Supreme Court of India
Sreenivasa General Traders & Ors. ... vs State Of Andhra Pradesh & Ors. Etc on 6 September, 1983
Equivalent citations: 1983 AIR 1246, 1983 SCR (3) 843
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
SREENIVASA GENERAL TRADERS & ORS. ETC.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS. ETC.

DATE OF JUDGMENT06/09/1983

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1983 AIR 1246 1983 SCR (3) 843
1983 SCC (4) 353 1983 SCALE (2)422
CITATOR INFO :
F 1985 SC 218 (1,6,8,9,10,11)
F 1985 SC 756 (5)
D 1986 SC 726 (6,9)
APL 1989 SC 100 (16)
F 1989 SC 317 (34)
F 1989 SC2091 (11)
RF 1991 SC 672 (20)
RF 1991 SC1676 (61)
RF 1992 SC1383 (13)

ACT:
Andhra Pradesh (Agricultural Produce and livestock) Market Act 1966-Sections 7(6).12(1) scope of-Prohibiting sale/purchase of agricultural produce outside the market-Whether encroaches upon citizen's right under Art. 19(1)(g) Levy of market fee on transactions from one's business premises if invalid-Rule 74(1)-Scope of.
Tax and Essential differences-What are.
Jurisprudence-Decision of a Court-To what extent an authority.

HEADNOTE:
The Andhra Pradesh (Agricultural Produce and Livestock)

Markets Act, 1966 was enacted to regulate the purchase and sale of agricultural produce, livestock and products of livestock (compendiously referred to as agricultural produce), to establish markets in connection therewith, to eliminate middlemen and to protect the producers in such agricultural produce from exploitation and to ensure them a fair price for their produce. The Act empowers the State Government to establish Market Committees. Section 7 prohibits the setting up of any Place for the purchase, sale etc. Of any notified agricultural produce except in accordance with the conditions of a licence granted by the Market Committee. Sub-section (6) of section 7 prohibits the purchase or sale of any notified agricultural produce outside the market in the notified area. Section 12 empowers the State Government to authorise the Market Committees to levy a fee on agricultural produce purchased or sold within the

The market fee which in 1970 was 25 paise for every hundred rupees of the aggregate amount for which the notified agricultural produce was purchased or sold was raised to 50 paise in 1972. It was eventually raised to Re. 1.

It was contended on behalf of the petitioners that (i) section 7(6) which totally prohibits the purchase and sale of any notified agricultural produce outside the market in that area encroaches upon the right of the citizen to carry on trade or business and is repugnant to Article 19(1)(g) of the Constitution and is therefore void; (ii) levy of market fee under section 12(1) on transactions effected by the petitioners from their business premises which are located in the notified market area but outside the market proper is per se illegal and unconstitutional as such levy is not correlated to any services rendered to them,

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Dismissing the appeal,

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HELD: Having regard to the purpose and object of the legislation the restriction imposed by section 7(6) of the Act is reasonable restriction within the meaning of Article 19(6) of the Constitution. [865 A-B]

Marketing legislation which seeks to enable producers to get a fair price for the commodities produced by them by eliminating middlemen and providing regulated markets, cannot be said to impose an unreasonable restriction on the citizen's right to do business unless it is clearly established that the provisions are too drastic to achieve the object for which the law was enacted. In order to make such legislation effective it would be reasonable for the legislature to control transactions between traders and also the sale within the market area of produce grown outside the market area. [859 D-F]

The liberty of the individual must yield to the common good. There can be no protection of the right themselves

unless there is a measure of control and regulation of the rights of each individual in the interest of all.

[863 G]

In order to determine the reasonableness of a restriction the court must have regard to the nature and conditions prevailing in that trade. Section 7(6) was enacted for the very purpose of controlling the business in agricultural produce by the establishment of regulated markets in connection therewith. Therefore the section cannot be said to be arbitrary or of an excessive nature which is beyond what is required in the interests of tho community. If the agricultural produce is sold in the notified area the transactions would be carried on under the supervision and control of the market committee. The producers can get tho best competitive prices and the transactions will be in ready cash. The producers do not have to pay the middlemen. The use of standard weights and measures would eliminate the possibility of the producer being victimized by malpractices of the traders. Supervision of tho operations in the notified market area can be more conveniently done if business is carried on in a specified area. [873 H, 864 B-C, F-G]

M.C.V.S. Arunachala Nadar etc. v. State of Madras and Ors., [1959] Supp. 1 SCR 92; Mohammad Hussain Gulam Mohammad and Anr. v. State of Bambay and Anr., [1962] 2 SCR 659 and Mohammadbhai Khudabux Chhipa and Anr. v. State of Gujarat and Anr., [19621 Suppl. 3 SCR 875, relied on. .-:

The contention that no liability is cast on the petitioners to pay market fee on transactions of sale and purchase of notified agricultural produce if they carry on such trade from their own premises in the notified area but outside the market in that area proceeds on wrong assumption because firstly in view of the express prohibition contained in Section 7(6) the petitioners cannot carry on such trade by not resorting to the market proper. Contravention of the provisions of section 7(6) is made a penal offence under section 23(1). Secondly, establishment of regulated markets for agricultural produce is a service rendered to those who are engaged in the business of purchase and sale of such commodities. The duty of the market committee does not and with

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the establishment of such markets but extends under section 15 of the Act to providing facilities in the market. Service rendered by a market committee and facilities so be provided are not confined to the market proper but extend through the notified area. [865 F-H, 866 D-E]

Immidisetti Ramakrishnaiah v. State of A.P., [1976] ILR (AP) 878, approved.

There is no irreconcilable conflict between the provisions of section 7(6) and 12(1) because they are meant to achieve two distinct and separate objects operate on two different planes. [868 B]

The argument of the petitioners that since the market committees do not provide any additional facilities to justify increase in the rate of market fee is devoid of substance. The decision of this Court in Kewal Krishan Puri's case does not lay down any legal principle of general applicability and is clearly distinguishable on facts. 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 to a Medical College and deposit the surplus amounts with the State Agricultural Marketing Board and the Board in turn advanced interest free loans to Marketing Federations. Even after incurring these unauthorised expenditures, the market committees were left with huge surpluses and were required to make donations to many educational institutions. The marketing committees also spent large sums on general improvement of the Municipal areas. 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. [870 C, F-H]

Kewal Krishan Puri and Anr. v. State of Punjab and Ors., [1979] 3 SCR 1217, distinguished and held inapplicable.

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] SCR 1005 and Matthews v. Chicory Marketing Board, 60 Com. L.R. 263, referred to.

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 expressions are to be found. In Kewal Krishan Puri's case there are certain observations which were really not necessary for purposes of that decision and go beyond the occasion and therefore they have no binding authority though they may have a persuasive value. [871 H, 872 A-B]

The traditional view that there must be actual guid pro quo for a fee has undergone a sea change. The distinction between a tax and a fee lies primarily

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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. 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, correlation between the fee collected and the service intended to be rendered. In deter

mining whether a levy is a fee or a 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 on 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 the services rendered. However, correlationship between the levy and the services rendered is one of general character and not of Mathematical exactitude. All that is necessary is that there should be a reasonable "relationship" between levy of the fee, and the service rendered. [872 D-G]

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, supra; H. H. Sundhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Churitable Endowments, Mysore, [1963] Suppl. 2 SCR 302; The Hingir-Rampur Coal Co. Ltd. v. State of Orissa JUDGMENT:

Mutt etc. v. The Commissioner, Hindu Religious & Charitable Endowments Department & Ors., [1980] 1 SCR 368; Southern Pharmaceuticals & Chemicals, Trichur & Ors. etc. v. State of Kerala & Ors. etc., [1982] 1 SCR 519 and Municipal Corporation of Delhi & Ors., v. Mohd. Yasin, AIR [1983] SC 617, referred to.

