Supreme Court of India
Shri Bhagwan Dass Sood vs State Of Himachal Pradesh And ... on 25 October, 1996
Author: G.N.Ray.J.
Bench: G.N. Ray, G.B. Pattanaik

PETITIONER:
SHRI BHAGWAN DASS SOOD

Vs.

RESPONDENT:
STATE OF HIMACHAL PRADESH AND OTHERS

DATE OF JUDGMENT: 25/10/1996

BENCH:
G.N. RAY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T G.N.Ray.J.

This appeal is directed against judgment dated November 30, 1994 passed by the Division Bench of Himachal Pradesh High Court Writ Petition No.568 of 1988 (M/s Sardar Singh & Sons Vs. State of Himachal Pradesh) involving common question of law and all the said writ petitions were disposed of by the judgment rendered in C.W.P.No.568 of 1988.

The main contention raised before the Himachal Pradesh High Court in the said petitions was that the Writ Petitioners were not required to take licences under Section 4 (3) of the Himachal Pradesh Agricultural Produce Market Act, 1949 (hereinafter referred to as Market Act) and are also not required to pay market levy. The petitioners contended that the market committee had established principal/sub market yards within the territorial jurisdiction of the market committee. But the petitioners did not carry on their business within the principal market or market yards/sub market yards. On the contrary, they had been agricultural produce outside the principal market/yard or sub yards. They had carrying on their business in their own premises which were though within the notified market area, but were outside the principal market/market yard or sub-market yards. Even then, the market committees were insisting the petitioners to obtain licence and pay market fee in accordance with the provisions of the Markets Act and the Rules framed thereunder. Such action on

the part of the market committee was wholly illegal and unconstitutional. It appears from the impugned decision of the High Court that the petitioners contention was that the provisions relating to taking of licences for carrying on business and payment of market fee under the Markets Act have placed unreasonable restrictions on their right to carry on their trade and hence Section 4 (3) and 21 of the Markets Act are violative of Article 19 (i) (g) of the Constitution of India. It was contended that market fee had a direct relationship with the services rendered and since the market committee rendered no service in respect of the area in which the petitioners had carried on their trading activities but the services rendered by the market committee remained confined only to principal market/market or sub market yard established by the market committee. realisation of market fee was illegal and unconstitutional.

Such contentions were disputed by respondents by contending that principal market yards had been identified and constructions had been undertaken. According to respondent, such market and market and sub market yards would consist of shops, auction platforms and various public utility services like provision for drinking water, latrines, sanitation, farmers rest houses etc. would be provided. Such scheme would cost expenditure of several crores of rupees by each of the market committee. Though the works were in process, works of such magnitude involving very heavy expenditure could not be immediately implemented in full and the works in progress would require some more time to be completed. The respondents contended that even in respect of areas outside principal market and market or sub market yards inspecting staff had been appointed to ensure proper weighment and payment of price to the producers of scheduled agricultural produce. It was also contended that income to be derived from market fee would be spent for providing the aforesaid facilities and amenities. Hence, there was sufficient nexus justifying imposition of levy and collection of the same.

By the impugned judgment, the High Court has held that levy of market fee was quite justified. The requirement of obtaining licence fee and payment of levy of market fee constituted reasonable restriction under Article 19 (1) (g) of the Constitution. Hence, the provisions of Section 4 (3) and 21 of the Markets Act were intra vires and valid. It appears that the High Court has relied on the decisions of this Court in Kewal Krishna Puri and another Vs. State of Punjab and others (AIR 1980 SC 100B), Ram Chandra Kailash Kumar and Co. Vs. State of U.P. (AIR 1980 SC 1124) and Sreenivasa General Traders Vs. State of Andhra Pradesh (AIR 1983 SC 1246).

In Kewal Krishna Puri's case (supra), market fees were levied under the Punjab Agricultural Produce Markets. 1961. But such fees were increased. Such increase was challenged before this Court by contending that the market fees levied under the Act were sufficient for meeting the requirements of the said Act. Even then, increase in such fees was made for diverting the said fund for purposes other than those for which market fees were levied. A Constitution Bench of this Court has held that the fee must have direct nexus with the services provided by the market committee and since the increase was not intended to provide any additional service, the same cannot be lawfully imposed.

