M.C. V. S. Arunachala Nadar Etc vs The State Of Madras & Others on 6 October, 1958

Equivalent citations: 1959 AIR 300, 1959 SCR SUPL. (1) 92

Bench: Natwarlal H. Bhagwati, Bhuvneshwar P. Sinha, K.N. Wanchoo

PETITIONER:
M.C. V. S. ARUNACHALA NADAR ETC.

Vs.

RESPONDENT:
THE STATE OF MADRAS & OTHERS

DATE OF JUDGMENT:
06/10/1958

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
DAS, SUDHI RANJAN (CJ)
BHAGWATI, NATWARLAL H.
SINHA, BHUVNESHWAR P.
WANCHOO, K.N.

CITATION:
1959 AIR 300 1959 SCR Supl. (1) 92
CITATOR INFO :

R	1959 SC1124	(25,27)
F	1962 SC 97	(5)
R	1966 SC 385	(8)
RF	1967 SC 973	(4)
R	1973 SC 106	(102)
D	1974 SC1489	(6)
E	1980 SC1008	(22)
F	1983 SC1246	(15,18)
D	1984 SC1772	(15,16)
R	1985 SC 218	(3)
R	1986 SC1506	(6)

ACT:
Fundamental Right-Reasonable restrictions-Statute regulating buying and selling of commercial crops-Constitutional validity Madras Commercial Crops Markets Act (Mad. XX Of 1933) Constitution of India, Arts. 19(1)(g) and 19(6).

HEADNOTE:

The Madras legislature enacted the Madras Commercial Crops Markets Act for providing satisfactory conditions for the growers of commercial crops to sell their produce on equal terms with the purchasers and at reasonable prices. The Act, Rules and the Bye-laws framed thereunder have a long term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and reliable market information is given. Till such markets are established the Act provides for the imposition of licensing restrictions to enable the buyers and sellers to meet in licensed premises. After the establishment of the markets no licenses would be issued within a reasonable radius from the markets and all growers will have to resort to the markets for selling their crops. The result would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities.

Held, that the impugned provisions of the Act impose reasonable restrictions on the citizen's right to do business and are valid. Such a statute cannot be said to create unreasonable restrictions on the citizen's right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and over-reach the object for which they were made.

Chintaman Rao v. The State of Madhya Pradesh, [1950] S.C.R. 759 and State of Madras v. V. G. Rao, [1952] S.C.R. 597, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 169-171 of 1955.

Appeals from the judgment and order dated July 10, 1953, of the Madras High Court in Writ Petitions Nos. 75, 87 and 135 of 1953.

R. Ganapathy Iyer and Shanmugavel, for the appellants. V. K. T. Chari, Advocate-General for the State of Madras, V. V. Raghavan and R. H. Dhebar, for the respondents.

H. N. Sanyal, Additional Solicitor General of India and R. T. M. Sen, for Interveners Nos. 2 and 3.

S. B. Sen, Additional Government Advocate for the State of Madhya Pradesh and I. N. Shroff, for Intervener No. 4. 1958. October 6. The Judgment of the Court was delivered by SUBBA RAO J.-These three appeals by certificate granted by the High Court are directed against the common order of the High Court of Judicature at Madras, dated July 10, 1953, dismissing three writ petitions filed by the appellants impugning the validity of the provisions of the Madras Commercial Crops

Markets Act (Mad XX of 1933), hereinafter referred to as the Act, and the Rules framed thereunder, and certain notifications issued by the first respondent herein in pursuance thereof.