There is no generic difference between a tax and a fee: both arc compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person inspite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is 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. It is now increasingly realized that merely because the collections for the services rendered or for grant of a privilege or licence arc taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case was not drawn to Art. 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of 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 a sine qna non for a fee. The element of quid pro quo is not necessarily absent in every tax. [873 B-F] There is no force in the contention that the increase in, the rate of market fee from 50 paise to 1 rupee was illegal on the ground that there was no correlation between the increase in the services rendered. The levy of market- fee under section 12(1) of the Act is co-related to the purposes mentioned in section 15 that all the monies received by a market committee from tho traders on sale of agricultural produce have. to be paid into a fund called the Market Committee Fund, and all expenditure incurred has to be defrayed out of that fund and any surplus has to be invested in the proscribed manner. The purposes mentioned in section 15 are all purposes which are extremely beneficial to the growers and the traders. [874 F-H, 875 A.B] In the instant case, there was no allegation that expenditure incurred by the Market committee was not authorised by the Act. When the petitioners had not challenged the increase of the market fee from 25 paise to 50 paise in 1972 there could be no basis for challenging

the increase in the rate of fee to Re. 1 in 1978. Apparently, the cost of rendering services has correspondingly increased over the years. Moreover, the Market committees are rendering services some of which are obligatory duties. [875 C-E] It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a 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 modern infra-structure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question whether there is guid pro quo i.e. there is correlation between the increase in the rate of fee from 50 paise to rupee one and the services rendered. [852 D-F] On the plain language of section 12(1) of the Act the market fee is leviable both on purchase of paddy by a rice miller from a purchaser and also on purchase or sale of rice by a miller to a trader or by a trader to a trader because there is service rendered by market committee at each of the stages. Rice and paddy are not the same commodity. There is distinction between the two although paddy is milled into rice by the process of de-husking, they arc two separate and distinct commercial commodities and have been separately specified as individual agricultural produce in schedule of the Rules.

[879 G-H, 880 A] On a reasonable construction of r. 74(1), the legal consequences as set forth must ensue. IF paddy is subjected to levy of a market fee on purchase or sale by the producer to a rice miller in a notified market area by a market committee within the State and is taken into the notified market area of another market committee of being processed i.e. de-husked into rice and sold by a rice miller to a trader or by a trader to a trader in the course of a commercial transaction, there cannot by any levy of market fee on such purchase or sale of rice in another notified market area. If that be so then it must logically follow that the subsequent sale of rice in the notified area of the market committee cannot be subjected to levy of market fee on purchase or sale of rice by a miller to a trader or by a trader to a trader, if sale or purchase of paddy within such notified market area has suffered the levy of market fee. This is of course subject to the qualification that such sale or purchase has taken place in the notified market area, but outside the market in that area as enjoined by the proviso to r. 74(1). [881 H, 882 A-B] & ORIGINAL JURISDICTION: Writ Petitions Nos. 2727, 2840- 42, 2765, 2868, 2869, 2911, 3137, 3138, 3568-71, 3680, 7485- 7580,3817 20,4190,9018-62,4553,4554-55, 4690,4773, 6617- 6663,4774,6665-71,4775,6672-81, 4919, 4929,7588-7606, 8824, 7039-96,7129,8285 8311,8506-8653, 8654-8854, 7946-65, 9485 of 1981,2642-84, 3584, 4114-22,4409, 5485-5509 of 1982,4246- 72 of 1973,5519-34,5665-85, 6983,7000,7252-60,7478-7637, 7925-42, 8386,9372-90, 9291-9440, 9605, 9804-9921, 9922-26, 9958-78, 9979-9994 of 1982, 199-318, 834-50,2862-2893,3644- 48, 3660-3665,2901-2983 of 1983, 1286 and 1924,1925-49 of 1973,9383-9407, 8009-8036 of 1981,1650-82,1683-1704, 1763- 88, 1789-1917, 1964-2113, 2287-91, 2461-78, 2846-49, 3107- 27, 3128-48,3637-55, 3707,4652-4788, 4790-4919, 7093-7121, 8088 of 82,1174-80,4435 4565,4838-4909,4825 5074 of 1983.

(Under Article 32 of the Constitution of India) WITH Special Leave Petition No. 728/81 and Civil Appeal Nos. 1486, 2108,2469/1972, 4013/82, 10/73 and 7502/81.

For the Appearing Petitioners G. L. Sanghi, Dr. L.M. Singhvi, D. Sudhakara Rao, Mrs Urmila sirur, T. V. S. N. Chari, B. Kanta Rao, G. R. Subbarayan, B. Kanta Rao, A. M. Singhvi, B. Parthasarthi, C. Seetharamiah, A. Subba Rao, Upendra Gupta, A. V. Rangam, Mrs. Sarla Chandra, N. Bhatakatsalam, Mrs. C. K. Sucharita, J. M. Khanna, G. Narayana Rao, M. Veerappa, Raju Ramachandra, G. S. Narayana Rao, and M. M. S. Srivastava.

For the Appearing Appellants.

P. P. Rao and B. Parthasarthi with him in CA. Nos. 1485, 2108, 2469/72,1073 and 4013 of 1982.

Mrs. Shyamala Pappu, Mrs. Indra Sawhney and Miss Kittu Bansilal, with her for the Appellants in CA. No. 2502/81.

For the Appearing Respondents.

P. Ram Reddy and G. N. Rao with him.

The Judgment of the Court was delivered by SEN,J. These Petitions Under Art. 32 of the Constitution principally lay a challenge to the constitutional validity of the increase in the rate of market fee levied by the market committees in the state of Andhra Pradesh under Sub-s. (1) of s. 12 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 ('Act' for short) from 50 paisa to rupee one on every one hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock are purchased or sold in their respective notified market areas on the ground that there was no quid pro quo i.e. there was no correlation between the increase in the rate of market fee and the service rendered.

There are also certain subsidiary questions raised in these petitions viz.: As to (1) The constitutional validity of sub-s. (6) of s. 7 of the Act which prohibits the carrying on of any transaction of purchase or sale of notified agricultural produce, livestock or pro ducts of livestock in a notified market area or outside the market in that area as violative of Art. 19 (1) (g) of the Constitution. (2) As to the power of the market committees to levy market fee under sub-s. (1) of s. 12 of the Act at rupee. One per hundred rupees of the aggregate amount for which such agricultural produce, livestock or products of livestock is purchased or sold outside their markets but within their respective notified market areas. And (3) Whether under r. 74 (1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 (Rules' for short) if purchase or sale of paddy has suffered market fee in the hands of a rice miller, the subsequent purchase or sale of rice by a miller to a trader, or by a trader to a trader, can be subjected to payment of market fee again.

Writ Petition No. 1286 of 1973 questions the validity of a notification issued by the State Government being G. O. M. S. No. 2095 dated October 29, 1968 declaring rice to be a notified agricultural produce under s. 2 (i), and the notification issued by the State Government of Andhra Pradesh under sub-s. (4) of s. 4 of the Act being G.O.M.S. No. 971 dated July 16, 1971 declaring an area of 20 kms. around Kothavalasa to be the notified market area of the Kothavalasa Agricultural Market Committee for the district of Visakhapatnam, as well as the constitutional validity of sub-s.

(6) of s. 7 of the Act and sub-s. (1) of s. 12 of the Act. Civil Appeal No. 1485 of 1972 is directed against the judgment of the Andhra Pradesh High Court dated July 7, 1971 upholding the constitutional validity of sub-s. (ii) of s. 7 of the Act and sub-s. (1) of s. 12 of the Act. Civil Appeal No. 2108 of 1972 is directed against the judgment of the Andhra i Pradesh High Court dated July 27, 1971 upholding the increase in the rate of market fee from 13 paise per quintal to 25 paise per hundred rupees by the Agricultural Market Committee, Guntur in the year 1970 on the ground that there was no quid pro quo i. e. there was no correlation between the service and the increase in the rate of market fee. Civil Appeal No. 2502 of 1981 is directed against the judgment of the Andhra Pradesh High Court dated April 21, 1981 upholding the levy of market fee at 50 paisa per hundred rupees on cotton seeds by an agro-based industry engaged in the business of manufacture and sale of cotton seed oil. Civil Appeal No. 4013 of 1982 is directed against the judgment of the Andhra Pradesh High court dated September 17, 1982 upholding the increase in the rate of market fee from 50 paisa per hundred rupees to rupee one by the Agricultural Market Committee, Guntur upon the basis that there need be no quid pro quo to justify the levy of such market fee.