It has been indicated by this Court in Kewal Krishna Puri's case that the element of quid pro quo may not be possible or even necessary to be established with mathematical exactitude but 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 fees. It has also been indicated that a good and substantial portion of amount collected on account of fees, may be, in the neighborhood of two thirds or three fourths, must be shown with reasonable certainty as being spent for rendering services kind as mentioned hereinbefore.

In Ram Chandra Kailash Kumar's case (supra), the principles justifying imposition of levy of market fee as indicated in Kewal Krishna's case have been affirmed by another Constitution Bench of this Court. It has been held in Ram Chandra's case that declaration of big areas as market areas does not offend any provisions of law. In Sreenivasa General Traders case (supra), this Court has held that establishment of a principal market yard or sub market yard and provisions for amenities and facilities to persons using the same is sufficient quid pro duo for the purpose. This Court has also emphasised in this decision that traditional view or quid pro quo has undergone sea change, though corelation between the fee collected and service rendered or intended to be rendered is still important. The true test is whether its primary and essential purpose is to render specified service to a specified area or class. It is of no consequence that the State may ultimately and indirectly be benefitted by it. The power of the Legislature to levy a fee is established by the fact that it must be by and large a quid pro quo for the service rendered. All that is necessary is that there should be reasonable relationship between the levy of fee and services rendered.

The principles governing quid pro quo justifying levy of market fee in Kewal Krishna's case were taken into consideration by this Court in M/s Amar Nath Om Prakash Vs. State of Punjab (AIR 1985 SC 218). In view of finding by this Court that increase in levy was unjustified in Kewal Krishna's case, the Legislature by amendment inserted Section 23A in the Punjab Agricultural Produce Markets Act, 1961. The said provision dealt with saving of excess fee already charged. Section 23A provided that notwithstanding anything contained in any judgment, decree or order of any court, it would be lawful for a market committee to retain fee levied and collected by it in excess of that levied under Section 23. In considering the constitutional validity of Section 23A since impugned in Amar Nath's case, this Court has held that observations contained in Kewal Krishna's case about the extent of fees levied and realised to be spent for justifying quid pro quo. are not to be read as Euclid's Theorems nor as provisions of the statute. The observations must be read in the context in which they appear. The constitutional validity of Section 23A has been upheld in Amar Nath's case by indicating that Section 23A intended to prevent unjust enrichment by these dealers who had already passed on the burden to the next purchaser and so reimbursed themselves.

The High Court has held in the impugned judgment that levy of market fee on the traders carrying on business outside principle market/market or sub market yard, cannot be held as invalid as it has sufficient nexus with the services rendered. The services are directly beneficial to the producers of agricultural produce and are available within the notified market area.

Mr.P.P.Rao, learned Senior Counsel appearing for the appellant, has submitted that Section 4 (3) and 21 of the Markets Act may not be held invalid on the score of offending Article 19 (1) (g) of the Constitution and Markets Committee may be competent to impose levy of market fee on scheduled agricultural produce generally but the question required to be considered as to whether any market fee was at all leviable on the appellant and consequently the appellant was under any obligation to

take licence under the Markets Act, has not been considered by the High Court presumably because a number of writ petitions were disposed of by the common judgement impugned in this appeal where the specific question raised by the appellant was not in issue in other cases and the High Court has addresses to itself the question of constitutional validity of Section 4 (3) and 21 of the Markets Act only in the context of existence of quid pro quo warranting imposition of levy of market fee. The High Court has not adverted to the core question involved in the appellant's case that the appellant being a petty retailer, had purchased from other dealers such articles which had already been subjected to levy of fee under the Markets Act and hence there was no question of payment of levy of fee by the appellant. Consequently, there was no requirement for obtaining any licence under the Markets Act for carrying out the said retailer's business in an area far away from any principal/sub market yard where no benefit consistent with levy of market fee was available, even though quid pro quo for justifying imposition of levy of market fee is not required to be correlated with any mathematical precision with the amount of service rendered and amount of fees levied and realised by the Market Committee.

