Supreme Court of India
Krishi Upaj Mandi Samiti vs Orient Paper & Industris Ltd on 9 November, 1994
Equivalent citations: 1995 SCC (1) 655, JT 1994 (7) 414
Author: P Sawant
Bench: Sawant, P.B.

PETITIONER:
KRISHI UPAJ MANDI SAMITI

Vs.

RESPONDENT:
ORIENT PAPER & INDUSTRIS LTD.

DATE OF JUDGMENT09/11/1994

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
AGRAWAL, S.C. (J)

CITATION:
1995 SCC (1) 655 JT 1994 (7) 414
1994 SCALE (4)914

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SAWANT, J.- The respondent-Orient Paper Mills (for short `Mills') purchases bamboos as raw material under a contract with the State Government which holds monopoly in regard to bamboos as a forest produce in view of the provisions of the M.R Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (No. 9 of 1969). The bamboos are supplied to the respondent-Mills by the Forest Department of the State Government at various forest depots established for the purpose. After taking delivery from the forest depots, the Mills transports the same to its factory situated in Amlai in the district of Shahdol (M.P.). It is not disputed that forest depots from which the Mills purchases the bamboos fall within the market area of the appellant-Krishi Upaj Mandi Samitis (for short 'Committees') and the factory of the Mills also falls within the market area of Krishi Upaj Mandi Samiti, Budhar (M.R).

2.Under Section 3 of the M.R Krishi Upaj Mandi Adhiniyam, 1973 (for short 'the Act'), the State Government is empowered to declare by a notification its intention to establish a market for

regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification, and invite objections for the same. Under Section 4 thereof, after the expiry of the period specified in the notification and after considering the objections and suggestions as may be necessary, the State Government is authorised to establish by another notification a market, for the areas specified in the notification issued under Section 3 or in any portion thereof. Under Section 5, in every market area, there has to be a market yard and there may be more than one sub- market yards. For every market yard or sub-market yard, there has to be a market proper. On the establishment of market under Section 4, Section 6 prohibits local authorities from setting up or establishing or continuing or using or allowing to be set up, established, continued or used, any place in the market area for the marketing of any notified agricultural produce. Likewise, no person is permitted to use any place in the market area for the marketing of the notified agricultural produce or operate in the market area any market function otherwise than in accordance with the provisions of the Act. The exception to this prohibition is in favour of (a) a person who himself is a seller of the product concerned, and whose sale does not exceed four quintals at a time to a person who purchases it for his own domestic consumption, (b) produce which is brought by headloads, (c) produce which is purchased or sold by petty traders, (d) produce which is imported from outside India, (e) produce which is purchased by various fair price shop dealers from the Food Corporation of India, the Madhya Pradesh State Commodities Trading Corporation or any other agency or institution authorised by the State Government for distribution of essential commodities through the public distribution system, and (f) the transfer of the agricultural produce to a cooperative society for the purpose of securing an advance therefrom.

3.The Samitis or Market Committees are established under Section 7 of the Act. Under Section 19(1) of the Act, the Committees have been given power to levy market fees on notified agricultural produce brought for sale or sold in the market area tinder their jurisdiction at such rate as may be fixed by the State Government from time to time subject to the minimum rate of fifty paise and a maximum rate of two rupees for every one hundred rupees of the price in the manner prescribed. Under Section 19(2), the market fees are payable by the buyer of such produce and is not to be deducted from the price payable to the seller. It is only if the buyer of the produce cannot be identified that all fees are payable by the seller or by the person who brought the produce for sale in the market area. Provided further that in case of a commercial transaction between the traders in the market area, the market fees are to be collected and paid by the seller. Section 19(6) provides that no notified agricultural produce or any product processed therefrom shall be removed out of the market proper except in accordance with a permit issued by the market committee. Sub-section (7) thereof provides that the market committee may levy and collect entrance fee on vehicles plying on hire, which may enter into market area at such rate as may be specified in the bye-laws.

4.Section 31 prohibits any person from operating in the market area in respect of the notified agricultural produce as commission agent, trader, broker, weighman, hammal, surveyor, warehouseman, owner or occupier of processing or pressing factories or as other market functionary except in accordance with the provisions of the Act and the rules and the bye-laws made thereunder. Section 32 requires every person specified in Section 31 who desires to operate in the market area to apply to the market committee for the grant of a licence. The application has to be accompanied by such fees as the Director of Marketing appointed by the State Government may subject to the

minimum, prescribe in this behalf. Under Section 33, the market committee is given power to cancel or suspend the licence for reasons and under the procedure laid down therein. Section 38 provides for the constitution of a Market Committee Fund in which all the moneys received by the market committee are paid and from which all expenditure incurred by the committee is defrayed. Section 39 lays down the purposes for which the Market Committee Fund is to be expended. They are:

> "39. Application of market committee fund.- Subject' to the provisions of Section 38, the market committee fund may be expended for the following purposes only, namely--
>
> (i)the acquisition of a site or sites for the market yards;
>
> (ii)the maintenance and improvement of the market yards;
>
> (iii)the construction and repairs of buildings necessary for the purposes of the market and for convenience or safety of the, persons using the market yard;
>
> (iv)the maintenance of standard weights and measures;
>
> (v)the meeting of establishment charges including payments and contributions towards provident fund, pension and gratuity of the officers and servants employed by a market committee;
>
> (vi)the payment of interest on the loans that may be raised for the purpose of the market and provisions of sinking fund in respect of such loans;
>
> (vii)the collection and dissemination or information, relating to crops statistics and marketing of agricultural produce;
>
> (viii)(a) the expenses incurred in auditing the accounts of the market committee;
>
> (b) payment of honorarium to Chairman, travelling allowance of Chairman, Vice-Chairman and other members of the market committee and sitting fees payable to members for attending the meeting;
>
> (c) contribution to State Marketing Development Fund;
>
> (d) meeting any expenditure for carrying out order of 'the State Government and any other work entrusted to market committee under any other Act;
>
> (e) contribution to any scheme for increasing agriculturists in the market area;
>
> (f)to develop necessary infrastructure within a radius of one kilometre from the market yard/sub-market yard for facilitating the flow of notified agricultural produce

with the prior sanction of the Director and with the prior permission of the local authority concerned for using their land for this purpose;

(g) to provide for development of agricultural produce in the market area;

(h) payment of expenses on elections under this Act.