It appears that initially in the year 1970 the bye-laws of all the market committees throughout the State provided for the levy of market fee @ 25 paisa for every hundred rupees of the aggregate amount for which the notified agricultural produce livestock or products of livestock was purchased or sold. Subsequently, in 1972 the rate of market fee was increased to 50 paisa per hundred rupees of the value of such agricultural produce, livestock or products of livestock. The State Advisory Board at its meeting held or January 27 and 28, 1976 resolved to recommend the enhancement of the existing rate of market fee to rupees one per hundred rupees so as to enable the market committees to build up adequate finances to meet the increasing cost towards acquisition of land and establishment of markets with modern infrastructure facilities. The Director of Marketing accordingly addressed a letter dated February 16, 1976 to all the agricultural market committees in the State inviting their attention to the resolution of the Advisory Board and requesting them to place the proposal for the enhancement of the existing rate of market fee from SO paisa to rupee one before the market committees and communicate their consent for levy of the enhanced rate of market fee under sub-s. (1) of s. 12 of the Act read with bye-law No. 24 (i) of the concerned market committee bye-laws. Accordingly, all the market committees throughout the State accepted the recommendation of the Advisory Board and resolved to enhance the market ' fee from 50 paisa to rupee one requesting the Director to forward the amended bye-law No. 24 (i) to the State Government for their approval. The State Government of Andhra Pradesh by notification dated January 1, 1978 published in the Andhra Pradesh Gazette dated February 23, 1978 accorded their approval to the amended bye law, In pursuance of the impugned notification the market committees throughout the State began to levy market fee @ rupee one per hundred rupees.

Some of the petitioners challenged the increase in the rate of levy of market fee from 50 paisa to rupee one by filing petitions under Art. 226 of the Constitution before the Andhra Pradesh High Court. All these writ petitions were disposed of by the High Court by its judgment in Sri Vijaya Cotton Traders and Ors., v. The State of Andhra Pradesh and Ors.(1) by which it negatived many of the submissions advanced before us. Aggrieved by the decision of the High Court, the petitioners applied to this Court for grant of special leave under Art. 136. After hearing learned counsel appearing for them at considerable length, the Court dismissed the special leave petitions by its

order dated May 1, 1981. Undaunted by the dismissal of the special leave petitions, these petitioners along with others have now filed petitions under Art. 32 of the Constitution and secured a rule nisi on the pretext that similar questions were involved in Civil Appeal No. 2108 of 1972 and Writ Petition No. 1286 of 1973.

The pattern of working of the market committees in the State is more or less the same although the circumstances in which each market committee is placed may differ. Facts as far as they can be gleaned from some of the writ petitions where counters have been filed may be briefly stated. The Malakpet Agricultural Market Committee, Hyderabad has in its counter in Writ Petition No. 2911 of 1981 furnished sufficient material to show the nature of services rendered by the Market Committee. It has established and has under its control various Markets in the twin cities of Hyderabad and Secunderabad viz. (i) Osmanganj Market for the purchase and sale of food grains and other notified agricultural produce, (ii) Jambagh Market for sale of fruits, (iii) Miralam Mandi and Sabzi Mandi for the sale of vegetables in Hyderabad, and Hissamgunj Market in Secunderabad for the purchase and sale of food grains and vegetables. In all those markets, the Committee is providing necessary facilities to the traders and producers of agricultural produce. The Market Committee during the financial year 1981-82 incurred an expenditure of Rs. 8.28 crores for the construction of godowns, shops, platforms, formation of internal roads, approach roads, construction of press building etc. So far as the Malakept area is concerned, the Osmangang Market was not sufficient for regulating the transactions of sale and purchase of agricultural produce. The Market Committee therefore permitted the traders of Malakept to carry on their business from their respective licensed premises, subject to the supervision and control of the functionaries of the Market Committee. Due to the location of the present markets in busy and congested places, it was not possible to extend the market areas any further. The Committee therefore acquired an area of 41 acres 22 guntas at Malakpet on a permanent lease from the Andhra Pradesh Housing Board in April 1980 It also applied for acquisition of 20 acres 20 guntas at Bahadurpura, 70 acres at Mansoorabad and 50 acres at Kukatpally. The aforesaid construction work for expansion of the markets was in progress when the writ petitions were filed. It appears from the statement of income and expenditure for the years 1978-79, 1979-80 and 1980-81 that the income from the market fee even after its increase from 50 paisa to rupee one is not sufficient to meet the expenditure of the Market Committee.

It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a 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 modern infra-structure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question whether there is quid pro quo i. e. there is correlation between the increase in the rate of fee from 50 paisa to rupee one and the services rendered. The High Court in Sri Vijaya Cotton Traders' case, supra has dealt with the Nizamabad Agricultural Market Committee. It observed from the statement showing the details of income and expenditure for three years 1977-78, 1978-79 and 1979-80 that there was a closing balance of about Rs. 39 lakhs at the end of the year 1977-78, of about Rs. 15 lakhs at the end of 1978-79 and of about Rs. 66 lakhs at the end of

1979-

80. The Market Committee filed a counter affidavit showing that it had taken up constructional works with a spill over for the year 1978-79, estimated at over Rs. 16 lakhs and had to complete new works costing about Rs. 21 lakhs. That apart, the expenditure for development of the eastern portion of the market yard at Shraddhaland Gunj, Nizamabad came to nearly Rs. 24 lakhs and that on the western side came to Rs. 134 lakhs. It was that for the year 1977-78 the Committee derived a total income of Rs. 18 lakhs by way of market fees and licence fees and the expenditure was to the tune of Rs. 16 lakhs. At the end of the year 1977-78 the closing balance was Rs. 39 lakhs but it was not sufficient to meet the cost of land acquisition, cost for development works and providing of modern facilities. In these thousand and odd writ petitions, it is difficult to expect each and every market committee to file their counter but some of the market committees like the Agricultural Market Committee, Guntur, Kothavalasa, Bheemavaram and Ambajipeta have filed their counter showing the nature of services rendered. Learned counsel appearing for the State Government has filed a statement showing the income and expenditure of the market committees and a detailed chart indicating the nature of development works undertaken by each. It is clear from the material placed before us that the income from the market fee even after its increase from 50 paisa to rupee one is not sufficient to meet the expenditure of the market committees.

In all fairness to learned counsel for the petitioners, we must state at the very outset that they do not challenge the levy of market fee of 50 paisa per hundred rupees in the year 1972 and have confined their submissions questioning the increase in the rate of market fee from 50 paisa to rupee one per hundred rupees of the price.

In support of these petitions, three main contentions were raised, namely: (1) Sub-s. (6) of s. 7 of the Act which totally prohibits purchase or sale of any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area, encroaches upon the right of citizens to carry on trade or business and is repugnant to Art. 19(1)(g) of the Constitution and is in consequence void, (2) The levy of market fee by the market committees under sub-s. (1) of s. 12 of the Act on transactions of purchase or sale of any notified agricultural produce, livestock or products of livestock in the notified market area effected by the petitioners from their business premises therein but located outside the market proper is per se illegal and unconstitutional as such levy of market fee is not correlated to any service rendered to them. (3) If paddy is brought by the producer into the notified market area for purposes of the de-husking and is sold to the miller, no market fee is leviable on subsequent transaction of sale or purchase of rice by the miller to a trader, or by a trader to a trader, or by a trader to a consumer. At any rate, there should be no levy of market fee on sale of food grains by a trader to a consumer.

It is a common feature throughout the country wherever there is such marketing legislation whether be it the State of Andhra Pradesh or any other State, that there is the usual reluctance of the traders who deal in foodgrains etc. to shift from their established trading premises situate in a notified market area to the market proper. The petitioners before us are all merchants licensed under sub-s. (1) of s. 7 of the Act to carry on the business of purchase and sale of noticed agricultural produce, livestock and products of livestock by different market committees in various parts of the State:

They are therefor subject to the restrictions contained in sub-ss. (1) and (6) of s 7 and the terms and conditions of their licence.

The object and purpose of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 as reflected in the long title is to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock. and products of livestock and the establishment of markets in connection therewith. The legislation is designed to eliminate middlemen in notified agricultural produce, livestock and products of livestock, to protect the producers of such agricultural produce, livestock and products of livestock from exploitation and to ensure to them a fair price for their produce. The material provisions of the Act may be referred to. s. 2 is the definition clause and defines the expression 'agricultural produce' in cl. (i) to mean anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purposes of this Act. The term 'market' as defined in s. 2 (vi) means a market established under sub-s. (3) of s. 4 and includes market yard and any building therein. The expression 'notified area' as defined in s. 2 (xi) means any area notified under s, 3, and 'notified market area in clause

(xii) means any area declared to be a market area by notification under s. 4. Under s. 3 of the Act, the State Government is empowered to declare their intention or regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notifications. After considering the objections and suggestions, if any, the State Government is authorized to publish a final notification under sub-s. (3) thereof declaring such area to be a notified area. By sub-s. (1) of s. 4, the State Government is empowered to constitute a market committee for every notified area which shall be a body corporate having perpetual succession and a common seal. The duty of enforcing the provisions of the Act and the rules and bye-laws is entrusted to a market committee under sub-s. (2) thereof. Sub-s. (3) of s. 4 empowers the market committee to establish such number of markets as the State Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock. Sub-s. (3) of s. 4 provides such facilities in the market as may be specified by the Government from time to time by a general or special order. Sub-c. (4) provides that the State Government shall, after the establishment of a market under sub-s. (3), declare, by notification the market area and such other area adjoining thereto a as may be specified in the notification, to be a notified market area for the purposes of the Act. Section 7 insofar as material provides as follows:

> "7. Trading etc., in notified agricultural produce, livestock and products of livestock in the notified area : (1) No person shall, within a notified area, set up, establish or use, or continue or allow to continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee. (2) Nothing in sub-section (1) shall apply to a person purchasing notified agricultural produce, livestock or products of livestock for his own domestic consumption.

