

(1953) 07 MAD CK 0027

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 13169 of 1950 and W.P. No's. 854 of 1952 and 75, 87, 119, 135 and 155 of 1953

P.P. Kutti Keya and Others

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 10-07-1953

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(1), 19(6)
Madras Commercial Crops Markets Act, 1933 — Section 11(1), 11A, 14, 18(11), 18(2)
Madras Commercial Crops Markets Rules, 1948 — Rule 10(3), 10(4), 28(3), 37, 38

Citation : AIR 1954 Mad 621 : (1954) 1 MLJ 117

Hon'ble Judges : Rajamannar, C.J;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : K. Rajah Ayyar, M.K. Nambiar, C.F. Louis, B. Lakshminarayana, A. Shanmugavel, K.S. Ramamurthy, K. Hariharan, A.R. Ramanathan, C. Ramanathan, for the Appellant; A.G., Vepa P. Sarathy and V.V. Raghavan for Government Pleader, V.T. Rangaswami Iyengar, K. Kalyanasundaram and V. Balakrishna Eradi, for the Respondent

Final Decision : Dismissed

Judgement

Venkatarama Aiyar, J.—The common question of law that is raised in these petitions is whether the Madras Commercial Crops Markets Act 20 of 1933 (hereinafter referred to as the Act) and the rules framed thereunder have become void and unenforceable as being repugnant to the Constitution.

In C. M. P. No. 13169 of 1950 the facts are that the Government of Madras in exercise of the powers conferred on them by Section 2 (i-a) of the Act issued on 27-6-1949 a notification declaring cocoanuts, copra and arecanuts as commercial crops. On 15-11-1949, a further notification was made u/s 4 of the Act declaring the district of Malabar as notified area under the Act in respect of the above commodities. In May 1950, a Market Committee was constituted u/s 4-A of the Act and on 26-11-1950 and 27-11-1950 the Committee published certain notices marked as Exs. A, B, B-1 and B. 2 and it is the Validity of these notices that is in

question in this petition.

Exhibit A provides that the merchants must, in order to do business in cocoanuts, copra and arecanuts, obtain licences on payment of fees as provided therein and register their names with the Market Committee and that they should execute an agreement undertaking to do business in accordance with the terms contained therein. Exhibit B is the form of the agreement to be executed by the merchants in favour of the Market Committee; Clause 2 thereof provides that the licensee should "confine his purchases and sales to the licensed premises."

Exhibit B. 1 is the application form for obtaining licences for selling and buying and Ex. B. 2, for storing and processing the commodities. The place or places where the business is to be carried on are to be specified.

The petitioner is a merchant carrying on business as purchaser and seller of cocoanuts, copra and arecanuts in Calicut in the district of Malabar and his contention is that the Act and the Rules are repugnant to the Constitution and have become void & that accordingly a writ of mandamus should be issued prohibiting the respondents from enforcing them, as threatened in their notice.

2. The petitioners in W. P. No. 854 of 1952 are merchants carrying on business in tobacco at various places in the District of East Godavari. On 1-11-1948, the Government notified the area u/s 4 of the Act in respect of tobacco; & on 5-12-1950, a further notification was made u/s 4-A, establishing a Market Committee. On 3-9-1952, the Committee issued a notice to the petitioners that they should obtain a licence under Rule 48 and that in default, they would be prosecuted under the Act. The validity of this notice is challenged on grounds similar to those put forward in C. M. P. NO. 13169 of 1950.

3. The petitioners in W. P. No. 75 of 1953 are merchants carrying on business in cotton and they are also trustees of a charity known as "Virudhunagar Nadar Abhivridhi Panjikadai mahimai" which owns a market in Vridhunagar available for use by all merchants. On 5-6-1951, the Government issued a notification u/s 4 extending the operation of the Act to the district of Ramnad with reference to cotton and groundnuts. On 18-3-1952, a notification was issued u/s 4-A of the Act appointing a Market Committee, with directions that they should establish markets in Virudhunagar, Rajapalayam and Sattur.