(ix) any other purpose whereon the expenditure to the market committee fund is in the public interest, subject to the prior sanction of the State Government."

5. Section 43 provides for the constitution of a Market Development Fund and every market committee is required to pay every three months, to the Marketing Board constituted under the Act such percentage not exceeding 50 per cent of its gross receipts comprising of licensing fees and market fees as the State Government may by notification declare from time to time. All expenditure incurred by the Board according to the object sanctioned by it has to be defrayed out of the said fund.

6. It appears that the Committees levied fees on the sale and purchase of bamboos. The Mills challenged the said levy by way of a writ petition in the M.R High Court on the ground that the Act was ultra vires the Constitution, that the requirement of obtaining the licence under Section 32 and of paying the market fee under Section 19 of the Act was also unconstitutional.

7. The High Court relied upon a decision of the same Court in Miscellaneous Petition No. 4063 of 1986 decided on 12-1- 1988 and allowed the writ petition. The High Court by the said decision of 12-1-1988 had repelled the challenges to the constitutional validity of the Act and its provisions, but had upheld the contention of the petitioners that the levy was not justified on the ground that it was not established that any direct or indirect benefit was conferred either on the purchasers or traders of bamboos as a class by the market committee. For the purpose, the High Court relied upon a decision in Om Parkash Agarwal v. Giri Raj Kishoril. The High Court further held that in view of the return filed on behalf of the State Government, while selling the bamboos, the Forest Department would be a trader within the meaning of the Act and hence the sale of bamboos by the State Government to the petitioners would be a sale of a notified agricultural produce by a trader to a trader and in such a case the second proviso to subsection (2) of Section 19 of the Act will be attracted. That proviso contemplates that in case of a commercial transaction between traders in the market area, the market fee shall be collected and paid by the seller. Consequently, according to the High Court, even if it was accepted for the sake of argument, that market fee on sale of bamboos by the State Government to the petitioner was leviable, it was not to be paid through the Market Committees by the petitioners who are the buyers; but it has to be collected and paid by the Forest Department of the State Government. Hence, the Market Committees cannot require the petitioners to pay the market fee directly to them. While allowing the present writ petition on this ground, the Court also observed as follows:

"At this place, however, we wish to make it clear that if in future any service is rendered by any market committee with regard to transactions of sale and purchase

> in the various forest depots it would be open to the concerned market committee to lay a claim to levy market fee in the 1 (1986) 1 SCC 722: AIR 1986 SC 726 changed circumstances. It is further made clear that since that contingency is not stated to have so far arisen in these cases, we are not expressing any opinion with regard to any claim about market fee that may be made by the concerned market committee, if any of the paper mills actually sells some stock of bamboos as contemplated by the M.P. Van Upaj (Vyapar Viniyaman) Sanshodhan Adhiniyam, 1986 (No. 15 of 1987)."

8.We are not concerned in this appeal with the vires of the Act or of the levies of the market fees or of the requirement of a licence and of the payment of the licence fees since those contentions are not raised before us on behalf of the Mills and they have been expressly given up. There is also no cross-appeal on the said point. The limited controversy before us is whether the finding of the High Court that the levy of the market fees is not justified because there is no direct or indirect benefit conferred by the market committee either on the purchasers or traders of bamboos as a class, is valid or not.

9.We may now refer to the authorities cited at the bar. The earliest decision of this Court on the definition of 'fee' and 'tax' and the distinction between the two is of the Constitution Bench of seven learned Judges in Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt2. It was observed then that though levying of fee is only a particular form of the exercise of the taxing power of the State, our Constitution has placed fee under a separate category for purposes of legislation, and at the end of each one of the three Legislative Lists, it has given power to the particular legislature to legislate on the imposition of fee in respect of every one of the items dealt with in the list itself. Referring then to the definition of 'tax', the Court referred to the decision of the Australian High Court in Matthews v. Chicory Marketing Board3. There 'tax' is defined as a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. The Court then observed that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law. The second characteristic of tax according to the Court is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. The levy of tax is for the purposes of general revenue which when collected forms part of the public revenue of the State. There is no quid pro quo between the taxpayer and the public authority. It is a part of the common burden and the quantum of imposition upon the taxpayer depends generally upon his capacity to pay. Referring to the definition of 'fee', the Court observed that a fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in 2 1954 SCR 1005 : AIR 1954 SC 282 3 (1938) 60 CLR 263 (Aus HC) some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are some of the general characteristics of fee but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases. The Court then referred to the contention with regard to the distinction between a tax and a fee in the compulsory nature of the former and the voluntary nature of the latter and observed that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of

impositions though in different degrees and that it is not totally absent in fees. Hence it cannot be the sole or even a material criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees. In some cases whether a man would come within the category of a service receiver may be a matter of his choice, but that by itself could not constitute a major test which can be taken as the criterion of these species of imposition. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions but in a fee it is some special benefit which the individual receives. The special benefit accruing to the individual is the reason for payment in the case of fees. In the case of a tax, the particular advantage if it exists at all, is an incidental result of State action. A fee is a sort of return or consideration for services rendered and hence it is primarily necessary that the levy of fee should on the face of the legislative provision be correlated to the expenses incurred by Government in rendering the services. As indicated in Article 110(2) of the Constitution, ordinarily there are two classes of cases where Government imposes fees upon persons. In the first class of cases, Government simply grants a permission or privilege to a person to do something which otherwise that person would not be competent to do, and extracts fees either heavy or moderate from that person in return for the privilege that is conferred. A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, the tax element is predominant and if the money paid by licence-holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax. In the other class of cases, the Government does some positive work for the benefit of persons, and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between tax and fee, and the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes. Our Constitution has for legislative purposes made a distinction between a tax and a fee and, as stated above, while there are various entries in the Legislative Lists with regard to various forms of taxes, there is an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of the matters that is included in it. The implication seems to be that fee has special reference to Government action undertaken in respect of any of those matters.