Mr. Rao had contended that the scheme of the Markets Act and Rules framed thereunder is to protect the interests of the producers and for this purpose the Act and the Rules contain various provisions to enable the market committees to notify market areas and establish markets and market yards in different parts, provide therein and levy and collect fees from the licensed dealers. According to Mr.Rao, on a reasonable interpretation of the Act, the power to establish markets in the notified market area is coupled with duty to establish sufficient number of markets in different parts of the notified area which are reasonably accessible to producers and traders.

Mr.Rao has contended that in the instant case, non- establishment or a principal market or market yards in or around Kasauli town where the appellant is carrying on his retail business outlet. renders the traders in Kasauli town not liable to obtain licences and pay any market fee. Mr.Rao has submitted that the imposition of levy of market fee may be held justified if the principal market and market yards or sub market yards are reasonably accessible to the producers and traders of scheduled agricultural produce so that the benefit arising out of an organised market having various amenities, are available to the producers and dealers coming to the principal/sub market yards. When principal/sub market yards are established, completion of such principal/sub market yards with consequential constructions of shops, yards, toilets, rest room, offices etc. may take a reasonable time. It may not be necessary to wait for imposition of levy of market fee till the construction of infra structures of such principal/sub market yards are fully completed because such completion takes some time. There may be impelling necessity to generate funds out of imposition of levy of market fee to take various works necessary to establish principal and market and sub market yards at a desired level consisting of various essential infra structures with amenities of services attached for effective implementation of the aims and objectives under the Markets Act. Where principal market and market/sub market yards with some essential infra structures have been established and provisions for reasonable amenities to the producers and traders coming to such principal market and market yards or sub market yards are being taken within a reasonable time frame imposition of levy of market fee may be justified. In such a case, validity of imposition of levy cannot be challenged on the ground that amount of levy collected and amount of services then available are not fully correlated provided no part of income derived put of levy of market fee is

spent for purposes for which levy of fee was not imposed.

Mr.Rao has submitted that where a large acre has been notified as market area under the Act but only in one or two places, a principal market and market yards or sub-market yards have been established where the amenities envisaged under the Act and Rules are available, and transactions taking place in such market/market yards are regulated but to a large percentage of producers and traders of scheduled agricultural produce, no amenity of an organised principal market/market yards is at all available because of inaccessibility to such market yards either on account of long distance of such market/market yards from the place of business of such traders or for some other reasons, imposition of levy on such traders who do not purchase from organised market/market yards and are wholly deprived of any benefit available to them arising put of imposition of levy of market fee, simply on the basis that such areas also come under the notified market areas, must be held illegal and unconstitutional. According to Mr.Rao, in such circumstances, the basic ingredient of fee being related with return of some service to the payer of fee is not satisfied and the fee, in reality, partakes the character of tax.

Mr.Rao. in support of his contentions, has relied on the decisions of this Court in M.C.V.S. Arunachala Nadar Vs. State of Madras (1959 Suppl. (1) SCR 92) and Lakha Lal Vs. State of Bihar (1968 (3) SCR 539) and R.K.Porwal Vs. State of Maharashtra (1981 (2) SCR 866 (888)). In Arunachala Nadar's case (supra). this Court has noted the practice of notifying a radius of five miles around the market buildings and yards and occasionally ten miles and has observed that keeping in mind the purpose of establishing organised market/market yards for the benefit of producers and to protect them from exploitation by traders and middlemen it is unlikely that the government will fix longer distance in the prevailing circumstances. In Lakha Lal's case (supra), a Constitution Bench of this Court has held that power under Section 4 (of the Bihar Markets Act to notify market area should be exercised reasonably consistent with the beneficial purpose envisaged under the Act. In R.K.Porwal's case (supra), this Court has examined the question of reasonableness of the location of a market and after being satisfied that the location of the market was reasonable, upheld the same.

Mr. Rao has submitted that it cannot be reasonably presumed that the Himachal Pradesh Legislature have intended that Section 4 (3) should be construed literally to cover even retail dealers in scheduled agricultural produce to be covered for the imposition of levy and requirement to obtain licence from such retail dealers. Until Section 4 (3) is read down by reasonably interoreting the scope and ambit of the said Section. Section 4(3) is liable to be struck down being violative of Articles 14 and 19 (1) (9) of the Constitution.