The Act was passed to provide for the better regulation of the buying and selling of commercial crops in the State of Madras and for that purpose to establish markets and make Rules for their proper administration. On May 18, 1951, the State Government issued G. 0. No. 1049 (Food & Agriculture Department) extending the provisions of the Act to Ramanathapuram and Tirunelveli Districts in respect of cotton and groundnuts. On February 25, 1952, the State Government issued G. 0. No. 251 (Food & Agriculture Department) ordering the constitution of a Market Committee at Koilpatti and Sankarankoil in Tirunelveli District. By a similar G. O., viz., G. 0. No. 356 (Food &- Agriculture Department) dated March 8,1952, the Government directed the constitution of a Market Committee at Virudhunagar and markets at (1) Virudhunagar; (2) Rajapalayan and (3) Sattur in Ramanathapuram District. The Market Committees. were duly constituted, and, on January 9, 1953, the Market Committee at Virudhunagar issued a notice stating that the Act and the Rules had come into force in Ramanathapuram District on January 1, 1953, and requiring persons who did business in cotton and groundnut to take out licences as provided therein. A further notice dated January 17, 1953, stated that all the traders in cotton and groundnut, who failed to take out licences on or before February 15, 1953, were liable to prosecution. Similar notices dated January 22, 1953, and February 14, 1953, were issued by the Chairman, Tirunelveli Market Committee at Koilpatti calling upon all traders, producers and weighmen dealing in cotton to take out licences before February 28, 1953, and threatening prosecution for failure to comply therewith. The appellants in the above three appeals and others filed writ petitions in the High Court of Madras against (1) the State of Madras; (2) the Collectors of the concerned Districts and (3) the Chairmen of the Market Committees, for the issue of a Writ of Mandamus directing the respondents to forbear from enforcing any or all the provisions of the Act as amended and the Rules and Bylaws framed thereunder.

A Bench of the Madras High Court, consisting of Rajamanna C. J. and Venkatarama Aiyar J. by an order dated July 10, 1953, dismissed the applications. The learned Judges held that s. 5(4)(a) of the Act was void to the extent it conferred on the Collector authority to refuse a licence at his own discretion and rule 37 was void in so far as it prohibited persons whose names had not yet been registered as buyers and sellers, from carrying on business in the notified area. Subject to that, the impugned Act and the Rules were upheld under Art. 19(6) of the Constitution as a valid piece of marketing legislation. In the result, the applications were dismissed. The aforesaid three appellants have filed these appeals against the order of the High Court in so far as it dismissed their applications.

Learned counsel for the appellants contends that the provisions of the Act and the Rules framed thereunder constitute an unreasonable restriction upon the appellants' fundamental right to do business and that they not only do not achieve the object for which they are enacted but defeat their purpose. Elaborating this argument, he took us through some of the provisions of the Act and the Rules made thereunder in an attempt to establish that the provisions cripple the business of the appellants, restrict the rights of the small traders, cause unnecessary and unintentional hardship to the growers and thereby exceed the purpose of the enactment and defeat its object.

Before we scrutinize the provisions of the Act, the law on the subject may be briefly noticed. Under Art. 19 (1)(g) of the Constitution of India all persons have the right to practice any profession, or to carry on any occupation, trade or business. Clause (6) of that Article enables the State to make any law imposing in the interest of general public reasonable restrictions on the exercise of the right conferred by sub-cl. (g) of el. (1). It has been held that in order to be reasonable, a restriction must have a rational relation to the object which the legislature seeks to achieve and must not go in excees of that object (See Chintaman Rao v. The State of Madhya Pradesh) (1). The mode of approach to ascertain the reasonableness of a restriction has been succinctly stated by Patanjali Sastry C. J., in State of Madras v. V. G. ROW (2) thus:

> It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."
>
> Bearing the aforesaid principles in mind, we shall ascertain the object of the Act, from the circumstances under which it was passed, and its provisions, and see whether the provisions have any reasonable relation to the object which the legislature seeks to achieve.
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> There is a historical background for this Act. Marketing legislation is now a well-settled feature of (1) [1950] S.C.R. 759.
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> (2) [1952] S.C.R. 597, 607.

all commercial countries. The object of such legislation is to protect the producers of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce. In Madras State, as in other parts of the country, various Commissions and Committees have been appointed to investigate the problem, to suggest ways and means of providing a fair deal to the growers of crops, particularly commercial crops, and find a market for selling their produce at proper rates. Several Committees, in their reports, considered this question and suggested that a satisfactory system of agricultural marketing should be introduced to achieve the object of helping the agriculturists to secure a proper return for the produce grown by them. The Royal Commission on Agriculture in India appointed in 1928, observed:

> "That cultivator suffers from many handicaps: to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other Provinces the establishment of regulated markets on the Berar system as modified by the Bombay

> legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation."