10.In Mahant Sri Jagannath Ramanuj Das v. State of Orissa4 the Constitution Bench of five learned Judges upheld the annual contribution provided in Section 49 of the Orissa Hindu Endowments Act, 1939 as fee on the same reasoning as in the earlier decision of seven learned Judges.

11.In Ratilal Panachand Gandhi v. State of Bombay5 the validity of the contribution imposed under Section 58 of the Bombay Public Trust Act, 1950 fell for consideration. The Court held that as the contribution was levied purely for the purposes of due administration of the trust property- and to

defray the expenses incurred in connection with the same, no objection could be taken to the provisions of the section on the ground of its infringing the fundamental rights of the appellants. The Court referred to its earlier decision in Shirur Mutt case2 and the observations made and principles laid down there and reiterated the same.

12.In Hingir-Rampur Coal Co. Ltd. v. State of Orissa6 the Constitution Bench of five learned Judges reiterated that although there can be no generic difference between a tax and fee since both are compulsory exaction of money by public authorities, there is this distinction between them that whereas the tax is imposed for public purposes and requires no consideration to support it, a fee is levied essentially for services rendered and there must be an element of quid pro quo between the person who pays it and the public authority that imposes it. While a tax invariably goes into the consolidated fund, a fee is earmarked for the specified services in a fund created for the purpose. Whether a cess is one or the other would naturally depend on the facts of each case. If in the guise of a fee, the legislature imposes a tax, it is for the court on a scrutiny of the scheme of the levy to determine its real character. The distinction is recognised by the Constitution which while empowering the appropriate legislatures to levy taxes under the entries in the three lists refers to their power to levy fee in respect of any such matters, except the fees taken in court. In determining whether the 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 being of no consequence that the State may ultimately and indirectly be benefited by it. The amount of the 4 1954 SCR 1046: AIR 1954 SC 400 5 1954 SCR 1055 : AIR 1954 SC 388 6 (1961) 2 SCR 537 : AIR 1961 SC 459 levy must depend on the extent of the services sought to be rendered and if they are proportionate, it would be unreasonable to say that since the impost is high, it must be a duty of excise. Nor can the method prescribed by the legislature for recovering the levy by itself alter its character. The method is a matter of convenience and though relevant, has to be tested in the light of other relevant circumstances.

13.In H.H. Sadhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments7 the Constitution Bench of five learned Judges on the same reasoning as in the earlier decision of seven learned Judges in Shirur Mutt case2 upheld the contributions levied under the amended Section 76(1) of the Madras Religious Endowments Act, 1951 as fee since the said contributions went into a separate fund and not the consolidated fund of the State and were earmarked for defraying the expenses for rendering services. The contributions were not even payable to the Government but to the Commissioner and hence they were not levied as a tax but only as a fee. It was observed further that a fee does not cease to be of that character merely because, there is an element of compulsion in it nor is it a postulate of a fee that it must have relation to the actual service rendered. Absence of uniformity is not a criterion on which alone it can be said that the levy is of the nature of a tax. The legislature has power to enact appropriate retrospective legislation declaring levies as fees by denuding them of the characteristics of tax.

14.In Corpn. of Calcutta v. Liberty Cinema8 the facts were that under Section 413 of the Calcutta Municipal Act, 195 1, no person was permitted to keep open any cinema house for public amusement without a licence granted by the Municipal Corporation. Under Section 548(2), for every licence under the Act, a fee could be charged at such rates as may from time to time be fixed by the Corporation. In 1948, the appellant-Corporation fixed fees on the basis of annual valuation of the

cinema house and it was paid by the respondent. In 1958, the appellant changed the basis of assessment of the fee and levied it at rates prescribed per show according to the sanctioned seating capacity of the cinema house. The respondent-cinema, therefore, moved the High Court by a writ petition and the petition was allowed. In appeal to this Court, the appellant-Corporation contended that (i) the levy was a tax and not a fee in return for services, and (ii) Section 548(2) did not suffer from the vice of excessive delegation. On behalf of the respondent, it was contended that (i) the levy was a fee in return for the services to be rendered and not a tax, and since it was not commensurate with the costs incurred by the Corporation in providing the services, the levy was invalid; (ii) if Section 548 authorised a levy of tax as distinct- from fee, it was invalid as it amounted to illegal delegation of legislative function to the appellant to fix the amount of tax without any guidance for the purpose, and (iii) the levy was invalid as violating Articles 19(1)(f) and (g) of the Constitution. By 7 1963 Supp 2 SCR 302: AIR 1963 SC 966 8 (1965) 2 SCR 477: AIR 1965 SC 1107 majority, it was held that the levy was not a fee but a tax. While dealing with the difference between tax and a fee in this context, the Court referred to the earlier decisions of this Court, viz., Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt2, Hingir-Rampur Coal Co. Ltd. v. State of Orissa6 and H.H. Sadhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments7 and observed that the decisions of this Court established that in order to make a levy a fee for services rendered, the levy must confer special benefit on the persons on whom it is imposed.

15.In Kewal Krishna Puri v. State of Punjab9 where the levy of market fees by the market committees, as in the present case, though under a different Act, viz., the Punjab Agricultural Produce Markets Act, 1961 specifically fell for consideration before the Constitution Bench of five learned Judges, it was held that the impost of fee and the liability to pay it is on a particular individual or a class of individuals. They are under the obligation to submit accounts, returns or the like to the authorities concerned in cases where quantification of the amount of fee depends upon the same. They have to undergo the botheration and harassment, sometimes justifiably and sometimes unjustifiably, in the process of discharging their liability to pay the fee. The authorities levying the fee deal with them and realise the fee from them. By operation of the economic laws in certain kinds of imposition of fee, the burden may be passed on to different other persons one after the other. In that case, the market committees and the market boards assume to themselves the liberty of utilising and spending the realisations from market fees to a considerable extent as if it was a tax although in reality it was not so. It was further held that rendering some service, however remote the service may be, cannot, strictly speaking, satisfy the element of quid pro quo, required to be established in cases of the impost of fee. Registration fee, however, had to be taken to stand on a different footing altogether. In the case of such a fee, the test of quid pro quo is not to be satisfied with such close or proximate relationship as in the case of many other fees. By and large, the registration fee is charged as a regulatory measure. The Court then culled the following principles from the conspectus of various authorities on the subject: (SCR pp. 1243-1244 : SCC pp. 434-35, para 23)

(i)That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

* * *

(iii)That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special 9 (1980) 1 SCC 416: (1979) 3 SCR 1217 benefits must be conferred on them which have a direct, Close, and reasonable correlation between the licensees and the transactions.

