

Jan Mohammad Noor Mohammad Begban vs State Of Gujarat And Another on 18 August, 1965

Equivalent citations: 1966 AIR 385, 1966 SCR (1) 505, AIR 1966 SUPREME COURT 385

Author: J.C. Shah

Bench: J.C. Shah, P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, S.M. Sikri

PETITIONER:

JAN MOHAMMAD NOOR MOHAMMAD BEGBAN

Vs.

RESPONDENT:

STATE OF GUJARAT AND ANOTHER

DATE OF JUDGMENT:

18/08/1965

BENCH:

SHAH, J.C.

BENCH:

SHAH, J.C.

GAJENDRAGADKAR, P.B. (CJ)

WANCHOO, K.N.

HIDAYATULLAH, M.

SIKRI, S.M.

CITATION:

1966 AIR 385

1966 SCR (1) 505

CITATOR INFO :

D 1974 SC1489 (6)

R 1979 SC1149 (24,27)

ACT:

Gujarat Agricultural Produce Marketing Act, 1964 (20 of 1964), ss. 5, 6, 27(2) and 30 validity of-Whether violative of Arts. 14, 19 and 31 of the Constitution-Rules under the Act, validity of.

HEADNOTE:

The Bombay Agricultural Produce Markets Act (22 of 1939) was, enacted by the Provincial Legislature of Bombay and

under the said Act the Bombay Agricultural Produce Market Rules, 1941 were framed. By a notification issued under the Act, the whole area within a radius of 12 miles of Ahmedabad City was declared in respect of certain agricultural produce, a market area for the purposes of the Act. A market yard and a market proper were also established for transactions in specified commodities. Under the Bombay Reorganisation Act 11 of 1960 which became operative as from May 1, 1960 two States-Maharashtra and Gujarat were carved out of the territory of the former State of Bombay and the town of Ahmedabad was included within the State of Gujarat, but Bombay Act 22 of 1939 continued for the time being to remain applicable to the Gujarat region by virtue of s. 87 of Act 11 of 1960. Subsequently the Gujarat Agricultural Produce Markets Act 20 of 1964 was passed but under s. 64 of the Act the Bombay Agricultural Produce Market Rules, 1941 remained in operation. The petitioner filed a petition under Art. 32 of the Constitution seeking a declaration that Gujarat Act 20 of 1964 was illegal, ultra vires, unconstitutional and violative of Arts. 14, 19 and 31 of the Constitution of India and therefore null and void and that the rules framed thereunder (being the Bombay Agricultural Produce Market Rules, 1941) were also ultra vires, unconstitutional, illegal, null and void. He prayed for a writ of mandamus forbidding the State of Gujarat from enforcing any of the provisions of the Act and the Rules. The following grounds were urged in support of the petition : (1) The powers conferred by ss. 5 and 6 of the Act were unfettered, wide and unguided and on that account the fundamental rights of the petitioner were infringed. (2) Retail sales which were not regulated by the provisions of the earlier Act were sought to be regulated by Gujarat Act 20 of 1964. (3) Retail trade was completely prohibited by the Act and the prohibition amounted to an unreasonable restriction upon the fundamental rights of the petitioner. (4) Section 30 of the Act gave wide powers to evict a person carrying on business without a licence from the market area. (5) Section 27(2) not having provided the maximum licence fee chargeable was illegal. (6) The market committee had no power to function as it was not constituted according to law. The period of office of the old committee which was to function for three years under Bombay Act 22 of 1939 had expired in 1961 but the committee continued to function and no fresh elections were held. (7) The rules pursuant to which the market committee was constituted and functioned not having been placed before the Legislature in the first meeting after the rules were promulgated under Act 22 of 1939 as required by that Act, the rules were unauthorised and so there was complete absence of machinery for enforcement of the Act. Despite the suspension of Art. 19 by virtue

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of the operation of Art. 358 of the Constitution in the

state of Emergency declared by the President in December 1962, the Court decided the petition on merits because breach of fundamental rights under Arts. 14 and 31 was also alleged.

HELD: (i) The object of the Act being to ameliorate the condition of agriculturists and to do away with middlemen, who, it is a matter of common knowledge, make large and unconscionable profits out of the transactions carried out through them, declaration under s. 5, of intention to regulate trade in agricultural produce in a specified area, after hearing the objections and suggestions of interested parties, cannot be regarded as imposing unreasonable restrictions on the right to carry on trade. The preamble to the Act and the scheme of the Act clearly indicate that the powers conferred upon the Director are to be exercised for the purpose of regulating buying and selling of agricultural produce and for that purpose to establish markets for sale and purchase of agricultural produce. The powers under s. 6 are also to be exercised after giving an opportunity to persons interested to raise objections or to make suggestions as to the proposed introduction of control on sale and purchase of agricultural produce. The authority conferred upon the Director is not wide and arbitrary merely because no principles are indicated for guidance. [515 D-H]

(ii) If regulation of trade in agricultural produce by the declaration of market area and imposition of restrictions may be regarded as reasonable when operating on the wholesale trade it would be difficult to hold that the identical restriction when operating on retail trade may be per se unreasonable.. [516 F]

Mohan Hussain Gulam Mohammud and Anr. v, State of Bihar & Anr., [1962] 2 S.C.R. 659, referred to.