... ...

(5) A person to whom a licence is granted under sub-section (1) shall comply with the provisions of this Act, the rules and the bye-laws made thereunder and the conditions specified in the licence.

(6) Notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area."

Section 12 of the Act which provides for the levy of market fee ant as an important bearing, reads:

"12 Levy of fees by the market committees (1) The market committee shall levy fees on any notified agricultural produce, livestock or products of live stock purchased or sold in the notified market area at such rate, not exceeding one rupee, as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation 1: For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

... ...

(2) The fees referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock:

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller."

Under the scheme of the Act, the market committee is 'enjoined by sub-s. (1) of s. 14 to pay into a fund called the 'Market Committee Fund' all moneys received from the traders as market fee on transactions of sale or purchase of agricultural produce taking place within the notified market area and they are to be credited in the nearest Government treasury or in a Bank, with the previous sanction of the State Government. All expenditure incurred by the market committee under and for purposes of the Act have to be defrayed out of the said Fund and any surplus remaining after such expenditure, has to be invested in such manner as may be prescribed. Under sub-s. (2), every market committee has to pay to the State Government out of its Fund the cost of any special or additional staff employed by the Government with their consultation. Where such additional staff is employed for the purposes of one or more market committees, the State Government has to apportion the cost of such special or additional staff among the market committees concerned in such manner as they think fit. Under sub-s. (3), the market committee may grant loans to another market committee out of its surplus funds, with the previous sanction of the State Government, at

such rates of interest as may be prescribed. The purposes for which the market Committee Fund may be expended are set out in s. 15 which reads:

(i) the acquisition of site for the market;

(ii) the establishment, maintenance and improvement of the market;

(iii) the construction and maintenance of buildings, necessary for the market and for the health, convenience and safety of the persons using the market and maintenance of buildings under the control of the market committee;

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

(v) the pay, pensions, leave allowance, gratuities, compassionate allowances and contribution towards leave allowances, pensions or provident fund of officers and servants employed by the market committee;

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

(vii)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;

(viii) schemes for the extension or cultural improvement of notified agricultural produce, livestock and products of livestock within the notified area, including the grant., subject to the approval of the Government, of financial aid to the schemes for such extension or improvement within such area, undertaken by other bodies or individuals;

(ix) propaganda for the improvement. Of agriculture, livestock and products of livestock and thrift;

(x) the expenses of, and incidental to, the conduct of elections;

(xi) the promotion of grading services;

(xii) measures for the preservation of foodgrains;

(xiii) such other purposes as may be specified by the Government by general or special order.

Sub-s (1) of s. 16 of the Act provides that there shall be formed for the whole of the State a fund to be called the 'Central Market Fund'. Every market committee is required to contribute 10% of its

annual income to the Central Market Fund and the contribution so paid shall be placed to the credit of the said Fund. Sub-s. (2) of s. 16 provides that the Central Market Fund shall be vested in the State Government and deposited in the Government treasury at Hyderabad. It is administered and applied by the Director of Marketing for all or any of the purposes set out therein viz.:

> (i) grant-in-aid of the market committees for the first year after their constitution under this Act;
>
> (ii) grant-in-aid of a deficit market committee for a period not exceeding three years;
>
> (iii) grant of loans to the market committees at such rates of interest as are charged on loans granted by the Government for development purposes; and
>
> (iv) such other similar or allied purposes as may be specified by the Government by general or special order.

In exercise of the powers conferred by s. 33 of the Act, the State Government of Andhra Pradesh have framed the Andhra Pradesh (Agricultural Produce & Livestock) Markets Rules, 1969. Chapter IV of the Rules deals with the powers and functions of the market committees and Chapter V deals with the regulation of trading. Chapter VI relates to the levy and collection of market fee, Chapter VII regulates the manner in which the Market Committee Fund shall be maintained and Chapter VIII the manner in which the market committees shall function. The Act and the Rules provide for a complete scheme for the establishment and regulation of markets for the purchase and sale of notified agricultural produce, livestock and products of livestock in the State of Andhra Pradesh. We are here concerned with Chapter V.

Marketing legislation which seeks to enable producers to get a fair price for the commodities by eliminating middlemen and providing a regulated market, cannot be said to impose 'unreasonable restriction' on the citizens right to do business unless it is clearly established that the provisions are too drastic to achieve the object for which it was enacted. In order to make effective such legislation for the control of a market, it would be reasonable for the legislature to control transactions between traders and also the sale of produce grown outside the market area, if sold in the market area. In M.C.V.S. Arunachala Nadar etc. v. The State of Madras & Ors. (1) Subba Rao, J. speaking for the Court, upheld the validity of the Madars Commercial Crops Markets Act, 1933 which provided for the establishment of certain controlled markets for the sale of commercial crops and provided that after the establishment of such markets, no person would be allowed to establish any other market within the specified distances of the controlled markets so that the growers of such crops would be obliged to resort to the controlled markets only for the sale of their produce. The learned Judge thus explained the scheme, in these words:

> "The Madras Commercial Crops Markets Act was passed on July 25, 1933. The preamble introduces the Act with the recital that it is expedient to provide for the better regulation of the buying and selling of commercial crops in the Presidency of Madars and for that purpose to establish markets and make rules for their proper

> administration. The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated markets by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings".

The learned Judge brought out the purpose and object of the legislation and stated:

> "The Act, Rules and the Bye-laws framed thereunder have a long-term target of providing a net work of markets wherein facilities for correct 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 them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market 'information' and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities".

The Act did not directly prohibit the business of middleman engaged 7 in the trade of selling commercial crops, but the result of the operation of the Act was to eliminate the middlemen. It was held that both the restriction as to the place where transactions of purchase or sale of commercial crops would be effected and the total or substantial elimination of middlemen was a reasonable restriction in order to prevent the exploitation of the poor cultivators engaged in the production of commercial crops which necessitated such marketing legislation. In Mohammad Hussain Gulam Mohammad Anr. v. The State of Bombay & Anr.(1) and Mohammadbhai Khudabux Chhipa & Anr. v. The State of Gujarat & Anr.(2) this Court held following the view ill Arunachala Nadar's case, supra, that the Bombay Agricultural Produce Markets Act, 1939 did not violate Art. 19 (1) (g) and further upheld the levy of market fee as a fee charged for services rendered by the market committees. Following the decision in Arunachala Nadar's case, supra, the regulatory provisions of such marketing legislation throughout India have been upheld as imposing reasonable restrictions in the interests of the growers of agricultural produce in particular and of the community at large. The specific question whether a fee levied by a market committee under the Bihar Agricultural Produce Markets Act, 1960 was a fee or a tax came up for consideration before the Court in Lakhan Lal & Ors. etc. v. The State of Bihar & Ors. etc.(3) In that case the entire area under the jurisdiction of the Gaya Municipality and several villages around it-were declared as the market area for the sale and purchase of certain agricultural produce. The Court repelled the contention that the market committee had not established any market inasmuch as a market must be a well-defined site fully equipped as a market and made no provisions for rendering services, and observed:

> "According to counsel, a market must be a well defined site with market equipment and facilities. The argument overlooks the definition of market in section 2 (h). The market consists of market proper and the market yards. The market yards are well-defined enclosures, buildings or localities but the market proper is under Section 2 (k) read with Section 5 (2) (ii) a larger area. For establishing a market it is sufficient to make a declaration under Section 5(2) fixing the boundaries of the market proper and the market yards on the recommendation of the market committee made under Rule 59(2). Under section 18 (1) the market committee must provide for such facilities in the market as the State Government may from time to time direct. It is not shown that the market committee refused to carry out any direction of the Government. The market committee may, in view of Sections 28 (2) and 30
>
> (i), acquire and own lands and buildings for the market, but it is not always obliged to do so. The market is established on the issue of a notification under Section 5 (2) declaring the market proper and the market yards".