The Royal Commission further pointed out in its report:

> " The keynote to the system of marketing agricultural produce in the State is the predominant part played by middlemen."

It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies."

The necessity for marketing legislation was stressed by other bodies also like the Indian Central Banking enquiry Committee, the All India Rural Credit and Survey Committee, etc. Recently the Government of Madras appointed an expert Committee to review the Act. In its report the Committee graphically described the difficulties of the cultivators and their dependence upon the middlemen thus:

> " The middleman plays a prominent part in sale transactions and his terms and methods vary according to the nature of the crop and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to the taluk or district centre and entrusts it to a commission agent for sale. If it is not sold on the day on which it is brought, it is stored in the commission agent's godown at the cultivators' expense and as the latter generally cannot afford to wait about until the sale is effected he leaves his produce to be sold by the commission agent at the best possible price, and it is doubtful whether eventually he receives the best price. The middle class ryot invariably disposes of his produce through the same agency but, unlike the rich ryot he is not free to choose his commission agent, because he generally takes advances from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore, he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price but he loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between a creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour the villages and the price at which it changes hands is governed not so much by the market rates, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middleman occupies and his methods of sale and the terms of his dealings have long ago been realized."

The aforesaid observations describe the pitiable 'dependence of the middle-class and poor ryots on the middlemen and petty traders, with the result that the cultivators are not able to find markets for their produce wherein they can expect reasonable price for them.

With a view to provide satisfactory conditions for the growers of commercial crops to sell their produce on equal terms and at reasonable prices, the Act was passed on July 25, 1933. The preamble introduces the Act with the recital that it is expedient to provide for the better regulation of the buying and selling of commercial crops in the Presidency of Madras and for that purpose to establish markets and make rules for their proper administration. The Act, therefore, was the result of a long exploratory investigation by ex- perts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated markets by eliminating middlemen and bringing face to- face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object to achieve which it is enacted.

It is therefore necessary to scrutinize the provisions of the Act and the Rules made thereunder to ascertain whether the restrictions imposed are not reasonable. The said provisions fall under two groups: the first group provides the machinery for controlling the trade in commercial crops and the second group of provisions imposes restrictions On the carrying on of the said trade. Section 2(1-a) defines I commercial crop' to mean cotton, groundnut or tobacco and includes any other crop or product notified by the State Government in the Fort St. George Gazette as a commercial crop for the purposes of this Act. Under s. 3, the State Government issues a notification declaring their intention to exercise control over the purchase and sale of such commercial crop or crops in a particular area and calls for objections and suggestions to be made within a prescribed time. After the objections are received, the State Government considers them and declares the areas to be specified in the notification or any portion thereof to be a notified area for the purpose of the Act in respect of commercial crop or crops specified in the notification. Under s. 4-A, the State Government has to establish a market committee for every notified area and it shall be the duty of the market committee to enforce the provisions of the Act. Sections 6 to 10 provide for the constitution of Market Committees and s. 16 for their supersession for the reasons mentioned therein. In exercise of the powers conferred by s. 18 of the Act the State Government made Rules which provide for the manner in which the members of Market Committees should be elected, and also for the constitution of sub-Committees. In exercise of the powers conferred by s. 19 of the Act and also subject to the Madras Commercial Crops Markets Rules, 1948, the Committees for the various districts made, bye-laws for regulating their meetings and for the discharge of their duties by the various subordinate bodies. The said provisions which bring into existence a machinery for regulating the trade are not attacked by the learned counsel for the appellants. Under the second group, there are provisions providing for matters which are succinctly stated in the 'Report of the Expert Committee on the review of the Madras Commercial Crops Markets Act, 1933 at p. 7 as under:

"(1) A common place is provided for seller and buyer to meet and facilities are offered by way of space, buildings and storage accommodation.