(iii) Apart from the generality of the provisions made in the Gujarat Act and the omission of retail sales from the scheme of exclusion, the Act and the rules clearly indicate that retail sales are not sought to be regulated by the provisions of the Act. It was rightly conceded on behalf of the State that the Act read together with the rules does not purport to place any restriction upon retail transactions in agricultural produce. Therefore no licence is required under the Act for carrying on retail trade in Agricultural produce in the market area, and there is no prohibition against the carrying on of retail sale in agricultural produce in the market area. [518 C-D]

(iv) Section 30 of the Act authorises the eviction from the market of any person found to be operating in the market without holding a valid licence. The power of eviction by the market committee is limited to eviction from the precincts of the market. The provision is apparently enacted for the purpose of imposing an additional penalty against infraction of the prohibition contained in s. 6(2). 'Operating in the market area' can in the context only mean using a place in the market area for the purchase or sale of

agricultural produce specified in the notification under s. 6(2) otherwise than in accordance with the provisions of the Act. The apprehension of the petitioner that a person infringing the regulatory provisions of the Act may be compelled to leave his hearth and home at the instance of the market authorities, was totally unfounded. [518 H-519 C] (v) In terms s. 27(2) provides that the licences may be granted in such forms for such periods, on such terms and conditions and restrictions as may be prescribed or determined by the bye-laws and on payment of fees determined by the market committee within such maxima as may be prescribed,. This clearly contemplated fixation of maxima by the rules

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made under s. 59. Therefore the suggestion that s. 27(2) not having provided the maximum licence fee chargeable was illegal, could not be accepted. (519 D]

(vi) The life of the market committee elected in 1958 was validly extended from time to time by legal enactments or steps taken thereunder. Finally by virtue of s. 64 of Act 20 of 1964 the market committee established under the earlier Act was deemed to be a market committee established under the new Act and members of the market committee holding office immediately before the commencement of the new Act continued to hold office under the new Act. The contention that there was no legally constituted market committee had therefore no force. [521 D]

(vii) Section 26(5) of Bombay Act 22 of 1959 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under s. 26(1). Failure to place the rules before the Houses of Legislature does not affect the validity of the rules. Having regard to the purposes for which it is made and in the context in which it occurs, s. 26(5) cannot be regarded as mandatory. The rules had been in operation since the year 1941 and by virtue of s. 64 of the Gujarat Act 20 of 1964 they continued to remain in operation. [522 B-D]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No.11 of 1964. Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

Ahmedmiyen Miyasaheb Peerzada, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the petitioner. S. V. Gupte, Solicitor General, N. S. Bindra and B. R. G. K. Achar, for the respondents The Judgment of the Court was delivered by Shah, J. By this petition the petitioner seeks to restrain the State of Gujarat from enforcing the Gujarat Agricultural Produce Markets Act 20 of 1964, on the

plea that certain provisions of the Act infringe the fundamental freedoms guaranteed to petitioner under Arts. 14, 19 and 31 of the Constitution.

The Bombay Agricultural Produce Markets Act 22 of 1939, was enacted by the Provincial Legislature of Bombay and rules were framed thereunder. By a notification issued under the Act, the whole area within a radius of 12 miles of Ahmedabad City was declared in respect of certain agricultural produce, a market area for the purposes of that Act and a market yard and a market proper were established for transactions in specified commodities. A market committee was established under s. 5 of the Act for the Ahmedabad market area. In 1959 a locality known as the 'Kalupur market' was declared a sub-market yard for the purposes of the Bombay Act, and traders carrying on business in the Kalupur market yard were required by the market committee to take out licences authorising them to carry on their trade. Certain traders in agricultural produce filed petition No. 129 of 1959 in this Court under Art. 32 of the Constitution challenging diverse provisions of the Act and the rules and bye-laws framed thereunder on the plea that those provisions placed unreasonable restrictions on their right to carry on trade in agricultural produce and thereby infringed their fundamental right guaranteed under Art. 19 (1) (g) of the Constitution. This Court by judgment dated May 2, 1961 (Mohammad Hussain Gulam Mohammad and another v. The State of Bombay and Anr) (1) upheld the validity of s. 4 (authorising declaration of market areas), s. 4A (authorising declaration of principal and sub-market yards), S. 5 (authorising the constitution of market committees), s. 5A (specifying the duties of market committee), s. 5A (authorising the market committee to issue licences in accordance with rules to traders, commission agents, brokers, weighmen, measurers, surveyors, housemen and other persons to operate in the market) of the Bombay Act and further held that the fee authorised to be levied by s. II was a levy charged for services rendered by the market committee in connection with the enforcement of the various provisions of the Act and therefore s. II was valid, that under s. 29 the power given to the State Government to add to, or to amend, or to cancel any of the items of the agricultural product specified in the Schedule in accordance with the local condition, prevailing in different parts of the State was *intra vires*, and that r. 64 being a mere method for enforcing the regulatory provision with respect to market yards and sub-market yards was also valid. But the Court held that r. 53 insofar as it authorised the market committee to fix the rates of fee to be collected on agricultural produce bought and sold in the market area, and rr. 65 66 and 67 insofar as they authorised the market committee to grant a licence for doing business in any market were beyond the powers conferred on the market committee by s. 5A and were *ultra vires*.

