

(1988) 03 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No's. 14197 to 201 of 1987

K.G. Kallappa and Co.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-03-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 254 (2)
Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act, 1980 —
Section 3, 65, 65 A, 8 (2), 8 (3)

Citation : (1988) ILR (Kar) 2722

Hon'ble Judges : Rama Jois, J;Rajendra Babu, J

Bench : Division Bench

Advocate : R.B. Guttal, B.R. Satenahalli, T.S. Ramachandra, A.K. Subbaiah and K. Srinivasan, for the Appellant; N. Santosh Hegde, General, R.H. Chandanagoudar, HCGA, N. Devadas, HCGP, S.G. Sundaraswamy, K. Balakrishna, B.G. Sridharan, R. Gopal, R.U. Goulay and S.G. Bhat, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—In this batch of Writ Petitions, the petitioners who are traders in agricultural produce have challenged the constitutional validity of the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act, 1980 (Karnataka Act No. 17/1980) by which various items of agricultural produce including oil seeds were specified in the schedule which could be notified for the purpose of regulating their marketing under the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 as also Sub-section (2) of Section 8 of the Act, as amended by Amending Act 29/87, by which the sale and purchase of the agricultural produce is directed to take place only within the market yard or market sub-yard or the sub-market yard as the case may be, as also the provisions of Section 65 as amended by Act No. 29/87 and Section 65-A inserted into the Act by the said amendment which provides for fixing the time for payment of market-fee and provide for penalty for non-payment of market fee within the time prescribed.

2. Some of the petitions have been referred to Division Bench u/s 9 of the Karnataka High Court Act, 1961 at the stage of preliminary hearing and others have been referred to Division Bench after issuing of Rule Nisi. All the Writ Petitions were heard together and are disposed of by this order.

3. The facts of the case which are necessary for the purpose of disposal of these petitions are these : The Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (the Act for short) was enacted by the State Legislature for the purpose of regulating the buying and selling of the agricultural produce and the establishment of markets for agricultural produce within the State, and received the assent of the President on 19-8-1966. It was brought into force with effect from 1-5-1968. Under the provisions of the Act as originally stood, the sale and purchase of agricultural produce in a place declared as market within the market area, had to take place only within the market-yard or sub-market yard and in a place declared as sub-market, within the sub-market yard. However, there was provision for the sale and purchase of a notified agricultural produce outside the market, by certain classes of traders who secured licence from the market-committee concerned for making purchase of agricultural produce, in the entire market area concerned. The said Section was amended by Act No. 29/87. According to the amendment, the sale and purchase of agricultural produce has to take place within (i) the market yard or (ii) market sub-yard or (iii) sub-market yard of the concerned market or sub-market declared as such within the market area. For purpose of convenience we shall refer to all the places within which sale has to take place as market yard. An exception is made only in favour of certain Co-operative Societies. In view of this, such, Societies are entitled to purchase agricultural produce, outside the market-yard and within the market area. The petitioners who are traders in agricultural produce have questioned the constitutional validity of the above provision.

4. By the same Amending Act i.e., Act 29 of 87 Section 65 has been amended which provides for fixing the maximum period within which a trader has to remit the market-fee to the market committee concerned. Section 65-A has been introduced which provides for levy of penalty for belated payments of market-fee and the rate of penalty, as prescribed by the market-committee, but not exceeding 30% of the amount of market fee not remitted within time. The validity of the said provision has also been challenged in these petitions.

5. In some of the petitions, the petitioners have also questioned the constitutional validity of the Act 17 of 1980, on the ground that to the extent the oil seeds are also brought within the scope of the provisions of the Act, it being a State Legislation on a concurrent topic, which was repugnant to the provisions of the Essential Commodities Act, 1955 (Central Act) it is invalid as no assent has been received to the Amending Act from the President of India.

6. The learned Counsel for the petitioners have urged the following contentions:

1) Section 8(2) of the Act as amended imposes restrictions on trade and

commerce and therefore bad, in view of Article 401 read with Article 404(1) of the Constitution as neither previous sanction of the President to the introduction of the Bill nor subsequent assent to the Act of the President has been taken.

