I.T.C. Ltd. Etc vs State Of Karnataka & Ors on 3 May, 1985

Equivalent citations: 1985 SCR, SUPL. (1) 145 1985 SCALE (2)515

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A. Varadarajan, Sabyasachi Mukharji

PETITIONER:
I.T.C. LTD. ETC.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT03/05/1985

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1985 SCR Supl. (1) 145 1985 SCALE (2)515

ACT:
Constitution of India, Seventh Schedule. Entry 52 of List I, and Entries 22 and 66 of List II-"Industries"-Tobacco Board Act 1975 (Central Act) passed for the development of tobacco industry-State Act subsequently included tobacco in its Schedule and levied market fee on tobacco or its products-Whether the provisions of the State Act repugnant to the Central Act on this point.

Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act 1966, Section 65 Enhancement and collection of market fee-Whether it should have direct nexus between services randered and the amount collected-Levy of market fee found to be bad in law-Fee collected-Whether it should be refunded-Whether the State legislature competent to validate levy declared by Court as bad in law.

HEADNOTE:
On 19th May, 1975, the State Government amended s. 65 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 by the Karnataka Agricultural Produce Marketing

(Regulation) (Amendment) Act 24 of 1975. Sub-Section (1) of S. 65 as it stood after the amendment provided that the Market Committee shall levy and collect market fee 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. Sub Section (2) laid down that the market Committee shall levy and collect market fee 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. Sub-Section (3) stated that every market committee shall credit to the Karnataka Motor Vehicles Taxation Act, 1957, the market fee collected under sub-section (1) for being spent for the purpose of construction, repair, improvement and maintenance of rural roads in the State. On 2th September, 1978, the High Court struck down the amended section 65(1) and (3) of the Act and upheld the levy on buyers at the rate of one rupee per one hundred rupees under s. 65(2) of the Act in Rajasekhariah's case (ILR (1978) Karnataka 1939). Thereafter, the Karnataka Ordinance 2 of 1979 was promulgated amending ss. 63 and 65 of the Act. Section 63 was amended with retrospective effect from 19.5.1975 by substituting in clause (ii) of sub-section (1) of S. 63 the words "transport and marketing" for the word "marketing". The amended S. 65(a) validated market fee levied and collected under sub-section (1) of S. 65 for the period 19.5.1975 to 28.9.1978; (b) omitted the amended sub-section (1) of S. 65with effect from 28.9.1978; (c) enhanced the maximum permissible limit of market fee levied and
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and collected from buyers of specified agricultural produce under sub-section (2) of S. 65 from one per cent to two per cent; and (d) omitted sub-section (3) of S. 65 as if it never existed in the Statute. The Ordinance was later replaced by the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act 17 of 1980 which also numerated for the first time cardamom and tobacco as an agricultural produce for the purpose of the Act. The Tobacco Board Act 1975 (Act No. 4 of 1975) which had been passed for the development of the tobacco industry under the control of the Union was already in existence before tobacco was included in the Schedule to the Act, Section 42 of that Amendment Act validated the levy and collection of market fee during the period 19.5.1975 to 28.9.1978. Pursuant to the amendment made to sub-section 2 of S. 65 of the Act, all the Market Committees in the State of Karnataka except the Mangalore Market Committee amended the bye-law by enhancing the levy under S. 65(2) of the Act from one per cent to two per cent on the directions of the Chief Marketing Officer and without following the procedure laid down in S. 148 of the Act.

The appellants/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 market fee

from sellers during the period 19.5.1975 to 28.9.1978. The High Court directed the Chief Marketing Officer to furnish in respect of each market committee a comprehensive statement in a tabulated form setting out certain factors which may be relevant for considering the question of enhancement of market fee. During the hearing of the writ petitions, the respondent State promulgated Karnataka Ordinance No. 22 of 1981 dispensing with the requirement of the previous publication contemplated in S. 148 of the Act in relation to making of bye-laws and amendments thereof with retrospective effect.

The High Court held (1) that s. 65(1) as substituted by the Act 17 of 1980 and S. 42 of the Amendment Act were unconstitutional and liable to be struck down on the grounds (1) that before S. 65(3) was struck down, the levy and collection of market fee under S. 65(1), as it then stood were for the benefit of the Karnataka Roads and Bridges Fund constituted under the Karnataka Motor Vehicles Taxation Act, 1957, and that event which had happened, namely, crediting of the market fee to that Fund cannot be reversed by the subsequent amendment of S. 65(1) and introduction of S. 42 in the Amendment Act 17 of 1980; (ii) that as per the decision of the Supreme Court in Kewal Krishan Puri's case 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 fee collected did not become the property of the market committees or shed their character as public roads; (2) that sub-section 65(2) does not confer uncanalised and excessive power on market committees in the matter of fixing the rate of market fee and that there are adequate statutory guidelines and safeguards; (3) that on the materials placed, the levy ought nor to fail for want of quid pro quo. However, having regard to the infirmities noticed in the estimates the High Court is unable to say with any confidence that the enhancement of fee was
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totally justified; (4) that S. 3 of the amending Ordinance 22 of 1981 validated the bye-law, notwithstanding the fact that the affected interests were not heard because that right has been taken away by s.3 and 5 of the amending Ordinance 22 of 1981. However the Chief Marketing Officer's direction can be regarded as his previous sanction for amending the bye-laws; (5) the question whether S. 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 in the judgment; (6) that the provisions of the Act in so far as marketing of cardamom is concerned, are repugnant to the provisions of the Cardamom Act (Central Act 42 of 1965) but,

so far as the provisions of the Tobacco Board Act, 1975 (Central Act) are concerned it makes provisions only in relation to Virginia tobacco and not all varities of tobacco and the Act is not repugnant to the provisions of the Tobacco Board Act, and all that is necessary for the Market Committee is to obtain auctioneer's licence under the provisions of the Tobacco Board Act.

In the appeals and writ petitions to this Court the appellants and petitioners/traders contended that the enhancement of the market fee from one per cent to two per cent of the price of the specified agricultural produce is invalid on two grounds : (1) that the item of expenses envisaged for the rural roads has gone with the striking down of s.65(1) and (3) of the Act and the omission of clause (3) of s.65 from the Act by the Amendment Act 17 of 1980. However, 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 (ii) that reduction of the enhanced levy from two per cent to one per cent subsequently by the State Government shows that there was no justification for the enhancement of the market fee from one per cent to two per cent; (2) that the amendment of the bye-laws made for enhancement of the market fee from one per cent to two per cent was not in accordance with the procedure laid down by s. 148 of the Act and ss. 3, 5(a) and 5(b) of Ordinance 22 of 1981 promulgated during the pendency of the writ petitions in the High Court would not cure the defect; (3) that S.65(1) as substituted by Act 17 of 1980, read with s.42 of the Amending Act, seeking to validate the collection of market fee on "sellers" made under the old s.65(1) of the Act is constitutionally invalid, and (4) the High Court erred in holding that the Tobacco Board Act, 1975 covers only Virginia tobacco and is not repugnant to the provisions of ss.8(2)(a), 8(3) and 12 of the Tobacco Board Act and r.35 of the Rules made under that Act.

On behalf of the respondents it was contended that quid pro quo was established in respect of 73 out of 93 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 in view of Kewal Krishan Puri's case. (2) that there is no repugnancy between the Act and the Tobacco Board Act, 1975 , (3) that after s.65(3) has been omitted from the Act there was no question of striking down S.65(1) as substituted by the Amendment Act 17 of 1980 and since S.42 of the Amendment Act has validated the levy, there is no question of refund of the market fee collected under S.65(1).

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Dismissing all the civil appeals, special leave petitions and the writ petitions except C.A. No. 629 of 1983.

(Per majority; Fazal Ali and Vardarajan, JJ.-Sabyasachi

Mukharji, J. dissenting)
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HELD : 1 (i) A close and careful analysis of Articles 245 and 246 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 is the logical result and the necessary concomitant of clause (4) of Art. 246. [168 E]

(1)(ii) The cardinal principles justifying the competency of the respective legislatures with respect to the entries concerned are : (a) Entries in each of the Lists 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; (b) 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; (c) the consideration of encroachment or entrenchment of one List in another and the extent thereof is also well established. If 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; (d) the nature and character of the scope of the entries having regard to the touch stone of the provisions of Arts. 245 and 246; and (e) 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, 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. [168 F-H; 169 B-C; F-H]

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 where 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. There may also be cases where despite an entry being in List II, the Parliament may under the provisions of Art. 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 Art. 246(3). [170 B-D]

S.P. Mittal v. Union of India & Ors. [1985] 1 SCC 51; Delhi Cloth & General Mills Co. Ltd. v. Union of India & Ors. [1983] 4 SCC 167; Subrahmanyan Chettiar v. Muttuswami

Goundan AIR [1941] F.C. 47: Zaverbhai Amaidas v. State of Bombay [1955] 1 SCR 799; Deep Chand v. State of U.P.
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(Proprietary) Ltd. v. State of West Bengal & Ors. [1962] Supp. 3 SCR 1; State of Orissa v. M.A. Tulloch & Co. [1964] 4 SCR 461; Sudhir Chandra Nawn v. Wealth Tax Officer, Calcutta & Ors. [1969] 1 SCR 108; Baijnath Kedia v. State of Bihar & Ors. [1970] 2 SCR 100, relied upon.

(2) Once the Centre takes over an industry under Entry 52 of List 1 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 of the powers of the State legislature. [174 H] (3)(i) In the instant case, by virtue of Notification No. 374(3) dated 31.5.80 the Central Government made applicable ss. 10 and 11 of the 1975 Act to the State of Maharashtra, West Bengal, Gujarat, Tamil Nadu and Uttar Pradesh. By making Rule 35 in the Tobacco Board Rules, 1976 (enacted under s. 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. Admittedly 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. By a letter dated 15.9.83 the Tobacco Board rejected the application made by the Karnataka State to allow it to participate in auctioning the tobacco products. 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. [165 F-H; 167 C-D] (3)(ii) 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 Art. 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 are fully occupied by the Central Act of 1975. [175 C] This being the position, this Court strikes down that part of the Karnataka Act which takes in itself the power to levy market fee on tobaco or its products. Even if the products may be sold in the markets in Karnataka or near about the same place situated in that States, the power to levy fee will not belong to that State; it will remain with the Centre which would regulate the sale and purchase of tobacco. [175 F] Per Mukharji, J. (dissenting) :

> 1. The provisions of the Karnataka Marketing Act and Tobacco Board Act and the Rules are not inconsistent. 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. On the construction of the Central Act read with the rules it is clear that the Central Act and the declaration made by section 2 of the Act cover all kinds of tobac-

cos. 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. [278 B; 271 E; 272 C; 271 C-D] Navinchandra Mafatlal v. C I.T. Bombay, [1955] 1 SCR 829 at page 836-37, Baijnath v. Bihar State [1970] 2 S.C.R. 100 at 113, Kannan Devan Hills Co. v. Kerala, [1973] 1 SCR 356 at 369, Ganga Sugar Co. Ltd. v. State of U.P, [1980] 1 SCR 769 at 781, referred to.

2. (i) 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 (emphasis supplied). 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 the matters falling in List I. The dominant position of the Central Legislature with regard to matters in List I and List III is established. [272 F-G]

2. (ii) The principles of repugnancy in Indian Constitution are well-settled. These are as follows :-

(a) 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. [276 B]

(b) 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; [276 B]

(c) 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 ancillary provisions which might touch on any entry of List I incidentally; [276 C]

(d) A State law which, in its pith and substance, is within any entry in List II would be valid even though it might incidentally touch upon a subject falling within List I; [276 D]

(e) 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;

and [276 E-F]

(f) 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 would arise only if both the laws cannot exist together. Repugnancy does not arise simply because Parliament and the States pass law on the same subject. There can not 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. [276 G-H; 277 A] Subramanyam v. Muthuswamy, [1940] 45 C.W.N. (FC) 1=AIR 1941 FC 47 at 58, Sudhir Chand v. Wealth Tax Officer, Calcutta, [1969] 1 SCR 108 at 113 Ch. rika Ramji & Others Etc. v. State of Uttar Pradesh & Others, [1956] SCR 393, State of Orissa v. M.A. Tulloch Co. [1964] 4 SCR 461 at 477, M/s. Rochst Pharmaceuticals Ltd. & Others Etc. v. State of Bihar and Others etc, Ramesh Chandra Etc. v. State of U.P. Etc., [1983] 4 SCC 45 and The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal and Others, [1962] 3 Supp. SCR 1 referred to.

3. While it is true that in the spheres very carefully delineated, the Parliament has supremacy over State Legislatures, 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 power 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. [280 B-C]

4. (i) In the instant 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-nor is the Central Act a law relating to any 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. Essentially the Central Act was for the development of the industry of tobacco and, incidentally, certain provisions for better sale of tobacco through certain auction platforms had been made. There is nothing in the Act or in the Rules which indicate that it is inconsistent with or cannot be operated along with the marketing regulations. [277 F-G; 279 B-C]

4. (ii) It is fully manifest that both Act 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 legislations. 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 est- wholly unnecessary and undesirable. The Marketing Act is essentially an Act to regulate the marketing of agricultural produce; control of coffee industry would not be defeated if the marketing of coffee is done within the provisions of the Marketing Act. It must therefore be held that the State Act should prevail. One should avoid corroding the State's ambit of powers of legislations which will ultimately lead to erosion of India being a Union of States. [279 F-G; 280 D-E] The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal and Others, [1962] 3 Supp. SCR 1, followed.

Per majority, Fazal Ali and Mukharji, JJ.-Varadarajan, J. dissenting.

Per Fazal Ali, J.

1. (i) 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 medulated 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. 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's 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. [161 H; 162 B]

(ii) The one cardinal principle which flows from Kewal Krishan Puri's case is that any fee or money realised should not be diverted to any other purpose except for the benefit of the purchaser/seller. What would be the nature of the service, 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 in spent on the extention 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 purchasers at the auction of goods or articles in the market. [161 H; 159 E] 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. [161 B-C] Kewal Krishan Puri & Anr. v. State of Punjab & Ors. [1979] 3 SCR 1217, Southern Pharmaceuticals & Chemicals, Trichur & Ors. etc. v. State of Kerala & Ors. etc. [1982] 1 SCR 519 and Sreenivasa General Traders & Ors. v. State of Andhra Pradesh, [1983] 3 SCC 353 referred to. Per Mukharji, J.

