. The learned Advocate-General submitted that no market fee is being levied at the check posts and no person is compelled to do so but as a matter of convenience, for the dealer, he is permitted to pay the market fee at the check at post. However, if, as the petitioners allege, market fee is being collected at the check-posts, we are of the view that such levy is illegal. Under Section 12 of the Act, market fee is levied on a notified agricultural produce at a particular rate for every hundered rupees of the aggregate amount for which the produce is purchased or sold. Unless therefore there is a transaction of sale or purchase, there cannot be a levy of market fee. Here again, the learned Advocate-General conceded that if market fee is collected when goods are coming in and even before sale or purchase is effected, no market fee can be collected. Whatever may have been the doubts regarding the scope and extent of the application of the market fees derived by the Market Committees earlier, detailed guidelines have been enunciated by the Supreme Court in *Kewal Krishan v. State of Punjab*[19], particularly in paragraph 23 of its Judgement where their Lordships have enumerated the principles for satisfying the tests for a valid levy of market fees. The Market Committees are directed to bear these principles in mind while utilizing the market fees in developing markets. We may also emphasize just as the Supreme Court did in the above case, the need for maintaining proper budget estimates, balance-sheets showing the balance of money in hand, in deposit, and the estimated income and expenditure etc., so that it will be possible to decide as to what extent the levying of

[17] AIR 1962 SC 1517 (1527)
[18] AIR 1959 SC 300
[19] AIR 1980 SC 1008

market fee can be justified, taking an overall picture.

35. As we have negatived all the contentions of the Writ Petitioners, the Writ Petitions are dismissed with costs; subject however to the observations in connection with Section 7 (6) of the Act with regard to the transactions between a dealer and a consumer for domestic consumption, and with regard to the legality of the levy at check posts before there is any transaction of sale or purchase.

36. Advocate's fee Rs. 100/- in each of the writ petitions.
Petitions dismissed.