(iv)That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(v) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such service in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(vi)That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(vii)At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

Referring to the provisions of the impugned Act, the Court further held that the whole object of the Act was to supervise and control the transaction of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. The supervision and control could be effective only in specified localities and places and not throughout the extensive market area. The fee levied was not on the agricultural produce in the sense of imposing any kind of tax or duty on the agricultural produce. Nor was it a tax on the transaction of purchase or sale. The levy was an impost on the buyer of the agricultural produce in the market in relation to transaction of his purchase. The agriculturists were not required to share any portion of the burden of this fee. In case the buyer was not a licensee, the responsibility of paying the fee was of the seller who may realise the same from the buyer. But such a contingency could not arise in respect of the transaction of a sale by an agriculturist of his agricultural produce in the market to a dealer who must be a licensee. Probably such an alternative provision was meant to be made for outside buyers who were not licensees when they bought their agricultural produce from or through the licensees. Every market committee was obliged under sub-section (2)(a) of Section 27 of that Act to pay out of its fund to the marketing board as contribution such percentage of its income derived from licence fee, market fee and fines levied by the courts as specified therein. The purpose of this contribution was to enable the Board to

defray expenses of the office establishment of the Board and such other expense incurred by it in the interests of the Committees in general. The purposes for which the Marketing Development Fund might be expended were enumerated in Section 26 and the purpose for which the Market Committee Funds might be expended were catalogued in Section 28 of that Act. The whole of the State was divided into market areas. The propaganda in favour of agricultural improvement and expenditure for production and betterment of agricultural produce would be in the general interest of agriculture in the market area. It was not permissible to spend the market fees realised from the traders for any purpose calculated to promote the national or public interest. No market committee could be permitted to utilise the fund for an ulterior purpose, however benevolent, laudable and charitable the object might be. The whole concept of fee would collapse if the amount realised by the market committees could be permitted to be spent in that fashion. Technically and legally one may not have any objection to the expenditure of such money for the purposes mentioned in clauses (x), (xi), (xiii) and (xvii). The Court also held that it was not necessary to strike down any clauses of Section 28 as being unconstitutional merely on the ground that the expenditure authorised therein went beyond the purposes of the utilisation of market fees. However, where a concrete case comes where the spending of money cannot be reasonably connected with the purposes for which the market fee can be spent, the courts may have to deal with the question as to whether such expenditure can be met from the market fees realised. The State Agricultural Marketing Board constituted under the Act is the central controlling and superintending authority over all the marketing committees, the primary function of which is to render services in the market. Parting with thirty per cent of the income by a market committee in favour of the Board is not so excessive or unreasonable so as to warrant the interference on the ground of violation of the principle of quid pro quo in the utilisation of the market fee. The Marketing Development Fund can be validly spent for the purposes mentioned in clauses (i), (ii), (iii), (iv), first part of clauses (v), (vi), (vii), (viii), (ix), (xii), the first part of clauses (xiii), (xiv), (xv) and (xvi). The fund cannot be expended for the purposes mentioned in the second part of clause (v), clauses (x), (xi), the second part of clause (xiii) and clause (xvii). The purpose of the law will be served by restricting the operation of Section 26 to the purposes for which it could be validly spent. It is not necessary to strike down the provisions of Section 26 for that purpose. The market fee cannot be spent on the construction of link roads although transportation is very essential for the development of a market and to enable the growers of the agricultural produce to bring the same to the market. The impost must be correlated with the service to be rendered to the payers of the fees as pointed out above. If insecticides and pesticides are for use at the place where actually the marketing operations are carried on, it would be justifiable expenditure. But if they are meant to be supplied to the agriculturists for use at their village homes or in their fields, the market fee cannot be spent for the purpose. The charging of fee at the rate of Rs 2 per Rs 100 was not considered unjustifiable. The Court observed that any increase in the rate should be corelated to the expenditure made strictly for the purposes mentioned above.

16. It may be mentioned here that the purposes mentioned in Sections 26 and 28 of the Punjab Agricultural Produce Marketing Act which fell for consideration there are similar to the provisions of the M.P. Krishi Upaj Mandi Adhiniyam, 1973.

17. In Southern Pharmaceuticals & Chemicals v. State of Kerala10 which is a decision of three learned Judges, what fell for consideration was the validity of the levy of supervisory charges under

the Kerala Abkari Act, 1967. In this connection, it was observed that it was increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the Consolidated Fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive of the nature of the levy. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the Consolidated Fund. It was also increasingly realised that the element of quid pro quo stricto sensu was not always a sine qua non of a fee. The Court therefore, observed that it is needless to stress that the element of quid pro quo was not necessarily absent in every tax. The Court then quoted with approval the observations of Seervai in his Constitutional Law on Shirur Mutt case2 that the attention of this Court does not appear to have been drawn to Article 266 which requires that all revenues of the Union of India and the States must go into the respective Consolidated Funds and all other public moneys must go into the respective accounts of the Union and the States. If the services rendered are not by a separate body like the Charity Commissioner, by a Government Department, the character of imposition could not change because under Article 266, the moneys collected for the services rendered must be credited to the Consolidated Fund. After referring to the decision in Kewal Krishan Puri case9, the Court observed that the observations made in that case, viz., the element of quid pro quo must be established, were not intended and meant as laying down a rule of universal application. In that case, the Court was considering the rate of market fee and whether the increase in the rate from Rs 2 for every Rs 100 to Rs 3 was justified. There was no material placed to justify the increase in the rate of fee and, therefore, the Court took the view there that it partook the nature of a tax. The Court thus observed that it seems the Court in that case, proceeded on the assumption that the element of quid pro quo must always be present in fee but the traditional concept of quid pro quo was undergoing a transformation. The question of corelationship between services rendered and the fee levied was essentially a question of fact.