1. 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 rightly left upon by the High Court with certain

observations and directions contained in its judgment. 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 be reiterated again. The principle of audi alteram partem has application only to judicial, quasi- judicial and administrative functions and not to any legislative functions. [270 A-D] The Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur, [1980] 2 SCR 1111 at pages 1118 to 1121, Avinder Singh etc. v. State of Punjab & Anr. Etc., [1979] 1 SCR 845, referred to.

2. (i) It is well-settled that though there 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. Any incidental benefit to those other than the payers of the fee is not decisive of the fact whether it is a `tax' or a `fee'. It is necessary to find out the primary object and essential purpose of the imposition (emphasis supplied). 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 common sense point of view, taking an integrated view. The proper principles are : (1) that 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 services 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-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) that a reasonable projection for the future years of practical scheme is permissible; (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; and (6) the primary object and the essential purpose of the imposition must be looked into. [256 B-E; 260 F-H] Kewal Krishan Puri v. State of Punjab, AIR 1980 S.C. 1008, H. H. Shri Swamiji of Shri Admar Mutt, etc. v. the Commissioner, Hindu Religious & Charitable Endowments Department & Ors. [1980] 1 SCR 368; Ramesh Chandra etc v. State of U.P. etc. [1980] 3 SCR 104; Municipal Corporation of Delhi and Others v. Mohd. Yasin, [1983] 3 SCC 229; Southern Pharmaceuticals & Chemicals Trichur & Ors. Etc. v. State of Kerala & Ors. Etc. [1982] 1 SCR - 19; Sreenivasa General Traders and Others v. State of Andhra Pradesh and Others, [1983] 4 SCC 353; Amar Nath Om Parkash & Ors. etc. v. State of Punjab & Ors. Civil Appeal Nos. 4500 and 4501 of 1984 (decided on 19.11.1984), relied upon.

In the instant case, having regard to the detailed analysis of the expenditure of the various market committees, 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. [261 B]

2. (ii) 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. If, without rural roads, markets could not be reached and the functions for which the market committees were constituted could not be performed, if it is of fundamental importance that there should be a net work of roadways if effective aid is to be given to buyers and sellers of goods for marketing their products, then the fact that the public streets and roads as trustees would be of no consequence in considering such realisation as fee. [267 B; 268 B-C] In the instant case, the High Court was error in holding that the second major defect noticed in the law authorising the levy on the sellers in Rajasekhariahs 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 forms an integral part of the facilities for marketing of the goods. Therefore this court is unable to sustain the findings of the High Court of Karnataka that section 65(1) as substituted by Section 20 of the Act 17 of 1980 as well as section 42 of the Amending Act was not constitutionally valid and was liable to be struck down. These sections are constitutionally valid in view of the perspective in which the concept of fee has to be judged. [268 D-G] Amar Nath Om Parkash & Ors. etc. State of Punjab & Ors., Civil Appeal No. 4500 and 4501 of 1984 (decided on 19.11.1984), followed.

Municipal Corporation of Delhi and Others v. Mohd. Yasin, [1983] 3 SCC 229, relied upon.

3. The validity of a validating law has to be judged mainly be 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 is consistent with the provisions of part III of the Constitution. Section 42 of the Amending Act is valid and by virtue of the said section, there cannot be any order for refund in the instant case. [266 G; 269 F] Misrilal Jain etc. etc. v. State of Orissa and Another., AIR 1977 SC 1686-[1977] 3 SCR 714: Shri Prithvi Cotton Mills Ltd. Anr. v. Broach Borough Municipality & Ors., AIR 1970 SC 192=[1970] 1 SCR 388; Municipal Corporation of City of Ahmedabad, etc. v. New Shorock Spg & Wvg. Co. Ltd. etc., AIR 1970 SC 1292=[1971] 1 SCR 288; I.N. Sakeena v. The State of Madhya Pradesh, AIR 1976 SC 2650 [1976] 3 SCR 237; relied upon.

4. Section 42 of the Amending Act has specifically provided against refund of levy of fees already collected. 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. Therefore, 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 section 42(1)(b) and (c) that no proceedings for refund would lie, there cannot be any order of refund in the instant case. [269 A-B; D]

5. (i) The High Court was competent to give directions and the same were within the competence of the High Court while dealing with grievances made under Article 226 of the Constitution to ensure

that appropriate statuary authorities acted according to law after properly ascertaining the facts and for the purpose of rending fully justice to the parties. [261 H; 262 A]

5. (ii) 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. While it is true that if a law is bad, the Court must strike it down, if the law by and large and in its true perspective is 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. [263 A-B] In the instant case, the High Court having found, that basically and essentially the fee was justified on the theory of quid pro quo, the Court was entitled to give positive directions regards the manner the money should be spent. [263 C] Per Varadarajan, J. (dissenting)

1. There is no correlation between the enhancement of the rate of the market fee leviable under s. 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, 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 in the notified market area and a good and substantial portion of it must be shown to be expended for those purposes. The good and substantial portion earmarked for rendering services may be in the neighbourhood of two thirds or three-fourths and it must be shown with reasonable certainty as being spent for rendering services of the kind mentioned in Kewal Krishan Puri's case. [213 F; 213 B-C] In facts and circumstances of the case, the High Court should have held that there is no correlation and that there is no justification for enhancement of the rate of the market fee. The learned judges of the High Court have failed to exercise the jurisdiction vested in them by law by not recording any finding one way or the other on the question of correlation, and that they have clothed the Market Committees and the Chief Marketing Officer with their jurisdiction to decide the question whether the enhancement is justified and if not justified to effect a down-ward revision wherever necessary. [220 A-B] Kewal Krishan Puri v. State of Punjab, [1973] 3 SCR 1217, followed.

2(i) Enhancement of the rate of market fee leviable under s. 65(2) of the Act by Amendments of the bye-laws from one per cent to two per cent of the price of the notified agricultural produce is invalid in law for non-compliance with the law laid down in Kewal Krishan Puri's case. If the market fee is sought to be raised, proper budgets, estimates, balance-sheets showing the money in hand and in deposit, expenditure on projects to be undertaken etc. should be carefully prepared. Then and only then there may be a legal justification for raising the rate of the market fee further to a reasonable extent, for only then the authorities will be able to know the correct position and to decide reasonably as to what extent the raising of the market fee can be justified, taking an over-all view of the matter. [228 C; 213 C-D] 2 (ii) Admittedly, there was no previous publication as required by s. 148(1) as it stood at the relevant time, and that requirement is purported to have been dispensed with retrospectively by s 3 of Ordinance 22 of 1981. Market fee is not a tax which is imposed by law passed by a Legislature where the interests affected are or are supposed to be represented unlike the market fee the enhancement whereof is made by subordinate legislation by way of amendment of the relevant by-laws by the Market Committees. That is why the provision for previous publication was made in s. 148(1) of the Act as it stood at the relevant time. Previous approval can only be of

some proposal or resolution of the Market Committees for during one or the other of the things required to be done under the provisions of the Act. When undisputably there was no such resolution or proposal by the Market Committees for enhancement of the rate of the market fee, it is difficult to see how the direction of the Chief Marketing Officer given to the Market Committees to amend the bye-laws for raising the rate of the market fee from one per cent to two per cent can be considered to be his approval. The right of the affected interests of being heard before the Market Committees could raise the rate of the market fee being a right available to them under the principles of natural justice cannot be denied to them even by omitting in s. 148(1) the clause relating to previous publication of the proposal to make or amend any bye-law under s. 148 of the Act. In any event the amendment has not taken away the requirement of previous approval of the Chief Marketing Officer, and since there was no resolution or proposal of the Market Committees to enhance the rate of the market fee before the Chief Marketing Officer gave the direction to the Market Committees to amend the bye-laws for ralsing the market fee the direction cannot be taken as previous approval of something which was not in existence at that time. Therefore, the amendment of the bye-laws made for enhancement of the rate of the market fee from one per cent to two per cent is invalid in law notwithstanding s. 3 of Ordinance 22 of 1981 and s. 12 of Karnataka Act 4 of 1982. [222 E; G-H; D-E ; 223 D-F] In the present cases, none of these requirements was satisfied before the market fee was raised. The Market Committees had no such material before them before they raised the rate of the market fee from one per cent uniformly to two per cent by amendment of the bye-law on the more direction of the Chief Marketing Officer. Therefore the enhancement of the market fee from one per cent to two per cent by amendment of the bye-law under the directions of the Chief Marketing Officer without complying with the principles of law laid down in Kewal Krishan Puri's case is bad in law The same would be the position even if the amendment to the bye-law was made in accordance with s. 148 of the Act as it stood before the amendment by the Ordinance 22 of 1981. [213 E; 214 G-H]

3. The High Court has erred in giving the direction dated 30.11.1981 to the Chief Marketing Officer for furnishing a comprehensive statement in respect of each of the Market Committees in a tabular form. 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 Ex. R-1 to R-111 and similar statements perused by the High Court were not 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. [215 D-E]

4. S. 65(1) of the Act as substituted by the Amendment Act 24 of 1975 and Act 17 of 1980, and s. 42 of Amendment Act 17 of 1980 in so far as it seeks to save what has been done under s. 65 (1) of the Act are unconstitutional and have been rightly struck down by the High Court; the quid pro quo for the levy under substituted s. 65 (1) on sellers was the construction, repair, improve-

ment and maintenance of rural roads which is no longer permissible to be done out of moneys collected as market fees There is thus no quid pro quo to any extent for the levy under the substituted s. 65 (1) of the Act and therefore, it fails, and it is not protected even by s. 42 of the Amendment Act 17 of 1980 and has been rightly struck down by the High Court. S 42 of the Amendment Act 17 of 1980 in so far as it seeks to save the levy and collection of market fee on sellers

under the substituted s. 65 (1) cannot also stand. [226 H; 227 A-B

5. There shall be no refund of the market fees collected under the substituted s. 65 (1) or excess fee collected under s. 65 (2) either by the State Government or by any of the Market Committees. [227 H] The market fee collected from sellers under the substituted s. 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 s. 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 circumstances no order for refund of the market fee collected under the substituted s. 65 (1) and the excess market fee collected under s. 65 (2) of the Act could be made in these cases. [227 F-H] M/s. Amarnath Om Prakash & Ors. v. State of Punjab [1975] 3 SCR 475 followed.

Southern Pharmaceuticals and Chemicals v. State of Kerala & Ors. etc. [1982] 1 SCR 519, Mahant Sri Jagannath v. State of Orissa, [1954] SCR 1046, Rathilal Param Chand Gandhi v. State of Bombay, [1954] SCR 1055, Sreenivasa General Traders & Ors. v. State of Andhra Pradesh, [1983] 3 SCR 843 and Municipal Corporation of Delhi v. Mohd. Yasin, [1983] 3 SCR 229, referred to.

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

From the Judgment and Order dated 25.1.1982 of the Karnataka High Court in Civil Writ Petition No. 12133 of 1979.

Soli J. Sorabjee, Dr. Y.S. Chitale, V.M. Tarkunde, S.N. Kacker, S.N. Haksar, Mrs. A.K. Verma, Aditya Narain, D.N. Misra, E.R. Inder Kumar, Mukul Mudgal, Mrs. S. Ramachandran, P.H. Parekh, Mrs. Manju Sharma, Ms. Divya K. Bhalla, S.S. Javali, B.P. Singh, and Ranjit Kumar for the appearing Appellants.

P.R. Mridul, S.T. Desai, H.B. Datar, R.P. Bhatt, K.L. Sharma, A.K. Sen, B.G. Sridharan, Devendra Singh, Mrs. Bina Tamta, R.B. Datar, Swaraj Kaushal, V.C. Brahmraijappa, K.N. Madhysoodhnan, E.C. Vidyasagar, M. Veerappa, Ashok Kumar, B.G. Shreedharan and R.B. Datar for the Respondents.

The following Judgments were delivered FAZAL ALI, J. 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 straitjacket nor can it be weighed 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 extention 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 purchasers at the action of goods or articles in the market. It is, however, difficult to lay down any hard and fast rule for determining the extent and contours of the services that should be rendered by the Government while imposing a fee. All that the law requires is that the amount of fee realised from the purchasers should be spent for the purposes of the market. For instance, if the fee is on the higher side but the excess amount is reserved for the present or future expansion of the market, the provision for making further facilities, the building up of roads upto the point of markets so as to benefit the purchasers and make there task easier to collect all their goods at one place or to build rest houses for their stay while transacting their business in which case any reasonable fee levied by the market committees would be justifiable. It may be that sometimes there may be a huge rush of arrivals of goods and the purchasers/sellers may have to wait for a day or two or even a week to buy or sell the goods in such cases it will be sufficient if the fee realised, even if it is in excess, is reserved exclusively for the purpose of expansion and development of the markets or market buildings or roads leading up to the markets.

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 & Anr. v. State of Punjab & Ors.(1) 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's case decided was that in the facts of that case there was no clear nexus between the fee and the services rendered. In Southern Pharmaceuticals & Chemicals, Trichur & Ors. etc. v. State of Kerala & Ors. etc.,(2) A.P. Sen, J. speaking for the Court observed thus :

> "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 the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee.
>
> ... ...
>
> Our attention has been drawn to the observations in Kewal Krishan Puri & Anr. v. State of Punjab & Ors. 1 (1979 (3) SCR 1217 at 1230) :
>
> The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be 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."

The one cardinal principle which flows from Kewal Krishan Puri's case (supra) 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 fee realised. Whether the development takes place immediately or in the course of a few years, so long as it is done with in a reasonable period, it cannot be said that the fee amounts to a tax and is, therefore, ultra vires.

In Sreenivasa General Traders & Ors. v. State of Andhra Pradesh,(1) this Court observed as follows:

> "With greatest respect, the decision in Kewal Krishan Puri's 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 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, correlationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude."

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 every increasing trends sf the rise in prices. In other words, this is a dynamic concept which (1) [1983] 3 S.C.R. 353.

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 wôõld apply for all times to come. Therefore, the decision in Kewal Krishan Puri's 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 of the first limb of the question of levy of fee so far as the agricultural produce in Karnataka State is concerned.

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 expressely 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 legistation 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 convict or collision between the two Lists (List I and II) whether the State List or the Union List should prevail. the instant case we are really concerned with the question of tobacco industry. Entry 52 of List I (Union List) which lays down and fixes the subjects of legislation to be made by Parliament may be extracted thus:

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

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 No. 52 then the State has no jurisdiction to legislate on that particular field if that field is occupied and the doctrine of occupied field A 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.

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.

