Supreme Court of India
Amar Nath Om Prakash And Ors. vs State Of Punjab And Ors. on 19 November, 1984
Equivalent citations: AIR 1985 SC 218, 1984 (2) SCALE 769, (1985) 1 SCC 345, 1985 2 SCR 72, 1986 62 STC 130 SC
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Bench: A Sen, E Venkataramiah, O C Reddy
JUDGMENT O. Chinnappa Reddy, J.

1. The appellants, who are traders engaged in the purchase and sale of agricultural produce, appear to be a determined lot. For over a decade, they or those similarly placed have been litigating and impeding the levy and collection of market fee by the Market Committees constituted under the Punjab Agricultural Produce Markets Act. Some times they have been successful, sometimes they have not. One of the occasions when they appeared to be successful was when this Court in Kewal Kirshnan Puri v. State of Punjab declared that 'the enhancement of the fee from 2% to 3% was illegal. The court while striking down the enhancement of the fee laid down no new principle but made certain general observations which, we regret to say, have been so misunderstood and misinterpreted as to lead to some confusion and public mischief. The misunderstanding and confusion have also naturally led to more litigation. Fortunately, in Sreenivasa General Traders v. State of Andhra Pradesh , this Court has removed much of the misunderstanding, cleared many of the cobwebs and retrieved the situation.

2. Before we proceed to consider the question at issue in the present case, it will be fair to recall the object and purpose of the Punjab Agricultural Produce Markets Act and similar enactments in force in other States. Par back in 1953. Rajamannar, CJ and T. L. Venkatarama Aiyar, J, in Kutti Keya v. State Of Madras , considered the provisions of the Madras Commercial Crops Markets Act, 1933, one of the forerunners of the Punjab Agricultural Produce Markets Act and other similar enactments elsewhere. The general nature of the legislation was explained by Venkatarama Aiyar. J.. as follows :

...the subject-matter of the impugned Act is marketing and legislation on marketing is now a well-recognised feature of all commercial countries. The need for such a legislation arises whenever society passed on from the state of self-supporting economic unit, producing only articles for its own consumption to that of a commercial community producing articles for sale in outside areas for profit. While in the former stage, transactions would be generally settled directly between the seller and the purchaser, the price being paid 'and delivery of the commodity taken at the time of the deal, the conditions would be different when commercial crops are begun to be raised. The ultimate purchasers of these commodities would generally be persons outside the area of production, a merchant residing in another State and even in a foreign country.

To bring about a deal between the local producers and the outside purchasers, there emerged a class of middlemen. Even in well-organised and economically advanced countries like England, it was found that the agriculturist producer had not facilities for disposing of the goods to his best advantage (vide the statement of Dr. Addison, Minister for Agriculture, quoted at page 80 of the Indian Central Banking Enquiry Committee Report, Vol. I, Part II). It is these conditions that have led up to the enactment of marketing laws in all countries having a large volume of trade in

commercial crops. The object of this legislation is to protect the producers of commercial crops from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce.

The need for such legislation is even greater in India as the producers are as a class illiterate and economically dependent and unstable. The question had engaged the attention of several committees which had been constituted to report on various economic matters. Indian Cotton was a commodity greatly in demand in England and other countries and in the Central Provinces and Berar open markets for cotton were established through legislation. In 1919, the Indian Cotton Committee observed in their report that the marketing system afforded great protection to the producers and that special legislation should be undertaken to establish' such markets in every cotton growing area.

The Royal Commission on Agriculture in India recorded a considerable body of evidence on the state of the trade in food crops and it showed the need for legislative action for safeguarding the interests of the producers (vide report dated 1928). In 1981 the Indian Central Banking Enquiry Committee considered in Chapter VII of its report the. conditions with reference to marketing. It is therein pointed out that the village producer was seldom able to gets proper price because he was chronically indebted to the middlemen who advanced loans on the security of the crops to be grown and were thus in a position to dictate their own terms and that the bargains were seldom fair to the seller.

It was also observed that for want of facilities, for warehousing the produce, the grower was not in a position to wait and sell the commodities for proper price (vide pages 78 &' 79). In 1933 the Act now under consideration was passed with the object of providing for "the better regulation of buying and selling of commercial crops". It must be mentioned that at that time the only products which had become commercial crops having an international market were cotton, groundnut sand tobacco: and the definition of commercial crops as enacted originally comprised only these three crops.