Mr. Rao has submitted that it is the case of the appellant that the appellant has a shop or outlet in the town of Kasauli and he is a retailer of scheduled agricultural produce. He purchases such articles from other bigger dealers. From the shop or retail outlet of the appellant in Kasauli, there is no principal market/market or sub market yards within a radius of about 20 kilometers. Mr.Rao has submitted that the appellant cannot afford purchasing from dealers in principal market/market yards sub yards because of long distance of such place of business and consequential cost of transportation. The appellant, for impelling necessity, purchases from other dealers in near about places and carry on his retail business n various agricultural produce in his shop at Kasauli under

the administrative control of Kasauli Cantonment Board. Hence, in any event, the appellant is not liable to pay market fee levied on various agricultural produces by the Market Committee.

Mr.Rao has submitted that Markets Act and the Rules framed thereunder envisage a single point levy. Once a particular scheduled agricultural produce has already been subjected to levy of market fee, subsequent sale or purchase of such produce cannot be subjected to levy of market fee. In this connection, Mr.Rao has referred to Rule 81 of Himachal Pradesh Agricultural Produce Market Rules, 1971 framed under the Markets Act, Sub rule (1) of Rule 81 provides as follows:

81. Exemption from payment of fees-

> (1) If a fee has once been levied on sale or purchase of any quantity of agricultural produce in a notified market area and the dealer concerned complies with the provisions with the sub-rule (2) of this Rule, then no fee shall be leviable on the sale or purchase within the same notified area of any agricultural produce manufactured or extracted from the agricultural produce in respect of which the fee has already been paid.
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> (2) The dealer concerned in the sale of purchase of any quantity of agricultural produce from which he manufactures or extracts any other agricultural produce shall maintain in Form L time and correct accounts of sale or purchase as the case may be, of the said agricultural produce manufactured or extracted from it.

Mr.Rao has submitted that dealers n agricultural produce are not exempted from the levy of market fee. It is only the actual growers of agricultural produce who are exempted from the imposition of levy of market fee when they sell agricultural produce grown by them to dealers. Since the appellant is small retail dealer who purchases from various other dealers it should be reasonably held that the other dealers being liable to pay levy on the first transaction in course of dealership business and once the goods in question have already been subjected to levy subsequent transaction between dealer and sub dealer and sub dealer and retailer like the appellant is not open to any levy of market fee.

Mr.Rao has also submitted that the purpose of requiring a licence to be obtained for carrying on dealership business is to bring the dealer under control so that such dealer does not escape payment of levy of market fee due from him. Where a retailer has no obligation to pay levy of fee, the very purpose of obtaining licence for dealership business in case of such retailer does not arise. Mr.Rao has submitted that the dealer must be understood and defined in the context of its liability to pay levy of market fee. All traders in the State of Himachal Pradesh are not liable to pay levy of market fee even if they carry on their business within a notified market area. It is only the dealers dealing in scheduled agricultural produce under the Act, who have been brought within the purview of Markets Act. Hence, a retailer purchasing the items of its business from other dealers, who as aforesaid, must be presumed to have been subjected to levy of market fee on the agricultural produces sold by such dealer to the retailer should be excluded from the definition of dealer by interpreting the definition reasonably and in the context of single point levy envisaged under sub rule (1) of Rule 81 of the

Rules framed under the Act.

Mr.Rao has submitted that unfortunately the liability of the appellant either to take a licence for carrying on retail business in agricultural products and his liability to pay levy of market fee in the context of single point levy, have not been taken into consideration by the High Court because the Writ Petition of the appellant was heard along with other Writ Petitions where only a common question of law raised in such writ petitions about non existence of liability to pay any levy of market fee in the absence of quid pro quo of services to be rendered to the writ petitioners on account of levy of market fee had been taken into consideration. Mr.Rao has submitted that the writ petition of the appellant should be remanded to the High Court for considering the questions of law in the context of factual matrix to be established by the respective parties.

Disputing such contentions of Mr.Rao, Mr.E.C.Aggarwala, learned counsel appearing for the respondents Nos.2 and 3, has submitted that the appellant on the admitted position that he purchases agricultural produce from other dealers and carries on retail business in such produce is a 'dealer' as defined in Section 2 (i) of the Markets Act. Notified market area has been prepared under Section 4 of the Markets Act. Section 4 (3) of the Markets Act purchase, sale etc. of agricultural produce so notified except under a licence granted in accordance with the provisions of Markets Act. Section 5 of the Markets Act contemplates that in each notified market area there shall be one principal market yard and one or more sub-market yards as the Government or the Board may find necessary. Section 21 of the Markets Act provides that market committee shall levy on advalorem basis fee on agricultural produce bought or sold by licensees in the notified market area at the rate not exceeding one rupee for everyone hundred rupees, as may be fixed by the Board.