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 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 Act:-

"2.It is hereby declared that it is expendent 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 the 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 A 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 registered grower or curers, and functioning of the Board as an auctioner at auction planteforms established by or registered withit subject to such conditions as may be specifited 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,

(i) 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, A 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 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 and all the provisions of that Act shall have effect accordingly."

By virtue of Notification No 374(3) dated 31.5.80 the Central Government made applicable ss. 10 and 11 of the 1975 Act to tho States of Maharashtra, West Bengal, Gujarat, Tamil Nadu & Uttar Pradesh. It may, however, be mentioned that by making Rule 35 in the Tobacco Board Rules, 1976 (enacted under s. 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 kind, 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 fileds and it is now well settled that one cannot encroach on the other. For A instance, take the case of Railways which is mentioned in List I and is fully covered by the entry in that List. Though the railways may pass through various States it can neither be contended nor imagined that each State would be competent to legislate by passing regulations or Acts for the working of the railways with respect to areas through which they pass. This is exactly the case here. When the Parliament took over the tobacco industry without any preconditions or permutations and combinations and established a Tobacco Board for regulating the sale and purchase of tobacco under entry 52 of List I the entire field of tobacco industry was fully occupied and nothing remained for the States to do, and thus neither the doctrine of entrenchment nor that of pith and substance would have any application.

The crucial point for determination in this cases 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 implemention of the same there is an entrenchment or encroachment which is only minimal, the question of the doctrine of pith and substance will come in to play and the State will be justified in legislating over the subject concerned.

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 h not disputed as discussed above that by virture 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-s. (2) of s. 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 of, or dealer A in, tobacco unless he registers himself with the Board in accordance with the rules made under this Act."

Section 13 states that virginia tobacco shall be sold only at in 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 rules made under this Act, or established by the Board under this Act."

By a letter dated 15.9.83 the Tobacco Board rejected the application made by the Karnataka State to allow it to participate in auctioning the tobacco products. 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 the incidental entrenchment arise in such cases.

I shall now discuss the law on the subject which has been well settled by a long course of decision 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 Arts. 245 and 246 of the Constitution which may be extracted thus:

> "245. Extent of laws made by Parliament and by the Legislatures of State (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 laws with respect to any of the matters enumerated in List I in 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 matters 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) not with standing that such matter is a matter enumerated in the State List."

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 sf cl. (4) of Art. 246.

It is also not disputed that under s. 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 competency of the respective legislatures with respect to the entries concerned:-

(1) Entries in each of the Lists 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 Ors.(l) where this Court observed thus:-

(1) [1983]1 S.C.R. 51.

"It may be pointed out at the very outset that the A 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 or 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 o f 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 & Ors.(1) where Desai, J. speaking for the Court made the following observations:

"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 touch stone of the provisions of Arts. 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 (1) [1931] 4 S.C.C. 167.

legislature is wholly incompetent to legislate and no entrenchment or A encroachment, minimal or otherwise, by a State legislature is permitted. In other words, where the field is not wholly occupied, than a mere minimal encroachment would not affect the validity of the State legislation.

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 where 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.

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

Now to the authorities. As far back as 1941, the Federal Court, while interpreting the ideal provisions of the Government of India Act of 1935 in Subrahmanyan Chettiar v. Muttuswami Goundan(observed thus.

> "In [1921] 2 A.C. 91, Lord Haldane after stating 'the rule of exception' applicable to the heads of ss. 91 and 92, added:
>
> Neither the Parliament of Canada nor the Provincial Legislature have authority under the Act to nullify, by implication any more then 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 s. 100, it would necessarily follow that from all matters in (1) A.l.R. 1941 F.C. 47.

List II which are exclusively assigned to Provincial Legislatures, all portions, which fall in List I or A 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 legis- late with respect to matters in List III. A Provincial Legislature has exclusive power to 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 List I. In its fullest scope, S. 100 would then mean that if it happens that there is any subject in List II which also falls in List I or List III, it must be taken as cut out from List II.. If a subject falls exclusively in List 11 and no other list, then the power of the Provincial Legislatures is supreme. But it does also fall with in List I, then it must be deemed as if it is not included in List II at all. Similarly, if it also falls in List III, it must be deemed to have been excluded from List II But the rigour of the literal interpretation is relaxed by the use of the words "with respect to" which as already pointed out only signify "path and substance," and do not forbid a mere incidental encroachment. But, even if such an incidental encroachment may be ordinarily permissible, the field may not be clear. There may be competency and yet repugnancy also. The question is how to prevent a clash if the trespass is on a field already occupied by a Central Legislation." In the above case their Lordships relied on the leading case reported in [1921] 2 A. C. 91. To the same effect is a decision of this Court in Zaverbhai Amaidas v. State Bank of Bombay(l) 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 Central and by the Province both of them being competent to enact the same, the la v of the Centre should prevail over That of the State."

(1) [1955] 1 S.C.R 799.

In Deep Chand v. State of U.P. & Ors. (1) 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 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 bases 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."

In The Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors.(2) the same view seems to have been taken where the following observations were made:

> (1) [1959] Supp. 2 S.C.R. 8.
>
> (2) [19621 Supp. 3 S.C.R. 1.
>
> "It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently convicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire centre and make it nugatory."

(Emphasis ours) Thus, indeed if I accept the agrument 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 Art. 246 by the 1975, Act.

The case of State of Orissa v. M.A. Tulloch & Co.(l) 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 enanctments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enanctment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other.. The best of two legislation 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 filed, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance."

(Emphasis supplied) To the same effect is another decision Or this Court in Sudhir Chandra Nawn v. Wealth Tax Officer, Calcutta & Ors.(2) when Shah, J. Observed thus:

> "Exclusive power to legislate conferred upon Parliament is exercisable, not with standing anything contained (1) [1964] 4 S.C.R. 461.
>
> (2) [1969] 1 S.C.R. 108.

in cls. (2) & (3), that is made more emphatic by providing A in cl. (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 cls. (1) and (2). Exclusive power of the State Legislature has therefore to be exercised subject to cl. (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 Legislatere."

(Emphasis supplied) Practically the same view has been taken in Baijnath Kedia v. State of Bihar & Ors.(1) where the following observations were made :-

> "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 filed is abstracted from the legislative competence Or the State Legislature. This proposition is also self- evident that no attempt was rightly made to contradict it."

(Emphasis supplied) Thus, it would appear that in view of the recent decisions, once the Centre takes over an industry under entry No. 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 (1) [1970] 2 S.C.R. 100, so, that legislation would be ultra vires of the powers of the State legislature.

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 no where 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.

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

This being the position, 1, 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 p markets in Karnataka or near about the same place situated in the 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 than 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 tho Centre by virtue of the 1975 Act.

Before closing the judgment I would like to give a rough and ready example to illustrate my constitutional point of view in t figurative sense. Suppose there are two fields belonging to A and B. The area of A's field is 500x200 metres. There is another adjacent A field belonging to comprising 400xl00 metres. A's possession covers every nook and corner of the entire field leaving nothing vacant. It is manifest that cannot encroach or entrench on the field of A. Conversely, if A is in possession of the entire field leaving, however, a small portion (30x20) metres vacant, 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 Arts. 245 and 246 of the Constitution.

Having regard to these circumstances I allow the appeal of the I.T.C.. (C.A. No. 629 of 1983) and quesh 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 1-5- 1968. Now known as the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 it will be hereinafter referred to as 'the Act'. S. 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 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 S. 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 brought within such yard by the persons in possession of such produce. Pursuant to S. 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 the buyers.

S. 2 of the Karnataka Agricultural Produce Marketing (Regulation) Amendment Act. 20 of 1973 which came into force on 23-10-1973 amended S. 65 of the Act by substituting the words "thirty paise". in sub-section (1) of S. 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 S. 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 byelaws. 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 the decision rendered on 17.12.1974 in W. P-No. 537 of 1974 (Vaman Rao v. Agricultural Produce market Committee, Sagar). Subsequently the Act was further amended by the Karnataka Agricultural Produce Marketing (Regulation) Amendment Act 24 of 1975 which came into force on 19.5.1975. S 2 of that Amendment Act substituted S.65 of the Act by a new section, which read:

> "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 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 as may be specified in the bye-laws (which shall not be more than one rupee per one hundred rupees 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 the purpose of construction, repairs improvement and maintenance of rural roads in the State."

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.

The levy of market fees on sellers of specified agricultural produce by the amendment of S 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 Rajasekhriah's case(1) In that case the High Court struck down the amended s. 65(1) and (3) of the Act and upheld the levy on buyers under S.65 (2) of the Act in the judgment delivered on 28.9.1978 following the decision

dated 17.12.1974 rendred in Vaman Rao's case (supra) so for as the lavy in buyers is concerned.

On 30 6.1968 Karnataka Ordinance 2 of 1979 was promulgated making some amendments to ss. 63 and 65 of the Act. S. 63 which deals with the powers and duties of market Committees was amended with retrospective effect from 19.5.1975 so as to substitute in clause (ii) of sub-section (1) of S.63 the words "transport and marketing" for the word, marketing" In Sub-section (2)(a) of S.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."

S.65 was ammended (i) validating market fees levied and collected under sub-section (1) of S. 65 for the period from 19.5.1975 to 28.9.1978; (ii) omitting the amended sub- section (1) of S. 65 with effect from 28.9.1978; (iii) enhancing the maximum permissible limit of market fee levied and collected from buyers of specified agricultural produce under sub-section (2) of S. 65 from one per cent to two per cent, and (iv) omitting sub-section (3) of S. 65 as if it never existed in the Statute.

The Karnataka Agriculture Produce Marketing (Regulation) Amendment Act 17 of 1980 which came into force on 9.5.1980 seems (1) I.L.R. [1978] Karnataka 1939, to have been passed in replacement of Ordinance 16 of 1979 which in turn was promulgated in replacement of Ordinance 2 of 1979. S. A 42 of that Amendment Act validating the levy and collection of market fee during the period from 19.5.1975 to 28.9.1978 which was struck down in Rajasekhariah's case (supra) reads:

> "42.Validati on of levy of market fee etc.-(1) Not- withstanding 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 E or continued in any court or before any authority for the refund to any such market fee; and
>
> (c) no court shall enforce any decree or order directing the refund of any such fee.
>
> (2) (a) The Karnataka Agricultural Produce Marketing (Regulation) (Second Amendment) Ordinance, 1979 (Karnataka Ordinance No 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 from 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 A 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."

Section 20 of the Amendment Act 17 of 1980 amended S.65 of the Act thus -

"In S.65 of 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 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."

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 19.5.1975 has been done away with effect from 28.9.1978 and sub-section (3) of s. 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 S. 65 of the Act by the Amendment Act 17 of 1980.

Pursuant to the amendment made to sub-section (2) of S. 65 of the Act enhancing the maximum limit of the market fees leviable on buyers under the station 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 A under s. 65 (2) of the Act from one per cent to two per cent.

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 19.5.1975 to 28.9.1978. After the hearing of the writ petitions commenced in the High Court in October-November, 1981, Ordinance of 1981 was promulgated dispensing with the requirement of the previous publication contemplated in S. 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 25.1.1982 upholding the enhancement of the market fee on buyers from one per cent to two percent the market fee leviable under S. 65 (2) on buyers has been reduced by all the Market Committees by the Circular No. SMD-268/PGN-83 dated 27.2.1982 to one per cent pursuant to the declaration of the policy of the Government.

The principal challenge before the High Court was as to: (i) the constitutional validity of Sec 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 19.5.1975 when S. 65(1) was introduced in the place of the old S. 65 by sub-section (2) of the Amendment Act 24 of 1975 and when it was struck down by the High Court in Rajasekhariah's case (supra); (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 S. 148 of the Act, and (iii) inclusion of certain items of agricultural produce such as cardamom and tobacco in the schedule to the Act. The levy and collection of market fees from sellers during the period from 19.5.1975 to 28.9.1978 was sought to be validated by the aforesaid amendment because by reason of the judgment of the High Court in Rajasekhariah's case (supra) the State was exposed to the liability to refund the market fees collected during that period. The High Court found that S. 65 (1) as substituted by the Amendment Act 17 of 1980 and even S. 42 of that Amendment Act was not constitutionally valid and are liable to be struck down. The reason is that before S. 65 (3) was struck down the levy and collection of market fees under S. 65 (1), as it stood then, were for the benefit of the Karnataka Roads and Bridges Fund constituted under the Karnataka Motor Vehicles Taxation Act, 1957 and that the event which had happened, namely crediting of the market fees to that Fund cannot be reversed by the subsequent amendment of S. 65 (1) and the introduction of S. 42 in the Amendment Act 17 of 1980. The High Court rejected the submission of the learned Advocate General that several crores of rupees collected under S. 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 S. 42 in the Amendment Act 17 of 1980 as not acceptable, and relying on the decision of this Court in Kewal Krishan Puri's case(l) 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 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 S. 65 (1) as substituted by S. 20 of the Amendment Act 17 of 1980 and also the validating S. 42 of that Amendment Act.

As regards S. 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.

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 S. 65 (1) by the Amendment Act 17 of 1980 from one per cent to two per cent from 19.1.1980 the Chief Marketing Officer issued instructions to the market committees for amending (1) [1973] 3 S.C.R. 1217.

the bye-laws in order to raise the market fee from one per cent to two per cent and he subseqently sanctioned the enhancement after A the bye-laws were accordingly amended by the market committees.

The learned counsel for the petitioners invited the attention of the High Court to the following passage occurring at page 952 of volume 24 of Halsbury's Laws of England, Third Edition: B "The bye-law to be valid must be reasonable. Unless it is manifestly unjust, capricious, or partial in the operation or involves oppressive, gratuitous inferences with the rights of those subject to it the question of its reasonableness is one to be decided by the authority making it."

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 S. 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 30.6.1979 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 giving an opportunity of being heard about the matter to the affected interests. On the other hand, for the Market Committees it was contended that the right to be heard was a creature of S. 148 (1) of the Act and not in recognition of or corollary to any obligation which could be said to be inherent in or implied from S. 65 (2) and that what was given by the Statute was taken away by the Stature and the Court not go against it.