When the petition in Mohammad Hussain's case(1) was filed the town of Ahmedabad was part of the State of Bombay. Under the Bombay Reorganisation Act 11 of 1960 which became operative as from May 1, 1960 two States-Maharashtra and Gujarat were carved out of the territory of the former State of Bombay and the town of Ahmedabad was included within the State of 'Gujarat, but Bombay Act 22 of 1939 continued until it was altered to remain applicable by s. 87 of Act 11 of 1960 to the (1) [1962] 2 S. C. R. 659 Gujarat region. After the decision of this Court in Mohammad Hussain's case(1) the Governor of Gujarat amended in certain matters the Act, the rules and the bye-laws framed thereunder in their application to the Gujarat State by Ordinance I of 1961. The Ordinance was intended to rectify the defects pointed out by this Court in Mohammad Hussain's case(2). Four petitions were then filed under Art. 32 of the Constitution challenging the constitutionality of the

Amending Ordinance and especially the notification which amended r. 53 (specifying the maxima of fees to be charged) as offending Art. 14 of the Constitution. It was also contended that s. 5A (authorising the grant of licences in accordance with the rules to traders, commission agents, brokers, weighmen, measurers, surveyors, warehousemen and other persons to operate in the market area) which was amended was only prospective and therefore the infirmity noticed in the earlier judgment of this Court still remained, and that the new section 29-B which rectified the defect in the establishment of markets under the Act was insufficient, to validate what had been done before the Ordinance came into force. It was also contended that the bye-law under which the market committee issued licences to dealers was discriminatory and imposed unreasonable restrictions on the fundamental right to carry on trade and business and was therefore unlawful and that the market committee was not entitled to control retail trade as the same was not within the provisions of the Act and in consequence the market committee was using r. 64 in a manner in which it was not intended to be used and therefore that rule though it was upheld in the earlier judgment had become ultra vires. This Court rejected all the contentions raised by the petitioners.

Thereafter Writ Petitions Nos. 71 of 1964 and 112 of 1964 were filed by three traders carrying, on business at Baroda. The petitioners claimed a declaration that the bye-laws framed by the market committee were void in that they infringed the fundamental rights of the petitioners under Arts. 14 and 19 (1) (g) and also Arts. 301 and 304 of the Constitution, and that in any event the bye-laws were ultra vires the Act and the Rules. Those petitions were heard before this Court on November 9, 1964 and after arguments were fully heard, the petitioners -applied for leave to withdraw the petitions.

In the meantime on September 25, 1964 the petitioner Jan Mohammad Noor Mohammad Bagban filed this petition for a declaration that the Gujarat Agricultural Produce Markets Act (1) [1962] 2 S. C. R. 659 20 of 1964 was "illegal, ultra vires, unconstitutional and violative of Arts. 14, 19 and 31 of the Constitution of India and therefore null and void," that the rules framed thereunder being the Bombay Agricultural Produce Market Rules, 1941 were "also ultra vires, unconstitutional, illegal, null and void," and for a writ of mandamus or a writ in the nature of mandamus, direction or order forbidding the State of Gujarat from enforcing any of the provisions of the Act and the Rules. Numerous grounds were set up in the petition, but counsel for the petitioner restricted his arguments at the hearing to the following only:

(1) that the powers conferred by ss. 5 & 6 of the Act were unfettered, wide and unguided and on that account the fundamental rights of the petitioner were infringed;

(2) that retail sales which were not regulated by the provisions of the earlier Act were sought to be regulated by the Gujarat Act 20 of 1964;

(3) that retail trade was completely prohibited by the Act and the prohibition amounted to an unreasonable restriction upon the fundamental rights of the petitioner;

(4) that S. 30 of the Act gave wide powers to evict a person carrying on business without a licence, from the market area;

(5) that s. 27(2) not having provided the maximum licence fee chargeable was illegal; (6) that the market committee had no power to function as it was not constituted according to law. The period of office of the old committee which was to function for three years under Bombay Act 22 of 1939 had expired in 1961, but the committee continued to function and no fresh elections were held; and (7) that the rules pursuant to which the market committee was constituted and functioned not having been placed before the Legislature in the first meeting after the rules were promulgated under the Bombay Agricultural Produce Markets Act, 1939, as required by that Act, the rules were unauthorised and there was com-

plete absence of machinery for enforcement of the Act.