Various suggestions were made for improving the market conditions (vide Pp. 92 and 93). In the report of the Planning Commission published in 195Z Chapter XVII, Vol. 1, deals with agricultural marketing and after referring to the working of the regulated markets in Bombay, Madras, Hyderabad and Madhya Pradesh, it throws out several suggestions for future improvements. It must be added that there has been legislation on lines similar to those of the Madras Act in several of the States in India.

It will be clear from the above survey of the marketing legislation that its object is to enable producers to get a fair price for their commodities and that it has been generally adopted in all commercial States. Such laws have been held in America to be within the Police Power of the State as tending to promote general welfare (vide 'Parker v. Brown' (1942) 87 Law ED 315). Under the Indian Constitution, they must be upheld under Article 19(6) as reasonable and enacted in .the interests of the general public.

3. The decision of the Madras High Court in Kutti Keya v. The State was affirmed by a Constitution Bench of the Supreme Court in Arunachala Nadar v. State of Madras . Subba Rao, J. referring to the background of the Act. observed :

There is a historical background for this Act. Marketing legislation is now a well-settled feature of 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.

4. The learned Judge then referred to the report of the Royal Commission on Agriculture in India, the report of the Expert Committee appointed by the Government of Madras, and proceeded to observe :

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 25th July 1983. 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 market and make rules for their proper administration. The Act, therefore, was the result Of a long exploratory investigation by-experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market 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 (educing 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 a re to odrastic. unnecessarily harsh and overreach the scope of the object to achieve which it is enacted.

Shortly stated, the Act, Rules and the Byelaws framed there under have a long-term target of providing a net work of markets wherein facilities for correct weighment 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 the mat 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 a re built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereof thrall 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.

5. In Immodesty Ramkrishnaiah Sons v. State of Andhra Pradesh the nature of the duties of a Market Committee was explained :

Another unfounded assumption of the learned Counsel was that the activities of the Market Committee and the facilities provided by it were Confined by the Act to the market area only. The establishment, maintenance and improvement of the market is one of the purposes for which the Market Committee Fund might be expended under Section 15 of the Act. The other services such as the provision and maintenance of standard weights and measures, the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock schemes for the extension or cultural improvement of notified agricultural produce including the grant of financial aid to scheme for such extension -or improvement within such area undertaken by other bodies or individuals, propaganda for the improvement of agriculture, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the food grains, etc. are not services which are confined to die market area only. They are services which are required to, be performed by the Market Committee and which may be rendered throughout the notified market area without being confined to the market. Further, the facilities provided in the market are available for the use of every grower of agricultural produce and owner of livestock within the notified market area. It is too much to expect the Market Committee to provide the same facilities as are available in die market area in every nook and corner of the notified market area. It is up to the growers of agricultural produce and owners of livestock to avail themselves of the facility safe forded in the market. None can complain against the levy of licence fees on the ground that some may not avail themselves of the facilities available in the market.

6. Immedisetti Ramakrishnaian Sons v. Slate of Andhra Pradesh (supra) was a proved by this Court in Sreenivasa General Traders v. State of A. P. , where it was observed :

It, is obviously in the interests of the producers of agricultural produce that they can get the best competitive prices in an open market and that they have not to pay the middlemen. Sale or purchase of agricultural produce in such a market under the supervision and control of the market committee is likely to be in ready cash and therefore advantageous to the producers and the use of standard weights, must eliminate the possibility of his being victimized by malpractices. Supervision of the operations in the notified market area can be more conveniently done if business is carried on in a specified area or areas intended for that purpose. .The Act is an integrated one and it regulates the buying and selling of notified agricultural produce, livestock and products of livestock from .a centralized place.

...

The contention that there is no liability cast on the petitioners to pay market fee on transactions of sale and purchase of notified agricultural produce, livestock and products of livestock proceeds on a wrongful assumption that they can still carry on Such trade from their premises, in the notified market area, but outside the market in that area. In view of the express prohibition contained in Sub-section (6) of Section 7, the petitioners cannot carry on such trade by not resorting to the

market proper.

...

There is a fallacy underlying the argument that since the services are rendered by market committees within the market proper, there is no liability to pay a market fee on purchase or sale taking place in the notified market area but outside the market. The contention does not lake note of the fact that establishment of a regulated market for the purchase or sale of notified agricultural produce, livestock or products of livestock is itself a service rendered to persons engaged in the business of purchase or sale of such commodities. The duty of a market committee constituted under Sub-section(1) of Section 4 of the Act does not end with establishing such number of markets in the notified market area under the first part of Sub-section (3) but also extends to the providing of such facilities, in the market as the Government may from time to time by general or special order specify under the second part of Sub-section (3). In exercise of their powers under Section 33 of the Act, the State Government have framed the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969. Chapter V relates to 'Regulation of trading'. It would appear that Rules 48 to 53 are the machinery provisions for controlling the trade in notified agricultural produce, livestock and products of livestock in a notified area while Rules 54 to 73 impose restrictions on the carrying on of all such trade in such area. It is clear from the provisions of Section 15 of the Act that the services to be rendered by the market committee and facilities to be provided are not confined to the market proper but extend throughout the notified area.