It was also contended for the writ petitioners before the High Court that in S. 148 as it originally stood then it was provided that subject to the provisions of the Act and the Rules made under S. 146 and with the previous sanction of the Chief Marketing Officer a Market Committee may, after previous publication in the prescribed A 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 S. 148 (2) which reads as:

> "Any other matter in respect of which by-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 add previous publication in the prescribed manner in regard to the amendment of the bye-law for enhancing the rate of market fee leviable under s. 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 S. 148 as also ss. 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 S.148 of the Act with retrospective effect from the date of commencement of the Act. Sec. 3 of the amending Ordinance 22 of 1981 validated the bye-law notwithstanding the fact that the affected interest were not heard in any manner. The High Court has observed that this amendment took away the obligation of prior hearing of the affected interests on the ground that the persons affected have no right to be heard before statutory rules or bye-laws are made unless the right is conferred by the Statute and that the right has been taken away by ss. 3 and 5 of the amending Ordinance 22 of 1981. The High Court found that in this case the Chief marketing Officer himself has issued directions to the market Committees to amend the bye-laws for enhancing the market fee from one per cent to two per cent and the bye- laws were accordingly amended by the market committees and the Chief Marketing Officer thereafter accorded sanction. The High Court has held that the Chief marketing Officer's direction can be regarded as his previous sanction for amending the bye-laws.

However, the learned Judges themselves do not appear to have been quite happy about what had happened, for they have observed A 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 s. 65(2) of the Act in future without such an opportunity of hearing effected 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 no obligation of hearing the affected interests was implicit in s. 65(2), that it would be eminently desirable that the Market Committees adopt some reasonable procedure in that behalf and that the amendment to s. 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 Committee 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 KRISHAN PURI'S case (supra). It would also be proper for the Market 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 thereof, 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 from the affected interests with in a stipulated period, not being less then one month. The mode of inviting objections and suggestions may be, in addition to the publication on the Notice Board of the A Market Committee's Office, by appropriate publication in a daily news-paper, having circulation in the area. Those who wish to file objections or offer suggestions shall be entitled to inspection of the statements containing the estimates, costs and other financial projections. The Market-Committees shall take into consideration the objections and suggestions so offered and here the interest affected before amending the bye-laws revising the fee. This appears to be the minimal requirement of a hearing of the interests affected. The Market-Committees shall, of course, be at liberty to adopt a more comprehensive procedure. The C.M.O. should also look into the objections and suggestions before according his sanction. All that we need say at this stage is that following of such a procedure would help the market committees to render better and efficient service, and the bye-laws framed after following such a procedure would be beyond reproach on procedural grounds, obviating needless and avoidable litigation."

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 s. 65(2) of the Act from one per cent to two per cent and roads thus:

> "Whether the enhancement of market fees leviable under s. 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 in 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's case, (supra) the several market committees had filed financial projections for a I S year period ll from 1974-75 to show the estimated income and expenditure. Just about that time all the market committees had 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 A the Court to examine these proposals also having regard to the principles and guide lines laid down by the Supreme Court in Kewa1 Krishan Puri's case (supra). we directed by over order dated 30.11.1981, the Chief Marketing Officer to furnish in respect of each respondent Market Committee, a comprehensive statement in a tabular from, 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 30.6:1974.

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 banks or in the form of invest- ment as on 1-7-1981.

8. Items of developmental works originally envisaged (for a period of 15 years during 174-75 to 1988-

89) together with item-vise estimated cost thereof; revised estimates, if any, itemwise; progress inexecution in terms of financial outlays of work, itemwise in respect of each item up to 1.7.1981; balance remaining to be executed (in terms of money) with break up for the future years upto 1988-89 if the work 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-l to R-111, In addition, several of the respondent- Market Committee have filed statements which though not in the same form also contain similar information." The petitioners before the High Court made fourfold submissions regarding those statements. they are:

(1) Exs. R-1 to R-l 11 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 pro posed development of market yard to market yard are so glaring that no authority in the position of the Chief Marketing Officer would reasonably approve such unco-

ordinated and disproportionate development of the regulated markets;

(3) many of the items of works envisaged in the development such as constructions of shops, godowns and 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.

After considering the above proposals and estimate 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.

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 development disclose no uniformity or consistency with any norms cannot be said to be without justification. In several cases markets with decidedly lesser potentialiaties for expansion and handling lesser quantum than other markets propose to spend sums on development which are several times higher than those proposed by those other markets. 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 prodominantly 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 situate from the point of view of the market fee income, quantum of produce handled A and

transacted; potentialities for expansion and levels of development XX already reached, the proposals reveal a wide divergence. There is admittedly no uniformity or standardisation of norms for growth even broadly and each Market-Committee has its own plans of growth adhoc.

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 Inter national 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 precipitious 7 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 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 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 "

After considering in some detail the proposals and estimates on the assumption that they are correct the learned Judges of the High A 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 refere 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 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 produced handled by the markets; potentialities of

> development of the market in 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."

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 infra-structural 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 A may deem relevant and also to evolve corresponding cost patterns of the projects with suitable unbuilt 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 regulated markets depending upon their specific individual problems and requirements. At the time of sanction of the budgets of the Market Committees the C.M.O. should scrutinise the budgets with reference to and applying the broad-norms and criteria evolved and adopted by him so that the programme and the projects of development for the next 8 years are need based and are as far as may be on a uniform and rational basis.

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 there from, 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 S. 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 A an examination of the proposals, that there is no need to make a downward revision, he shall make a specific note in the behalf. These orders shall be made within a period of 8 months from now."

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. S. 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 relating 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 bye-laws though earlier in para 107 they have observed that they "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 estimate 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.

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 bas held that the provisions of the Act in so far as A 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 field and make a comprehensive law in regard to marketing of tobacco is not manifest in the Central enactment and that the two legislations can co-exist and operate cumulatively.

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 and Special Leave Petitions. They are:

> (1) That the provisions of S. 65 (1) of the Act ar substituted by the Amendment Act 17 of 1980 and also the validating S. 42 of that Amendment Act in so far as it seeks to validate the levy of market fee on sellers of notified agricultural produce during the period from 19.5.1975 to 28.9.1978 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 that 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 there.

under 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 S. 65 (1) in cases where the mandamus issued had not been complied with by the respondents in the writ petitioners in view of the validating provision contained in S. 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 S. 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.

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. Kackar appearing for the appellants in Civil Appeals Nos. 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 S. 65 (1) as substituted by the Amendment Act 17 of 1980 and also S. 42 of that Amendment Act and the direction for the refund of the market fees collected under s. 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 s. 65 (2) of the Act, while Mr. S.T. Desai, Dr. Y S. Chitale and late Mr. P.R. Mridul appearing for the Market Committees advanced arguments supporting the High Court's judgment that the provisions of the Act are not repugnant to those of the Tobacco Board Act, 1975.

The submissions of Mr. Sorabjee in short are these:

> The item of expenses envisaged for the rural roads has gone with the striking down of s. 65 (1) and (3) of the Act and the omission of clause (3) of s. 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 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 27.2.1984 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 moths of the judgment and that there was no justification for the enhancement of the market fee from one per cent to two per cent by amendment of the bye- law relating to the levy of market fee under s. 65 (2) of the Act. The amendment of the bye-laws was not in accordance with the procedure laid down by s. 148 of the Act for making bye-laws and amendments thereto for want of previous approval of the Chief Marketing Officer and previous publication of the

proposed amendment and hearing of the affect interests, and ss. 3, 5 (a) and 5 (b) of Ordinance 22 of 1981 promulgated when the hearing of the Writ Petitions in the High Court was in progress would not cure the defect- In the course of the arguments before the High Court it was specifically conceded that there was no compliance with the requirement of s. 148 in making the amendment of the bye-law for enhancement of the market fee from one per cent to two per cent. But on 17.12.1981 Karnataka Ordinance 22 of 1981 was promulgated, and ss. 3 and 5 (a) thereof stated:

"3. Amendment of section 148-ID 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 Of collection of market fec shall for all purposes be deemed to be and to have always been done or taken in accordance with law"

and s. 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 with- out giving reasonable opportunity to persons likely to be affected thereby to file their objections and suggestions, or otherwise without following the procedure prescribed." Ss. 3, 5 (a) and 5 (b) have been replaced by ss. 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-law 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 be eminently desirable that the Market Committees should adopt some reasonable procedure in that behalf and that the amendment of s. 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 invalidation of the bye-law and that there was no intention to make the deletion a permanent feature, and any reasonable procedure which may be suggested by the High Court would be adopted in practice even if there was no such legal compulsion. There were no resolutions, estimates or projections of the market Committees for making improvements to the regulated markets immediately or within the near future before the bye-law was amended for enhancing the market fee from one per cent to two per cent under the directions of the Chief Marketing Officer, and Exs. R-1 to R-l l l and other statements

referred to in the High Court's judgment were prepared long after the date of filing of the Writ Petitions in the High Court and only pursuant to the directions given by the High Court for that purpose on 30.11.1981. The High Court was not satisfied even with those estimates, projections and statements and has therefore issued the directions contained in paras 109 and 111 of the judgment and those directions have been given in respect of all the Market Committees and not in respect of only 8 or 4 Market Committees in categories 'C', 'D' and 'E' as contended by Mr. A.K. Sen. Enhancement of the market fee from one per cent to two per cent is not justified. The High Court erred in holding that the Tobacco Board Act, 1975 covers only Virginia tobacco and is not repugnant to the provisions of the Act, ignoring the provisions of ss. 8 (2)

(a), 8 (3) and 12 of the Tobacco Board Act and r. 35 of the Rules made under the provisions of that Act. Though reference is made in s. 8 (2) (a) to (g) of that Act to Virginia tobacco clause (h) relates to "promoting the gradation of tobacco at the level of growers", clause (1) relates to "sponsoring, assisting, co-ordinating or encouraging scientific, technological and economic research for the promotion of tobacco industry", and s.' (3) says that:

"without prejudice to the generality of the provisions of subjection (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".

S. 12 of the 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."

R. 35 of the Tobacco Board Rules, 1976 relates to registration as exporter or packer or auctioneer of, or dealer in tobacco.

Clauses (c) to (g) of s. 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 plat forms, 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 far purposes 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 the nation;

(f) propagating information useful to the growers, dealers and exporters (including packers) of Virginia tobacco and manufacturers of Virginia tobacco products and others 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 also in view of s. g (3) of the Tobacco Board Act.

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

Before sub-section (3) of s. 65 was struck down in Rajasekhariah's case (supra) on 28.9.1978 several crores of rupees bad been collected under s. 65 (1) from 19.5.1975 when it was amended by Amendment Act 24 of 1975 to 28.9.1978 and that amount must be sufficient to meet the estimates and projections envisaged in Exs. R-l to R-111 and other statements prepared and produced by the Market Committees pursuant to the High Court's directions issued on 30.11.1981 having regard to the fact that subsection (3) of s. 65 under which that amount had to be credited to the Roads and Buildings Fund has been struck down in Rajasekhariah's case (supra) 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 bad no scheme for effecting improvements to the regulated markets then they enhanced the market fee from one per cent to two per cent under sub-section (2) of s. 65 of the Act by amending the bye-law except the statements produced in Vaman Rao's case (supra) in 1974. The statements Exs. R-1 to R-111 and other statements produced in the High Court were not in existence when the Writ Petitions were presented in the High Court.

The market fee has been since reduced to one per cent with effect from 1.4 1984. The High Court should not have given an opportunity to the Market Committees to fill up the lacuna by preparing and producing Exs. R- I to R- 111 and the other statements when the Writ Petitions were being heard

in the High Court.

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

> 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's case (supra). 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.

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

It is not 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 my 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. The Act relates to markets falling under entry 28 of List II (markets and fairs) while the Tobacco Board Act falls under entry 52 of List I (industries) of the Seventh Schedule to the Constitution. Industries would certainly include marketing of the products. The Act would therefore be repugnant to the Tobacco Board Act in view of Art. 254 (1) of the Constitution. The attention of the learned Judges does not appear to have been focussed on s. 8 (3) and s. 12 of the Tobacco Board Act extracted above and r. 35 of the Rules framed under that Act, a perusal of which would show that the Tobacco Board Act covers tobacco of all varieties in regard to matters required to be done by the Market Committees under the provisions of the Act. The High Court has thus erred in holding that the provisions of the Act are not repugnant to the Tobacco Board Act, 1975 and that they can co-exist and operate cumulatively.

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 Civil

Appeals Nos. 4500-4501 of 1984 (M/s. Amarnath Om Prakash & Others v. State of Punjab and Food Corporation of India v. State of A Punjab) disposed of on 19.11.1984. The first of those decisions is of Mathew, Bhagwati and Untwalia, JJ. in State of Maharashtra & Ors. v. The Salvation Army,(l) In that decision Mathew, J. speaking for the Bench observed:

> "We do not think any such levy for investment or diversion of the surplus would be consistant 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 afficient 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 surplus must be the 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 necessity for capital expenditure in the near future, as also the amount of levy collected or expected to be collected in a year. is already stated the Division Bench was of the view that the stage when the surplus must be taken into account to determine the character of the levy was reached by the end of March 31, 1958 when the available surplus came to Rs. 30, 44, 541/-. The Division Bench was alive to the desirability of locating the head office and regional offices in buildings to be owned by the organisation and incurring of capital expenditure in that behalf. The Charity Organisation bas purchased a building worth about Rs. 30 lakhs. Even according to the Division Bench, investment of the surplus in buildings for locating the head and regional offices cannot be said to be diversion of the surplus for purposes alien to the object of the organisation, namely, the better administration of the trusts."

(1) [1975] 3 S.C.R. 475.

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

The second decision is that of a Bench of five learned Judges of this Court (Chandrachud, C.J. and Bhagwati, Untwalia, Murtaza Fazal Ali and Pathak, JJ) in Kewal Krishan Puri v. State of Punjab (supra) where the purpose for which Marketing Development Fund and Market Committee Funds 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:

"Such a fee cannot be utilised for the purpose of rendering all sorts of facilities and services for the benefit of 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 marketing 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, ma be in the neighbourhood of two-thirds or three-fourths, must 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 culverts 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 agriculturist who are not required to share the 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 and its character of having an element of quid pro quo will dwindle down and become an empty formality.

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 of objects of the Act is not quite correct. The High Court points out that the money cannot be spent in construction of 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 the construction of link roads through 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 trans-

port his produce up 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 20 miles from the link road. It is plain that construction of such link roads is as much a part of the R governmental 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 term, it said:

> 'If the approach roads, culverts or bridges are in such a bad shape that they would become hinderance in the mobility of the produce from one part of the notified market area to the principal market yard, then the worst suffer or 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 purpose of raising the market fee any further, the balance- sheet will give a truepicture 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 fec further to a reasonable limit." The third decision is of Chinnappa Reddy, A.P. Sen and Baharul Islam, JJ. in Southern Pharmaceuticals and Chemicals v. State of Kerala & Ors. etc.(1) where Sen, J. speaking for the Bench has observed at page 542 thus:

(1) [1982]1 S.C.R. 519.