2) Section 8(2) of the Act as amended is violative of Article 14 of the Constitution as it favours the Cooperative Societies and discriminates against other traders like the petitioners in these petitions.

3) Act 17/1980 which incorporate a Schedule in which at Item VII oil seeds have been included, as an agricultural produce which could be regulated under the provisions of the Act, is repugnant to the provisions of the Essential Commodities Act, 1955 and as Act 17/80 had not received the assent of the President, to that extent the Amending Act must yield to the Essential Commodities Act in view of Articles 254(2) of the Constitution.

4) Section 65 of the Act as amended which provides that the market fee shall be paid to the market committee within such time as may be specified by the market committee in the Bye-laws and Section 65-A which provides levy of penalty for belated payment of market fee at the rates specified in the Bye-law are violative of Article 14 of the Constitution.

7. In order to appreciate the first contention it is necessary to set-out the provisions of Section 8(2) of the Act before its amendment by Act 29/87 as it stood prior to Act 29/87:

Section 8(2) before amendment

Section 8(2) after amendment

"No place in the market or the sub-market, except the market yard, sub-yard or the sub-market yard as the case may be shall be used for the purchase or sale of notified agricultural produce belonging to a producer provided that nothing in this sub-section shall be applicable to the purchase or sale of such agricultural produce by way of such produce is himself its seller and the purchaser is a person who purchases such produce for his domestic consumption."

(2) no place except the market yard or sub-market yard as the case may be shall be used for purchase or sale of notified agricultural produce.

(3) Nothing in sub-section

(2) shall apply

(a) The purchase or sale of notified agricultural produce by

(i) A Taluka agricultural produce Co-operative marketing Society.

(ii) A Primary Agricultural Co-operative Credit Society and

(iii) any other Cooperative Society permitted by the State Government

(b) the sale of notified agricultural produce by a retail trader."

Section 85(1) of the Act which has since been deleted read :

"TRADERS AND SECURITY FOR TRADING :-

(1) Traders licensed to operate in & market area shall be classified into the following four categories, namely :-

(i) Traders entitled subject to the provisions of Section 8, to purchase notified agricultural produce any where in the market area, called "A" Class traders;

(ii) Traders entitled to purchase notified agricultural produce only in the yard or yards in the market area, called "B" Class traders;

(iii) Traders entitled to purchase notified agricultural produce only outside the market or markets in the market area, called "C" Class traders;

(iv) Traders entitled subject to the provisions of Section 8, to purchase notified agricultural produce anywhere in the market area for sale to consumers for domestic purchases, and whose total annual purchase turnover in such agricultural produce does not exceed fifteen thousand rupees called "D" Class traders."

As can be seen from the original Section 8 before its amendment, the sales and purchase of agricultural produce within a market had to take place only within the yard. However, there was no provision prohibiting purchase of agricultural produce outside the market, within the market area. The provision of Section 85(1) read with Section 8(2) would indicate that in the market area, outside the market, A class and C class traders could purchase agricultural produce anywhere in the market area, directly from the producers. D class traders also could purchase agricultural produce anywhere in the market area subject to the limit prescribed under Clause (iv) of Section 85(1) of the Act. By Act 29/87, in the entire market area, no place except the market yards could be used for sale and purchase of agricultural produce. The only excepted class of purchasers are Taluk Agricultural Co-operative Societies and Primary Agricultural Credit Co-operative Societies and any other Co-operative Societies specially permitted by the State Government.

8. The learned Counsel for the petitioners submitted that the above provision imposed restrictions on the free flow of trade and commerce in agricultural produce and therefore as the prior permission of the President under Article 404(b) was not obtained and there was also no subsequent assent to the Amending Act 29/87, the Act was invalid. In support of the above submission, learned Counsel for the petitioners relied on the decision of the Supreme Court in State of Mysore Vs. H. Sanjeeviah, . In the said case, the Supreme Court held that certain restrictions imposed regarding movement of timbers felled in the Forest were invalid as the provision concerned had not received the assent of the President as required under Article 404(b) of the Constitution. The learned Counsel for the petitioners also relied on the Judgment of the Supreme Court in AIR 1981 1127 (SC) . In particular they relied on para-12, in which the

provisions regulating the marketing of the agricultural produce, have been described, as restrictions. The learned Counsel for the petitioners submitted that though the restrictions were regarded as reasonable and therefore not violative of Article 19(1)(g) of the Constitution, so long they are restrictions relating to Trade and Commerce, the provisions of Article 404(b) had to be complied with, and non-compliance with that provision, renders the Act invalid.