7. The general scheme of the Punjab Agricultural Produce Markets Act and the Act, as a mended and in farce in Huryana, are broadly on the same lines as the Madras and the Andhra Pradesh Acts and similar enactments in other States. Though we do not consider it necessary to refer to all the provisions of the Punjab and Haryana Acts, we think it may be appropriate to mention here those provisions of the Act which enumerate some of the duties and powers of the Market Committees constituted under the Acts and the purposes for which the Marketing Development Fund and the Market Committee Fund may be expended. We may mention that while there is to be a State Agricultural Marketing Board for the entire State for performing the functions and duties assigned to the Board by the Act, the State Government may declare specified, notified areas as market areas for each of which there shall be a market commission.

The Board is vested with powers of superintendence and control over the committees. Section 13 prescribes the duties and powers of market committees and is in the following terms :

13. Duties and powers of Committee (1) It shall be the duty of a Committee :

(a)to enforce the provisions of this Act and the rules and bye-laws made there under in the notified market area and, when so required by the Board, to establish a market therein providing such facilities for persons visiting it in connection with the purchase, sale, storage, weighment and processing of agricultural produce concerned as the Board may from time to time direct:

(b) to control and regulate the admission to the market, "to determine 'the conditions for the use of the market and to prosecute or confiscate the agricultural produce belonging to person trading without a valid licence;

(c) to bring, prosecute or defend or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration, on behalf of the Committee or otherwise when directed by the Boards.

(2) Every person licensed under Section 10 or Section 13 and every person exempted under Section 6 from taking out licence, shall on demand by the Committee or any person authorised by it in this behalf furnish such information and returns, as may be necessary for proper -enforcement of Act or the rules and bye-laws made thereunder.

(3) Subject to such rules as the State Government may make in this behalf, it shall be the duty of a Committee to issue licences to brokers, weighmen, measurers, surveyors, godown keepers and other functionaries for carrying on their occupation in the notified market area in respect of agricultural produce and to renew, suspend or cancel such licences, (4) No broker, weigh man measurer, surveyor, godown-keeper or other functionary shall, unless duly authorised by licence, carry on his occupation in a notified market area in respect of agricultural produce :

Provided that nothing in Sub-sections (3) and (4) shall apply to a person carrying on the business of warehouseman who is licensed under the Punjab Warehouses Act, 1957 (Punjab Act No. 2 of 1958).

Section 25 provides for the creation of a. Marketing Development Fund out of which the Board has to defray its expenditure. Section 27 provides for the creation of Market Committee Fund out of which the Committee has to defray its expediture. The purposes for which the Marketing Development Fund may be expended -are specified in Section 26 as follows:

26. The Marketing Development Fund shall be utilised out of following purposes :

(i) Better marketing of agricultural produce;

(ii) Marketing of Agricultural produce on co-operative lines;

(iii) collection and dissemination of market rates and news-

(iv) grading and standardisation of agricultural produce;

(v) general improvements in the markets or their respective notified (areas?);

(vi) maintenance of the office of the Board and construction and repair or its office buildings, rest-house and staff quarters;

(vii) giving aid to financially weak Committees in the shape of loans and grants;

(viii) payment of salary, leave allowance, gratuity, compassionate allowance, compensation for injuries or death resulting from accidents while on duty, medical aid, pension or provident fund to the persons employed by the Board and leave and pension contribution to Government servants on deputation;

(ix) travelling and other allowances to the employees of the Board, its members and members of Advisory Committees;

(x) propaganda, demonstration and publicity in favour of agricultural improvements;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the Board;

(xiii) imparting education in marketing or agriculture;

(xiv) construction of godowns;

(xv) loans and advances to the employees;

(xvi) expenses incurred in auditing the accounts of the Board;

(xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the Committees (or the national or public interests);

Provided that if the Board decides to give aid of more than five thousand rupees to a financially weak Committee under clause (vii), the prior approval of the State Government to such payment shall be, obtained.