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

It has to be noticed that the 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:

> "The distinction between a 'tax' and 'fee' is well settled. The question came up for consideration for the first time in this Court in the Commissioner, H.R.E. Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt (1954 SCR 1005). Therein, the Court speaking through Mukherjee, J. quoted with approval the definition of 'tax' given by Latham, C.J. in Matthews v. Chickory Marketing Board (60 CLR 263). In that case the learned Chief Justice observed:
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> 'A tax is a compulsory exaction of money by public authority for public purposes enforceable by E law and is not payment for cervices 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 the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services."

The same view was taken in Mahant Sri Jagannath v. State of Orissa(1) and Rathilal Param Chand Gandhi v. State of Bombay.(2) (1) [1954] S.C.R. 1046.

(2) 119541 S.C.C. 1055.

Therefore, the aforesaid observation of Sen, J. that it is now increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee and that it is needless to stress that the element of quidpro quo is not necessarily absent in very 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.

The fourth decision is A.P. Sen, Venkataramiah and R Misra, JJ, in Sreenivosa General Traders & Ors. v. State of Andhra Pradesh(1) where Sen, J. speaking for the Bench has observed:

> "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 coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of 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 element of quid pro quo is not necessarily absent in every tax."

The above decision arose out of proceedings taken under the Andhra Pradesh (Agricultural Produce and Livestock) Market 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 senso is not always a sine qua non for a fee in view of my learned brother Sen's approval in Southern Pharmaceutical and Chemical's case (supra) of the i (1) [1983] 3 S.C.R. 843.

distinction pointed out by Latham, C.J. in Matthews v. Chickory Marketing Board (supra) between a tax and fee and that it is A 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's case (supra), Rathilat Param Chand Gandhi's case (supra) and also in view of the decision of the larger Bench of five Judges of this Court in Kewal Krishan Puri's case (supra) that quid pro quo is a necessary element of the market fee. The fifth decision is of Desai and Chinnappa Reddy, JJ. in Municipal Corporation of Delhi v. Mohd. Yasin(1) where my learned brother Chinnppa Reddy, J. speaking for the Bench has observed:

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

D 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's case (supra) which is relied upon by both sides in these cases as stated above.

(1) [1983] 3 S.C.R. 229, observation. In Kewal Krishan Puri's case (supra) while the construction of link roads has been welcomed by the learned Judges, it has been observed:

> "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's case (supra) Chinnappa Reddy, J. has observed in his judgment thus:

> "He also draw attention to the increasing realisation that the element of quid pro quo in the strict sense was not always a sine que 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 the fee could not be a rule of universal application, and that it was a rule which had necessarily to be confined to the special facts of Kewal Krishan Puri' s case (supra). Other wise, it would affect. the validity of marketing legislations undertaken throughout the country during the past half a century. We agree with the view of Sen, J. that the observations extracted by him from Kewal Krishan Puri's case were not really necessary for that case and we also agree with the clarification of the observation made by Sen, J.
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> With respect, I am not able to see how an why the observations made in Kewal Krishan Puri's case (supra) have to be confined to the special facts of that case. Kewal Krishan Puri's 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 s. 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 what extent and what should be done by the Market Committees before the fee could be raised fell for considration in that case as in these cases. In Sreenivash General Traders' case (supra) which arose under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 the market fee which was 25 paise per hundred rupees was C raised to 50 paise in 1972 and eventually to one rupee for every hundred rupees. The contention was that increase in the rate of market from 50 paise to one rupee was illegal on the ground that there was no correlation between the increase and the services rendered. That is exactly the position in the present case where the increase was from one per cent to two per cent of the price paid by the buyers. Therefore, with respect I an unable to see how and why what l-as been decided in Kewal Krishan Puri's case (supra) should he confined to the facts of that case alone. Again with respect, I consider myself bound by the decision in Kewal Krishan Puri's case and that even the Bench of which I am one of three is bound by that decision having regard to the principles governing precedents and the necessity to avoid confusion in the minds of the High Courts and Subordinate

Courts as regards the correct view to be followed by them. Fortunately, in these cases, as stated above, both sides relied upon the decision in Kewal Krishan Puri's case (supra) which inter alia laid down of following principles:

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.

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 account are audited by Government auditors for the purpose of raising market fee any further. The balance-sheet will given 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 over-all picture of the matter.

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 Consel appearing for the Market Committee as stated above.

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 lay bearing on the questions involved as It understand the same I proceed to record my findings. The principles of law laid down by the Bench of five learned Judges of this Court in Kewal Krishan Puri's case (supra) 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's case (supra), Sreenivasa General Traders' case (supra) and the present cases 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's case (supra) 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 16 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 in the notified market area and a good and substantial portion of it must be shown to be expended for those purposes. The good and substantial portion earmaked for rendering services may be in the neighbourhood of two-thirds or three-fourths and it must be shown with reasonable certainly as being spent for rendering services of the kind mentioned in Kewal Krishan Puri's case (supra). If the market fee is sought to be raised, proper budgets, estimates, balance-sheets showing the money in hand and in deposit, expenditure on projects to be undertaken etc. should be carefully prepared. Then and only then there may be a legal justification for raising the rate of the market fee further to a reasonable extent, for only then the authorities will be able to know the correct position and to decide reasonably as to what extent the raising of the market fee can be justified, taking an over-all view of the matter. But in the present cases, none of these requirements was satisfied before the market fee was raised The Market Committees had no such material before them before they raised the rate of the market fee from one per cent uniformly to two per cent by amendment of the bye-law on the mere direction of the Chief Marketing Officer. These facts are not in dispute. Therefore, with respect, the High Court erred in law in not applying the principle of law laid down by this Court in Kewal Krishan Puri's case (supra) and failing to strike down the enhancement of the market fee from one per cent to two per cent on account of the failure to comply with the principles laid down in Kewal Krishan Puri's case (supra). The State Government and the Market Committees appear rightly to have retraced their steps by reducing the rate of the market are from two per cent to one per cent by the Circular No. SMD-268/ RGN-83 dated 27.2 1984 with effect from 1.4.1984. The learned Judges of the High Court themselves do not appear to have been quite happy about how the enhancement of the market fee had been made, for they have observed in para 61 of their judgment, as mentioned above, that the question might become a live issue if the Market Committees were to amend the bye-laws made under s.l48 read with s.65(2) of the Act in future without giving an opportunity to the affected interests of being heard in regard to the proposed enhancement. Even the learned Advocate General appearing for the State and the learned Counsel appearing for the Market Committees had stated before the learned Judges of the High Court that it would be eminently desirable that the Market Committees should adopt some reasonable procedure in that behalf and that the amendment to s.148 of the Act made by Ordinance 22 of 1981 dispensing with the need for prior publication and hearing of the affected interests was only intended to cure the defect in making the impugned amendment to the bye-law for avoiding 'great public inconvenience which may result from the invalidation of the bye-law and there was no intention to make the deletion, brought about by the Ordinance, a permanent feature'. They submitted before the learned Judges of the High Court that any reasonable procedure which may be suggested by them would be adopted in future 'even if there is no such legal compulsion'. In these circumstances, the High Court has observed: "It appears to us that before the Market Committees propose 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 (given) in para 55 in Kewal Krishan Puri's case". The learned Judges have thereafter given the directions contained in the judgment in that case as mentioned above. With respect, I am unable to see how the directions given by this Court in Kewal Krishan Puri's case (supra) should be followed only in future and how there is no compulsion in law for the Market Committees to follow the

directions already given by this Court in that case and how this could be dispensed with or ignored for the purpose of the impugned enhancement. with respect I think that the High Court has erred in not applying the principles of law laid down by this Court in Kewal Krishan Puri's case (supra) and in observing that they should be applied only in future. In these circumstances, I hold that the enhancement of the market fee from one per cent to two per cent by amendment of the bye-law under the directions of the Chief Marketing Officer without complying with the principles of law down in Kewal Krishan Puri's case (supra) is bad in law. The same would be the position even if the amendment to the bye-law made in accordance with s. 148 of the Act as it is stood before the amendment by the Ordinance 22 of 1981.

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 s. 65(2) of the Act from one per cent to two per A cent brought about by the amendment of the bye-law responnents-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 burden cast on the appellants is to prove the negative. The appellant are bound to succeed in the light of the decision in Kewal Krishan Puri's case (supra) if they prove that the enhancement of the market fee was made without complying with the law laid down in that case. That has been established by the appellant without any manner of doubt whatsoever.

As rightly contended by Mr. Kacker the High Court has erred in giving the direction dated 30.11.1981 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- I to R- 111 and similar statements perused by the High Court were not 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.

The High Court has found even Exs . R- I to R- 111 and the other statements prepared and furnished pursuant to its order dated 30.11 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 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 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 reason ably 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 exercise to regulate the development to these market yards on 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 infra-structural 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 he may deem relevant and also to evolve corresponding cost patterns of the projects with suitable inbuilt 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 regulated markets depending upon their specific individual problems and requirements. At the time of sanction of the budgets of the Market-Committees the C.M.O. should scrutinise the budgets with reference to and applying the broad-norms and criteria evolved and adopted by him so that the programme and the projects of development for next 8 years are need based and are as far as may be, on a uniform and rational basis.

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% market-fee cf any Market- Committee in the category 'C', 'D' and ùE' supra is unjustified, the C.M.O. will make appropriate orders under s. 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 the proposals, that there is no need to make a downward revision, he shall make a specific note in the behalf. These orders shall be made within a period of 8 months from now."

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 A cent, and the Chief Marketing Officer has been given four months time from the date of the judgment to evolve and standaries the norms and specifications and to circulate the samo 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 any Market Committee in categories 'C' 'D' and 'E' is unjustified, he will make the appropriate orders directing the Market Committees concerned to amend their bye-laws to effect an appropriate downward revision in the quantum of the fee and wherever he is of the opinion after examination of the proposals that there is no need to make a downward revision he shall make a specific not in this behalf and he shall make these orders within a period of eight months from the date of the judgment". It is not clear why after giving the general direction in respect of all the Market Committees which had enhanced the market fee from one per cent to two per cent the learned Judges of the High Court thought it necessary to give another set of directions to the Market Committee falling in categories 'C' 'D' and 'E'. This confusion was perhaps responsible for Mr. A.K. Sen contending seriously in the course of his arguments that the directions given by the High Court relate to only 8 or 4 of the Market Committees falling in categories 'C' 'D' and 'E'. It is not possible to accept this argument for the reason that the High Court has not recorded any finding on Point No. 12 to the effect that there is sufficient correlation in respect of all the Market Committees except 8 or 4 of the market Committees falling in categories 'C', 'D' and '13'. After setting out Point No. 12 in para 7 of their judgment the learned Judges of the High Court have indicated that the discussion relating to that point is in paras 75 to 110 and that the finding is in para 111. As stated earlier, a perusal of paras 107 to 110 and first sentence in para 111, especially para 110, would show that the direction has been given by the learned Judges in respect of all the Market Committees which had enhanced the fee from one per cent to two per cent. The learned Judges have stated in para 110 that the learned Advocate General appearing for the State and the learned Counsel appearing for the

Market Committees conceded that the exercise suggested by the learned Judges in para 109 of there judgment is necessary and beneficial as the matter involved an outlay of nearly 145 crores of rupees in the next eight years on the regulated market. Surely, an outlay of 145 croces of rupees could not be in respect of only 8 or 4 of the Market Committees falling in categories 'C', 'D' and 'E'. The learned Judges of the High Court have observed in para 107 øf 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. With respect I think that there is some confusion in this part of the judgment of the High Court which has given room for argument of Mr. A.K. Sen that the directions have been given only in repect of 8 or 4 of the Market Committees falling in categories 'C', 'D' and 'E'.As stated earlier the learned Judges of the High Court have not recorded any finding on Point No. 12 to the effect that correlation is established satisfactorily in regard to all the Market Committees which had enhanced the market fee from one per cent to two per cent except 8 or 4 of the Market Committees falling in categories 'C', 'D' and 'E'. The direction given in para 111 is stated under Point No. 12 in para 7 of the impugned judgment to be the finding on that point relating to correlation. I, therefore, agree with Mr. Sorabjee that the directions given in paras 107 to 110 and the first sentence in para 111 of the impugned judgment relate to all the Market Committees which had enhanced the market fee from one per cent to two per cent and not to only 8 or 4 of the Market Committees falling in categories 'C', 'D' and 'E' and that in view of the observation made in para 107 that having regard to the infirmities noticed in the estimates and financial projections of the proposed development works on the basis of which alone the enhancement is sought to be justified they are unable to say with any confidence and without reservations that the enhancement of the fee is totally justified, they should have held that there is no conelation and that there is no justification for the enhancement of rate of the market fee. For these reasons, I hold that there is no correlation and that there is no justification for the enhancement of the market fee from one per cent to two per cent. I am constrained to observe that the learned judges of the High Court have failed to exercise the jurisdiction vested in them by law by not recording any finding on Point No. 12 one way or the other, namely, that there is or no correlation, and that they have clothed the Market Committees and the Chief Marketing Officer with their jurisdiction to decide the question whether the enhancement is justified and if not justified to effect a downward revision wherever necessary.

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 male or not becomes academic and is, however, considered for the sake of completeness. According to s. 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 s. 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 s. 148 (2) (XXXiii) of the Act. It was contended before the High Court that there is no compliance with the requirement of previous sanction and previous publication in the prescribed manner in regard to the amendment of the bye-laws for raising the market fee leviable under s. 65 (2) of the Act from one per cent to two per cent. The High Court has observed that finding no answer to that criticism in regard to the amendment of the bye-laws the State Government has come forward with Ordinance 22 of 1981 when the arguments in the Writ Petitions were coming to a close. That Ordinance has since been replaced by the Karnataka Act 4 of 1982. ss. 3 and 5 of the Ordinance which have been replaced by ss. 2 and 114 the Amendment Act may be extracted for easy reference:

> "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."
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> "5. Validation-Nothwithstanding 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 section 2 and 3 of this Ordinance and accordingly,-
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> (a) all acts, proceedings or things done or action taken by the State Government or by the Market Commit tee 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 G opportunity to persons likely to be affected thereby to file their objections and suggestions, or otherwise without following the procedure prescribed".