18.In Sreenivasa General Traders v. State of A.P II a Bench of three learnedJudges considered the validity of a levy of market fee under the 10 (1981) 4 SCC 391 : 1981 SCC (Tax) 320: (1982) 1 SCR 519 11 (1983) 4 SCC 353 :(1983) 3 SCR 843 Andhra Pradesh (Agricultural Produce and Livestock) Market Act, 1966. The Court held that the provisions of Section 7(6) of that Act which prohibited any person purchasing, producing or selling any notified agricultural produce, livestock and products of livestock in a notified market area but outside the market in that area were valid having regard to the purpose and object of the legislation. The Court further held that the levy of market fee under Section 12(1) of that Act on the transactions effected by the petitioners from their business premises located in the notified market area but outside the market proper was legal. The petitioners' contention to the contrary proceeded on the wrong assumption because, firstly, in view of the express prohibition contained in Section 7(6) of the Act, the petitioners could not carry on such a trade without resorting to the market proper. The contravention of Section 7(6) was penally an offence under Section 23(1) of that Act. Secondly, the establishment of regulated market for agricultural produce is a service rendered to those who are engaged in the business of purchase and sale of such commodity. That duty of the market committee does not end with the establishment of markets but extends under Section 15 of that Act to providing facilities in the market. The service rendered by market committees and facilities so provided are not confined to the market proper but extends to the notified area. The Court held by referring to Kewal Krishan Puri case9 that there was no substance in the contention of the petitioner that since the market committees do not provide

any additional facilities to justify increase in the rate in the market fee, the increase was illegal. The Court pointed out that the said decision does not lay down any legal principle of general applicability and was clearly distinguishable on the facts. According to the Court, in that case, the increase in the market fee was quashed because the income of the market fee had become a source of revenue. The market committees throughout the State were left with huge surplus funds and the State Government had directed the market committees to contribute a large sum of money to a medical college and deposit the surplus amount with the State Agricultural Marketing Board, and the Board in turn advanced interest- free loans to marketing federations. Even after incurring the said unauthorised expenditure, the market committees were left with huge surplus and were required to make donations to many educational institutions. The marketing committees also spent large sums on general improvement of the municipal area. The Punjab Act permitted diversion of funds for any purpose calculated to promote the general interest of the committees or the national or public interest. The Court further observed that the traditional view that there must be quid pro quo for a fee had undergone a sea change. The distinction between a tax and fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary duty of regulating any public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees, there is and must always be a correlation between the fee collected and the services intended to be rendered. In determining whether the levy is a fee or tax, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class. It may be of no consequence that the State may ultimately and indirectly be benefited by it. 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 services rendered. Every corelationship between the levy and the services rendered is one of general character and not a mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authority to each individual to obtain the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or for grant of a privilege or licence are taken to the Consolidated Fund of the State and not separately appropriated towards the expenditure for rendering the service, is not by itself decisive of the nature of the levy whether it is a fee or a tax. The Court further held that presumably, the attention of the Court in the Shirur Mutt case2 was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of a fee that it should be credited to a separate fund and not to the Consolidated Fund. The element of quid pro quo in the strict sense is not always sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. The Court further held that the increase in the rate of market fee in that case from 50 paise to Re 1 was not illegal on the ground that there was no corelation between the increase and the services rendered. The levy of market fee was corelated to the purposes mentioned in Section 15 of that Act. All the moneys received by a market committee from the traders on sale of agricultural produce had to be paid into a fund called the Market Committee Fund and all expenditure incurred had to be defrayed out of that fund and any surplus had to be invested in the prescribed manner. The purposes mentioned in Section 15 of that Act are all purposes which were extremely beneficial to the growers and the traders. The increase was justified also because the cost of rendering services had correspondingly increased over the years. Moreover, the market committees are rendering services some of which were obligatory

duties. The Court also held that it is not always possible to work out in mathematical precision the amount of fee required for the services to be rendered each year and to collect just that amount which was sufficient for meeting the expenditure in that year. In some years, the income of the market committee by way of market fee and licence fee may exceed the expenditure and in another year when the development works are in progress for providing modem infrastructure facilities, the expenditure may be far in excess of the income. It is wrong to take any one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall view has to be taken in dealing with the question whether there is quid pro quo.

19. In Om Parkash Agarwal v. Giri Raj Kishoril what fell for consideration was the cess imposed under Section 3 of the Haryana Rural Development Fund Act, 1983. The cess was imposed on ad valorem basis at the rate of one per cent of the sale proceeds of the agricultural produce brought or sold or brought for processing in a notified market area. The dealer in his turn, was entitled to pass on the burden of the cess paid by him to the next purchaser of the agricultural produce from him. Section 4(1) of the Act provided for the creation of the fund called the Haryana Rural Development Fund which was vested in the State Government and the amount of cess was to be credited to the said fund. Sub-section (5) of Section 4 of the Act stated that the fund would be applied by the State Government to meet the expenditure incurred in the rural areas in connection with the development of roads, hospitals, means of communication, water supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of the rural areas. This Court held that the Act was unconstitutional since the State Legislature was not competent to enact it. The Court held that in the guise of a fee, the legislation imposed a tax. It was constitutionally impermissible for the State to do so. The Court pointed out that in the present case, the definition of expression "rural areas" was vague. There was no specification in the Act that the amount or a substantial part of the amount collected by way of cess would be spent on any public purposes within the market area where the dealer was carrying on his business. The purpose for which the fund could be spent was the same on which any amount collected by way of ax was spent by any State and there was nothing which was done specially to benefit the dealer. When any amount was spent from the fund, the interest of the dealers was not at all kept in view even generally. The cess, therefore, partook the character or part of the common burden which had to be levied and collected only as a tax. A dealer who paid the cess may, as one of the members of the general public, derive some benefit from the expenditure. The benefit so derived by him was merely incidental to the fact that he happens to be a person residing in the State of Haryana. It was not the same as the benefit which a dealer in a market area would derive from the expenditure of the fund by a market committee or as the benefit which a person living in a town would derive by the expenditure incurred by the municipality concerned. There was practically no difference between the Consolidated Fund and the fund both of which could be spent practically on any public purpose almost throughout the State. In such a situation, it was difficult to hold that there existed any corelation between the amount paid by way of cess under the Act and the services rendered to a person from whom it was collected.