The purposes for which the Market Committees Fund may be expended are specified in Section 28 as follows :

28. Purposes for which the Market Committee Funds may be expended. Subject to me provisions of Section 27, the Market Committee Funds shall be expended for the following purposes :

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

(iii) construction and repair of buildings which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it;

(iv) provision and maintenance of the standard weights and measures;

(v) pay, leave, allowances, gratuities, compassionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents' while on duty, medical aid, pension or provident fund of the persons employed by the Committee;

(vi) payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans;

(vii) collection and dissemination of information regarding all matters relating to crop statistics aim marketing in respect of the agricultural produce concerned;

(viii) providing comforts and facilities, such as shelter, shade, parking accommodation and water for the persons, draught cattle vehicles and pack animals, coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes;

(ix) expenses incurred in the maintenance of the offices and in auditing the accounts of the Committees;

(x) propaganda in favour of agricultural improvements and thrift;

(xi) production and betterment of agricultural producers;

(xii) meeting any legal expenses incurred by the Committee;

(xiii) imparting education in marketing or agriculture;

(xiv) payments of travelling and other allowances to the members and employees of the Committee, as prescribed;

(xv) loans and advances to the employees;

(xvi) expenses of and incidental to elections, and (xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interest of the Committee or the notified market area (supra) (or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest.) It will be seen that Sections 26 and 28 cover a vast range of topics and are so wide as to take in a multitude of direct and indirect ways of achieving the principal object of the Act, namely, the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce. Some of the purposes for which the funds may be expended may on a first impression appear to be municipal or governmental functions, but a closer scrutiny will reveal that they are clearly associated with providing better facilities for marketing of agricultural produce'. In fact, some of them maybe municipal or governmental functions, but may yet be purposes for which the funds of the marketing board and marketing committees may be usefully, lawfully and perhaps necessarily expended. For example, it is of fundamental Importance that there should be a network-of roadways if effective aid is to be given to farmers to transport and market their produce. Section 23 of the Act

enables the Committee, subject to such rules as may be made by the State Government in that behalf, to levy on ad valorem basis, fee on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding the rate mentioned in Section 23 from time to time for every one hundred rupees. The fee which was originally 50 paise per 100 was raised to Re. 1/-per 100 in 1969, thereafter to Rs. 1.50 in 1973 and to Rs. 2.257-in 1974. Later the fee was raised to Rs. 3/- per 100. It was this enhancement of fee to Rs. 3/-per 100 that was challenged by several dealers from Punjab and Haryana in Kewal Krishan v. Slate of Punjab AIR 1980 SC 1008 (supra). A Constitution Bench of this Court, after referring to the principles laid down in the leading cases of Shirur Matt 1954 SCR 1005 : AIR J954 SC 282, Hingir Rampur Coal Co. Ltd. v. State of Orissa , Corporation of Calcutta v. Liberties Cinema (1965) etc, thought that in all the circumstances of the case, an increase of the licence fee beyond Rs. 2/- per 100 was not justified. The court noticed that each of the Market Committee had huge surpluses and had made large donations to educational institutions arid expended funds for other purposes wholly unconnected with the purposes stipulated by the Act. It appeared that the increase from Rs. II- to Rs. 3/- in the year 1978 was made largely to compensate the market committees for having contributed the huge sum of Rs. one corer to the Medical College, Faridkot. Having regard to the huge surpluses and unauthorised items of enpenditures, the court came to the conclusion, on the facts of the case, that the increase of fee above Rs. 2/- per 100 was not justified. In the course of the discussion, Untwalia, J. who spoke for the court made certain observations which when torn out of context appear to give rise to some misunderstanding. For example, at page 1016 of AIR, he said :

But generally and broadly speaking, it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of the fee realised is spent for the special benefit of its payers.

This sentence should not be read in isolation. It must be read in the context of the facts of the case. In fact, in the very sentence, preceding the one quoted, it was said :

It may be so intimately connected or interwoven with the services rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payers of the fee and what proportion went to others.

8. That was why Sen J. in Sreenivasa General Traders v. State of Andhra Pradesh (Supra) took immense pains to explain the observations of Untwalia J. and place them in their proper setting. He observed, very rightly indeed:

In the ultimate analysis, the Court held in Kewal Krishan Purr's case, supra that so long as the concept of fee remains distinct and limited in contrast to tax, such expenditure of the amounts recovered by the levy of a market fee cannot be countenanced in law. A case is an authority only for what it actually decides and not for what may logically follow from it. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case in which such expressions are to be found. It would appear that there are certain observations to be found in the judgment in Kewal Krisnan

Puri's case supra, which were really not necessary for purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value. The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely:

At least a good and substantial portion of the amount collected on account of fees may be in the neigh boarhound of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter.