9. The learned Advocate General, per-contrà, submitted that the provisions contained in the Act including the Amendment Act 29/87 are in the nature of regulations and not restrictions and therefore Article 404-B was not at all attracted. The learned Advocate General submitted that the matter was concluded by the Division Bench of this Court in D.V. Kempaiah and Others Vs. The Chief Marketing Officer, Karnataka and Others, . The relevant portion of the Judgment, relied on by the learned Advocate General reads:

"Sections 8(2) and 65 in particular, do not have the original colour and content. The Act has thrown the protective net wider so as to cover not only the transactions between traders and producers, but also those between traders and traders. Its present object, among others, is to regulate the marketing of agricultural produce and not merely to regulate the buying and selling to which a producer is a party.

We also do not find any substance in the next contention urged for the petitioners that Act 43 of 76 is bad for want of Presidential sanction as required under Article 404(b) of the Constitution. We have already held that the restrictions imposed by Act 43 of 1976 are in the nature of regulatory measures and it is well settled that such measures need not comply with the requirement of the provisions of Article 404(b). See The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, and G.K. Krishnan and Others Vs. State of Tamil Nadu and Others,

The learned Advocate General also pointed out that in the batch of petitions which were considered by the Supreme Court in AIR 1981 1127 (SC) the appeals filed against the Judgment of this Court in D.V. Kempaiah and Others Vs. The Chief Marketing Officer, Karnataka and Others, were included and that the said judgment has been confirmed by the Supreme Court.

10. In our opinion, the submission made by the learned Advocate General that the provisions in question are only regulations and not restrictions is well founded and the point is concluded by the decision in D.V. Kempaiah and Others Vs. The Chief Marketing Officer, Karnataka and Others, . Further when a similar provision relating to marketing of Silk was attacked on the ground of non-compliance with Article 404(b) of the Constitution a Division Bench of this Court in B. VISHWANATHAIAH v. STATE OF KARNATAKA, W.P.Nos.20298 and 20409 and connected cases disposed of on 9-9-1980 rejected the contention and held that the provision for marketing of silk at a particular place and subject to the condition imposed by or under that Act were regulatory. The relevant portion of

the Judgment reads:

"The Principal Act as amended by Act 29 of 1969 regulated production and supply of cocoons and their sale by public auction in the regulated markets. It was intended to ensure protection to rearers. The legality of the scheme provided thereunder has been upheld by this Court and the Supreme Court. The present legislation, in our opinion, has just extended that measure for the protection of the revelers by establishing a silk exchange. It was intended to ensure a fair price for the silk yarn reeled by them and to eliminate exploitation by traders. This is nothing but a marketing legislation, the patterns of which has been upheld by the Courts in many cases in different contexts."

We respectfully agree with the view taken in the above cases and we reject the first contention urged for the petitioners.

11. The second contention of the petitioners was that the provisions of Sub-section (2) of Section 8 of the Act in so far as it created an exemption in favour of the two categories of Co-operative Societies and also such other Societies as might be permitted by the Government, was violative of Article 14 of the Constitution. The learned Counsel for the petitioners, however, did not dispute that there is a reasonable classification under Sub-section (2) of Section 8 as between private trader and the Co-operative Societies. However, their contention was that the second mandatory test to justify a different treatment viz. the rational nexus between the classification and the object sought to be achieved did not exist and therefore the provision was liable to be struck-down on the ground that it was violative of Article 14 of the Constitution.