Counsel submitted that the petitioners fundamental rights under Arts. 14, 19 & 31 of the Constitution were infringed by enactment of the Act and the promulgation of the Rules and byelaws and the exercise of the authority by the State of Gujarat and the market committee pursuant thereto. It may at once be observed that the President of India having declared in the month of December 1962 a state of emergency in exercise of the powers reserved under the Constitution, the right to enforce the fundamental rights guaranteed under Art. 19 of the Constitution remains suspended by virtue of Art. 358 for the duration of the period of the emergency. On this ground alone, a large majority of the contentions raised by counsel for the petitioner may fail. But we have heard full arguments on the petition and as the petitioner has attempted to urge that by the Act and the Rules and the Bye-laws the guaranteed freedoms under Arts. 14 & 31 are also infringed, we propose to decide this petition on the merits, apart from the preliminary objection as to the suspension of Art. 19 which disentitles the petitioner during the subsistence of the emergency from obtaining any relief from this Court on the footing of the breach of his fundamental right to carry on business.

We may usefully refer in the first instance to certain provisions of the Act which are material for the purpose of this petition. The Act is enacted to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat. Section 2 defines various expressions in the Act. "Agricultural produce" is defined in meaning all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the Schedule, [cl. (i)] : "licence" means a licence granted under s. 6, or, as the case may be a general or special licence granted under S. 27, [cl. (ix)] : "market" means, a market declared or deemed to be declared under the Act, [cl. (xii)] : "market area" means any area declared or deemed to be declared to be a market area under the Act, [cl. (xiii)] : "market committee" means a market committee established or deemed to be established under the Act, [cl. (xiv)] : "market proper" means any area declared or deemed to be declared to be a market proper under the Act, [(cl. xv)] : "principal market yard" means an enclosure, building or locality declared or deemed to be declared to be a principal market yard under the Act, [cl. (xvii)] : "retail sale" means a sale of any agricultural produce not exceeding such quantity as a market committee may by bye-laws determine to be a retail sale in respect of such agricultural produce, [cl. (xviii)] : and "trader" means any person, who carries on the business of buying or selling of agricultural produce or of processing agricultural produce for sale [cl. (xxiii)]. Section 5 authorises the Director (appointed by the State Government) to declare his intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified therein. Section 6

authorises the Director to declare an area specified in the notification as market area. It provides that after the expiry of the period specified in the notification issued under s. 5 and after considering the objections and suggestions received before its expiry and holding such inquiry as may be necessary, the Director may, by notification in the Official Gazette declare the area specified in the notification or any portion thereof to be a market area for the purposes of the Act in respect of all or any ,of the kinds of agricultural produce specified in the said notification. By sub-s. (2) of S. 6 it is provided that notwithstanding anything contained in any law for the time being in force, from the date on which any area is declared to be a market area under sub-s. (1), no place in the said area shall be used for the purchase or sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act. By sub-s. (3) it is provided that nothing in sub-s. (2) shall apply to the purchase or sale of any such agricultural produce, if its producer is himself the seller and the purchaser purchases it for his own private consumption. Section 7 provides that for each market area, there shall be a market which shall consist of-(i) one principal market yard, (ii) sub-market yards, if any, and

(iii) all markets proper notified under sub-ss. (2) & (3); by sub-s. (2) the Director is authorised to declare any enclosure, building or locality in any market area to be a principal market yard and any other enclosure, building or locality to be a sub-market yard, and a specified area as a market proper. Section 8 prohibits operations in the market area or any part thereof except under and in accordance with the conditions of a licence granted under the Act. Section 9 deals with the establishment and constitution of market committee or committees. Incorporation, and constitution of market committees and their powers and duties are dealt with by Ch. IV of the Act which consists of ss. 10 to 31. By S. 26 it is provided that it shall be the duty of every market committee to maintain and manage the market, to take all possible steps to prevent adulteration and to promote grading and standard-