(2) Market practices are regularized and Market charges clearly defined and unwarranted ones prohibited. (3) Correct weighment is ensured by licensed weighmen and all weights are checked and stamped.

(4) Payment on hand is ensured.

(5) Provision is made for settlement of disputes. (6) Daily prevailing prices are made available to the grower and reliable market information provided regarding arrivals, stocks, prices, etc. (7) Quality standards are fixed when necessary and contract forms standardized for purchase and sale."

Section 5 says: 'No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase or sale of a notified commercial crop, except under and in accordance with the conditions of a licence granted to him by the Collector. The first proviso to that section provides that after the establishment in such area of a market for the purchase and sale of a notified commercial crop, no licence for the purchase or sale of such commercial crop shall be granted or renewed in respect of any place situated within such distance of the market as may from time to time be fixed by the State Government. The second proviso enables the Market Committee to exempt from the provisions of the above sub- section any person who carries on the business of purchasing or selling any commercial crop in quantities not exceeding those prescribed by Rules made under the Act. The third proviso authorizes the said Committee to exempt a person selling commercial crop which has been grown by him, or a cooperative society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, selling a commercial crop which has been grown by any of its members, and also empowers it to withdraw the exemption. Sub-section (2) of s. 5 gives exemption to a person purchasing for his private use a commercial crop in quantities not exceeding those prescribed by Rules made under the Act. Sub-section (3) prohibits any person within a notified area from setting up, establishing or using, continuing or allowing to be continued, any place for the storage, weighment, pressing or processing of any notified commercial crop except under and in accordance with the conditions of a licence granted to him by the Collector. Under proviso to sub-s. (3) a person is exempted from the operation of that Rule in respect of any notified commercial crop grown by him. Sub-section (4) enables the Collector, on the report of the Market Committee and after such inquiry as he deems fit, to cancel or suspend any licence granted under the said section. There are provisions providing for penalties for infringement of the statutory regulations and for referring disputes to compulsory arbitration. The bye-laws framed by the Committees prescribe graded scales of licence fees in respect of various licences required under the Act; these show that a trader has to take separate licences under s. 5(1) and s. 5(3). The licence fee payable for additional premises is comparatively smaller than the amount payable for the main premises. Licence fee is also fixed for brokers, weighmen, etc. Rule 28(3) (iii) of the Rules states that it shall not be necessary for a poison to obtain more than one licence for setting up, establishing or continuing or allowing to be continued more than one place in the same notified area for the purchase, sale, storage, weighment, pressing or processing of the same commercial crop. A

combined reading Of the Rule and the bye-laws shows that though different licences may have to be obtained under s. 5(1) and s. 5(3), one licence is sufficient for different places and only small payments have to be made for every additional premises for the same purpose. It is not necessary to notice the other provisions as nothing turns upon them in the present ease. Shortly stated, the Act, Rules and the Bye-laws framed thereunder have a long-term target of providing a net work of markets wherein facilities for correct weigbment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued ; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities.

Learned counsel for the appellants contends that the restrictions imposed by the provisions of s. 5 are not only unreasonable but tend to defeat the very purpose of the legislation. Elaborating this argument, the learned counsel says that they are unreasonable from the standpoint of the big trader, the small trader and also the grower of crops. The trader, his argument proceeds, can only buy or sell in the licensed premises paying heavy licensing fees under different beads and paying also heavy overhead charges, with the inevitable consequence that he will not be able to run his business with profit. It is also said that he cannot go wherever he likes to buy the produce at cheap rates and can negotiate for or enter into contracts of sale only in the licensed premises, with the result that be has to pay higher prices to the sellers. The first argument rather exaggerates the situation; for, the rates of licence fees shown in the bye-laws framed by the Marketing Committee at Virudhunagar do not appear to be so high as to cripple the trader's business. No material has been placed before us to establish that the rates are so high and the burden is so unbearable that a trader, who is otherwise making profit, cannot carry on his business. The second objection of the learned Counsel in itself affords a reasonable - basis for the legislation ; for, what the learned counsel in effect says is that the trader is exploiting the small growers and that he is prevented from doing so under the licensing regulations.