The market area of Solan District in Himachal Pradesh included the area of Kasauli, Dharampur, Jagjitnagar, Garkhal etc, including Chakki ka More. By notification dated June 18, 11973, the extent of area of the Market Committee, Solan was described as :-

(1) All the revenue estates including Municipal Committees, notified area committees and Cantonment Board area of Solan District (except Nalagarh Tehsil) (2) Revenue of Rajgarh Sub-Tehsil/Padihad Tehsil of Sirmor District.

Mr.Agarwala has contended that the appellant Bhagwan Das admittedly carries on business in agricultural produce in Kasauli which is within a notified market area. The appellant is a dealer within the meaning of Section 2 (i) of the Markets Act. In view of the fact that the entire Solan revenue estate and District of Solan excluding Nalagarh area have been notified as market area, the appellant being a dealer and carrying on business in agricultural produce was bound to obtain licence under Section 4 (3) of the Markets Act. Inspite of repeated requests, the appellant has refused to take such licence under the Markets Act.

It has been contended by Mr.Agarwala that in the district of Solan, various sub-market yards have been constructed which have been set out in the counter affidavit filed before the High Court. It was also stated in the counter affidavit that proposals were afloat for development of market yards and sub-market yards at several places within the district of Solan, primarily amongst them are Jagjit

Nagar, Dharampur, Garkhal and ten other areas. Chakki ka More where a sub yard has been established is at a distance of 28 kilometer from Kasauli and Jagjit Nagar is at a distance of only 11 kilometer from Kasauli. Mr.Agarwala has informed the Court on instruction from the respondent Nos.2 and 3 that sub market yard at Jagjit Nagar has been constructed and has become operative and sub market yard at Dharampur is likely to be completed soon because tender for construction has already been invited. The sub-market yard in Chakki ka More had been completed and made operative as far back as in 1981.

Mr.Agarwala has submitted that the entire district of Solan is a hilly terrain and is not densely populated as in other places in the plains. It is not practicable to establish and construct sub-market yards within close distance in such hilly terrain sparsely populated. The agricultural production is also not much so that large volumes of transaction of such produce will take place in various sub-market yards if constructed at close proximity. Hence, for appreciating the felt need of establishing sub- market yards in the district of Solan, the test of reasonable distance of market yards which is applicable in plain lands involving good productive activities of the agriculturists, cannot be applied in view of geographical features and contours of the district of Solan and volume of agricultural produce grown in the district.

Mr.Agarwala has submitted that the purpose of obtaining licence is to bring a trader within the supervising control and regulation of the market committee. Licence being issued for a particular place in the market area, the market committee knows that a particular trader or dealer is carrying on its business in such particular area. Question of payment of market fee arises only after a person has obtained a licence and submits proof of the fact that particular agricultural produce in which he is carrying on business activity has already been subjected to levy of market fee so that further levy of market fee is not enforced.

Mr. Agarwala has also submitted that the question of including small traders was taken into consideration by this Court in Arunachala Nadar's case (supra). It has been held that "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 may be defeated."

Mr. Agarwala has further submitted that the law is well settled by a series of decisions of this Court as already referred that correlation of quantum of fees levied under the Markets Act and extent of services rendered by the Market Committee by establishing principal market yards and sub yards etc, is not to be scrutinised with any mathematical precision. It will be sufficient to uphold the validity of levy of market fee if it is established that steps for establishing market yards and sub yards have been taken and realisation from levy or market fee is being spent for the avowed object under the Markets Act. Mr. Agarwala has submitted that it is not necessary to establish that traders of a particular area within the notified area have in fact received the benefit of services and amenities envisaged by the Markets Act and Rules framed thereunder.