Previous publication referred to in s. 148(1) as it originally stood before the amendment to the bye-la vs for enhancing the rate 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 for 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's direction to amend the bye-laws for enhancing the rate of the market fee can be regarded as his previous approval. I am unable to agree with this view of the learned Judges of the High Court. Previous approval can only be of some proposal or resolution of the Market Committees for doing one or the other of the things required to be done under the provisions of the Act. When undisputably there was no such resolution or proposal by the Market Committees for enhancement of the rate of the market fee I am unable to see how the direction of the Chief Marketing Officer given to the Market Committees to amend the bye-laws for raising the rate of the market fee from one per cent to two per cent can be considered to be his approval. Admittedly, there was no previous publication as required by s. 148(1) as it stood at the relevant time, and that requirement is purported to have been dispensed with retrospectively by s. 3 of Ordiance 22 of 1981. It is seen from the impugned judgment that it was submitted before the learned Judges of the High Court that the affected interests' right of being heard was conferred by the Statute and it has been taken away by the subsequent amendment to the Statute with retrospective effect and that there is. therefore, no ground for the affected interests to complain. No such submissions were, however, made in this Court. Market fee is not a tax which is imposed by law passed by a Legislature where the interests affected are or are supposed to be represented unlike the market fee the enhancement whereof is made by subordinate legislation by way of amendment of the relevant bye-law by the Market Committees. That is why the provision for previous publication was made in s. 148(1) of the Act as it stood at the relevant time. It is not possible to accept the contention that the right given by law was taken away by law and cannot, therefore, be claimed by the affected interests, for though it was mentioned in s. 148(1) of the Act as it stood at the relevant time it was a right A which was available to the affected interests under the principles of natural justice of being heard before the enhancement could be made. The High Court appears to have been aware of this position and to have not been quite happy about how the enhancement of the market fee has been brought about, for the learned Judges have observed in para 61 of their judgment that the question might become a live issue if the Market Committees were to amend the bye-laws in future without giving an opportunity of being heard to the affected interests. Even the learned Advocate General appearing for the State and the learned Counsel appearing for the Market Committees had stated before the learned Judges of the High Court that the amendment to s. 148(1) made by the Ordinance was only intended to cure the defect in making the impugned bye-laws to avoid great public inconvenience and that there was no intention to make the deletion of the requirement of previous publication a permanent feature. The right of the affected interests of being heard before Market Committees could raise the rate of the market fee being a right available to them under the principles of natural justice cannot be denied to them even by omitting in s. 148(1) the clause relating to previous publication of the proposal to make or amend any bye-law under s. 148 of the Act. In any event the amendment has not taken away the requirement of previous approval of the Chief Marketing Officer, and since there was no resolution or proposal of the Market Committees to enhance the rate of the market fee before the Chief Marketing Officer gave the direction to the Market Committees to amend the bye-laws for raising the market fee the direction cannot be taken as previous approval of something which was not in existence at that time. I, therefore, hold that the amendment of the

bye-laws made for enhancement of the rate of the Market fee from one per cent to two per cent is invalid in law notwithstanding s. 3 of Ordinance 22 of 1981 and s. 12 of Karnataka Act 4 of 1982.

S. 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 (V 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. S. 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. S. 65 was amended by Amendment Act 24 of 1975 which came into force on 19.5.1975. S. 2 of that Amendment Act substituted s. 65 of the principal Act as amended by Act "0 of 1973 by a new section which read as:

> "S. 65. Levy of market fees.-
>
> (1) The market committees shall levy and collect market fees from every buyer in respect of agricultural produce sold by such seller in the market area at the rate of one rupee for 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 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, not withstanding anything contained in this Act, credit to the Karnataka Roads and Bridges Fund constituted under the Karnataka Motor Vehicles Act, 1957 market fees collected under sub-section (1) for being spent or the purpose of construction, repair, improvement and maintenance of rural roads in the State."

Market fee was levied on the sellers for the first time under s. 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 s. 65 of the Act, as substituted by Amendment Act 24 of 1975 were struck down on 28 9.1978 by the decision in Rajasekhariah's case (supra). Subsequent to that decision s. 65 of the principal Act as substituted by Amendment Act 24 of 1975 was amended by s. 20 of Amendment Act 17 of 1980 thus: A "S. 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 there of, 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 23th 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."

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 19.5.1975, the date on p which Amendment Act 24 of 1975 which substituted the new s. 65 in the place of the original section 65 came into force upto 28.9.1978, the date on which the substituted sub-sections (1) and (3) of s. 65 were struck down in Rajasekhariah's case (supra), and the substituted sub-section (3) was omitted by Amendment Act 17 of 1980 as if it never existed in the Statute. S. 42 of Amendment Act 17 of 1980 relates to validation of market fees-etc. and reads:

"S. 42 Notwithstanding anything contained in any decree, order of 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 A 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;

... ... "

The market fee levied on and collected from sellers under the substituted s. 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 Krishna Puri's case (supra) has held that rural roads are essentially and primarily intended for the benefit of the public and 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 or rural, is impermissible in view of the decision in Kewal Krishan Puri's case (supra), and even s 65(3) has been omitted as if it never existed in the Statute after it was struck down in Rajasekhariah's case (supra). The quid pro quo for the levy under substituted s 65(1) on sellers was the construction, repair, improvement and maintenance of rural roads which is no longer permissible to be done out of moneys collected as market fees. there is thus no quid pro quo to any existent for the levy under the substituted s. 65(1) of the Act and therefore, it fails, and it is not protected even by s. 42 of the Amendment Act 17 of 1980 and has been rightly struck down by the High Court. S. 42 of the Amendment Act 17 of 1980 in so far as it seeks to save the levy and collection of market fee on sellers under the substituted s. 65(1) cannot also stand. The High Court is, therefore, right in its finding on this aspect of the case.

In the Act there is no provision in regard to the market fee like s. 23A of the Punjab Agricultral Produce Markets Act sub-section (1) thereof 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 leviable under s. 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 Nos. 45()0-4501 of 1984 decided on 19.11.1984 this Court has held that what s. 23A 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 s. 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 s. 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 circumstances I do not think that any order for refund of the market fee collected under the substituted s. 65(1) and the excess market fee collected under s. 65(2) of the Act could be made in these cases .

To summarise, my findings are:

> (1) S. 65 (1) of the Act as substituted by Amendment Act 24 of 1975 and Act 17 of 1980, and s. 42 of Amendment Act 17 of 1980 in so for as it seeks to save that has

been done under s. 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 s. 65 (2) of the Act by amendments of the bye-

laws from one per cent to two percent of the price of the notified agricultural produce is invalid in law for non-compliance with the law laid down in Kewal Krishan Puri's case (supra);

(3) There is no correlation between the enhancement of the rate of the market fee leviable under s. 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 the market fee leviable under s. 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, 19,6 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 s. 65 (1) of excesss fee collected under s. 65 (2) either by the State Government or by any of the Market Committees. 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, nearly 4298 in number arising out of The Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the 'Act') were take 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 A 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 B 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.

These 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 and during the period of its operation, prior to its being struck down by the Karnataka High Court in Rajasekhariah' v. Tiplur Agrl. Produce Marketing Committee & Anr.(l) (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 per cent 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 contemplated by section 148 and on the ground that the enhancement of fees fail for want of quid-pro-quo; and (3) to the inclusion of certain items such as wood, cardamom, sugarcane, tobacco in the list of notified agricultral produce incorporated in the Schedule to the Act.

On 1st May, 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 (1) 19791 Karnataka L.J. p. 43.

(ii) any trader outside the market or sub-market in tho A market area.

Section 65 of the Act was amended on 20th October, 1973 by The Karnataka Act No. 20 of 1973 raising the maximum fee leviable by a Market Committee from 30 paise to one rupee.

On the 17th December, 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 traders-buyers of the agricultural produce before the High Court of Karnataka in Writ Petition No. 537 of 1974 and the connected writ petitions in the case of K.S. Vaman Rao v. The Agricultral Produce Market Committee. Sagar and the High Court by its judgment dated 17th December, 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.

On 19th May, 1975, section 65 of the Act was substituted by a new section (Act No. 24 of 1975). The substituted section reads as follows:-

> "65. Levy of Market Fees-(1) The Market Commit tee 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 areas 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."

By Act No. 14 of 1976 passed on 24th January, 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."

On 1st June, 1976, by the Amending Act No. 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 includes grading, processing, storage, transport, packaging, market information and channels of distribution. "On or about 1978 judgment was delivered by the High Court of Karanataka in the case of Rajasekhariah v. Tiptur Agricultural Produce Marketing Committee and Anr. (supra). 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 per cent 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 17th December, 1974 in Vaman Rao's case mentioned hereinbefore, On or about the 30th June, 1979 Ordinance No. 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 19-5-1975 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(l) 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 19-5-1975 to 28-9-1978 was validated.

(ii) Sub-section (1) of section 65 was deemed to have been omitted with effect from 28-9-1978.

(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 there to from 1 per cent to 2 per cent.

(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.

Pursuant to the amendment of sub-section (2) of section 65 of the Act enhancing the maximum Market fee leviable thereto A from I per cent to 2 per cent, 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 per cent to 2 per cent and on such enhancement of the market fee from I per cent to 2 per cent, all the buyers-traders filed writ petitions before the High Court assailing the said enhanced levy.

By Karnataka Ordinance No. 14 of 1979, on 2nd November, 1979, the earlier Ordinance, namely Ordinance No. 2 of 1979 was repealed. Another Ordinance on the same lines as Ordinance No. 2 of 1979 was promulgated on 3rd November, 1979. On 9th May,]980, Karnataka Act No. 17 of 1980 containing the same changes were brought as noticed in the ordinance mentioned before.

Hearing of these writ petitions before the High Court commenced in October-November, 1981. Section 148 of the Act was amended by Karnataka Ordinance No. 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.

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

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 19-5-1975 and 28-9-1978 was constitutionally valid. By the said amending Act it was provided that

the following sub-sections shall A be deemed to have been substituted with effect from 19th 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 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."

It was contended on behalf of the petitioners before the High Court that section 65 (l) 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 Rajasekharioh's case (supra) 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 (l) was operative.

The High Court in the case of Rajasekhariah's case struck down section 65 (1) (3) on grounds as follows:

> "(a) The 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 A way of quid-pro-quo, "to flow to the class of persons 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."

Pursuant to the judgment in Rajasekhariah's case, the State was exposed to the liability for refund of fee collected for the period between 19-5-1975 when sub-sections 65 (1) and (3) were introduced by the Amending Act 24 of 1975 and 28-9-1978 when the judgment was pronounced. By the Act 17 of 1980, this levy was sought to be validated and the fee retained by the State Government.

After discussing the rival submissions and after discussing the legal principles and the decisions in the cases of Misrilal Jain v. State of Orissa,(l) Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality,(2) Ahmedabad Corporation v. New Shirock Spg. and Wvg. Co. Ltd.,(8) I.N. Saxena v. State of M.P.,(4) and the Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,(5) 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(7) 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.

(1) A.I.R.1977 S.C.1686.

(2) A.I.R.1970 S.C.192.

(3) A.I R. 1970 S.C. 1292.

(4) A.I.R. 1976 S.C.2250.

(5) A.I.R. 1954 S.C.282.

(6) A I. R.1980 S.C. 1008.

(7) A.I.R.1981 S.C.1863.

After discussing several decisions, Karnataka High Court felt that the second major defect noticed in the law in the case of Rajasekhariah's case namely the construction of rural roads could not qualify for being reckoned as special service to a class of persons paying the fee 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 5 (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.

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) In so far as the Amending Act 17 of 1980 sought to validate the taxes realised following the defects mentioned in Rajasekhariah's case 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 ?

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

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 Act 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 sugarcane was outside the pale of the present Act. The Government has not appealed against the findings so far as cardamom was concerned. In so far as the High Court held that sugarcane was outside the pale of the Act, no argument impugning that finding was canvassed before us.

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.

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.

One of the main contentions urged before the High Court and reiterated before us was whether the Act in so far 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 52 of List I and it was submitted that once the declaration has made, any legislation by the State after such declaration trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field or area according to the appellants was excluded from 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."

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 of 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 A 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 section 8 of the Tobacco Board the duty to promote, by such measures as it thinks fit, the development under the control of the Central Government of the

tobacco industry. Sub-section (2) of section 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 therefor in India and abroad. Clause (cc) of section 8 (2) empowers the Board as follows:

> "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 action platforms established by or registered with it subject to such conditions as may be specified by the central Government."

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 14A 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.

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.

Chapter V deals 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 A 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 I 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 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 I of Tobacco Board Act, 1975, by Notification dated 31st May, 1980, the Central Government appointed 31st May, 1980 as the date on which sections 10 and 11 would come into force in the States of Maharashtra, West Bengal, Gujarat, Tamil Nadu and Uttar Pradesh.

Section 13 of the Tobacco Board Act is important because it empowered 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 specially come into force in the State of Karnataka, by the passing of the Act itself, the Center 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. 0 665 (E) dated 31st August, 1984 whereby section 13 of the said Act came into force in the State of Karnataka from 1st day of September, 1984. I have already noted the provision 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 subsequent to the writ petitions and after hearing in these matters was concluded. It was the contention on behalf of the petitioners that by declaration under entry 52 of List I and by the passing of the Act in question i.e. Tobacco Board Act, 1975, tobacco became an occupied field of Central Parliament and would prevail over the 'Act' irrespective of any separate notification making Tobacco Board Act, 1975, applicable to the State of Karnataka. In exercise of powers under section 32 of Tobacco Board Act, 1975 the Central Government was empowered to make rules. These are known as Tobacco Board Rules, 1976. Rule 33 of chapter VII provides for registration of growers, curers, exporters, packers and auctioneers of, and dealers in tobacco, The High Court was of the view that unlike the law governing A the marketing of Cardamom and Sugarcane, the Tobacco Act did not cover the marketing of tobacco in its entirety but only covered a part of the area of the topic of marketing of tobacco. According to the High Court the two legislations could co-exist 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 irreconcilable. It may , however, be noted that by letters dated 15th September, 1983 and 23rd September, 1983 appearing at pages 462 and 466 of the Paper Book, it was pointed out on behalf of the petitioners before this Court that the market committees had not even upto that date been registered under the Tobacco Board Act, 1975, in the first letter written to the Market Committee it was stated that the market J committee could not be given registration because these lacked certain necessary qualifications and was therefore incapable of rendering any service at all. Here it may have to be borne in mind that section 12 of the Tobacco Board Act, 1975 enjoins 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.