From the standpoint of the seller it is said that though he may be exempted from the operation of the said Act under the second proviso to s. 5 (1) he is prevented from selling his produce by insisting that he should trade only with the licensed trader and in the licensed premises. Assuming that that is the legal position under the Rules, nothing prevents the grower from selling his produce to another grower whose requirements are greater than what he produces or to a smaller trader exempted under the third proviso to s. 5 (1). After the market is established, it is contended, a grower will be obliged to carry the goods to a centralised place if he is to dispose of the goods, which can hardly be described as increasing the facilities for marketing the goods. It is true that the growers may be under some difficulties in this regard, but that is counter-balanced by the marketing facilities provided for them under the Act.

It is also said that when a market is established, no licence to purchase, or sell, commercial crops will be granted or renewed in respect of any place situated within such distance from the market as may from time to time be fixed by the State Government and that nothing under the Act prevents the Government from fixing a long distance as a prohibited area; with the result that a person, who is having a licence to trade ,in and about the place where the market is fixed, is deprived of his livelihood, which is an unreasonable restriction upon his right to do business. But in our view, such a provision is necessary for preventing the local business being diverted to other places and the object of the scheme being defeated. Further, ,in practice, it is seen that the Government fixes by notification under s. 5 (1) a radius of five miles around the building and occasionally ten miles. It is also not likely that it would fix a longer distance in the present circumstances, having regard to the inadequate facilities for transporting commodities. That apart, the establishment of a market does not prevent a trader from carrying on the business in the market established, but he could not run a market for himself in respect only of the commodities declared to be commercial crops within the radius prescribed.

While the object of the Act is to protect the growers, the argument proceeds, the small traders are compelled to resort to distant markets, with the result that some of them would be forced to give up their business and others would have to incur unnecessary expenditure which they could not afford. The Act is an integrated one, and it regulates the buying and selling of commercial crops. If the small traders are exempted, it creates loopholes in the scheme through which the big trader may operate, and thereby the object itself would be defeated. That apart, the second proviso enables the Committee to exempt small traders in appropriate cases. The constitution of the Committee, in which there will be representatives of the traders and the buyers, is a sufficient guarantee against the implementation of the provisions of the Act to the detriment of all concerned. If a packed Committee abuses its powers, there is a further provision to enable the Government to supersede it. We, therefore, hold that, having regard to the entire scheme of the Act, the impugned provisions of the Act constitute reasonable restrictions on a citizen's right to do business, and therefore, they are valid.

The next contention of the learned counsel for the appellants is that the G. 0. No. 356 dated 8-3-1952 directing the establishment of a market at Virudhunagar is an unreasonable restriction on the appellants' right to do business, and is, therefore, invalid. In Viradhunagar, there is already a well-established market which provides facilities for the purchase and sale of cotton and other goods. It is stated that the said market has been functioning for over fifty years, that it has been largely used by the merchants of the community, and that it contains stalls for effecting sales, godowns for stockina goods, halls, parks and other amenities. Certain charges called I mahimai' are collected on all transactions that take place within the market; and they are constituted into a trust fund which is utilised for the maintenance of schools and for religious purposes. The argument is that the appellants in C. A. No. 169 of 1955 are running the market as an occupation or business with high standards and that the notification directing the constitution of a market in the same locality, when admittedly the entire scheme of building a net work of markets could not be finished within a, predictable time, is not a reasonable restriction on their right to do business. It is also said that the same advantages could be given to the growers by continuing the said market with suitable restrictions and controls as the market established by the Market Committee would conceivably