On 9-1-1953, the market Committee issued a notice that the Acts and rules had come into operation on 1-1-1953 that persons who did business in cotton & groundnuts should take out licences as provided therein & that in default actions will be taken against them. A further notice dated 17-1-1953 required that licences should, on pain of prosecution, be taken on or before 15-2-1953. The petitioners have taken out this application both as merchants and trustees of the charity aforesaid for a Writ prohibiting the respondents from enforcing the provisions of the Act and the rules on the ground that they are repugnant to the Constitution and void.

4. In W. P. No. 87 of 1953, the facts are that on 5-6-1951 a notification was issued u/s 4 of the Act declaring the district of Tirunelveli, a notified area in respect of cotton; and on 18-3-1953 a further notification was issued u/s 4-A constituting a Market Committee. The Committee issued notices intimating the merchants that the Act and the rules had come into force on 1-1-1953, that licences should be taken as provided therein and that in default action will be taken against them.

The petitioners are merchants carrying on business in cotton in various places in the district of Tirunelveli and they pray that a writ may be issued restraining the respondents from taking any action under the Act and the rules on the ground that they have become void under the Constitution. The petitioners in W. P. No. 135 of 1953 are other merchants in the district of Tirunelveli to whom the Market committee subsequently issued notices similar to those in W. P. No. 87 of 1953 and they claim the same relief as the petitioners in W. P. No. 87 of 1953 and on the same grounds.

5. The petitioners in W. P. No. 119 of 1953 are merchants carrying on business in tobacco at various places in the district of Coimbatore. On 11-9-1951, a notification was published u/s 4 of the Act declaring Coimbatore district a notified area as regards tobacco. Subsequent thereto, there was representation by the public that in the absence of markets, the extension of the Act would cause considerable hardship and out of deference to it, a further notice was issued on 18-4-1952 that the Act would come into operation on 1-1-1953, the Committee being directed in the meantime to arrange for market facilities.

After the Act came into force, the Market Committee issued notices intimating the merchants that licences should be taken as provided in the Act and that in default, prosecution would be launched. The petitioners have thereupon filed the present application for the issue of a Writ prohibiting the respondents from enforcing the provisions of the Act on the ground that it has become void under the Constitution.

In W. P. No. 155 of 1953, the petitioners are growers of tobacco in the district of Coimbatore and the facts on which their application is founded are precisely the same as in W. P. No. 119 of 1953. The two petitions are complementary to each other, the one representing the standpoint of the merchants and the other that of the growers. The contentions in both are identical.

6. It will be noticed that the only action taken by the respondents against the petitioners so far as the issue of notices by the several Marketing committees informing them that the Act and the rules have come into force, that licences should be obtained by them as provided thereunder and that in default action would be taken against them. It is argued for the petitioners that this is sufficient to give them a "locus standi" to move the court for appropriate relief under Article 226 and the following passage in Rottschaefers on Constitutional Law is quoted in support of this position: "The principle that courts protect

constitutional rights only against actual or threatened invasion has led them to dismiss actions that are prematurely brought. A person is not required to await the consummation of a threatened injury before invoking judicial aid. He may invoke it if the injury is certainly impending", (p. 31).

The Supreme Court had occasion to consider this point quite recently in -- *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, . After agreeing with the appellant that where relief is sought under Article 226 on the allegation that fundamental rights had been invaded, the court should be satisfied that these allegations were well founded before proceeding with the application, Patanjali Sastri C. J. observed as follows:

"In the present case, however, the appellants can have no grievance, as the respondents' allegation of infringement of their fundamental right under Article 19(1)(g) was based on their contention that the Act was "ultra, vires" the State Legislature, and that contention having been accepted by the court below, there would clearly be an unauthorised restriction on the respondents' right to carry on their trade, registration and licence being required only to facilitate collection of the tax imposed."

Reference was then made to the decision of the Supreme Court in -- *Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another*, wherein relief was granted under Article 226 on the ground that a by-law which required a trader to pay a fee before doing business was unauthorised and was in consequence a violation of the right to trade guaranteed by Article 19(1)(g). As the petitioners contend that the impugned Act has become void under the Constitution and the notices issued by the Marketing Committee calling upon them to obtain licences were a threat to the exercise by them of their fundamental right to trade, these petitions are maintainable under Article 226.