The Court then rejected the contention that the fees levied by the market committee were in the nature of a tax as the committee did not render any services to the users of the market and therefore the levy of fee was illegal, and stated "The market committee has taken steps for the establishment of a market where buyers and sellers meet and sales and purchases of agricultural produce take place at fair prices. Unhealthy market practices are eliminated, market charges are defined and improper ones are prohibited. Correct weighment is ensured by employment of licensed weighment and by inspection of scales, weights and measures and weighing and measuring instruments. The market committee has appointed a dispute committee for quick settlement of disputes. It has set up a market intelligence unit for collecting and publishing the daily prices and information regarding the stock, arrivals and despatches of agricultural produce. It has provided a grading unit where the technique of grading agricultural produce is taught. The contract from for purchase and sale is standardized. The provisions of the Act and the Rules arc enforced through inspectors and other staff appointed by the market committee. The fees charged by the market committee are correlated to the expenses incurred by it for rendering these services. The market fee of 25 naye paisa per Rs. 100 worth of agricultural produce and the licence fees prescribed by Rules 71 and 73 are not excessive. The fees collected by the market committee form part of the market committee fund which is set apart and ear-marked for the purposes of the Act. There is sufficient quid pro quo for the levies and they satisfy the test of 'fee' as laid down in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt (1954) SCR 1005."

These observations are of some relevance as the Bihar Act is more or less on similar lines as the Act with which we are concerned.

The contention that the provision contained in sub-s. (6) of s. 7 of the Act which prohibits the carrying on of any transaction of purchase or sale of agricultural produce, livestock or products of livestock in a notified market area, outside the market in that area, infringes the right of a citizen to trade "as and where he wills" and therefore must be struck down as obnoxious to Art. 19 (1) (g) of

the Constitution. It is urged that the limitation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a balance between the freedom guaranteed in Art. 19 (1) (g) and the social control permitted by cl. (6) of Art. 19, it must be held to be void. The contention is obviously based on the following passage in Halsbury's Laws of England, 3rd edn., vol. 32 p. 15 para 9 which explains what freedom of business signifies:

> "It is the general principle of the common law that a man is entitled to exercise any lawful trade or calling as and where he wills; and the law has always regarded jealously any interference with trade, even at the risk of interference with freedom of contract, as it is public policy to oppose all restraints upon liberty of individual action which are injurious to the interests of the State."

The fundamental right of all citizens to practise any profession or to carry on any occupation or trade or business guaranteed under Art. 19 (1) (g) has its own limitations. The liberty of an individual to do as he pleases is not absolute. It must yield to the common good. Absolute or unrestricted individual rights do not and cannot a exist in any modern State. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all.

In order to determine the reasonableness of a restriction imposed upon the right guaranteed by Art. 19 (1)

(g), the Court must have regard to the nature and the conditions Prevailing in that trade.

It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. In other words, the pursuit of any lawful trade or business may be made subject to such conditions and restrictions as may be deemed essential by the legislature to be in the interests of the general public. Sub-s. (6) of s. 7 undoubtedly restricts the freedom of a citizen to trade "as and where he wills"; indeed it was enacted for the very purpose of controlling business in agricultural produce, livestock and products of livestock by the establishment of regulated markets in connection therewith. It is difficult to conceive how the restriction imposed by sub-s. (6) of s. 7 which interdicts that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area, can be said to be arbitrary or of an excessive nature beyond what is required in the interests of the community. In Arunachala Nadar's case, supra, the Court repelled the contention based on similar provision that a person who is having a licence to trade in or about the place where the market is fixed will be deprived of his livelihood unless he resorts to the market and therefore it was an unreasonable restriction upon his right to do business. It was observed that such a provision was necessary for preventing the business in such agricultural produce being diverted to other places and the object of the scheme being defeated.

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 weight 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 petitioners being licensed traders under sub-s. (1) of s. 7 are bound by sub-s. (5) thereof to comply with the provisions of the Act, the Rules and the bye-laws framed thereunder. They are therefore subject to the restriction contained in sub-s. (6) of s. 7 of the Act. The non obstante clause in sub-s. (6) of s. 7 provides that no person shall purchase or sell any notified agricul-

tural produce, livestock and products of livestock in a notified market area, outside the market in that area. Having regard to the purpose and object of the legislation, it must be held that the restriction imposed by sub-s. (6) of s. 7 of the Act is a reasonable restriction within the meaning of cl. (6) of Art. 19 on the fundamental right of a citizen to carry on trade or business under Art. 19 (1) (g). It was sought to be impressed upon us that at any rate a transaction between a retail dealer and a consumer should not be subjected to the restriction placed by sub-s. (6) of s. 7. The Legislature has already taken care of this eventuality under sub-s. (2), of s. 7 of the Act.

That takes us to 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 taking place from their business premises in the notified market area, but outside the market in that area. Alternatively, the contention is that there is no correlation between the service and the increase in the rate of market fee from 50 paisa to rupee one per hundred rupees of the price. It is suggested that there were amounts held in surplus by almost all the market committees and therefore there was no lawful justification for the increase in the rate of market fee. There is no warrant for any of the contentions.

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 1' sub-s. (6) of s 7, the petitioners cannot carry on such trade by not resorting to the market proper. It is pertinent to observe that a contravention of the provisions of sub-s. (6) of s. 7 by persons engaged in the business of purchase and sale of notified agricultural produce, livestock and products of livestock is a penal offence under sub-s. (1) of s. 23 of the Act. The petitioners cannot be heard to say by committing a breach of sub-s. (6) of s. 7 that since they effect their transactions in the notified market area, but outside the market, there is no liability to pay market fee because there is no quid pro quo i. e. services are not rendered outside the market.

There is a fallacy underlying the argument that since the services are rendered by the 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 take note of the fact that the 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-s. (1) of s. 4 of the Act does not end with establishing such number of markets in the notified market area under the first part of sub-s. (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-s. (3). In exercise a of their powers under s. 33 of the Act, the State Government have framed the Andhra Pradesh (Agricultural Produce & Live stock) 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 s. 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. We find that Chinnappa Reddy, J. speaking for himself and Jeevan Reddy, J. in Immidisetti Ramakrishnaiah & Sons, Anakapalli, represented by I. Ramakrishana Rao & Ors. v. The State of Andhra Pradesh, represented by its Secretary, Food & Agricultural by Penta Kota Sitaram & Ors.(1) repelled a similar contention and observed:

> "The argument proceed on the assumption that sales and purchases of notified agricultural produce, livestock and products of livestock in a notified market area could take place even outside the market. That is an unfounded assumption. Section 7 (6) of the Act prohibits sales or purchases of notified agricultural produce, livestock and products of livestock outside the market. It says "notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area outside the market in that area."
>
> Another unfounded assumption of the learned counsel was that the activities of the market committee and the facilities provided by it were confined by 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 expanded 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 s including the grant of financial aid to schemes for such extension or improvement within such area undertaken by Ir other bodies or individuals, propaganda for the improvement of agricultural produce, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the foodgrains, etc., are not services which are confined to the 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."

In Sri Vijaya Cotton Traders' case, supra, Alladi Kuppuswami, C. J. speaking for himself and Jeevan Reddy, J. followed the earlier decision in Immidisetti Ramakrishnaiah & Sons' case, supra, and held that the services to be rendered and the facilities to be provided by the market committees extended throughout the notified market area without being confined to the market proper. The view expressed by the High Court in these two cases is clearly in consonance with the scheme of the Act. lt appears that taking advantage of the ad-interim orders issued by this Court staying prosecution under sub-s. (1) of s. 23 of the Act, the petitioners who are big merchants engaged in the business of purchase and sale of agricultural produce, livestock and products of livestock throughout the State, are with impunity committing breach of the prohibition contained in sub-s. (6) of s. 7 of the Act. We trust that the market committees in various parts R of the State shall take immediate steps to shift all these traders to the markets proper of the respective notified market areas in the interests of the general public and shall also strictly enforce the provisions of the Act, the Rules and the bye-laws framed thereunder.