disation of the agricultural produce as may be prescribed, to provide such facilities in the market as the Director may from time to time direct and to enforce in the market area the provisions of the Act, the rules, bye-laws and the conditions of licences granted under the Act in connection with the purchase and sale of the agricultural produce with which it is concerned. It shall also be the duty of every market committee to collect and maintain such information relating to market intelligence as may be prescribed and to supply the same to Government whenever so required. Section 27 by the first sub-section provides that on the establishment of a market, the market committee may, subject to rules made in that behalf, grant or renew a general licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker, weighman, surveyor, warehouseman or any person to operate in the market area or part thereof, or after recording its reasons therefore, refuse to grant or renew any such licence. By sub-s. (2) it is provided that licences may be -ranted under sub-s. (1) in such forms, for such periods, on such terms and conditions and restrictions as may be prescribed or determined by the bye-laws and on payment of fees determined by the market committee within such maxima as may be prescribed. By sub-s. (3) power is conferred upon the market committee to suspend or cancel a licence. Section 28 authorises the market committee to levy from time to time prescribed fee and to collect the same on the agricultural produce bought or sold in the market area. Chapter V deals with the Market Committee Fund and State Agricultural Produce Market Fund. Chapter VI prohibits the collection of trade

allowances, other than allowances prescribed by rules or byelaws made under the Act. Chapter VII deals with offences, penalties, investigation and procedure for the trial of offences. Chapter VIII deals with the control by the Director and the State Government in the matter of administration of the Act and Ch. IX deals with miscellaneous matters, including the power to frame rules and bye-laws. The Act was, as is clear from its preamble and this review of its provisions, enacted with a view to provide satisfactory conditions for the growers of agricultural produce and to sell their produce on equal terms and at reasonable prices. The ordinary cultivator in our country suffers from many handicaps : he is generally illiterate, and often ignorant of the prevailing prices in the market of agricultural produce. Establishment of regulated markets is a well-known expedient for ameliorating the condition of the agricultural producers by eliminating the middlemen and bringing the consumers in direct contact with the producers and thereby securing an ordered plan of agricultural development. The Legislature has, by the Act, attempted, with this object in view, to set up machinery for declaring certain areas as markets and for setting up market yards in which the business of selling and buying agricultural produce may be carried on. The Act provides for the constitution of market committees authorised to maintain and manage the markets and to effectuate supervision, prevent adulteration and promote grading and standardisation of the agricultural produce and to enforce in the market area -the provisions of the Act and the bye- laws. For that purpose the market committees are authorised to grant licences and levy fees within the maxima as may be prescribed by the rules framed under the Act. The scheme of the Act is substantially the same as under the, Bombay Act 22 of 1939 which by S. 87 of the Bombay Reorganisation Act, 1960 continued to apply to the territory of Gujarat even after the territory was constituted into a separate State. Power to frame rules under S. 59 for generally carrying out the provisions of the Act is conferred upon the State Government by the Act, and until that power is exercised by virtue of s. 64, anything done or action taken (including any appointment, order, notification, rule, bye-law made, licence issued, or fee imposed) under the Bombay Act 22 of 1939 shall be deemed to have been done or taken, under the corresponding provisions of the Act and shall continue in force until it is superseded by anything done or action taken under this Act. It appears that till the date on which this petition was filed and even thereafter no rules were framed in exercise of the powers conferred under s. 59 by the State Government of Gujarat, and the rules framed under Bombay Act 22 of 1939 continue to remain in operation. Even the market committees which had been formed under the Act of 1939 continue to function and bye-laws framed by them hold the field.

This Court in *M.C.V.S. Arunachala Nadar etc. v. The State of Madras and Ors*(1) was called upon to deal with the validity of the Madras Commercial Crops Markets Act 20 of 1933. In that case certain traders had challenged the validity of Madras Act 20 of 1933) on the -round that the provisions of the Act imposed unreasonable restrictions upon their right to do business, and the Court on an exhaustive review of the provisions of the Act hold that the provisions which imposed liability to take out a licence for carrying on trade in "commercial crops", and the restrictions relating to the place where the business may be carried (1) [1959] 1 S.C.R. 92.

on were reasonable and did not infringe the right guaranteed by Art. 19(1)(g) of the Constitution. In Mohammad Hussain's case(1) this Court held following the judgment in Arunachala Nadar's case (2) Nadar's that the impugned provisions viz. ss. 4, 4A, 5, 5A and 5AA of the Bombay Agricultural

Produce Markets Act 22 of 1939 were not unconstitutional. It was pointed out by this Court that the provisions impugned in that case were substantially the same as were contained in Madras Act 20 of 1933 and therefore the restrictions imposed by the impugned provisions could not be regarded as unreasonable.