9. Obviously Untwalia J. did not purport to lay down any new principles and could not have intended to depart from the series of earlier cases of this Court For instance, in H.H. Sudhindra Thirtha Swamiar v. Commissioner, the Court had said :

...nor is it a postulate of a fee that it must taw direct relation to the actual services rendered by the authority to individual who obtains the benefit of the service. If with a view to provide a specific service, levy is impound by law and expenses for maintaining the service are rennet out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax...but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may.

In Hingir-Rampur Coal Co. Ltd. v. State of Orissa (Supra) the Court had said :

If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business, the cess is distinguishable from a tax and is described as a fee.

...

It is true that when the Legislature levies fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from pubic service, and in essence is directly a part of it, different considerations may arise. In such a case, it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy.

Again in H. H. Shri Swamiji v. Commr,, Hindi Religious and Charitable Endowments Department Chandrachud C. J. said :

For the purpose of finding whether there is a correlationship between the services rendered to the fee payers and the fees charged to them, it is necessary to know the cost incurred' for organising and rendering the services. But matters involving consideration of such a co-relationship are not required to be proved by a mathematical formula. What has to be seven is whether there is a fair correspondence between the fee charged and the cost of services rendered to the fee payers as a class. The further and better particulars asked for by the appellants under Order 6, Rule 5 of the Civil Procedure Code, would have driven the court, had the particulars been supplied, to a laborious and fruitless inquiry into minute details of the Commissioner's departmental budget. A vivisection of the amounts spent by the Commissioner's establishment at different places and for various purposes and the ad hex: allocation by the Court of different amounts to different heads would at best have been speculative. It would have been no more possible for the High Court if the information were before it. than it would be possible for us if the information were before us. to find out what part of the expenses incurred by the Commissioner's establishment at various places and what part of the salary of his staff at those places should be allocated to the functions discharged by the establishment in connection with the services rendered to the appellants. We do not therefore think that any substantial prejudice has been caused to the appellants by reasons of the non-supply of the information sought by them.

On a consideration of these cases Sen J. concluded as follows in Supernovas General Traders v. State of Andhra Pradesh (supra) :

The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest.

...

In determining whether a levy is a fee the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may he of no consequence that the Slate may ultimately arid indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered.

Referring to the catena of these cases it was observed by this Court in Municipal Corporation Delhi v. Mohd. Yasin :"

What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privileges conferred. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the

consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered-, or the ad vantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the Ices are also benefited dews not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of his services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee: nor is it necessarily absent in u tax.

Earlier on a question of interpretation it was pointed out :

A word on interpretation. Vicissitudes of time and necessitudes of history contribute to changes of philosophical attitudes. Concepts, ideas and idea Is a nil. with then, the meanings of words and phrases and the language itself. The philosophy and the language of the law arc no exceptions. Words and phrases take colour und character from the context and the times and speak differently in different contexts and times. And, it is worthwhile remembering that words and phrases have not only a meaning but also a content, a living content which breathes, and so, expands and contracts. This is particularly so where the words and phrases properly belong to other disciplines. Tax' and 'fee' are such words. They properly belong to the world of Public Finance but since the Constitution and the laws are also concerned with Public Finance, these words have often been adjudicated upon in an effort to discover their content.

10. in Sreenivasa General Traders v. State of Andhra Pradesh (supra). Sen, J. had also pointed out that there was no generic difference between a tax and a fee, that both were compulsory exactions of money by public authorities and that a levy in the nature of a fee did not cease to be of that character merely because there was an element of compulsion or coerciveness present in it nor was it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual, who obtains the benefit of the service. He also drew attention to the increasing realization that the element of quid pro quo in the strict sense was not always sine qua non for fee. Nor was the element of quid pro quo necessarily absent in every tax. He further pointed out that an insistence upon a good and substantial portion of an amount collected on account of fee, say in the neighbour hood of two-third or three-fourths, being shown with reasonable certainly as having been spent for rendering services in the market to the payer of fee, could not be a rule of universal application, and that it was a rule which had necessarily to be confined to the special facts of Kewal Krishan Puri's case . Otherwise, it would affects the validity of marketing legislations undertaken throughout the country during the past half a century. We agree with the view of Sen, J. that the observations extracted by him from Kewal Krishan Puri's case were not really necessary for that case and we also agree with the clarification of the observations made by Sen, J.