We are unable to appreciate that there is irreconcilable conflict between sub-s. (6) of 8. 7 and sub- s. (1) of s. 12. These provisions are meant to achieve two distinct and separate objects and they operate on two different planes. Sub-s. (6) of s. 7 imposes a restriction on a trader licensed to deal in notified agricultural produce, livestock and products of livestock that no purchase or sale in such commodities shall take place in any notified area, outside the market in that area. The constitutional validity of sub-s. (6) of s. 7 is beyond question as a reasonable restriction in the interests of the general public. It would frustrate the very object and purpose of the legislation if such a restriction was not imposed on the traders. Sub-s. (1) of s. 12 is a charging provision and it empowers a market committee to levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee as may be specified in the bye-laws, for every hundred rupees of the aggregate amount for which such commodities are purchased or sold, whether for cash or deferred payment or other valuable consideration. Explanation I thereto by a legal fiction provides that all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area. Sub-s. (2) of s. 12 casts the liability to pay market fee on the purchaser of such agricultural produce, livestock or products of livestock.

It was contended that many of the petitioners are food grains dealers licensed under the Andhra Pradesh Foodgrains Dealers Licensing order, 1964 issued under sub-s. (1) of s. 3 of the Essential Commodities Act, 1955 and that they are required under the terms of their licence to carry on their business from their licensed premises, maintain stock registrar, exhibit price list etc. The petitioners having been licensed as dealers under sub-s. (1) of s. 7 are bound by the terms and conditions of their licence and also they are subject to the restrictions imposed by sub-s. (6) of s.

7. They must comply with the provisions of the Act, the Rules and the bye-laws framed thereunder, and effect all sales of notified agricultural produce, livestock and products of livestock under the supervision and control of the market committee established under the Act.

Arguments in these proceedings have revolved around certain observations of Untwalia, J. in Kewal Krishan Puri and Anr v. State of Punjab and Ors (1) where he, speaking for the Court, after referring to the judgment of Mukherjea, J. (as he then was) in the leading case of the Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt(2) known as the Shirur Mutt case, and the dictum of Latham, C. J. in Matthews v. Chicory Marketing Board(3) upon which it was based, and the subsequent decisions on the subject, drew a distinction between a tax and a fee. Stress was particularly laid on these observations which, torn out of context, tend to suggest that there must be actual quid pro quo between the prayer and the market committee i.e. there must be actual correlation between the service rendered by a market committee and the prayer of the market fee, and that such service must be In relation to each transaction. Emphasis was placed on the following observations of Untwalia, J. in Kewal Krishan Puri's case, supra:

> 1. It must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realized is spent for the special benefit of its prayers (p. 1230 & H).
>
> 3. A fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. (p. 1232 G)
>
> 2. Service means service in relation-to the transaction, property or the institution in respect of which he is made to pay the fee. (p.

1233 D) With utmost respect, these observations of the learned Judge are not to be read as Euclid's theorems, nor as provisions of a statute. These observations must be read in the context in which they appear.

It is however strenuously urged on the strength of these observations made in Kewal Krishan Puri's case, supra, that the market committees have not placed all relevant material to show with reason able certainty that at least a good and substantial portion of the amount collected on account of fees, may be in the neighborhood of two-thirds or three-fourths, was being spent for rendering services to the petitioners, nor was there any material to show that a substantial portion of the fee realized was actually spent for rendition of any special benefit to them. In relation to the transactions of purchase and sale of agricultural produce, livestock and products of livestock effected by the petitioners, it was. urged that the market committees did not provide any additional facilities to justify the increase in the rate of levy of market fee. There was therefore no quid pro quo between the increase in the rate of fee from 50 paisa per hundred rupees in the price to rupee one and the services rendered. To say the least, the contention is wholly devoid of substance.

There was quite some discussion at the Bar as to the binding effect of the aforesaid observations made by this Court in Kewal Krishan Puri's case, supra. With greatest respect, the decision in Kewal Krishan Puri's case does not lay down any legal principle of general applicability. The decision in Kewal Krishan Puri's case is clearly distinguishable on facts. In that case, there was sufficient material showing that the income from the market fee in the State of Punjab had become a source of

revenue, and therefore the increase the rate of market fee from Rs. 2 per hundred rupees to Rs. 3 was quashed. It appears that the income of almost all the market committees was to the tune of several lakes of rupees per year and every market committee was required under sub-s. (2) (a) of s. 27 to pay 30 per centum of its income to the Punjab State agricultural Marketing Board as its contribution to the Marketing Development Fund maintained under s. 25 of that Act. Due to the progressive increase in the rate of market fee from 0.50 p. to Rs. 2 per hundred rupees during the course of few years both the State Agricultural Marketing Board as well as the market committees throughout the State were left with huge surplus funds. The State Government in exercise of the powers vested under s. 26 (xvii) and s. 28 (xvii) directed the State Agricultural Marketing Board and the market committees throughout the State to contribute rupees one crore to Guru Gobind Singh Medical College at Faridkot. In the year 1974 under the directions of the State Government, all the market committees were required to deposit the surplus amounts lying with them with the State Agricultural Marketing Board and the Board advanced an interest-free loan of rupees five crores to the Punjab State Co-operative Supplies and Marketing Federation, known as 'Markfed'. Apart from these unauthorized expenditure, the judgment reveals that there were surplus funds to the tune of rupees nine crores with market committees and each of them was required to make huge donations of Rs. 50,000 and above to many educational institutions. Besides, the statement of income and expenditure of the Board for the year 1975-76 showed that a sum of Rs. 1,28,000 was spent on general improvement of the municipal areas and a sum of Rs. 95 lakhs and odd was spent on setting up a gober gas plant. It would appear that the increase in the rate of market fee from Rs. 2 to Rs. 3 in the year 1978 was largely brought about to compensate the market committees for having contributed Rs. One crore to the medical college at Faridkot. The decision really turned on the provisions of cl. (xvii) of ss. 26 and 28 of the Punjab Agricultural Produce Markets Act, 1961 which permits diversion of the monies lying in the Market Committee Fund and the Marketing Development Fund by the market committees and the State Agricultural Marketing Board with the sanction of the Board or the State Government, as the case may be, for any purpose calculated to promote the general interests of the Board or the committees, or the national or public interest. The decision of the Court was rendered by Untwalia, J. in these words:

> "How ill-conceived the second part of clause (xvii) is? Is it permissible to spend the market fees realized from the traders for any purpose calculated to promote the national or public interest ? obviously not. No market committee can be permitted to utilize the fund for an ulterior purpose howsoever benevolent, laudable and charitable the object may be. The whole concept of fee will collapse if the amount realized by the market fees could be permitted to be spent in this fashion."

In the ultimate analysis, the Court held in Kewal Krishan Puri'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 that 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 Krishan

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 neighborhood of two-thirds or three- fourths, must ba shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter.

The traditional view that t ere must be actual quid pro quo for a fee has under gone a sea change in the subsequent decisions. The distinction between a 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. 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, correlation between the fee collected and the service intended to be rendered. 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 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 the services rendered. However, co-relationship 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. If authority is needed for this proposition, it is to be found in the several decisions of this Court drawing a distinction between a 'tax' and a 'fee'. Sea: The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, supra: H. H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore;(1) The Hingir-Rampur Coal Co. Ltd. v. The State of Orissa and Ors;(2) H. H. Shri Swamiji of Shri Admar Mutt etc. v. The Commissioner, Hindu Religious and Charitable Endowments Department and Ors (3) Southern Pharmaceuticals and Chemicals Trichur and Ors., etc. v. State of Kerala and Ors. etc.(4) and Municipal Corporation of Delhi and Ors. v. Mohd. Yasin.(5) There is no genic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person inspite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is 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. It is now increasingly realized 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 not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case was not drawn to art. 266 of the Constitution. The Constitution no where contemplates it to be an essential element: of fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realized that the element of quid pro quo in the strict sense is not always a sine qua non far a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax: Constitutional Law of India by H. M. Seervai, Vol. 2, 2nd Edn., p. 1252, para 22.39.

Viewed from this perspective, the conclusion is inevitable that the observation made in Kewal Krishan Puri's case that "At least a good and substantial portion of the amount collected on account of fees, may be in the neighborhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee" was not intended to lay down a rule of universal application but it was a decision which must be confined to the special facts of that case. Otherwise it may affect the validity of many similar marketing legislations undertaken during the past 50 years relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection there with and the levying of a market fee in lieu thereof towards the cost of rendering such service by different States on the recommendations made in the Report of the Royal Commission on Agriculture in India, 1928 and of those of many high-powered bodies of experts constituted from time to time by the Centre and the different States. In the subsequent decision in Ramesh Chandra etc. v. State of U.P. etc.,(1) Untwalia, J speaking for the Court has considerably narrowed down his observations in Kewal Krishan Puri's case at p. 116 of the Report saying that 'the free realized from the payer of the fee has, by and large, to be spent for his special benefit and for the benefit of other persons connected with the transactions of purchase and sale in the various Mandis.' If the quantum of quid pro quo was to be quantified to the extent as indicated in Kewal Krishan Puri's case for the levy of a fee or cess, it may affect many other beneficent legislations brought in by the Centre and the States for rendering service to a specified area or a specified class or persons or trade or business in any local area. There are many other observations in Kewal Krishan Puri's case which were really not necessary for purposes of the decision in that case and need to be, clarified. The word 'fee' cannot be said to have acquired a rigid technical meaning during the past three decades and should not be given such a narrow construction.