In this connection, Mr. Agarwala has referred to a decision of this Court in Mohammad Hussain Gulam Mohammad and another Vs. State of Bombay and another (1962 (2) SCR

659). The attention of the Court has been drawn to the observation at page 663 of the report to the following effect:

> "The act, however, envisages that there may be time lag between the declaration of a market area and the establishment of a market:
>
> therefore the proviso to Section 4 (2) lays down that pending establishment of a market in a market area, the Commissioner may grant a licence to any person to use any place in the said area for the purpose of purchase and sale of any agricultural produce."

Mr. Agarwala has submitted that even though no market yard was established, the imposition of market fee under the Bombay Act has been upheld by this Court. Mr. Agarwala has also submitted that establishment of various yards is reasonably expected to take some time and also involves substantial expenditure. If steps for establishing market and sub-market yards have been bona fide taken by a Market Committee by ensuring that collection from levy of market fee is being spent and intended to be spent for the purposes for which such levy has been imposed, the levy must be held to be a valid imposition under the Markets Act and such validity is not required to be tested in the context of quantum of levy imposed and extent of service rendered by the Market Committee.

Mr. Agarwala has also submitted that appellant had an obligation to take licence under the Markets Act because admittedly he deals in agricultural produce. Not only he failed and neglected to take licence under Section 4 (3) but even when reminded of such obligation to take licence he filed the writ petition for contending that levy of market fee in the absence of quid pro quo was unconstitutional and invalid. Such contention being wholly untenable in the facts of the case and law being clearly laid down in a series of decisions of this Court, there was no occasion for the appellant to move this Court. The appeal being devoid of any substance, should be dismissed with exemplary cost.

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that under the Markets Act any trader or dealer dealing in scheduled agricultural produce within a notified market area is under an obligation to obtain a licence under Section 4 (3) of the Markets Act. Such obligation is not confined to wholesalers of agricultural produce or intermediate dealers indulging wholesale and retailed business but also to retail traders like the appellant.

In our view, licence is required to be taken by a small retailer operating within a notified market area. The question of reasonable interpretation of 'dealer' under Section 2 (i) and provisions requiring a dealer to obtain licence under Section 4 (3), in the context of single point levy of market fee under Rule 81 of the Rules framed under the Act, as sought to be contended by Mr. Rao, though ingenuous, is devoid of any substance.

It has been rightly contended by Mr. Agarwala that a licensed dealer may raise objection against imposition of levy by establishing with reference to records that the agricultural produce since

purchased by such dealer has already been subjected to levy. Requirement for obtaining a licence is mandatory under Section 4 (3) of the Markets Act. Validity of imposition of levy on certain items of agricultural produce on the score of exemption on account of single point levy, is entirely a different exercise and exemption from liability on such score in respect of trading activities in question does not entitle a dealer of agricultural produce within a specified market area to refuse to take licence under Section 4 (3) of the Markets Act.

By a series of decisions of this Court, reference to which have already been made, the principles for upholding constitutional validity of imposition of levy of market fee in a notified market area have been laid down. The Agricultural Produce Marketing Acts have been enacted by various state legislatures. The beneficial legislation is aimed to prevent exploitation of growers of agricultural produce in the hands of dealers, traders and middlemen. There is commonness, by and large, in such legislations. The Marketing Act and the Rules framed thereunder usually contain provisions for establishing organised market and market yards, provisions to ensure sale and purchase of agricultural produce at a fair price to be notified, to ensure correct weighment of such produce brought and sold in the market yards, to ensure storage of agricultural produce by giving reasonable advances against the produce stored in the godowns of the Market Committee so that distress sale at a lower place at the time of harvesting is prevented for the benefit of farmers and agriculturists, to provide roads and pathways for transport of agricultural produce to organised market yards, to disseminate information to the farmers about improved techniques in cultivation, to ensure supply of good quality seeds, manures, agricultural implements etc, for intensive cultivation, to provide place of rest for farmers bringing their produce in the organised market yards after ensuring sanitary conditions in and around such organised market yards etc. In order to ensure generation of funds in the hands of Market Committee and Boards constituted under the Marketing Act, so that organised markets and market yards are established with necessary infrastructures involving substantial cost, the Marketing Act invariably contains provisions for imposition of levy of market fee at a specified rate on the traders and dealers in specified agricultural produce operating within the specified market area and in principal and sub-market yards established by the Market Committee. The dealers and traders are required to take licence for their trading activities in such area in respect of specified agricultural produce so that their trading activities are monitored and controlled and they may not escape the liability of imposition of market levy.