11. There is one other significant sentence in Sreenivasa General Traders v. State of A. P. (supra) with which we must express our agreement. It was said, with utmost respect, these observations of the learned judge are not to be read as Euclid's theorems, nor as provisions of the statute. These

observations must be read in the context in which they appear". We consider it proper to say, as we have already said in other cases that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussion but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as status. In London Graving Dock Co. Ltd. v. Horton 1951 AC 737 at P. 761, Lord Mac Dermot observed :

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J.' as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office v. Dorset Yacht Co. (1970) 2 All ER 294, Lord Reid said, "Lord Atkin's speech...is not to be treated as if it was a statutory definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not. of course, construe even a reserved judgment of even Russell L. J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972) 2 WLR 537 Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

12. There are a few other observations in Kewal Krishan Puri' s case to which apply which the same force all that we have said above. It is needless to repeat the oft quoted truism of Lord Halsbury that a case is only an authority for what it actually decides and not for what may seem to follow logically from it. We have said so much amount Kewal Krishan Puri's case because the learned Counsel placed implicit reliance upon it though as we shall presently show, we do not see how a mere declaration that the levy and collection of fee in excess of Rs. 2/- per hundred would automatically vest in the dealer the right to get at the excess amount when in fact he did not bear the burden of it and when the moral and equitable owner of it was the consumer-public to whom the burden had been passed on.

13. Soon after judgment was pronounced in Kewal Krishan's case, the question arose as to what was to be done with the fee in excess of Rs. 21- per 100 collected by various market committees. Were the Market Committees to be permitted to retain the excess amounts? Were the excess amounts to be refunded to the traders from whom the amounts had been collected notwithstanding the fact that the traders themselves had already passed on the burden to the next purchasers and consumers? In other words were the traders to be allowed to get a refund from the market committees and unjustly enrich themselves? Were they to be allowed to profiteer by ill-gotten gains? Or were the next purchasers or consumers to be traced and the amounts refunded to them, which of course, would well-nigh be an impossible task in practice? If it was not possible to trace the individual consumers who had borne the burden, was it not right that the public authority who levied and collected it should be allowed to hold and retain the amount as if it were in trust for their benefit to be used for

the purposes for which the statute desired the levy of the fee? Some dealers, however, wanted the monies to be refunded to them and moved this Court. Instead, in the circumstances the Court in Shiv Shankar Dal Mills v. State of Haryana gave the following directions :

I. Subject to the directions given below, all the sums collected by the various market committees who are respondents in these various writ petitions or appeals shall be liable to be paid into the High Court of Punjab and Haryana within one week of intimation by the Registrar of the amount so liable to be paid into the Court.

II. A statement of the amounts collected in excess (1%) shall be put into this Court by the dealers with copies to the various market committees aforesaid and furnished to the writ petitioners and appellants within 10 days from today, and if there is any difference between the parties it shall be brought to the notice of this Court in the shape of miscellaneous petitions. On final orders, if any passed thereon by this Court, those amounts, so as determined, shall be treated as final.

III. The Registrar of the High Court shall issue public notice and otherwise give due publicity to the fact that dealers who have not passed on the liabilities to others and others who have contributed to or paid the excess one per cent covered by these writ petitions and appeals may make claims for such sums as are due to them from him within one month or such other period as he may fix. The Registrar shall scrutinise such claims and ascertain the sums so proved. He will thereupon demand of all the market committees concerned payment into the Registry of such sums in regard to which proof of claims have been made. On such intimation, the market committees shall pay into the Registry the amounts so demanded by the Registrar within one week of such intimation. The amount shall be paid together with interest at 10 per cent per annum from today up to the date of deposit with the Registrar.

IV. It shall be open to the Registrar to make such periodical claims on appropriate proof by claimants on the line started above.

V. He will devise the mechanics of processing the claims as best as he may and, in the event of dispute, may refer to the High Court for its decision of such disputes, if he thinks it necessary. Otherwise, he may dispose of the objections finally.

VI. If any further directions regarding the mechanics of the claim of refund or otherwise are found necessary from this Court, the High Court will report about such matter to this Court and orders made thereon will bind the parties.

VII. If parties eligible for repayment of amounts do not claim within one year from today the Registrar will not entertain any further claims. It will be open to such parties to pursue their remedies for recovery for any sums that may be due to them.