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 1 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 appellants, it was urged that tobacco was covered by entry 52 of List I by virtue of the declaration under section 2 of the Tobacco Board Act, 1975 namely

the Central Government. It was submitted that once a declaration had been made under section 2, pursuant to Entry 52, the Parliament had exclusive competence to legislate every aspect or activity pertaining to tobacco and the State would have no competence to legislate on that topic.

Reference was made to the decision in the case of Baijnath Kedia v. State of Bihar & Ors.(1) I need not detain ourselves on the permissibility of the regulation of marketing of cardamom under the Act, because the same was not canvassed before us.

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.(2) In any event we are not concerned with this controversy as the same was not canvassed before us.

lt 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.

It was contended that the 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 (3) (1) [1970] 2 S.C.R. 100 at 113.

(2) A.l.R. 1980 S.C. 1124.

(3) A.l.R. 1978 S.C. 597, and Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc. (1). The A 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, Tulsipur (2) and in the said case on the observations of Megary, J- in rates v. Lord Hailsham of St. Marylebone (3) 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 consecrations 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 .. ."

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 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.

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 (1) A.l.R. 1981 S.C. 487.

(2) A.l.R. 1980 S.C. 882.

(3) [1972] I W.L.R. 1371.

rules, the concepts implicit in previous publication and incorporated in section 23 of the General Clauses Act, 1897 were attracted. It was A 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 No. 22 of 1981 during the period when the arguments in these cases were coming to a close before the High Court. The amendment sought to amend sections 137,148 and 158 of the principal Act. By section 3 of the Ordinance which amended section 148 of the principal Act, the words "after previous publication in the prescribed manner" occurring in section 148(1) of the principal Act had been deleted with retrospective effect i. e. from the date of commencement of the Act itself. It was contended that the requirement of hearing of interests affected was not merely a procedural requirement of Section 148 of the Act but an exercise inherent in the exertion of power of delegated legislation. The very concept of 'fee' and the determination of its extent and incidence by subordinate legislation would require for its reasonable exercise an opportunity for the interests affected being heard, it was submitted.

On behalf of the Market-committees and the Government, it was contended that 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 17th December, 1981 which, in turn, clearly took away the obligation of prior hearing.

The High Court was of the opinion that the authorities relied on before it indicated that the opportunity of consultation and hearing P 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.

The High Court was of the view that 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.

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 interest were not heard in any manner.

The Advocate-General stated before the High Court that A 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-law to make an upward revision of rate of fee, in future, the market committee could follows the directions of this Court in Kewal Krishan Puri's 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-law for want of previous sanction under section 148(1) of the Act was not accepted.

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 Sagar Corporation Ltd. v. The State of Uttar Pradesh and Others.(1) 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.

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

> (1) The amount of fee realised must be ear-market for rendering services to the licensees in the notified (1) A.I.R. 1980 286.

market area and a good and substantial portion of it must be shown to be expanded for this purpose. (2) The services rendered to the licensees must be in relation to the transactions 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 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 reason- able 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 placed in the market.

(5) While spending the amount of market fees for the purpose of augmenting the agricultural produce, its 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 long 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. The High Court by an order dated 30th November, 1981 had directed the Chief Marketing Officer to furnish in respect of each marketing committees a comprehensive statement in a tabulation from 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.

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 work of non-controversial kind will bring about the correlation required to pass the test of market fee.

The High Court observed that the market committees where the routine recurring annual revenue expenditure itself was over 60% of the receipts of the 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.

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'.

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) Laxmeshwar, (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'.

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. 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.

Then the High Court in Category 'E' dealt with markets whose I. financial estimates required to be individually examined. These were the regulated markets of Bangalore, Hubli, Sagar, Bijapur. Raichur, Gadag, Tiptur and Siddapur. The High Could 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.

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 services. The High Court, however, was of the view that during the period of execution of the works particularly at the formative stages of the markets the actual benefit of the services might not be available to the payers of the fees; but if the execution A of the work is so planned as to apply over the years in future as to be incapable of providing any service to the class of fee-payers for and during at least a considerable part of the unit of time-in these cases a 15 years' period from 1974-75 to 1988-89 fixed by the market committees themselves then the concept of quid-pro-quo would dwindle down to something which could not be characterised as illusory..

The High Court then dealt in detail with the category of markets mentioned herein before classed as Category 'E'. It was contended that buyers of different kinds of produce were differents, 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.

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.

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

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 lakhs proposed for construction of large godowns, second item was of Rs. 60 lakhs 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 lakhs for acquisition of 466 acres of land.

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 per cent On the basis of its present proposals and the High Court came to the conclusion that these were not unreasonable.

As mentioned hereinbefore, there was an outlay of Rs. 75 lakhs on the aquisition of land. The provisions of Rs. 75 lakhs 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.

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.

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 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 case 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 was a special service vis-a-vis the 'Fee'.

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 A that some time bound program 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 Committee, 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 part of the judgment has come in for criticism because on behalf of the petitioners/appellants, it was contended that in fact the High Court had abandoned its obligation to come to a finding whether there was quid- pro-quo or not when there was a challenge on that point. Therefore, it was contended that there was no quid-pro-quo established in respect of these markets. On the other hand it was contended that the High Court did come to the conclusion that there was quid-pro-quo but the High Court gave certain directions which it was competent to give. This position will be dealt with in this judgment later.

The High Court came to the following conclusions

(a) that the provisions of section 65(1) of the Karnataka Agricultural Produce Marketing (Regulation) Act, ;966 and section 42 of the Karnataka Act 17 of 1980 in so far as and to the extent these sought to validate the levy of market fee on sellers for the period between 19.5.1975 and 28.9.1978 were declared unconstitutional and void;

(b) the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, in so far 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 Karanataka Agricultural produce Marketing (Regulation) Act, 1966, in so far as these sougth to regulate the marketing of sugarcane was concerned, were held to be repugnant to the provisions of the Sugarcane (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 A 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 per cent 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] 5() directing a suitable reduction in the quantum of the market fee of the market-committees concerned.

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. In so far as producer-sellers and other petitioners who were trade 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.

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

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 I 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 A 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 item 54 of List I of the VIIth Schedule, or whether the State Legislature had no competence to legislate on this point 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?

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 contra-distinction 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 VII Schedule speaks of 'fees' in respect of the matter enumerated in List It. Similarly, Entry 96 of List I of VII Schedule speaks of fees' in respect of matters mentioned in List 1. Entry 97 of List I speaks of 'tax'. The classic distinction between the two was reiterated in the observations of J. Latham in the case of Matthews v. Chicory Marketing Board (60 Commonwealth Law Report p. 263). A 'tax' is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. In the case of The Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.,(l) this court reiterated that 'the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is a payment for a special benefit or __ privilege'.

(1) 119541 S.C.R. 1005, From time to time in several decisions the need for imposition of fees by the market-committees have been emphasised and A examined. Rajamanner, C.J. and T.L. Venkatarama Aiyar, J. in the case of Kuttf Keya v. The State of Madras(l) 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(2) where Subba Rao, J. referred to the background of the marketing legislation. It is not necessary to deal in detail with the said decisions, Most of these decisions were reviewed by this Court in judging the validity of fees imposed in the case of Kewal Krishan Puri (supra). Several principals deduced from the decision in Kewal Krishan Puri's case have been noted hereinbefore. Prior thereto the question was considered in the case of Government of Andhra Pradesh v. Hindustan Machine Tools Ltd.(3) which was noted in Kewol Krishan Purl's case. Kewal Krishan Puri's case specifically noted that the element of quid pro quo might not possible of 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 2/3rd or 3/4th 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 conferring special benefits to the licensees or payers of fees, it was permissible to render other services in the market which might be in the general interest of all concerned in respect of transactions that take place in the markets. Services rendered to the licenses must be in relation to the transactions of purchase or sale of produce in the market. It is not necessary, however, 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 licencees and transactions. But imposition of fees for general benefit like augmenting the agricultural produce, its facility of transport in villages and to provide other (1) A.T.R. 1943 MAD 621.

(2) A.I.R. 1959 S.C. 300.

(3) [1975] Supp. S.C.R. 394.

facilities meant mainly or exclusively for the benefit of agriculturists A was not permissible on the ground that such service in the long run augmented the volume of transaction in the market ultimately benefiting the traders. Such and indirect benefit could not be considered to be sufficient quid-pro-quo to justify imposition of market-fee.

This question was examined in the case of H.H. Shri Swamiji of Shri Admar Mutt, etc. v. the Commissioner, Hindu Religious & Charitable Endowments Department & Ors(l) The correlation was again reviewed in the decision in the case of Ramesh Chandra etc. v. State o f U P. etc.(2) This question was again examined by this Court in the case of Municipal Corporation of Delhi and Others v. Mohd. Yasin. (3) There this Court reiterated that the mere fact there others besides those paying the fees were also benefited did not detract from the character of the fee. Tn 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 to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship 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. A.P. Sen, J. in the said decision observed at page 235 of the report as follows:-

> "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 tax payers 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 (1) [1980] I S.C R. 368.
>
> (2) [1980] 3 S.C.R. 104.
>
> (3) 11983] 3 S.C.C. 229.

does not go into a separate fund but goes into the con solidated fund does not also necessarily make a levy a A tax. 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. Further, neither the incidence of the fee nor the service rendered need the 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 n-ay even be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee, nor it is necessarily absent in a tax."

In the case of Southern Pharmaceuticals & Chemicals Trichur & Ors. Etc. v. State of Keral & Ors. Etc.(1) This view as again reiterated at page 542 of the report, A.P. Sen, J. Observed as follows:-

> "It is now increasingly realised that merely because the collections for the services rendered or grant of a privillege 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 senso is not always a sine quo non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax."

(1) [1982]1 S.C.R. 519.

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

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 though there 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, project into the future for its existence and survival.

Any incidental benefit to those other than the payers of the fee is not decisive of the fact whether it is a 'tax' or a 'fee'. It is necessary to find out the primary object and essential purpose of the imposition (emphasis supplied). 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 he 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.

In the case of Sreenivasa General Traders and Others v. State Of Andhra Pradesh and Others(1), 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 (1) [1983] 4 S.C.C. 353.

According to this decision in determining whether a levy was of fee, the true test must be whether its primary and essential purpose was A 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's case did not lay down any legal principle of general applicability. Sreenivasa General Traders' case (supra) was approved by another decision of the bench of three learned judges in the case of Amar Nath Om Parkash & Ors. etc. v. State of Punjab & Ors.(l) (Judgment delivered by O. Chinnappa Reddy, J.).

Prior to all this, in the case of State of Maharashtra & Ors. v. The Salvation Army, Western India Territory(1), 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's case reiterated that in might not however be possible to prove in every case that the fees collected always approximated to the expenses that were incurred in rendering the particular kind of services or in performing any particular work for the benefit of certain individuals. In that case, the Court found that revenue expenditure was about 62 per cent of the amount of revenue receipts from 1953 to 1970 and this was considered approximate correlation and the Court held that the levy was in the nature of a fee. The Court dealt with the question of G capital expenditure and observed that the expenditure in constructing buildings for locating the head offices and regional offices and the increase in allowances or other amenities to the staff had also to be (1) Civil Appeal Nos. 4500 and 4501 of 1984-(judgment delivered by 19.1 1.1984).

(2) [1975] S.C.R. 475, included in the cost of services. The Court observed that when A there was a surplus it could not immediately be said that the surplus must necessarily go in reduction of the rate of contribution to be levied thereafter. This Court was of the view that it was neither expedient nor prudent to lay down any abstract proposition that whenever there was surplus in a particular year or years that surplus must always be taken into consideration and the rate of contribution should be reduced for the next year or subsequent years. An organisation like the Salvation Army had to incur capital expenditure for the better allowances or other amenities to the staff and these had to be included. tn after taking into account the capital and other expenditure necessary for efficient functioning of an organisation for the better administration of Trust a very large surplus was still left then, the Court noted that the question would arise whether then it was permissible for the organisation to continue the levy at the rate which would only result in further surplus and to invest the surplus solely for earning income or to divert the surplus for other objects. The Court noted that it was not necessary that all available surplus should always go in reducing the rate of contribution for subsequent years, the organisation could not be allowed to accumulate unreasonable amounts i.e., amounts which might not reasonably be required for proper and efficient working of the organisation. In drawing the line, however, the Court would have to look into the nature of the organisation, the potentiality of its growth, the multiplication in its work consequent or its expansion for rendering to services visualised and the necessity for capital expenditure in near future and also the amount of levy collected or expected to be collected. It may be mentioned that in the case of Indian Mica & Micanite Industries Ltd. v. State of Bihar & Ors.(1) whether in a particular case there was a correlation or not is essentially a question of fact.

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 (3) [1971] Supp. S.C.R. 319.

present challenge. It was further contended that having regard to the pace of growth and performance levels over the past seven years A out of the fifteen years period, it was unreasonable to

expect that the huge developmental activities now projected for the next eight years were really intended to be acted upon.

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.

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.

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.

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.

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 judgement. The High Court had also given certain directions. It was, therefore, submitted that the market fee on the buyers of the agricultural produce was originally levied at 3) p. which was increased to I per cent and was further increased from l per cent to 2 per cent 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 committee attempted to justify the enhanced levy of 2 per cent on the basis of the statements and projections mentioned hereinbefore. The High Court noted that that 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 la v as discussed by the High Court, it could not be said that there was no quid-pro quo. On the other hand it was contended on behalf of the appellants that there was a total failure on the part of the respondents to discharge the burden for sustaining the enhanced levy of market fee, it was urged that the High Court consequent to its findings referred to above, ought to have quashed the bye-laws of the market committees in respect of categories C, and mentioned hereinbefore. According to the appellants, the enhanced market fee from 30th June, 1979 could not be supported.

The contention of learned counsel for the appellant was that tho findings of the High Court with reference to 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.

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.

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 services 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 a 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 the essential purpose of the imposition must be looked into.

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, & D, a clear quid-pro-quo was established on a reasonable view. In respect of the 20 market committees falling in category of, 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 referrable to the services rendered and to be rendered to the payers of the fee. While the High Court observed that the levy of fee was justified, the High Court laid down certain guidelines and norms for the market committees for the future.

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.

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 & Ors(l) See also the decision in the case of State of Kerala v. Kumari T.P. Roshana & Anr.(3) In the case of Kewal Krishan Puri & Anr. v. State of Punjab & Others, (supra) this Court had given certain directions for future guidance of the authorities.

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].

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.

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 resolution 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. (1) [1984]3 S.C.C. 161 at 240-242.

(2) [1965] 2 S.C.R. 974.