7. Four contentions were advanced in support of the petitions:

1. The Act and the rules encroach on the right of citizens to carry on trade and are repugnant to Article 19(1)(g) and are in consequence void.

2. They are opposed to Article 301 of the Constitution as interfering with the freedom of trade within the territory of India and therefore void.

3. They are in contravention of Article 286 as they authorise levy of a tax on inter-State sales, and

4. The provisions in the Act and in the rules are some of them discriminatory and obnoxious to Article 14 and they vitiate the entire Act.

8. Certain special contentions were raised in W. P. No. 75 of 1953 and they will be considered later.

9. The first contention that has been pressed before us is that the provisions of the Act and the rules constitute a serious invasion of the fundamental right of a citizen to carry on business and are therefore void as repugnant to Article 19(1)

(g) of the Constitution. The material provisions of the Act and the rules bearing on this question may now be referred to. They fall into two groups: (1) Those which provide for Governmental control of trade in commercial crops and the mode in which such control is to be exercised; and (2) those which actually impose restrictions on the carrying on of business in commercial crops.

10. Taking the first group, Section 2(i-a) defines commercial crops as meaning cotton, groundnut or tobacco and any other crop or product which may be notified by the Government as commercial crop. u/s 3, the State has to issue a notification declaring their intention to exercise control over the purchase and sale of commercial crops in a specified area and call for representations on the proposal. After considering the suggestions and objections, if any, the Government is to Issue a notification u/s 4 bringing the Act into operation in a particular area in respect of one or more of the commercial crops. Section 4A provides that the Government should establish a market committee for the area and the duty is laid on them to enforce the provisions of the Act and the rules.

Sections 6 to 10 provide for the constitution of the Market Committee and Section 16 for its supersession. Turning to the rules which have been framed u/s 18 of the Act, Rules 5 to 23 provide for election to the Market Committee; preparation of the electoral roll, constitution of subcommittees, framing of by-laws and so-forth. These provisions are not the subject of independent attack as they merely provide the machinery for carrying out the controls imposed by the second group of sections. It is these latter that really affect the petitioners and it is their validity that has been vehemently questioned before us.

11. Section 5(1) enacts that when an area is notified u/s 4, no person shall thereafter do business at any place within that area except under licence and in accordance with the conditions therein. There is a proviso that when a market has been established, no licence shall be granted to carry on business within such distance of the market as may be fixed by the Government. Exemptions are enacted in favour of co-operative societies and persons who purchase for their own use. There is also power to exempt small dealers. Section 5(3) provides that no person shall use any place within the notified area for storing, or processing any commercial crop except under a licence to be granted by the Collector. Section 5(4) confers on the Collector power to grant licences or to suspend or cancel them, It runs as follows:

"Section 5 (4) (a). The Collector may in his discretion grant or refuse to grant a licence under this section.

Section 5(4) (b). Subject to such rules as may be made by the State Government, the Collector may, on the report of the market committee and after such inquiry as he deems fit, cancel or suspend any licence granted under this section."

Section 5(5) imposes on all licensees an obligation to comply with all the provisions of the Act, the rules, the by-laws and the conditions of the licence.

Section 17 enacts that contravention of the provisions of Section 5 shall be punishable as provided therein. Rule 28(3) prescribes the scale of fees for obtaining the licence; Rule 29 lays down the Procedure to be followed when action is taken for suspension or cancellation of licence. There is one other provision which calls for special mention. Section 18(2)(v-a) provides for the registration of buyers and sellers and for the prohibition of buying or selling within the notified area by persons not so registered. In accordance with this section, Rule 37 provides that "a person who is not registered shall not buy or sell within the notified area".

12. On these provisions the contention of Mr. K. Rajah Aiyar is that they interfere with the rights of the citizens to carry on business in three Ways:

(1) They impose restrictions as to who can carry on the business. u/s 5 it is only the persons who obtain licences that can carry on business in a notified area and the grant of a licence is purely discretionary with the Collector. Under Rule 37, it is only persons who get their names registered in the rolls that can do business in the notified area. These provisions are, it is argued, serious encroachments on the right to carry on business.