VIII. Each State Marketing Board will deposit within 10 days from today a sum of Rs. 5.000/- before the Registrar for the preliminary expenses of publicity and other incidentals for the implementation of the directions given above. Any unexpended amount, at the end of one year, will be repaid to the

respective State Marketing Board.

IX. We further direct that the unclaimed amounts, if any, shall be permitted to be used by the respective Marketing Committees for the purposes falling within the statute as interpreted by this Court in the C. A. No. 1083/7-7

14. Thereafter, more or less in tune with the directions given by the Court in Shiv Shankar Dal Millscase, the Punjab Agricultural Produce Markets Act was amended by the introduction of Section 23-A, providing as follows:

In the principal Act, after Section 23, the following section shall be inserted namely :

23-A (1) Notwithstanding anything contained in any judgment decree or order of any Court, it shall be lawful for a Committee to retain the fee levied and collected by it from a licensee in excess of that leviable under Section 23, if the burden of such fee was passed obey the licensee to the next purchaser of the Agricultural Produce in respect whereof such fee was levied and collected.' (2) No suit or other proceeding snail be instituted, maintained or continued in any court for the refund of whole or any part of the fee retained .by a Committee under subsection (1) and no court shall enforce any decree or order directing the refund of whole or any part of such fee.

(3) If any dispute arises as to the refund of any fee retained by a Committee by virtue of Sub-section (1) and the question is whether the burden of such fee was passed on by the licensee to the next purchaser of the concerned agricultural produce, it shall be presumed unless proved otherwise that such burden was so passed on by the licensee.

(4) If any amount of fee retainable by a Committee under Sub-section (1) has been refunded to any licensee, the same shall be recoverable by the Committee in the manner indicated in Sub-section (2) of Section 41.

(5) The provisions of this section shall not effect the operation of Section 6 of the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976.

The primary purpose of Section 23-A is seen on the face of it; it prevents the. refund of license fee by the market committee to dealers who have already passed on the burden of such fee to the next purchaser of the agricultural produce and who went to unjustly enrich themselves by obtaining the refund from the market committee. Section 23-A, in truth, recognises .the consumer public who have borne the ultimate burden as the persons who have really paid the amount and so entitled to refund of any excess fee collected and therefore directs the market committee representing their interests to retain the amount. It has to be in this form because it would, in practice, be a difficult and futile exercise to attempt to trace the individual purchasers and consumers who ultimately bore the burden. It is really a law returning to the public what it has taken from the public, by enabling the Committee to utilise the amount for the performance of services required of it under the Act Instead of allowing middlemen to profiteer by ill-gotten gains, the legislature has devised a procedure to undo the wrong that has been done by the excessive levy by allowing the Committees to

retain the amount to be utilised hereafter for the benefit of the very persons for whose benefit the Marketing legislation was enacted. The constitutional validity of Section 23A was questioned before the High Court of Punjab and Haryana. but was upheld in Walaiti Ram Mahabir Prasad v. Slate of Punjab . The correctness of this decision is questioned before us in these two civil appeals.

15. The submission of the lea med counsel was that Section 23-A was a blatant attempt to validate a levy which had been declared invalid by this Court and this, according to the learned Counsel, was not permissible/We entirely disagree with the submission that Section 23-A is an attempt at validating an illegal levy. Section 23-A does not permit any. recovery of fee @Rs. 3/- per 100 in respect of any sales of agricultural produce before Or after the coming into force of that provision. There is no attempt at retrospective validation of excess collection nor any attempt at providing for future collection at the rate of -Rs. 3/- per 100. All that Section 23-A does is to prevent unjust enrichment by those dealers who have already passed on the burden of the fee to the next purchaser and so reimbursed themselves by also claiming a refund from the Market Committees. We have already explained the true purpose of Section 23-A. It gives td the public through the market committee what it has taken from the public and is due to it. It renders unto Caesar what is Caesar's. We do not see any justification for characterising a provision like v. 23-A as one aimed at validating an illegal levy. The decision of this Court in A. V. Nachane v. Union of India on which the counsel placed reliance has no application whatsoever. Section 23-A in our view, is consistent with the spirit of Kewal Krishan and the letter of Shiva Shankar Dal Mills.

16. Another submission of the learned Counsel was that while the legislature was competent to enact a law for the levy of a fee and matters incidental and ancillary thereto, it was incompetent to legislate providing for the retention by any authority of fee illegally levied. For this purpose, reliance was placed by the learned Counsel on the decision of this Court in Abdul Quader & Co. v. Sales Tax Officer AIR 1964 SC 922. We are afraid that this decision also is of no avail to (he appellants.