provide for them, and in those circumstances, when two alternative methods would equally achieve the objects, the notification directing the constitution of a market to the exclusion of the existing one would be an unreasonable restriction. The learned Advocate General of Madras contends that the appellants have really two fundamental rights: one is to carry on trade or business and the other is to hold their property, i.e., the market; that by reason of the notification they are not prevented from doing their business, for they can still do business in the market established subject to the regulations and also do business outside the prescribed area ; and that they are not prohibited from holding the market as property, for they could still utilise it for commodities other than the notified crops. In respect of the contention that holding the market is only an incident of ownership of the property, reliance is placed upon the decisions in T. B. Ibrahim v. Regional Transport Authority, Tanjore (1); Ramunni Kurup v. The Panchayat Board, Badagara (2); Captain Ganpati Singhji v. The State of Ajmer (3) ; and Valia Raja of Edappally v. The Commissioner for Hindu Religious Charitable Endowments, Madras (4). It is unnecessary to express an opinion on the question whether the right of the appellants falls under Art. 19(1)(f) or (g) of the Constitution of India, or under both the sub-clauses; for, the (1) [1953] S.C.R. 290.

(3) [1955] S.C.R. 1065.

(2) I.L R. [1954] Mad. 513.

(4) I.L.R. [1955] mad. 870.

question whether the notification imposes an unreasonable restriction on the appellants' right cannot be decided on the material placed before us. That question may conveniently be left open to be decided at the time when the market is established at Virudhunagar, pursuant to the notification issued by the Government. It does not appear from the record that there is any early prospect of such a market being established in that place. The reasonableness of the restrictions would depend upon the circumstances obtaining at the time the market is established. It depends upon the conditions then obtaining in the trade in commercial crops, the standards that will be maintained in the present market at that time, the comparative merits of the existing market and the market to be built up and other relevant considerations which cannot now be visualized. We would, therefore, leave open that question to be decided at the proper time by the authorities concerned when a market is sought to be established in the manner provided by law. The next argument relates to I mahimai' allowances collected by the appellants from the sellers and buyers of the crops in the market. The learned judges of the High Court held that the question relating to this allowance did not arise for decision at that stage, but having heard full arguments on the question, they expressed the view that 'mahimai' could not be claimed as a trade allowance. They concluded their discussion on the subject in the following words:

> " It has nothing to do with -the transaction as such and is really a contribution levied at the time of the transaction for a purpose unconnected with it. It cannot therefore be properly regarded as a trade allowance, and bye-law 25(b) is perfectly valid."

We cannot share the opinion of the learned judges that the question does not arise for decision at this stage. The appellants prayed for issue of a writ of mandamus directing the respondents to forbear from enforcing any or all the provisions of the Act as amended and the Rules and bye-laws framed thereunder by the Ramanathapuram Committee; and, the provisions of the Act read with the bye-laws prohibited the collection of 'mahimai' by the appellants. The question whether the bye- law prohibiting the collection off I mahimai' allowance is valid or not does directly arise for consideration in this case. There is also some ambiguity in the conclusion arrived at by the learned judges of the High Court. They stated that the allowance had nothing to do with the transaction as such and could not therefore be properly regarded as a trade allowance. The learned counsel for the appellants contends that if it is not a trade allowance, it is not covered either by s. 14 of the Act or by bye-laws framed thereunder, as s. 14 prohibits the deduction of trade allowance and does not operate upon any other payments made which are not trade allowances. There is considerable force in this argument, but we think that the learned judges meant only that the said allowance is not an admissible or a permissible trade allowance prescribed by the bye-law. The question, therefore, is whether the allowance described as I mahimai' is a trade allowance and if so, whether the allowance is permitted to be received by the rules or bye- laws made under that section. The relevant provisions may be noticed at this stage. Section 14 says "No trade allowance, other than an allowance prescribed by rules or by-laws made under this Act, shall be made or received in a notified area by any person in any transaction in respect of the commercial crop or crops concerned and no Civil Court shall, in any suit or proceeding arising out of any such transaction, have regard to any trade allowance not so prescribed.