12. The learned Advocate General submitted that there existed a direct and rational nexus between the classification and the object sought to be achieved. He submitted that private traders who have personal interest in the matter of their business cannot compare the matter to the Co-operative Societies and particularly those specified in the Section which are Taluk Agricultural Produce Cooperative Marketing Societies and the Primary Agricultural Co-operative Credit Societies. He submitted that in view of the past experience the Government considered that there was scope for mal-practice at the time of purchase of agricultural produce from the agriculturists directly and the Market Committees were not in a position to ensure the correct price or weighment when purchaser selects place outside the market at the place of producers. He also submitted that in respect of the purchases made from the agriculturists anywhere in the market area there were evasions of the market fee payable and it was difficult for the Market Committees to keep track of all those transactions and to enforce the collection of market-fees. Therefore, in order to block the loopholes, the amendment, requiring that all the purchases and sales of notified agricultural produce Should be in the market yard was made. He submitted that the Legislature in its wisdom has considered that in respect of all the producers the purchase and sales of agricultural produce should be confined to market yards and as far as the Societies are concerned there was no possibility of exploitation

and therefore the Legislatures considered that an exemption should be made in favour of those Societies.

13. In support of his argument, the teamed Advocate General relied on the Judgment of the Supreme Court in *Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others*, of it reads :-

"Earlier, we have referred to the abuses which had grown up in the prevailing system of distribution of foodstuffs under the M.P. Foodstuffs (Distribution) Control Order, 1960. The system had deteriorated and become completely unworkable and rotten to a breaking point. An absolute and thorough overhaul of the system had become compulsive if the population of Madhya Pradesh were to receive a regular supply of their rations. It was in those circumstances that the Government came to the conclusion that distribution of foodstuffs through Co-operative Societies (consumers Co-operative Societies), would be the best method of distribution by which the goods could be delivered i.e. rations could be supplied to the consumers. No one can doubt the positive and progressive role which Cooperative Societies are expected to and do play in the economy of our country and, most surely, in the fair and effective distribution of Essential Articles of food. There certainly was a reasonable classification and a nexus with the object intended to be achieved, which was a fair and assured supply of rations to the consumer. The Fundamental Rights of traders like the petitioners to carry on business in foodstuffs was in no way affected. They could carry on trade in foodstuffs without hindrance as dealers; only they could not run fair price shops as agents of the Government. No one could claim a right to run a fair price shop as an agent of the Government. All that he could claim was a right to be considered to be appointed as an agent of the Government to run a fair price shop. If the Government took a policy decision to prefer Co-operative Societies for appointment as their agents to run fair price shops, in the light of the frustrating and unfortunate experience gathered in the last two decades, we do not see how we can possibly hold that there was any discrimination."

As regards the third categories of Society, the learned Advocate General submitted that any other Co-operative Society could be exempted from the operation of the provision if only the State Government satisfied that the object of the Society had a direct nexus to the object of the provisions of the Act and not any and every Cooperative Society and therefore that clause also was not violative of Article 14.

14. On consideration of all the relevant facts and circumstances, particularly the fact that the two categories of Societies which are exempted from the provisions of Sub-section (2) of Section 8 are those intimately concerned with the agriculturists, we are of the view that there exists a rational nexus between the classification and the object sought to be achieved by the provisions of the Act and therefore the provisions cannot be termed as discriminatory. As far as the clause which provides that any other Co-operative Society could also secure exemption, from the operation of Section 8(2) by securing permission from the

Government is concerned, we wish to make it clear that the State Government can only grant permission in favour of Co-operative Societies whose objects have an intimate connection with the object of the Act and are devoted to the service of the agriculturists and not any and every Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act as rightly submitted by the learned Advocate General. If in a given case, the power given in Section 8(3)(iii) is arbitrarily exercised and a Co-operative Society which has nothing to do with the objects of the Act is permitted to make purchase outside the market yard such permission is liable to be challenged, on the ground that it is an abuse of the power conferred and also violative of Article 14 of the Constitution. For these reasons, we find no substance in the second contention also.

15. The third contention urged in some of the petitions was that the schedule introduced by Act No. 17/80 to the extent it included at Item VII, the oil seeds which could be notified as agricultural produce the marketing of which could be regulated by the provisions of the Act was repugnant to the provisions of the Essential Commodities Act, 1955 (Central Act) and as no assent of the President had been secured from the President for the Amending Act 17/80, the provisions of the Act to that extent being repugnant to the Essential Commodities Act cannot prevail. In support of his argument, he referred to the definition of the words "agricultural produce" before and after the amendment. They read :

Before Amendment :

"Agricultural Produce" includes,

(i) Live-stock or poultry.