20.In Kishan Lal Lakhmi Chand v. State of Haryana12 which is a decision of a Bench of three learned Judges, the levy of cess under the Haryana Rural Development Act, 1986 fell for consideration. The Court held that from the scheme of the Act, it would be clear that there is a

broad, reasonable and general corelationship between the levy and the resultant 12 1993 Supp (4) SCC 461 : 1993 Supp 4 SCR 461 benefit to the producer of the agricultural produce, dealer and purchasers as a class though no single payer of the fee receives direct or personal benefit from those services. Though the general public may be benefited from some of the services like laying roads, the primary service was to the producer, dealer and purchaser of the agricultural produce. The Court also held that the power of any legislature to levy a fee is conditioned by the fact that it must be by and large quid pro quo for the services rendered. However, corelationship 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 reasonable relationship between the levy of the fee and the services rendered. The Court then held that the cess levied therein is a fee and that the levy for the fund was created to expend for the purposes enumerated under Section 6(5) of the Act.

21.Thus what emerges from the conspectus of the aforesaid decisions is as follows:

(1)Though levying of fee is only a particular form of the exercise of the taxing power of the State, our Constitution has placed fee under a separate category for purposes of legislation. At the end of each one of the three Legislative Lists, it has given power to the particular legislature to legislate on the imposition of fee in respect of every one of the items dealt with in the list itself, except fees taken in Court. (2)The tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. There is no quid pro quo between the taxpayer and the public authority. It is a part of the common burden and the quantum of imposition upon the taxpayer depends generally upon his capacity to pay. (3)Fee is a charge for a special service rendered to individuals or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are various kinds of fees and it is not possible to formulate a definition that would be applicable to all cases.

(4)The element of compulsion or coerciveness is present in all kinds of impositions though in different degrees and it is not totally absent in fees. Hence it cannot be the sole or even a material criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable by law against an individual in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees.

(5)The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions but in a fee it is some special benefit which is conferred and accruing which is the reason for imposition of the levy. In the case of a tax, the

particular advantage if it exists at all, is an incidental result of State action. A fee is a sort of return or consideration for services rendered and hence it is primarily necessary that the levy of fee should on the face of the legislative provision be corelated to the expenses incurred by Government in rendering the services. As indicated in Article 110(2) of the Constitution ordinarily there are two classes of cases where Government imposes fees upon persons. The first is of grant of permission or privilege and the second for services rendered. In the first class of cases, the cost incurred by the Government for granting of permission or privilege may be very small and the amount of imposition levied is based not necessarily upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, the tax element is predominant. If the money paid by privilegeholders goes entirely for the expenses of matters of general public utility, the fee cannot but be regarded as a tax. In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered.

(6)There is really no generic difference between tax and fee and the taxing power of the State may manifest itself in three different forms, viz., special assessments, fees and taxes. Whether a cess is tax or fee, would depend upon the facts of each case. If in the guise of fee, the legislature imposes a tax it is for the Court on a scrutiny of the scheme of the levy, to determine its real character. In determining whether the levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specific area or classes. It is of no consequence that the State may ultimately and indirectly be benefited by it. The amount of the levy must depend upon the extent of the services sought to be rendered and if they are proportionate, it would be unreasonable to say that since the impost is high it must be a tax. Nor can the method prescribed by the legislature for recovering the levy by itself alter its character. The method is a matter of convenience and though relevant, has to be tested in the light of other relevant circumstances.

(7)It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable corelation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The

element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general corelationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

(8)Absence of uniformity is not a criterion on which alone it can be said that the levy is of the nature of a tax. The legislature has power to enact appropriate retrospective legislation declaring levies as fees by denuding them of the characteristics of tax. (9)It is not necessary that the amount of fees collected by the Government should be kept separately. In view of the provisions of Article 266, all amounts received by the Governments have to be credited to the Consolidated Funds and to the public accounts of the respective Governments.

22.In the light of the above law with regard to the levy of fee we have to consider whether the fee levied by the appellant-Market Committees in the present case is illegal. The impugned decision has relied upon the earlier decision of the same Court to come to the conclusion that in the absence of any services rendered by the Market Committees with regard to the transactions of sale and purchase of bamboos, the respondent-Mills is not liable to pay the market fee. It is, therefore, necessary to deal with the said earlier decision of the said Court which was delivered on 12-1-1988 in Miscellaneous Petition No. 4063 of 1986 filed by the respondent-Mills against the State.

23.As stated at the outset, there is no dispute that bamboo is an agricultural produce within the meaning of the Act and is a notified agricultural produce under it. The respondent-Mills purchases and takes delivery of the bamboos from the forest depots of the Forest Department of the State Government. These depots are situated within the market area of the appellant-Market Committees. After taking delivery from the forest depots, the bamboos are transported by the respondent-Mills to its factory which is also situated within the market area of one of the committees. The services which are rendered by the Market Committees, among others, are as follows: Covered auction platform and open auction platform, godowns, shops-cum-godowns, office building, provision of all categories of staff and their training, office equipment, badges and uniforms for the staff, books, magazines and advertisement expenses, weighing instruments and weights, security guards, water coolers, rest house for agriculturists, tubewells and pipelines, overhead tanks, pump house, mini-sheds and covered-shed and parking area, cattle-shed, sanitary blocks, light arrangements with all fittings, roads, boundary walls, check-posts and canteen building.

24.On behalf of the appellant-Committees, their income and expenditure account for the five years, viz., 1985-86 to 1989-90 has been annexed to the appeal memo. As is stated in the memo itself, these details were not filed before the High Court since the appellants' averments in that behalf in the counter filed in the High Court, were not denied by the respondent-Mills. As per these details, the income from market fee recovered and the expenditure incurred for the five year period 1985-86 to 1989-90 in the case of both the appellant-Committees, was as follows:

----- |---------- Years | Income (in Rs) | Expenditure (in Rs)

------ |---------- |----------|----------|----------

| Appellant1|AppeLlant2 |Appellant1|Appellant 2

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-------|----------|----------|----------|---------- The expenses are excluding those incurred on capital assets like roads and buildings. These figures will show that there is a reasonable nexus between the market fees levied and the expenses incurred on the services rendered to the buyers and sellers of the agricultural produce.