Section 5 of the Gujarat Act authorises the Director to declare his intention to regulate purchase and sale of agricultural produce in a specified area after inviting objections or suggestions from the local authorities functioning in the area, and from other persons. By s. 6 of the Director after considering the objections and suggestions received within the period specified in the notification is authorised to declare the area or part thereof a market area for the purposes of the Act in respect of all or any of kinds of produce specified in the notification. The object of the Act being to ameliorate the condition of agriculturists and to do away with the middlemen, who, it is a matter of common knowledge, make large and unconscionable profits out of the transactions carried out through them, declaration of intention to regulate trade in agricultural produce in a specified area, after hearing the objections and suggestions of interested parties, cannot be regarded as imposing unreasonable restrictions on the right to carry on trade. The argument that the authority conferred upon the Director is wide and arbitrary, because no principles are indicated for guidance has no force. The Director is appointed by the State Government to exercise such powers and perform such functions and duties as are conferred or imposed on him by or under the Act, and the exercise of the powers and the performance of the duties is for the purpose of regulating the purchase and sale of agricultural produce and thereby doing away with malpractice in the trade. The preamble to the Act and the scheme of the Act clearly indicate that the powers conferred upon the Director are to be exercised for the purpose of regulating buying and selling of agricultural produce and for that purpose to establish markets for sale and purchase of agricultural produce. The powers under s. 6 are to be exercised after giving an opportunity to persons interested to raise objections or to make suggestions to the pro-

(1) [1962] 2 S.C.R. 659 (2) [1959] Supp. 1 S.C.R. 92 posed introduction of control on sale and purchase of agricultural produce. It is only after the objections and suggestions are received and considered by the Director in the light of the object and purpose of the Act, and he is satisfied that it is in the interest of the producer and the general public that there should be regulation of the trade in agricultural produce in the specified area that he may proceed to declare the market area.

It was urged on behalf of the petitioner that in Mohammad Hussain's case⁽¹⁾ this Court had upheld the validity of provisions in the Bombay Act 22 of 1939 analogous to ss. 5 & 6 of the Gujarat Act only on the ground that by the Bombay Act retail trade was not intended to be controlled, whereas under the Gujarat Act authority is given to control the retail trade also, and on that account the provisions of ss. 5 & 6 would be regarded as infringing the fundamental right to carry on trade and business. The question whether by the provisions of the Act and the rules framed thereunder the Legislature has attempted to impose restrictions upon retail trade in agricultural produce will be presently considered when we deal with the second and the third contentions advanced by the petitioner. But assuming that such a power is conferred, we fail to appreciate how solely on that account it can be said that the provisions of the Act infringe Art. 19(1)(g) of the Constitution or may be regarded as conferring an arbitrary authority. Reasonable restrictions on the right of a citizen to carry on trade-

retail as well as wholesale-may be placed by legislation. The test of the validity of the restrictions lies in the nature of the restrictions and not in the nature of trade. If regulation of trade in agricultural produce by the declaration of market area and imposition of restrictions may be regarded as reasonable When operating on the wholesale trade, it would be difficult to hold that the identical restrictions when operating on retail trade may be deemed unreasonable. We do not think that the observations made by this Court in Mohammad Hussain's case⁽¹⁾ justify the argument urged by the petitioner. Challenge to the validity of ss. 5 & 6 must therefore fail.

It was urged by counsel for the petitioner that whereas retail sales were not regulated by the provisions of the Bombay Act 22 of 1939, those sales were sought to be regulated by the Gujarat Act, and as a result of the provisions enacted in that Act retail trade was completely prohibited. It was urged that there was no provision for licensing retail trade in agricultural produce, and in (1) [1962] 2 S.C.R. 659 view of the prohibition contained in s. 6 (2) an unreasonable restriction was placed upon the right of the petitioner to carry on retail trade in agricultural produce. Section 6 (2) expressly provides that no place in any market area shall be used for the purchase or sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act, and by sub-s. (3) it is provided that nothing in sub-s. (2) shall apply to, the purchase or sale of any such agricultural produce, if its producer is himself its seller and the purchaser purchases it for his own private consumption. It may appear at first sight that subject to the reservation of transactions covered by sub-s. (3), all trade in agricultural produce in the market area is sought to be brought within the regulatory provisions of the Act. The exception clause in s. 6(3) is somewhat more restricted than the exception clause in s. 4(2A) of the Bombay Act 22 of 1939. By s. 4(1) of the Bombay Act the Commissioner was authorised to constitute a market area and by sub-s. (2) it was provided that no place in such area shall, subject to the provisions of s. 5A, be used for the purchase or sale of any agricultural produce specified in the notification issued thereunder. Sub-section (2A) of s. 4 provided that nothing in subs. (2) shall apply to the purchase or sale of such agricultural produce, if the producer of such produce is himself its seller and the purchaser is a person who purchases such produce for his own private use or if such agricultural produce is sold to such person by way of a retail sale. There was an express provision made in the Bombay Act 22 of 1939 which excluded from the operation of sub-s. (2) sale of agricultural produce by way of retail sale. Under the Gujarat Act no such exclusion is expressly prescribed. But, apart from the generality of the provisions made in the Gujarat Act and the omission of retail sales from the scheme of exclusion, the Act and the rules clearly indicate that retail sales are not sought to be regulated by the provisions of the Act. It may be noticed that the State of Gujarat has not framed any new rules the rules framed under the Bombay Act 22 of 1939 remain in operation by virtue of s. 64 and the rules framed under the Bombay Act 22 of 1939 have been framed on the footing that no retail sale is sought to be regulated thereby. Clause (4) of r. 53 excludes from the levy of fee sellers who are themselves producers of the agricultural produce offered for sale and buyers who by such produce for their own private and/or household use. Rule 60 which deals with sales of agricultural produce and trading in markets by the first clause provides that all agricultural produce brought into the market shall pass through the principal market yard or sub-market yards and shall not, subject to the provisions of sub-rule (2) be sold at any place outside such yards. Sub-rule (2) deals with processed agricultural produce. By sub-rule (3) it is provided that such details of all agricultural produce resold in the market area shall also be reported to the market committee in accordance with the provisions of the