(ii) all produce whether processed or not, of agriculture, animal husbandry, apiculture, horticulture, pisciculture, forest produce, and

(iii) any other produce declared by the State Government by notification to be agricultural produce for the purposes of this Act."

After Amendment:

"Agricultural Produce" means the produce or goods specified in the Schedule.

NOTE : Schedule to the Act has been inserted by Karnataka Act No. 17 of 1980."

In support of the contention (learned Counsel submitted as follows : The words "Agricultural produce" as defined earlier did not specifically include oil seeds. It was only by Act No. 17/80 for the first time the oil seeds have been included in the Schedule and as a result the Government got power to notify all oil seeds as agricultural produce for the purpose of regulating their marketing under the provisions of the Act. There was already the Central enactment i.e. The Essential Commodities Act, 1955, which empowered the Central Government to regulate the production and marketing of food-stuffs. Foodstuff being a specific item in entry No. 33 of the concurrent list, the power of the State Legislature under entry No. 27 of the State List namely "production and distribution of goods" was

subject to entry No. 33 as stated in entry 27 itself. As the Essential Commodities Act was intended to regulate the production and distribution of foodstuff which certainly includes oil seeds, Act 17/80 which also falls under entry 33 of List II must yield to the former, as no assent of the President was taken to Act 17/80.

16. The contention, in our opinion, has no merit. Firstly, all oil seeds are not foodstuff. For instance, castor seeds and honge seeds are not foodstuff though groundnut and gingelly are. Whatever that may be, the above contention urged by the learned Counsel would have been unexceptionable at least in respect of oil seeds which are food stuff ; if only the definition of the words "agricultural produce" as given in the Act when it was first enacted and received the assent of the President did not include oil seeds. The definition of the words "agricultural produce" in the Act when it was enacted in the year 1966, covered all produce of agriculture. Oil seeds being produce of agriculture they were within the scope of the words "agricultural produce" as defined in the Act in the year 1966 itself. Therefore, even on the basis that the provisions of the Essential Commodities Act were wide enough to regulate the marketing of oil seeds, which are food stuff, the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, enacted by the State Legislature was equally wide enough to cover the marketing of oil seeds. Therefore when the assent of the President was taken to the Act, in view of Article 254(2), it is the Karnataka Act which prevails, over the Essential Commodities Act in so far as it relates to regulation of marketing of agricultural produce including oil seeds within this State. In fact right from 1-5-1968 on which date the Act came into force oil seeds have been one of the various items of agricultural produce notified and regulated by several of the Market Committees in the State in whose area, the regulating of marketing of oil seeds was considered necessary. Several gazette notifications in which oil seeds were declared as "notified agricultural produce" in respect of various Market Committees in the State were produced by the respondents at the time of hearing. This fact is also not disputed by the petitioners. This shows that even prior to the amendment made by Act 17/80 oil seeds have been the subject matter of regulation under the provisions of the Act. All that had been done by Act 17/80 was to specify the various items of agricultural produce which had been notified for the purpose of regulating their marketing under the Act by the State Government, in exercise of its power u/s 3 of the Act, in one list in the Schedule, so that as and when occasion arises any of the items mentioned therein could be notified by the Government for regulating its marketing in the area of the market committee specified.

17. The learned Counsel for the petitioners, however, maintained that mere definition of the words "agricultural produce" was not sufficient to remove the repugnancy and that it was necessary to include oil seeds specifically and that as oil seeds have not been specifically included in the definition of the words "agricultural produce" in the original enactment, it should be held that the Amending Act was inconsistent with the provisions of the Essential Commodities Act, 1955. In support of his contention, the learned Counsel for the petitioners

relied on the Judgment of the Supreme Court in Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., That was a case in which a Surcharge Order levying surcharge on electricity issued by the Kerala Government was held to be inconsistent with the provisions of the Indian Electricity Act 1910 and the Electricity (Supply) Act, 1948 as the matter related to production, supply and distribution and the rates of electricity had to be and had been regulated by the Central Government under these two enactments. In particular Counsel for the petitioners relied on paragraph 23 of the Judgment which reads:

"In the alternative it is argued as follows : The Kerala Act in so far as it deals with electricity can be deemed to be legislation under Entry 38 of List III. Though the Act itself has not declared any Article as an Essential Article, when a declaration was made u/s 2(a) in 1965 declaring electricity as an Essential Article for the purposes of the Act, it became part of the Act. When the President assented to the Kerala Act in 1962 it may be that it cannot be deemed that he had assented to it on the basis that the provisions of that Act were repugnant to some Act made by Parliament or some existing law in the Concurrent field because there was nothing in the Act itself which made it repugnant to any Act passed by Parliament or any existing Law. But when he assented in 1967 to the Act extending the life of the Kerala Act by another two years the declaration of electricity as an Essential Article had been made and should be deemed to have become part of the Act. So far we are in agreement with the argument of the learned Solicitor General. But when he goes further and argues that in so far as the consequences of such declaration was that the State Government was enabled to make orders regarding production, supply and distribution of electricity, there was a possibility of such orders being repugnant to the provisions of the Electricity Act, 1910, and the Electricity (Supply) Act 1948 and therefore any such repugnance was cured by the assent given by the President. We cannot agree. We agree that the assent should be deemed not merely to be substitution of the words "five years" by the words "seven years" in the Kerala Act, but to the Act as a whole, that is, as amended by the 1967 Act and any repugnance between the Kerala Act and the Electricity Act, 1910 and the Electricity (Supply) Act 1948 should be deemed to have been cured by such assent. When assenting to the 1967 Act the President should naturally have looked into the whole Act, that is, the 1961 Act as amended by the 1967 Act. But the declaration itself did not create any repugnancy with the 1948 Act. It was in 1968 that the Surcharge Order was made, in pursuance of which the bills were served on the various respondents in these appeals and demands made for enhancing charges for electricity. And it was the Surcharge Order that can be said to create the repugnancy if at all. It is only actual repugnancy that can be cured by Presidential assent and not the possibility of repugnancy."

As can be seen from the above paragraph, the Kerala Act as enacted first provided for levying surcharge on Essential Articles. The definition of the words "Essential Article" in the Kerala Act did not include Electricity. Therefore, the Supreme Court held that there was no repugnancy between the Kerala Act and

the Two Central Enactments on the topic of electricity. The Supreme Court further held that even after the President gave assent to the Amending Act of 1967, before which a declaration had already been made that electricity was an Essential Article; no repugnancy arose and that it was only the surcharge order promulgated in the year 1968, which created the repugnancy, and such repugnancy after it actually arose, was not cured, as there was no subsequent assent of the President to the Kerala Act. The decision is clearly distinguishable. In the present case, in view of the clear definition of the words "Agricultural Produce", it certainly included every item of food stuff, which is an agricultural produce. Therefore, there was a clear repugnancy between the Essential Commodities Act in so far it covered the topic of regulating the production and marketing of food stuff and the Karnataka Act. It is exactly for this reason the State sought for and secured the assent of the President. Therefore, the Karnataka Act of 1966 which received the assent of the President being later in point of time to the Essential Commodities Act, 1955 the Act prevails within this State in view of Article 254(2) of the Constitution. Act 17 of 1980 did not create any new situation in that it did not for the first time provide for regulating the marketing of oil seeds as was sought to be made out for the petitioners. It is also not disputed that no order regulating the marketing of oil seeds has been issued under the Essential Commodities Act creating a repugnancy between the two enactments. Therefore, there is no substance in the contention.