Courts of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing A 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, directions 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 large 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 implementations 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 directions in the manner the money should be spent.

Another argument on this aspect was that estimate of Tiptur Market Committee showed that there was a surplus Rs. 72 lakhs in the year ending 1982. It was contended that so long as this surplus remained, there was no case for increasing market fee from I percent to 2 percent. It was also submitted that according to the projections filed and the estimated expenditure for the future upto 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 crore 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 the need for modern markets, had taken these F 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 the deficit.

In the aforesaid view of the matter, we are of 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.

In the premises the first question reserved for our consideration A 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 herein before, 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. l, 3, 4 & 5 mentioned hereinbefore are therefore disposed of in favour of the respondents in the manner indicated herein before.

So far as to the question of refund of the amount of the market fees to any of the party is concerned. 11 will briefly have to note the position arising out of the judgment of the High Court.

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 (supra). 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.

The High Court of Karnataka in its impugned judgment had set out exhaustively the grounds upon which the said High Court has (previously in Rajasekhariah's case struck down section 65 (1) (3) of the Act. Pursuant to the judgment in Rajasekhariah's case, the State was exposed to the liability to refund the fee collected for the period from 19.5.1975 when section 65(]) and (3) were introduced by the Amending Act 21 of 1975 and 28.9.1978 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 19.5.1975- in other A

words making it retrospective. Secondly by clause (ii) of subsection 63 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 marketing". In clause (ii) of sub-section (2) of section 63, item (ia) was newly introduced making the provision for, either independently or along with some other authority, necessary facilities for the transport of notified agricultural produce from and to the yard, as one of the obligatory functions of the market committees.

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 19.5.1975- being the date on which it was originally introduced.

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 recollected from the sellers between 19.9.1975 and 28.9.1978 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 Or 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, at best. the amendments could be said to have achieved was that providing "facilities for transport" which was not one of the duties and functions of the market committees earlier had now been made as one of their duties and functions. It was urged that even if the "facilities for transport" could be said to include construction of rural roads, only the first defect or infirmity pointed out in Rajasekharih's case could be said to have been cured or removed but not the more important one, the second.

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 A 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 marketyards, 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's 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.

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 around.

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. These principles are well-settled by the decisions of this Court in the cases of Misrilal Jain etc. etc. v. State of Orissa and Another(l), Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors. ('), Municipal Corporation of the City of Ahmedabad, Etc. v. New Shorock Spg. & Wvg. Co. Ltd., Etc (B) and l.N. Saksena v. The State of Madhya Pradesh.(4) 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 exercise 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 is consistent with the provisions of Part III of the Constitution.

(1) A.I.R. 1977 S.C. 1686=[1977] 3 S.C.R. 714. (2) A.l.R. 1970 S.C. 192=[1970] 1 S.C.R. 388. (3) A.I.R. 1970 S.C. 1292=[1971]1 S.C.R. 288. (4) A.l.R. 1976 S.C. 2250=[1976} 3 S.C.R. 237.

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 A further of the view that this was concluded by the decision of this Court in Kewal Krishan Puri's case (supra).

l 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 tile 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 M/s Amar Nath Om Parkash & Ors. Etc. v. The State Punjab & Ors. Etc. (supra) 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 Delhi v. MOJId. Yasin (supra) where it was reiterated that the fact that others besides those paying the fees are o benefited did not detract from the characted of the fee. The Court observed that 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. Quid- pro-quo in strict sense is not the one and only true index of a fee as we have mentioned hereinbefore.

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 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 & 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 & 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 A committees. In view of the amended provisions of the statute which we have mentioned providing facilities for transport is one of the obligations of the market committees. In my opinion, realisation of fees for such facilities would be justified and valid. If, as we have discussed, without rural roads, markets could not be reached and the functions for which the market committees were constituted could not be performed, if it is of fundamental importance that there should be a network of roadways if effective aid is to be given to buyers and sellers of goods for marketing their products, then in my opinion, the fact that the public streets and roads are public properties and the State holds such streets and roads as trustees would be of no consequences in considering such realisation as fees.

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's case (supra) 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 as Section 20 of the Act 17 of 1980 as well as section 42 of the Attending Act was not constitutional valid and was liable to be struck down. I hold that these are constitutionally valid in view of the perspective in which the concept of fee has to be judged in the light of the decision I have referred to hereinbefore. If that is the position then no question of refund would really arise, in view of the provisions of the said Act as amended by Act 17 of 1980 and section 42 of the Act 17 of 1980 as it validated the market fee on sellers between 19.5.1975 and 28.9.1978. The funds collected had remained with the Government and have been spent for purposes which are valid purposes in view of the amendment. So no question of refund arises.

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 A 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. Etc. Etc. v. The State of Mysore & Anr.(1) Most of these have been discussed in the recent decision of this Court in the case of Amar Nath Om Parkash & Ors. (supra) 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 section 42(1)(b) & (c) that no proceedings for refund would lie, in my opinion, in so far as the High Court had directed to refund in certain cases as indicated in the judgment of the High Courts I am unable to sustain that part of the order and that order is set aside. I may mention that when there was no provision like section 42 of the Amending Act and there was a liability of refund n the case of Shiv Shenkar Dal Mills Etc.. Etc v. State of Haryana & Ors Etc.(x), this Court had evolved certain procedure for utilisation of the funds collected so as to avoid undue enrichment. In view of the principles discussed above and the cases noted in the aforesaid decision in Amar Nath Om Parkash & Ors. case (supra), we are of the opinion that section 42 of the Amending Act is valid and by virtue of the said section, that cannot be any order for refund in the instant case. It must be borne in mind that the High Court has given specific directions for utilisation of the surplus fund in certain matters to the market committees. Point (2) noted above is thus disposed of.

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 (1) [19751 2 S.C.R. 511.

(2) 11980]1 S.C.R. 1170.

referred to this discussion before and had come to the conclusion A 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 Scud.

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, quasijudicial and administrative functions and not to any legislative functions See The Tulsipur Sugar Co. Ltd. v. The Notified Area Committee,Tulsipur.('), S.A. de Smith ' Judicial Review of Administrative Action ', 4th P.dn. pages 181 to 183. In any event the rule of 'audi alteram partem' is applicable in exercise of the States' power of taxation-See Avinder Singh Etc. v. State of Punjab & Anr. Etc (2) This disposes of point no. (7).

The 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 31st August, 1984 by which section 13 of the Central Act was made applicable in the State of Karnataka, in so far 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 (1) [1980] 2 S.C.R. 1111 at pages 1118 to 1121. (2) [1979]1 S.C.R. 845.

impressed before this Court that the same reasoning should apply in view of the similarity of provisions of the Central Act as with A Cardamom Act as it should have been held logically by the High Court that the State Legislature was not competent to extend marketing provisions to tobacco in the State Act. Tobacco was brought within the network of the Act by virtue of Karnataka Act 17 of 1980.

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 have no competence to legislate on that topic. As mentioned hereinbefore a declaration under Entry 52 of List I of-Vllth Schedule has been made in respect. Of tobacco. Entry 52 of the said list provides 'Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.' 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. C. 1. T. Bombay(l). On behalf of the appellants reliance was placed on the observations in the case of Baijnath v. Bihar State(2) 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 (1) [1955]1 S.C.R. 829 at page;836-37.

(2) [1970] 2 S.C.R. 100 at 113.

Devan Hills Co. v. Kerala(1) and Ganga Sugar Co. Ltd. v. State of U.P..(2) 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 7th Schedule and therefore, the legislative power of Parliament covered enactments with respect to industries having regard to Article 246(1) of the Constitution. If the impugned legislation invaded Entry 52 it must be repulsed by the Court.

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.

So fast 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.

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 (emphasis supplied). 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 or List III 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 Subrohmanyam v. Muthuswamy.(3) Justice Suliaman in that case observed that the rigour of that literal interpretation of section 100 of the Government (1) [1973]1 S.C.R. 356 at 369.

(2) 11980] I S.C.R. 769 at 781.

(3) [1940] 45 C.W.N. (FC) I=A.I.R. 194] FC 47 at 57-58.

Of India Act, 1935 with which Federal Court was concerned in that decision was relaxed by the use of the words "with respect to which A only signify pith and substance" and do not forbid a mere incidental encroachment. This is also the position that emerges from Article 246(1) of the Constitution.

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 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 Il and C reserved to be only dealt with the 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.

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 brought 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.

It was, further, submitted that in any event that 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 v. Wealth Tax Officer, Calcutta(1). But in resolving the rights of component units of federal or quasi-federal set up (to which category, however, 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 enteries, as to 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 will regard to marketing of tobacco and levy of market fee thereon under entry 28 read with entry 66 of List lI 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. (1) [1969] S.C.R. 108 at 113, It was urged that in the case of Cit. Tika Ramji & Others Etc. A v. The State of Uttar Pradesh & Others(l), this Court rejected the contentions that all sugarcane 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 783-84 in the case of Ganga Sugar Co. Ltd v. State of U.P. (supra) 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 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.(2).

The following submissions were placed before us on the around of repugnancy:

> (1) There may be inconsistency in the actual terms of the competing statutes. (See R.V. Brishbane Licensing Court, [19201 28 C.L.R. 23.
>
> (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 [1926] 37 C.L.R.
>
> 466).
>
> (3) Even in the absence of intention, a conflict may arise when both State Legislature- and Common wealth (1) [1956] S.C.R. 393.

(2) [1964] 4 S.C.R. 461 at 477.

seek to exercise their powers on the same subject Victoria v. Commonwealth, [1937] 58 C.L.R. 618; Wenn Attorney General (Vict.) [1948] 77 C.L.R. 84) Nicholas, Australian Constitution 2nd Edn at p.

303. Tikaramji [1956] SCR 393 at 424-425. Deep Chand v. State of U.P. [1959] Suppl. 2 SCR p. 8 at

43. Ex-Parte Mclean [1930] 43 C.L.R. 472 at 483 and the observations of Justice B.N. Rau in the Calcutta decision of G.P. Stewart v. B.K Roy Choudhury (AIR 1939 Cal 628 at 634). As Sir B.N. Rau mentioned in Stewart v. Brogendra 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.

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

It was finally submitted that in 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.

It was evident from the letters dated 15.9.1983 and 23.9.1983 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.

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

> (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 sub stance, 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 ancilliary 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 Il 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 matter falling pith and substance in List II or in A respect of Central laws passed on subject falling in List I. Parliament cannot legislate on a State subject and Slate cannot legislate on a Central subject. If either trenches upon the field of the other, law will be ultra vires. See in this connection M/s Hoechst Pharmaceuticals Ltd. & Others Etc. v. State of Bihar and Others (1) etc., Ramesh Chandra Etc. v. State of U.P, Etc. (supra) at page 135 and The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal and Others.(a) Like entry 25 of List II-Gas and Gas Works-without any limitation of entry 28 in List II-in respect of any legislation which is in substance and true nature deals with 'markets and fairs' read with entry 66 of the said List has complete ascendency and there cannot be any intrusion of that filed by another entry-See in this connection the discussion on "Union & State Relation under the Indian Constitution"-M.C. Setalvad-p. 48, 49. In Calcutta Gas Company's case (supra) by comparison of entry 7 and entry 52 of List I with entry 25 of List Il, this Court upheld State legislation of take over the Gas industry in spite of declaration under entry 52.

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 - nor is the Central Act a law relating to any 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.

In the High Court, counter-affidavits were filed to establish the quid-pro-quo and rendering of the services to the traders including (1) [1983] 4 S.C.C. 45.

(2) [1962] 3 Supp. S.C.R. 1.

tobacco merchants by the respective six market committees. In fact A 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.

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 a administration of markets for agricultural produce and whereas it was thought expedient to provide for the better regulation of buying and selling agriculture 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 obligations to impose fees for better maintenance of markets, in other words for better administration of markets. The Central Act was an Act to provide for the control of the union of tobacco industry. How better to control the industry of tobacco was the object of the Center11 Act. For this purpose I have noted the salient features of the Act, the functions and duties of Tobacco Board, the regulation of production and disposal of virginia tobacco.

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 the 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 provisions of any other law for the time being in force. Tobacco was brought within the marketing Act in 1980 and section 13 of the Tobacco Board Act, 1975 was made applicable in the State of Karnataka only on 31st August, 1984 by the notification referred to hereinbefore. Therefore essentially the Central Act was for the development of the industry of tobacco and, incidentally, certain provisions for better sale of tobacco through certain auction platforms had been made. There is nothing in the Act or in the Rules which indicate that it is inconsistent with or cannot be operated along with the marketing regulations. It is true that for this purpose certain sanction under the Act is required.

Rule 35 of the Tobacco Board Rules provides for registration as exporter, or packer Of 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.

In a letter written on 15.9.1983 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 13th of October, 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 legislations. If in spite of declaration under entries 7 and 54 of List I in respect of Gas, the State Legislature can still legislate for the nationalisation of Gas industry as was held in Calcutta Co. (Prop.) Ltd v. State of West Bengal (supra) because entry 25 of List II, it cannot be said that no legislation regulating the market A can be done by the State of Karnataka in spite of entry 28 read with entry 66 of List II because of declaration under entry 52 of List I in respect of tobacco industry. That would be inconsistent and illogical See also P.D. Shamdaswami v. Central Bank of India.(l) While it is true that in the spheres very carefully delineated the Parliament has supremacy over State Legislatures, supremacy in the the sense that in those fields, Parliamentary legislation would hold the field ands 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 est-wholly unnecessary and undesirable result. The Marketing Act is essentially an Act to regulate the marketing of agricultural produce, control of coffee industry would not be defeated if the marketing of coffee is done within the provisions of the Marketing Act. It must therefore be held that the State Act should prevail. One should avoid corroding the State's ambit of powers of legislations which will ultimately lead to erosion of India being a Union of States.

The contentions OD behalf of the appellants therefore, on this point have to be rejected. As to who 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.

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 (1) [1952] S.C.R. 391 at 394.

as against the Tobacco Board Act. As noticed before, the contention of validity of the Cardamom Act on the ground of entry 28 of A 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 less a compelling reason to hold that Tobacco Board Act was within the competence of the State Legislature for the reasons indicated in this judgment. Therefore that cannot be any argument for consideration at all.

In so far 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.

In view of the majority decision, all the civil appeals, special leave petitions and writ petition except civil appeal No. 629 of 1983 (Karnataka Market Fee matters) are dismissed without any order as to costs.

Civil appeal No.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.

M.L.A. Appeals and Petitions dismissed.