25. What is further, the provisions of Section 17 of the Act cast a duty on the market committee to provide such facilities for marketing of notified agricultural produce in the market area as the State Government may from time to time direct and to do such other acts as may be necessary in relation to the superintendence and control of the market area for regulating the marketing of notified agricultural produce in any place in the market area and for purposes connected with the said matters. Among other things, the market committees are required to (i) maintain and manage the market yards; (iii) provide the necessary facilities for marketing of agricultural produce in the market yard; (iii) grant or refuse licences to the market functionaries and renew, suspend or cancel such licences; (iv) supervise the conduct of the market functionaries; (v) regulate the opening, closing and suspending of trading in the market yards; (vi) enforce the conditions of the licences; (vii) regulate the making, carrying out and enforcement or cancellation of agreement of sales, the weighment, delivery, payment and all other matters relating to the marketing of notified agricultural produce; (viii) provide for the settlement of all disputes between the seller and the buyer arising out of any kind of transaction connected with the marketing of notified agricultural produce and all matters ancillary thereto; (ix) collect and maintain information in respect of production, sale, storage, processing, prices and movement of notified agricultural produce and disseminate such information as directed by the Director of Marketing appointed by the State Government under the Act; (x) take all possible steps to prevent adulteration of goods and promote grading and standardisation of the notified agricultural produce; (xi) with a view to maintain stability in the market-(a) take suitable measures to ensure that traders do not buy agricultural produce beyond their capacity and avoid risk to the sellers in disposing of the produce; and (b) grant licences only after obtaining necessary security in cash and bank guarantee according to the capacity of the buyers;

(xii) levy and recover all moneys related to fees and other charges due, which the market committee is authorised to receive; (xiii)(a) ensure payment in respect of transaction which takes place in the market yard or market proper to be made on the same day to the seller, and in default to seize the agricultural produce in question along with other property of the person concerned and to arrange

for resale thereof and in the event of loss, to recover the same from the original buyer together with charges for recovery of loss, if any from the original buyer and effect payment of the price of the agricultural produce to the seller, (b) recover the charges in respect of weighment and hammal, and to distribute the same to weighmen and hammals; (xiv) employ the necessary number of officers and servants for the efficient implementation of provisions of the Act, and the rules and the bye-laws made thereunder; (xv) regulate the entry of persons and vehicular traffic into the market yard; (xvi) prosecute persons for violating the provisions of the Act, and the rules and the bye-laws made thereunder and to compound such offences if necessary; (xvii) acquire, hold and dispose of any movable or immovable property for the purpose of efficiently carrying out its duties; (xviii) institute or defend any suit, action, proceeding, application or arbitration and compromise such suit action, proceeding, application or arbitration; (xix) make arrangement for employing by rotation, weighmen and hammals for weighing and transporting of goods in respect of transactions held in the market yard; (xx) to provide on rent, storage facilities for stocking of agricultural produce to agriculturists; (xxi) arrange for preventive measures against spread of contagious cattle disease.

26.In addition, the market committees are required to contribute to the Market Committee Fund constituted under Section 38 of the Act and the said fund is to be utilised for the purposes mentioned in Section 39 of the Act. Those purposes, among others, are (i) the acquisition of a site or sites for the market yards; (ii) the maintenance and improvement of the market yards; (iii) the construction and repairs of buildings, necessary for the purposes of the market and for convenience or safety of the persons using the market yard; (iv) the maintenance of standard weights and measures; (v) the meeting of establishment charges including payments and contribution towards provident fund, pension and gratuity of the officers and servants employed by a market committee; (vi) the payment of interest on the loans that may be raised for the purpose of the market and provisions of sinking fund in respect of such loans; (vii) the collection and dissemination of information relating to crops' statistics and marketing of agricultural produce;

(viii)(a) the expenses incurred in auditing the accounts of the market committee; (b) contribution to State Marketing Development Fund; (c) to develop necessary infrastructure within a radius of one kilometre from the market yard/sub- market yard for facilitating the flow of notified agricultural produce.

27.Further, as pointed out earlier, every market committee is required to pay to the State Marketing Development Fund, every three months such percentage not exceeding 50 per cent of its gross receipts comprising of licence fees and market fees as the State Government may by notification declare from time to time. The Marketing Development Fund is applied under Section 44 of the Act, among others, for (i) market survey and research, grading standardisation of the agricultural produce and other allied subjects; (ii) propaganda and publicity and extension services on the matters, relating to general improvement of conditions of buying and selling of agricultural produce; (iii)(a) giving aid to the market established for the first time in the form of grants to the extent of fifty thousand rupees to defray the establishment expenses; (b) giving aid to financially weak market committees in the scheduled areas of the State in the form of loans and or grants; (c) for loans to any market committee for development of market yard and/or sub- market yard, construction of cold storage and godown or warehouses; (iv) acquisition or constructions or hiring by lease or otherwise

of buildings or land for performing the duties of the Board; (v) payment of salary, leave allowance, gratuity, other allowances, loans and advances and provident fund to the officers and servants employed by the Board and pension and other contribution to the government servants on deputation; (vi) better control of market committees; (vii) meeting any legal expenses incurred by the Board; (viii) imparting education in regulated marketing of agricultural produce; (ix) training the officers and staff of the market committees in the State, provisions for technical assistance to the market committee in the preparation of site plans and estimates of construction and in the preparation of project reports or master plans for development of market yard and

(x) any other purpose of general interest to regulate marketing of agricultural produce.