18. The learned Counsel for the petitioners relied on the Judgment of the Supreme Court in *State of Orissa Vs. M.A. Tulloch and Co.*, and submitted that the test to find out the repugnancy between the two enactments one claiming superiority over the other, was to see whether the former was intended to cover the whole field and that if it was found to be so, it would prevail and that in order to create repugnancy it was not necessary that action to regulate the matter through rules or orders should have been taken. On this basis he submitted that in order to create repugnancy between the Essential Commodities Act, and the Karnataka Act 1966 it was not necessary that the marketing of oil seeds was regulated by the promulgation of an order under that Act. Learned Advocate General did not dispute at all the correctness of the proposition. But his reply was that by applying the above principle itself the contention of the petitioners was devoid of merit. He pointed out that a perusal of the Karnataka Act would show that it was intended to cover the entire field of regulation of marketing of "agricultural produce" which by the force of definition included oil seeds and therefore even in the absence of notifying oil seeds as agricultural produce for the purpose of regulating their marketing, the Act was repugnant to the provisions of the Essential Commodities Act, 1955. But as the President has given the assent to the enactment which is a 1966 enactment, it prevails over the earlier Central Act of 1955 in view of Article 254(2) of the Constitution. In our view the contention of the learned Advocate General is correct and there is no substance in the submission of the learned Counsel for the petitioners.

19. The learned Counsel for the petitioners relied on the Judgment in *I.T.C. LTD.*

AND ORS. v. STATE OF KARNATAKA AND ORS. 1985 SCC 476 and submitted that in that case the Supreme Court held that the Tobacco Act prevails over the Karnataka Act, in question, and on the same analogy it should be held that the Essential Commodities Act prevails over the Karnataka Act. The contention is fallacious. The Tobacco Act was a Central Act of 1975 i.e., subsequent to Karnataka Act of 1966. Therefore, the Supreme Court held that as far as topic of marketing of Tobacco was concerned it was fully occupied by the Central Act of 1975 and being a later Central Law it prevailed over the Karnataka Act of 1966. Further as the assent of the President was not taken to Amending Act 17 of 1980 though it was later State Law it could not prevail over the earlier Central law i.e., the Tobacco Act of 1975. Moreover, the Tobacco Act also fell under entry 52 of the Union List, and for that reason also it prevailed over the Karnataka Act.

For the aforesaid reasons, we hold that there is no substance in the third contention also.

20. The fourth contention relates to Section 65 and Section 65-A of the Act. Section 65 empowers the Market Committee to fix the maximum time allowed for payment of market fee collected. The learned Advocate General submitted that a uniform period of one week for remitting the market fee is being given by all the Market Committees, in their respective Bye-laws. We find it difficult to appreciate as to how this Section can be regarded as violative of Article 14 of the Constitution. As far as Section 65-A is concerned it empowers the Market Committee to impose a penalty not less than 12% but not exceeding 30% on the amount of market fee, if it is not paid within the time allowed under the Bye-law made u/s 65 of the Act. The rate of penalty has to be fixed in the Bye-laws. The provision, in our opinion, is compensatory in character, though the word penalty is used in the said provision, for it provides for collection of interest on the amount of market fee withheld by a person after it became due. Therefore, we find no substance in the contention that the provision is violative of Article 14 of the Constitution.

21. In one of the Writ Petitions relating to Market Committee of Madhugiri, the petitioner who is a resident of Chandrabhavi Village, a place situate about 40 K.M. from Madhugiri, contented that the provisions of Section 8(2) of the Act, as amended was working out a great hand-ship to him. He submitted that he had an Oil Mill at Chandrabhavi and in view of Section 8 he was disabled from purchasing the groundnuts required for his Oil Mill, though the producers at Chandrabhavi were willing to sell the groundnuts, at Chandrabhavi and that the said groundnuts had to be taken to Madhugiri, again to be brought back to Chandrabhavi by the petitioners after purchase at the market yard at Madhugiri and this was an injury inflicted on him without any benefit to the public. This is a genuine practical difficulty in an individual case because there was no sub-market at Chandrabhavi. Now the Chief Marketing Officer has produced a Notification dated 17-3-1988 by which Chandrabhavi village has been declared as sub-market for the Madhugiri market and a sub-market yard is also declared. Sri

A.K. Subbaiah, learned Counsel for the petitioners submitted that if Chandrabhavi was declared as a sub-market, the grievance of the petitioners no longer survived.

22. In the result, we make the following Order :-

- i) The Writ Petitions are dismissed.
- ii) There will be no order as to costs.