The levy of market fee under sub-s. (1) of s. 12 of the Act is correlated to the purposes mentioned in s. 15 of the Act. All the moneys received by a market committee from the traders as market fee on transactions of sale or purchase of agricultural produce, livestock and products of livestock taking place within the notified market area have to be paid into a fund called the Market Committee Fund under sub-s.(1) of s. 14 of the Act. All expenditure incurred by the market committee under and for purposes of the Act have to be defrayed out of the said Fund and any surplus remaining after such expenditure, has to be invested in such manner as may be prescribed. Under sub-s. (2) thereof, every market committee has to pay to the State Government out of its fund the cost of any special or additional staff employed by the Government with their consultation. Under sub-s. (3) the market committee may grant loans to another market committee out of its surplus funds, with the previous sanction of the State Government, at such rates of interest as may be prescribed. The purpose for which the proceeds of the Market Committee fund can be expended are set out in s. 15 of the Act. There can be no doubt that the purposes mentioned viz. acquisition of site for the market, establishment, maintenance and improvement of the market, construction of buildings, maintenance of standard weights and measures, promotion of grading services, measures for the preservation of foodgrains etc. etc. are all purposes which are extremely beneficial to the growers and the traders.

In the present case, there is no allegation anywhere by any of the petitioners, nor was any contention advanced that there was any unauthorized expenditure by any of the market committees for

purposes not authorized by the Act. There is only a bare assertion on their part that there are surplus funds available with the market committees and therefore the increase in the rate of market fee from 50 paisa per hundred rupees to rupee one was without lawful justification. From the material on record it is quite apparent that the income from the market fee derived from some of the market committees is not sufficient to meet the expenditure incurred by them. That apart, when the petitioners concede that they do not challenge the levy of market fee 50 paisa per hundred rupees in the year 1972, there can be no basis for challenging the increase in the rate of market fee from 50 paisa to rupee one in 1978. Surely the cost of rendering services has correspondingly increased with the fall in the value of rupee. In the economic sense, 50 paisa of 1972 is certainly equivalent to at least rupee one of today, if not more.

There is no material placed on record by the petitioners to show that the market committees are rendering no service. Under the scheme of the Act, there are certain obligatory duties of a market committee. Sub-s. (3) of s. 4 provides that every market committee shall establish in the notified area such number of markets as the Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government from time to time by a general or special order. Chapter V provides for various regulatory measures in Rules 54 to 73 for the control of a market in that correct weigh-

ments would be secured, storage facilities provided and equal powers of bargaining assured so that the growers may bring their agricultural produce, livestock and products of livestock to the market and sell them at a reasonable price. There was not a whisper during the course of the arguments that the market committees were not providing the services as enjoined by Rules 54 to 73. All that was said is that there was no due observance of the directions issued by the State Government and the Food & Agricultural Department GOMs. No. 719 dated December 27, 1979 drawing the attention of the market committees to certain basic amenities like drinking water for users of the market, drinking water for the cattle, shed for use of the users of yards etc. We were not referred to any specific instance where any of the market committees have not provided these basic amenities. Much emphasis was however laid on the second part of the aforesaid G.O. which reads :

> "The Governor of Andhra Pradesh also directs the market committees to provide the other facilities mentioned below at the market yards in course of time as and when funds permit.
>
> 1. Rest House for Ryots.
>
> 2. Electrification of Market yard.
>
> 3. Auction-cum-Weighing shed.
>
> 4. Auction Platforms.
>
> 5. Internal Roads.

6. Telephone Booth.

7. Canteen.

8. Office Building.

9. Godown for use of Producer-Seller.

10. Approach Roads.

11. Library-cum-Club Building.

12. Resting House for traders."

It will be noticed that these facilities are to be provided by the market committees in course of time 'as and when funds permit'. It is needless to stress that the question of providing these facilities would depend on the financial capacity of each market committee. That would depend on whether there are sufficient funds available at its disposal in the Market Committee Fund. We are not impressed by the submission that if a market committee does not have sufficient funds to provide the special amenities, it should borrow loans from the State Government under sub- s. (1) of s. 18 of the Act or the State Government should provide grant-in-aid to such market committee under sub-s. (2)(iii) of s. 16 of the Act. If any particular market committee persistently makes default in not performing the duties imposed on it by or under the Act, or neglects or refuses to carry out any general or special direction issued by the State Government under sub-s. (3) of s. 4 as regards providing of facilities or abuses its powers, the petitioners have the remedy to take up the matter with the State Government. The State Government has ample power under s. 22 of' the Act to direct the supersession of such a market committee.

It is obvious that the phrase 'prayer of the fee' used by this Court in the authorities referred to above represents collectively the class of persons to whom the benefit is directly intended by the establishment of a regulated market in notified agricultural produce, livestock of products of livestock and not the actual individual who belongs to that class i.e. the trader. No doubt, the petitioners initially pay the market fee under sub-s. (2) of s. 12 of the Act, but there is passing on of liability by them to the consumer as part of the price. The observation in Kewal Krishan Puri's case, supra, as to the service to the 'payer of the fee' must, therefore, be understood as meaning service to the users of the market. The services are rendered to the users of the market i.e the growers of agricultural produce, livestock or products of livestock and persons engaged in the business of purchase or sale of the same.

The contention that the increase in the rate of market fee levied by the market committees in the State under sub- s. (1) of s. 12 of the Act from 50 paisa to rupee one was illegal and invalid on the ground that there was no quid pro quo i.e. there was no correlation between the increase in the rate of market fee and the service rendered must therefore fail.

There still remains the question that if purchase or sale of paddy has suffered market fee in the hands of a rice miller, whether subsequent purchase or sale of rice by a miller to a trader or by a trader to a trader should again be subjected to payment of market fee. The contention is that under Rule 74(1) of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Rules, 1969 no such market fee is payable on rice produced from paddy. The same is the contention with regard to cotton seed extracted from cotton. Rule 74(1) of the rules reads as follows:

> "74. Market Fees: (1) The fees leviable under sub-section (1) of section 12 on notified agricultural produce, livestock and products of livestock, if paid to a Market Committee within the State shall not be collected by another Market Committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of another Market Committee for the purpose of processing, pressing packing, storage, export and on sales effected in the course of commercial transactions between the licensed traders, and the licensed traders and consumers subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought: Provided that the fees shall be levied on notified agricultural produce, livestock or products of livestock when such agricultural produce, livestock or products of livestock are sold in auction or in any other manner prescribed in the bye-laws in the Market either directly or through Commission Agents even though purchased already in the same market or same other market or place within the State".

It is contended that the whole object and purpose behind Rule 74(1) is to prevent multi-point levy of market fee on the same commodity. The submission that no such fee is payable on rice is also based on the following observations of Untwalia, J., speaking for the Court in Ramesh Chandra's case, supra:

> "If paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the agriculturist-producer under sub-clause (2) of section 17(iii)(b). He cannot be asked to pay market fee over again under sub-clause (3) in relation to the transaction of rice". The learned Judge then went on to say: "If, however, paddy is brought by the rice- miller from another market area, then the Market Committee of the area where paddy is converted into rice and sold will be entitled to charge market fee on the transaction of sale in accordance with sub-clause (3)".