Explanation:Every deduction other than deduction on account of deviation from sample, when the purchase is made by sample, or of deviation from standard, when the purchase is made by reference to a known standard, or on account of difference between the actual weight of the sacking and the standard weight, or on account of the admixture of foreign matter, shall be regarded as a trade allowance for the purposes of this Act ".

Section 19: " (1) Subject to any rules made by the State Government under section 18 and with the previous sanction of the Director of Agriculture, Madras, a market committee may in respect of the notified area for which it was established make bylaws for the regulation of the business and the conditions of trading therein."

By-law 25: Trade allowance applying to the market and the notified area:

> (a).....
>
> " (b) Deductions such as I mahimai' are prohibited. The weight of alien substance such as mud and stone, if any, contained in the lint or kapas borahs or in the bags of groundnut pods or kernels shall be deducted."

The gist of the aforesaid provisions may be stated thus:

Trade allowance cannot be received in any notified area by any person in any transaction in respect of commercial crop or crops. Every deduction in any transaction in respect of the said crop other than those specified in the explanation is trade allowance for the purpose of the Act. A market committee generally may make bye-laws for the regulation of the business and conditions of trading therein and particularly it can make bye-laws prescribing what are permissible trade allowances under the section. Such allowances as are prescribed by a bye-law can be deducted in any transaction notwithstanding the fact that they are trade allowances. The argument of the learned counsel is that that bye-law is bad, because the market committee did not name the allowance or allowances taking them out of the prohibition under s. 14 which they are entitled to do under that section, but made the bye-law mentioning the ' mahimai' allowance as one not deductible in any transaction. The validity of that part of the bye-law prohibiting the deduction of ' mahimai ' as trade allowance depends upon the nature of that deduction. If ' mahimai' is not a trade allowance, the said part of the bye-law would obviously be invalid as inconsistent with the provisions of s. 14. If, on the other hand, mahimai' is a trade allowance, the said part of the bye-law will be superfluous, as the allowance falls within the terms of the section itself This leads us to the question whether ' mahimai' is a trade allowance, within the meaning of s. 14 of the Act.

What is a trade allowance? Trade involves exchange of commodities for money, the business of buying and selling and the transaction involves the seller, the buyer, the commodity sold and the price paid for the sale. Allowance means something given as compensation, rebate or deduction. Under the section, the said deduction should be in any transaction in respect of commercial crops. The deduction may be out of the commodity or out of the price. The recipient may be the seller, the buyer or a third party. When A sells a quantity of cotton to B for a hundred rupees, B, the purchaser, may deduct one rupee from the sale price and pay ninety-Dine rupees to A; he may keep that amount for himself or pay the same to C. So too, A, the seller, may purport to sell one maund of cotton but in fact deduct a small part of it, retain that part for himself or give it to C; or both A and B may fix the price of the commodity purchased at Rs. 102 but the purchaser pays one rupee to C and the seller retains or pays one rupee to C; or it may be that payments have nothing to do with the price or the transaction, but both the parties pay C a specified amount as consideration for the user of the premises or for the services rendered by him. The question whether a particular payment is a trade allowance or not, depends upon the facts of each case. Firstly, it must be a deduction in any transaction in respect of commercial crops. If it is a deduction out of the price or commodity agreed to be paid or transferred, it would be a trade allowance. On the other hand, if the payment is de hors the terms of the transaction but made towards consideration for the use of the premises or services rendered, it would not be a deduction from the price or in any transaction. No material has been placed before us to arrive at a definite finding in the present case whether 'mahimai' is a deduction from the price or commodity within the meaning of s. 14 of the Act. The learned judges, having expressed the view that the

question did not arise for consideration at that stage, did not also consider any material to support their finding. In the circumstances, the only reasonable course is to leave that question open so that it may be decided in appropriate proceedings.

In the result, subject to the aforesaid observations, the appeals are dismissed but without costs.

Appeals dismissed.