bye-laws. Sub-rule (4) enacts that the price of agricultural produce brought into the market for sale shall be settled by open auction or by open agreement and not by secret signs and no deductions shall be made from the agreed price of the consignment except for any authorised trade allowance. The provisions with regard to information and report to the market committee about the resale of the agricultural cultural produce and the prohibition of sales otherwise than by open auction or by open agreement clearly indicate that r. 60 does not deal with retail sales. The learned Solicitor-General appearing on behalf of the State of Gujarat has conceded, and we think that the concession is rightly made, that the Act read together with the rules does not purport to place any restriction upon retail transactions in agricultural produce. Therefore no licence is required under the Act for carrying on retail trade in agricultural produce in the market area, and there is no prohibition against the carrying on of retail sale in agricultural produce in the market area.

In this connection bye-law 35 (1) (a) of the Agricultural Produce Market Committee, Ahmedabad also indicates that no retail sales are intended to be regulated. That bye-law states that there will be two classes of licensed traders viz. "A" class traders and "R" class traders: those holding "A" class traders' licence shall be entitled to buy and/or sell agricultural produce in quantities not below 10 lbs. in the market yard : those holding "B" class traders' licence shall be entitled to purchase agricultural produce in quantities not below 10 lbs. in the market yard and to sell in retail to consumers anywhere in the market area. The "B" class trader' licence is manifestly for purchasing agricultural produce.

It was then contended that s. 30 conferred power upon the market committee of summarily evicting from the market any person, if he is found in the market area without holding a valid licence. This, it was urged, made a large inroad upon the fundamental right guaranteed to the citizens to move freely throughout the territory of India, and to reside and settle in any part of the territory in India. But s. 30 authorises the eviction from the market any person found to be operating in the market without holding a valid licence. The power of eviction by the market committee is limited to eviction from the precincts of the market. The provision is apparently enacted for the purpose of imposing an additional penalty against infraction of the prohibition contained in s. 6 (2). "Operating in the market area" can in the context only mean using a place in the market area for the purchase or sale of agricultural produce specified in the notification under s. 6(2) otherwise than in accordance with the provisions of the Act. The apprehension of the petitioner that a person infringing the regulatory provisions of the Act may be compelled to leave his hearth and home, at the instance of the Chairman, the Vice-Chairman of the Market Committee, or members, officers, or Secretary of the Market Committee, who may be authorised in that behalf, is wholly unfounded. The power conferred is disciplinary in character, and its exercise is restricted to the precincts of the market, and only if the offender is found operating in the market area without a licence. The language of the section does not at all warrant the submission that a person carrying on trade in agricultural produce without obtaining a licence may be evicted from the market area.

The argument that s. 27 (2) does not provide fee in excess of the maximum licence fee may not be charged by the market committee is also without substance. In terms sub-s. (2) provides that the licences may be granted in such forms, for such periods, on such terms and conditions and restrictions as may be prescribed or determined by the bye-laws and on payment of fees determined