17. In Orient Paper Mills Ltd. v. State of Orissa , a dealer had been assessed to tax and had paid the tax. Later he applied for refund of tax which was held to be not exigible by this Court in State of Bombay v. United Motors (India) Ltd. 1953 SCR 1069 : AIR 1953 SC 2521. When the appeals were pending in this Court, the Orissa Legislature intervened in the matter and introduced Section 14-A in the principal Act providing that refund could be claimed only by a person from whom the dealer had actually realised the amount as tax. The vires of the provision was challenged in this Court, but it was upheld on the ground that it came within the incidental power arising out of Entry 54 of List II. The matter was considered to be a question of refund and it was held that it could not be doubted that refund of the tax collected was always a matter covered by incidental and ancillary powers relating to the levy and collection of tax. The Constitution Bench held':

By item 54 of List II of Schedule 7 to the Constitution, the State Legislature was indisputably competent to legislate with respect to taxes on sale or purchase of papers and paper-boards. The power to legislate with respect to a lax comprehends the power to impose the tax, to prescribe machinery for collecting the tax. To designate the officers by whom the liability may be enforced and to prescribe the authority, obligations and indemnity of those officers. The diverse heads of legislation in the Schedule to the, Constitution demarcate the periphery of legislative competence

and include all matters which are ancillary or subsidiary to the primary head. The Legislature of the Orissa State was therefore competent to exercise power in respect of the subsidiary or ancillary matter of granting refund of tax improperly or illegally collected, and the competence of the legislature in this behalf is not canvassed by counsel for the assessees. If competence to legislate for granting refund of sales-tax improperly collected be granted, is there any reason to exclude the power to declare that refund shall be claimable only by the person from whom the dealer has actually realised the amounts by way of sales-tax or otherwise? We see none. The question is one of legislature competence and there is no restriction either express or implied imposed* upon the power of the Legislature in that behalf.

18. The present case is a case akin to Orient Paper Mills case (supra). Section 23-A. as we have seen, disables a dealer from getting a refund of fee paid by him, the burden of which he has already passed on to the next purchaser. As we said all that Section 23-A does is to prevent unjust enrichment by means of a refund to which the person claiming it has no moral or equitable entitlement.

19. Abdul Quader & Co. v. Sales Tax Officer (supra) on which considerable reliance was placed by the learned Counsel for the appellants was an entirely different case. The dealer in that case had collected sales tax from the purchasers in connection with the sales made by him on the basis that the incidence of the tax lay on the sellers and assured the purchaser that after paying the tax to the appellant, there would be no further liability on them. After realising the tax. however, the appellant did not pay the amount realised to the Government, but kept it in a suspense account. When the Sales, Tax Department discovered this and called upon the appellant to pay the amount realised, he refused to do so. On behalf of the Government, reliance was placed upon Section 11(2) of the Hyderabad General Sales tax Act which laid down mat any amount collected by way of tax otherwise than in accordance with the provisions of the Act shall be paid over to the Government and in default of such payment, the said amount shall be recovered from such person as if it were arrears of land revenue. The court held that it was clear that the words "otherwise than in a accordance with the provisions of this Act", included .amounts which, may have been collected by way of tax though not exigible as tax under the Act. The court then held that the State Legislature was incompetent to enact; a provision like Section 11(2) as it enabled the Government to recover an illegal levy and it could not possibly be said to be an incidental or ancillary power-capable of exercise in aid of the main topic of legislation, which was a tax on the sale or purchase of goods. The decision in Orient Pa per Mills case was distinguished on the ground that it dealt with a case of refund and not the collection of tax, not really due as a tax under the law. In their precise words they said :

The matter (In Orient Paper Mills case) dealt with a question of refund and it cannot be doubted that refund of the tax collected is always a matter covered by incidental and ancillary powers relating to the levy and collection of tax. We are not dealing with a case of refund in the present case. What Section 11(2) provides is that something collected by way of tax, though it is not really due as a tax under the law enacted under Entry 54 of List II must be paid to the Government. This situation in our opinion is entirely different from the situation in Orient Paper Millscase.

20. The decision in Orient Paper Mills case was expressly affirmed by a Bench of Seven Judges of this Court in R. S. Joshi v. Ajit Mills and observations to the contrary in Ashoka Marketing Company

case were expressly dissented from. We are, therefore, satisfied that Section 23-A of the Punjab Agricultural Produce Markets Act was within the competence of the Punjab Legislature and that it was not also otherwise invalid in any manner. The appeals are, therefore, dismissed with costs.