The view that the market fee is payable on purchase or sale of rice stems from the premise that since paddy is de- husked into rice there cannot be levy of market fee at both the stages i. e. On purchase of paddy by a rice miller from a producer and again on purchase or sale of rice by a rice miller to a trader or by a traded to a trader. The question is whether the fee is payable at both the stages ? It would all depend upon the scheme of each Act. The decision in Ramesh Chandra's case, supra, turned on a construction of sub-clause (2) of s. 17 (iii) (b) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, as amended by U.P. Act 7 of 1978. It was conceded in that case on behalf of

the State Government and the market committees that there cannot be any multi-point levy of market fee in the same market area. Under, sub-clause (2) of s. 17 (iii) (b) of that Act if in agricultural produce is purchased from a producer directly, the trader is liable to pay market fee but when the trader sells the same produce or any products of the same produce to another trader, neither the seller nor the purchaser can be made to pay the market fee under sub-clause (3). The scheme of the Act with which we are concerned appears to be entirely different. Under Sub-s. (1) of. s. 12 of the Act, a market committee is empowered to levy market fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. It would appear that every purchase or sale of any notified agricultural produce, livestock or products of livestock attracts the levy of market fee. One is apt to think that rice and paddy are the same commodity and therefore there is double taxation but, in reality, it is not so. There is distinction between 'paddy' and 'rice' and although paddy is milled into rice by the process of de- husking, they are two separate and distinct commercials commodities and have both been separately specified as notified agricultural produce in Schedule II of the Rules as items 1 and 2 respectively. On the plain language of sub-s. (1) of s. 12 of the Act, the market fee is leviable on both on purchase paddy by a rice miller from a producer and also on purchase or sale of rice by a miller to a trader or by a trader to a trader because there is service rendered by a market committee at each of the stages.

It appears that the State Government in the Food alc Agriculture Department by its memo dated March 23, 1978 informed the Director of Marketing, Andhra Pradesh that it had been decided to amend Rule 74 in order that no market fee shall be leviable on the sale or purchase of agricultural produce manufactured or extracted from the agricultural produce in which such fee was already levied. Pending such amendment, he wag directed to advise the market committees not to press for recovery of arrears of market fee on purchase or sale of rice when such fee had already been collected on purchase or sale of paddy. The matter was however re-examined by the State Government with reference to the provisions contained in sub-s. (1) of s. 12 of the Act. The State Government were of the view that market fee was leviable under sub-s. (1) of s. 12 on the paddy if it is sold in the notified marker area and it is also leviable on rice if it is put to sale irrespective of the fact that whether market fee was paid earlier on paddy or not. That view proceeded upon the basis that the market committee is required to supervise and control the sale of such commodities at both the stages and was therefore entitled to recover market fees both on paddy and rice. The State Government accordingly issued GOMs No. 136 dated March 26, 1981 to the effect "Government on reconsideration decided that Rice need not be exempted from the levy of market fees even if the Paddy from which the Rice is extracted was subject to market levy, orders were accordingly issued in the Memo second above that market fees should be levied both on paddy and rice.

The preliminary notification proposing to amend rule 74 of the A.P. (Agricultural Produce & Livestock) Markets Rules, 1969 issued in G.O. first read above and published at pages 227-229 of the Rules supplement to Part II of the A.P.

Gazette No. 23 dated 15.6.1978 is here by cancelled."

In view of this clarification, it follows that paddy and rice having both been notified to be two separate agricultural commodities, upon the language of sub-s. (1) of s. 12 of the Act, market fee is

leviable both on sale of paddy by a producer to a rice miller and on purchase and sale by a miller to a trader or by a trader to a trader. The question Still remains whether in view of r. 74 (1) the power of a market committee to levy market fee on such transactions is in any way affected: and if so, to what extent., The words used in 3 r. 74 (1) are: "The fees leviable under sub-s. (1) of 8. 12 on notified agricultural produce, livestock and products of livestock, if paid to a market committee within the State, shall not be collected by another market committee", when the conditions set out therein are 3 fulfilled. Rule 74 (1) postulates that no market fee leviable under sub-s. (1) of s. 12 shall be collected by another market committee: (1) When such notified agricultural produce, livestock or products of livestock on which market fee has already been paid to a market committee within the State, is brought into the notified market area of another market committee for the purpose of processing, pressing, packing, storage, export and (2) on sales effected in the course of commercial transactions between licensed traders, and licensed traders and consumers. Use of the word 'and' makes the two conditions conjunctive. The exemption from payment of market fee over again to such other market committee claimable under r. 74 (1) is however subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fee to the market committee from where it was brought.

The question is not by any means free from difficulty; but after carefully considering the argument which has been addressed to us we have come to the conclusion that there is no reason why the word 'and' should be read disjunctively as 'or'. Any such construction would, in our opinion, produce an unintelligible and absurd result and would be against the clear intention of the Legislature. It would be more appropriate in the context of sub-s. (6) of s. 7 of the Act and sub-s. (1) of s. 12 of the Act to read the word 'and' in r. 74 (1) conjunctively. The critical words of r. 74 (1) are "brought into the notified area of market committee for the purpose of processing, pressing, packing, storage, export", subject of course to the condition that market fee has already been paid on such commodity under 1 sub-s. (t) of s. 12 of the Act to a market committee within the State on a reasonable construction of r. 74 (1), the legal consequences set forth must ensue. If paddy is subjected to levy of a market fee on purchase or sale by the producer to a miller in a notified market area by a market committee within the State is taken to the notified market area of another market committee for being processed i. e. de-husked into rice and sold by a rice miller to a trader or by a trader to a trader in the course of commercial transactions, there cannot be any levy of market fee on such purchase or sale of rice in another notified market area. If that be so, it must logically follow that the subsequent sale of rice in the notified market area of the same market committee cannot be subject to the levy of market fee on purchase or sale of rice by a miller to a trader or by a trader to a trader if sale or purchase of paddy within such notified market area has suffered the levy of market fee. This is of course subject to the qualification that such sale or purchase has taken place in the notified market area, but outside the market in that area, as enjoined by the proviso to r. 74 (1).

R. 74 (1) is not very happily worded but one part of its meaning is clear. It was obviously introduced to grant exemption from payment of market fee on sale or purchase of agricultural produce, livestock or products of livestock on which such fee has already been levied under sub-s. (1) of s. 12 by a market committee within the State. According to the terms of r. 74 (1) read with the proviso thereto, the fee leviable under sub-s. (1) of s. 12 on any notified agricultural produce, livestock or products of livestock, if paid to a market committee within the State, shall not be collected by

another market committee when such notified agricultural produce, livestock or products of livestock is brought into the notified , market area of such other market committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the course of commercial transactions between licensed traders, and the licensed traders and consumers. This is of course subject to production of such evidence as may be prescribed in the bye- laws about the payment of market fees from where it was brought. Upon the construction placed by us, the exemption under r. 74 (1) is also claimable if such transactions take place within the notified market area of the same market committee.

The normal function of a proviso is to except something out of the main enacting part or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. Proviso to r. 74 (13 is added to qualify or create an exception. By reason of proviso to r. 74 (1), no exemption is claimable when the purchase or sale of any notified agricultural produce, livestock or products of livestock takes place by auction or in any other manner prescribed in the bye-laws in the market (in contradistinction to the notified market area) either directly or through commission agents even though purchased in the same market or some other market or place within the State. In other words, r. 74 (1) lead with the proviso means that if the notified agricultural produce, livestock or products of livestock is sold within the market maintained by a market committee, it is liable to pay market fee on each such sale. It does not matter whether such agricultural produce, livestock or products of livestock has already been subject to payment of market fee within the notified market area of another market committee.

Learned counsel for the State strenuously contends against the taking of this view because of its serious ramifications on the income of the market committees throughout the State. It is no doubt true that this would result in the market committees being deprived of the power to levy market fee on several items of notified agricultural produce, livestock or products of livestock shown separately in Schedule II of the Rules. but that is a consequence which cannot be avoided on the language or r. 74 (1). The exemption from payment of market fee under r. 74 (1) on any notified agricultural produce, livestock or products of livestock brought into the notified market IG area of another market committee for the purpose mentioned therein is however claimable only on production of such evidence as may be prescribed in the bye-laws about the payment of market fees to the market committee from where it was brought. The burden of establishing the necessary facts to attract the exemption would lie on the petitioners. Unless the requirements of r. 74 (1) are satisfied, the petitioners are not entitled to any relief.

There is very little that we could add in the connected matters. The question as to the constitutional validity of sub-s. (6) of s. 7 of the Act and sub-s. (1) of s. 12 of the Act which is common to Writ Petition No. 1286 of 1973, Civil Appeal No. 2108 of 1972 and Civil Appeal No. 4013 of 1982 stands disposed of. The question regarding the validity of the notification issued by the State Government declaring rice to be a notified agricultural produce under s. 2 (i) of the Act and that declaring the notified market area of Kothavalasa Market Committee for the district of Visakhapatnam under sub-s. (4) of s. 4 of the Act has not been pressed at the hearing. Arguments in these matters were more or less the same and they have been dealt with in the judgment.

The result therefore is that all the writ petitions and the connected appeals must fail and are dismissed with costs.

P.B.R. Appeals & Petition dismissed.