28.It will be obvious from the above purposes for which the market fee is to be utilised that the said purposes are in furtherance of the object of the Act, viz., to regulate the buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce for the benefit of the agriculturists who are the primary producers of the said produce. The machinery and the facilities for which the market fees are being expended are all necessary to provide the necessary infrastructure to further the object of the Act. But for such infrastructure, the objects of the Act cannot be properly and adequately implemented. The fact that the respondent-Mills may not be the direct beneficiary of anyone or some of the said facilities or does not make use of them does not absolve it from payment of -the market fees. The said machinery and the facilities are meant for the benefit of all the buyers and sellers of all the agricultural produce within the market area and it cannot be denied that they are so. It is further difficult to appreciate the contention that in the circumstances, the respondent-Mills is not either directly or indirectly a beneficiary of the said machinery and the facilities as a buyer of the bamboos when the purchase is admittedly made in the market area as pointed out above. In the circumstances, the High Court was in error in holding that there was no evidence of the services rendered by the Committees.

29.In this connection, a reference may be made to Kewal Krishan Puri case9. There this Court has upheld the legality of the fees levied for the following purposes stated in the Punjab Agricultural Produce Markets Act, 1961, viz., (i) better marketing of agricultural produce; (ii) marketing of agricultural produce on cooperative lines;

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

(iv) grading and standardisation of agricultural produce;

(v) general improvement in the markets; (vi) maintenance of the office of the Board and construction and repair of its office buildings, resthouse and staff quarters; (vii) giving aid to financially weak committees in the shape of loans and grants; (viii) payment of salary, travel and 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; (xii) meeting any legal expenses incurred by the Board; (xiii) imparting education in

marketing; (xiv) construction of godowns; (xv) loans and advances to the employees and (xvi) expenses incurred in auditing the accounts of the Board. All these purposes are also covered by the present Act.

30.The High Court in the present case, accepted the contention of the writ petitioners before it, i.e., the respondent-Mills herein that so far as the bamboos grown on private land are concerned, they are to be purchased by the State Government in view of the provisions contained in the Van Upaj Adhiniyam. Further, the sale of such bamboos by the Government takes place at various forest depots and hence the requirement of the Act that the agricultural produce shall be sold in the market proper or market area does not apply to the present case. This also applied to bamboos grown on the forest land belonging to the Government. The contention advanced on behalf of the respondent-State Government there that the market fee is required to be paid on every agricultural produce brought for sale or sold in the market area was rejected by the Court on the ground that the respondent-Mills did not purchase the bamboos for sale but purchased them for use as its raw material for manufacture of paper. Secondly, there was nothing in the return filed by the State Government to show that any services were rendered to the respondent-Mills in return for the market fees levied oil them for the purchase of bamboos which transaction took place at various forest depots. The bamboos were purchased by them not for sale but for being used for manufacture of paper. Although, the Court noted the fact that it is not necessary that each individual trader must be benefited by the services provided, the Court held that it was necessary to justify the levy by proving that some direct or indirect benefit was conferred either on the purchasers or traders of bamboos as a class by the Market Committee. The Court also held that since the State Government's stand was that the Forest Department would be a trader within the meaning of the Act while selling bamboos and since respondent-Mills are also traders according to the State Government, the sale of bamboos to the respondent by the Forest Department would be a sale by a trader to a trader and in such a case, the proviso to sub-section (2) of Section 19 of the Act shall be attracted. That proviso contemplates that in a case of commercial transaction between traders in the market area, the market fee shall be collected and paid by the seller. Hence, according to the High Court, even if it was accepted for the sake of argument that market fee on the sale of bamboos by the State Government to the respondent-Mills was leviable, it was not to be paid to the Market Committee by the respondent Mills who were the buyers. It was to be collected and paid by the Forest Department which is the seller. Hence, the Market Committees could not require the respondent-Mills to pay the market fee directly to them.

31.We are afraid that on both these counts, the High Court has committed errors. As regards the first ground on which the High Court has set aside the market fee, viz., that the transaction of sale and purchase of the bamboos at the forest depots is not a transaction in the market proper or market yard and hence it is not prohibited by the Act, the High Court has failed to notice the relevant provisions of Section 6(b) of the Act to which a reference has already been made earlier. The provision in terms states that no person shall, except in accordance with the provisions of the Act and the rules and the bye-laws made thereunder, use any place in the market area for the marketing of the notified agricultural produce or operate in the market area as a market functionary. The exceptions to this provision are mentioned in Section 6(b) itself and the sale of the bamboos at the forest depots which are admittedly in the market areas of one or the other committee, are not

covered by any of the exceptions. The prohibition for sale or purchase of the agricultural produce is not only in the market proper or market yard area but in the market area as a whole. So also Section 31, as already pointed out, further provides that no person shall, in respect of any notified agricultural produce, operate in the market area as commission agent, trader, broker, weighman, hammal, surveyor, warehouseman, owner or occupier of processing or pressing factories or such other market functionary except in accordance with the provisions of the Act and the rules and bye-laws made thereunder. Section 37 requires that every person who buys notified agricultural produce in the market area, shall execute an agreement in favour of the seller in triplicate in such forms as may be prescribed. One copy of such agreement is to be kept in the record of the market committee.

32.As regards the reliance placed by the High Court on the second proviso to sub-section (2) of Section 19 of the Act which provides that in case of a commercial transaction between traders in the market area, the market fee shall be collected and paid by the seller, we are unable to understand as to how the said provision can be pressed into service to negative the levy of the market fee, even assuming that the Forest Department is for the purposes of the said provision, a trader when it sells the bamboos. The Forest Department is required by that provision to collect the fees from the buyers- in the present case, from the respondent-Mills. The market fee has, therefore, in any case, to be paid by the respondent-Mills if not to the Market Committee directly, at least to the Forest Department, and it is to be paid at the time of the purchase of the bamboos. It is immaterial for this purpose whether the bamboos are purchased by the respondent-Mills for selling them or for using them as their raw material in the manufacture of paper. The liability of the respondent-Mills to pay the market fees is in no way negated on that account. The provision requiring the seller to collect the market fees in such cases is made for the convenience of collection of the fees, as is the similar provision made in the first proviso of the said sub-section where buyers cannot be identified. The collection made by the seller, i.e., the forest depots in the present case is for and on behalf of the Committee and is eventually to be handed over to the Committee. The provision is enabling and does not prevent the Committee itself from collecting the fee, if it so proposes.

33. We are, therefore, of the view that the High Court was in error in holding that the levy of market fees in the present case was not legal. The appeal is, therefore, allowed with costs and the impugned decision of the High Court is set aside.