by the market committee within such maxima as may be prescribed. That clearly contemplated fixation of maxima by the rules made under s. 59. It was then urged that the market committee was not lawfully constituted because no fresh elections had been held after the expiry of three years from September 18, 1958 for which the members of the committee were entitled to hold office under s. 6(3) of Bombay Act 22 of 1939. Section 64 by the first sub-section repeals the Bombay Agricultural Produce Markets Act 22 of 1939 and by the second sub-section, notwithstanding the repeal, every market committee established for any market area under any of the Acts so repealed shall, notwithstanding anything contained in s. 11 but subject to the other provisions of the Act, be deemed to be a market committee established for the said market area under the Act and the members thereof holding office immediately before the commencement of the Act- shall. continue to hold office for the period for which they would have held office, had the Act not been enacted or until the market committee is duly reconstituted under s. 11 whichever is earlier. A market committee constituted under the Bombay Act 22 of 1939 is therefore entitled to function under the Gujarat Act, subject to the restrictions contained in L7Sup.165-5 S. 64(2) (ii). It is common ground that no fresh elections were held for the election of members of the market committee since, May 1958. Under s. 6 of Bombay Act 22 of 1939 which dealt with the constitution of market committees by sub-s. (3) it was provided that every member of a market committee elected or nominated, when it is first constituted, shall hold office for a term of two years and every such member elected or nominated thereafter shall hold office for a term of three years. In the normal course, the members of the committee elected in 1958 would have held office for three years. But by sub-s. (3A) it was provided that the term of office of the outgoing members of a market committee shall be deemed to extend to and expire with the day before the date of the first general meeting of the market committee constituted in its place. This provision was enacted by Bombay Act 26 of 1951, presumably with a view to provide for the interregnum between the expiration of the period of office of the members and the constitution of a fresh committee after elections. The lawful authority of the members of the market committee was, notwithstanding the expiry of the period, extended by sub-s. (3A) till the date of the first general meeting of the market committee. It may be noticed that there has been no deliberate refusal to hold elections. The period of the market committee was to end on September 18, 1961 and before that date the Collector of Ahmedabad had taken steps to hold elections to the market committee, but as a petition was pending -in this Court challenging the vires of the Act the elections could not be held. This Court declared certain provisions earlier referred to as invalid and an Ordinance had to be issued modifying or validating those provisions of the Act. That Ordinance was later replaced by The Bombay and Saurashtra Agricultural Produce Markets (Gujarat Amendment and Validating Provisions) Act 21 of 1961. The constitutional validity of Act 22 of 1939 as amended by Gujarat Act 21 of 1961 was again challenged before this Court and the elections had further to be postponed. This Court upheld the validity of the impugned provisions by judgment dated March 15, 1962: see *Mohammadbhai Khudabux Chhipa v. The State of Gujarat*(1). Steps were again taken to hold elections, but in the meanwhile a declaration of emergency was made by the President, and Ordinance 11 of 1962 was issued by the Governor of Gujarat in exercise of the powers conferred upon him by the Constitution by virtue of which under S. 3 the term of office, inter alia, of the member of the local authority was extended for a period during (1) [1962] Supp. 3 S. C. R. 875.

which the proclamation of emergency was in force and thereafter for a period not exceeding six months. The market committee constituted or deemed to be constituted under the Bombay Agricultural Produce Markets Act 22 of 1939 was included in the definition of the term "local authority"

under the said Ordinance. This Ordinance was substituted by The Gujarat Local Authorities (Extension of Term) Act, 1962. That Act was repealed by The Gujarat Local Authorities (Extension of Term) (Repeal) and the Gujarat Panchayats (Amendment) Act 35 of 1963, by the operation of which the terms of members of local authorities were to stand extended upto the end of March 1964 or such earlier date as the State Government or a person authorised by it may by notification in the Official Gazette specify. Thereafter the Gujarat Local Authorities (Further Extension of Term) Act 9 of 1964 was enacted. By that Act the term was extended up to March 1965 by s. 2 thereof. in the meanwhile the Gujarat Act 20 of 1964 being the Gujarat Agricultural Produce Markets Act was enacted and was brought into force and by virtue of s. 64 thereof the market committee established under the earlier Acts was deemed to be a market committee established for the said market under the new Act and members of the market committee holding office immediately before the commencement of the new Act continued to hold office under the new Act. The contention that there is no legally constituted market committee has therefore no force.

Finally, the validity of the rules framed under the Bombay Act 22 of 1939 was canvassed. By s. 26(1) of the Bombay Act the State Government was authorized to make rules for the purpose of carrying out the provisions of the Act. It was provided by sub-s. (5) that the rules made under s. 26 shall be laid before each of the Houses of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Houses concur and such rules shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly. It was urged by the petitioner that the rules framed under the Bombay Act 22 of 1939 were not placed before the Legislative Assembly or the legislative Council at the first session and therefore they had no legal validity. The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no Legislature in session, the Legislature having been suspended during the emergency arising out of World War II. The session of the Bombay Legislative Assembly was convened for the first time after 1941 on May 20, 1946 and that session was prorogued on May 24, 1946. The second session of the Bombay Legislative Assembly was convened on July 15, 1946 and that of the Bombay Legislative Council on September 3, 1946 and the rules were placed on the Assembly Table in the second session before the Legislative Assembly on September 2, 1946 and before the Legislative Council on September 3, 1946. Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under S. 26(1). It is true that the

Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-s. (5) of s. 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-s. (5) of S. 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of s. 64 of the Gujarat Act 20 of 1964 they continue to remain in operation.

All the contentions raised by counsel for the petitioner must therefore fail and the petition is dismissed with costs.

Petition dismissed.