Levy of market fee being essentially a fee and not a tax, such imposition of levy of market fee necessarily inheres in it the essence of quid pro quo between the fees levied and services returned to the payer of such fees. What should be the extent of service rendered to the payers of levy of market fees so as to keep such levy of fees within the bounds of accepted principle of fee involving existence of reasonable quid pro quo has been a vexed question agitated before various High Courts including this Court from time to time. Some of the decisions of this Court on this question have been indicated. The legal position regarding constitutional validity of levy of market fee may be summarised as follows:-

(i) Existence of quid pro quo is essential for retaining the character of 'fee' in the matter of levy of market fees.

(ii) Such quid pro quo is snot to be reckoned with any mathematical precision with reference to quantum of fees realised by imposition of levy and the percentage of such fees spent for establishing market yards, construction of various infra structures etc, and providing various amenities as envisaged under the Marketing Act and the Rules framed thereunder for effective implementation of aims and objectives under the Act.

(iii) The service to be rendered to the payers of market fee must be real and not illusory.

(iv) Such service must have an objective basis and have a direct link and not to be remote in its effect.

(v) It is not necessary that imposition of levy is to be effected only on establishment of principal and sub market yards by completing the infrastructures required for such establishment of market and sub-market yards. Such construction being time consuming and expenditure oriented, it will be sufficient to justify valid imposition of levy if it is demonstrable that after notifying market area, effective steps not in contemplation but in reality have been taken to identify market and sub-market yards have in fact been but to action and the market fees levied and realised are being ploughed back for the advancement of the purpose for which market fees have been levied and realised.

(vi) In deciding the question of rendering of a real and not illusory service in discharging the obligation emanating from quid pro quo, to levy of market fee, no straight jacket formulae can be evolved. Fact situation in the matter of establishment of principal and sub-market yards and the practical feasibility of construction of infrastructures, roads, pathways etc, for establishment of such market yards within a time frame and in the light of financial constraints is bound to vary depending on various factors including imponderables. It is, therefore, essentially necessary to take a pragmatic approach to the problems associated with establishing market and sub-market yards with necessary infrastructure etc, and accompanying facilities and amenities to be made available to traders and producers coming to such yards, in order to decide whether concrete steps have been translated into action with reasonable sincerity in implementing the schemes envisaged under the Marketing Act and the Rules framed thereunder.

In the instant case, it has been established that the market committee in the district of Solan after notifying market area, has taken real and effective steps to identify various sub market yards and some of such yards have been commissioned after constructing essential infrastructures and in respect of some of such yards, tenders have been invited. It is true that the facility of sub-market yards from the town of Kasauli is at some distance. But it should be borne in mind that Solan is a hilly terrain with sparse population. The volume of agricultural produce is also limited because of geographical features of the area. Consequently, volume of transaction in agricultural produce is expected to be much less than that in good agricultural belts in the plains. Such factors are undoubtedly operating as constraints in establishing sub-market yards with necessary infrastructures within a proximate distance from the place of business of various traders in the said district. Simply on such account, the appellant cannot be permitted to contend that he has no obligation to pay levy of market fee for failure to comply with the obligation of quid pro quo for

imposition of levy of market fee. The appellant has failed to establish that there is total lack of quid pro quo vis-a-vis imposition of levy of market fee in the district of Solan and also in the town of Kasauli.

In our view, the appellant being admittedly a dealer under Section 2 (i) of the Act was required to take a licence. The question of liability to pay levy of market fee is to be decided on the basis of actual business activities of the appellant with reference to agricultural produce involved in such business activities. If in respect of some agricultural produce the appellant has no liability of market levy in view of single point levy, it is for the appellant to establish such claim with reference to records. It is unfortunate that the appellant has not obtained licence despite reminder. The appellant has successfully prevented the action on the complaint made against him for not taking the licence under Section 4 (3) of the Markets Act by moving the writ petition before the High Court and raising untenable contentions in such writ petition. We, therefore, find no reason to interfere with the impugned judgment. This appeal is dismissed with cost assessed at rupees ten thousand only.