(2) Then there are restrictions as to the places Where the business could be carried on. Section 5(1) enacts that when a market is established no licence should be granted to any person to carry on business within an area to be notified by the Government; and even outside such area, the section provides that it can be carried on only in licensed premises. (3) Finally it is urged that Rule 10, which provides for compulsory reference of disputes to arbitration is a restriction on the mode of carrying on of business. The following passage from Halsbury's Laws of England, Vol. 32, p. 338, para. 554, was relied on as showing what freedom of business signified.

"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."

It is contended that the provisions of the Act and the rules already set out infringe the rights of a citizen to trade "as and where he wills" and must be held to be obnoxious to Article 19(1)(g) and void.

13. The Act does undoubtedly restrict the freedom of a citizen to trade "as and where he wills"; indeed it was enacted for the very purpose of controlling business in commercial crops. The point for determination is whether the restrictions contained therein are reasonable and valid under Article 19(6); and this question must be considered firstly with reference to the general nature of the legislation and secondly, with reference to the specific provisions in the Act and the rules.

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

To bring about a deal between the local producers and the outside purchasers, there emerged a class of middlemen. Even in well-organised and economically advanced countries like England, it was found that the agriculturist producer had not facilities for disposing of the goods to his best advantage (vide the statement of Dr. Addison, Minister for Agriculture, quoted at page 80 of the Indian. Central Banking Enquiry Committee Report, Vol. I, part II). It is these conditions that have led up to the enactment of marketing laws in all countries having a large volume of trade in commercial crops. The object of this legislation is to protect the producers of commercial crops from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce.

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

The Royal Commission on Agriculture in India recorded a considerable body of evidence on the state of the trade in food crops and it showed the need for legislative action for safeguarding the interests of the producers (vide report dated 1928). In 1931 the Indian Central Banking Enquiry Committee considered in Chapter VII of its report the conditions with reference to marketing. It is therein pointed out that the village producer was seldom able to get a proper price because he was chronically indebted to the middlemen who advanced loans on the security of the crops to be grown and were thus in a position to dictate their own terms and that the bargains were seldom fair to the seller.

It was also observed that for want of facilities for ware-housing the produce, the grower was not in a position to wait and sell the commodities for proper price (vide pages 78 and 79). In 1933 the Act now under consideration was passed

with the object of providing for "the better regulation of buying and selling of commercial crops and the establishment of markets for commercial crops". It must be mentioned that at that time the only products which had become commercial crops having an international market were cotton, groundnuts and tobacco; and the definition of commercial crops as enacted originally comprised only these three crops.

By an amendment of the section made by the Madras Act 7 of 1948, it was enlarged so as to include any other crops or product which might be notified as commercial crop by the State Government. It was under this amended provision that cocoanuts were notified as commercial crops on 27-6-1949. The contention was raised in C.M.P. No. 13169 of 1950 that the power conferred on the Government under Clause 2 (1) (a) to declare particular commodities as commercial crops amounted to unlawful delegation of legislative powers to the executive. But in view Of the decision of the Supreme Court in -- "Ref. under Article 143 of the Constitution Of India", AIR 1951 S C 332 (C), no argument was addressed in support of it.

15. In 1943 the Government published a report on Fairs and Markets. After reviewing the working of the various markets, the report stated that while the cotton market was working satisfactorily in Adorn and Nandyal, the Tirupur market was experiencing difficulty owing to want of public cooperation; that the groundnut markets which had been established in South Arcot were becoming increasingly popular but that the tobacco markets did not come up to expectation owing to opposition from buyers.

Various suggestions were made for improving the market conditions (vide pp. 92 and 93). In the report of the Planning Commission published in 1952, Chapter XVII, Vol. 1, deals with agricultural marketing and after referring to the working of the regulated markets in Bombay, Madras, Hyderabad and Madhya Pradesh, it throws out several suggestions for future improvements. It must be added that there has been legislation on lines similar to those of the Madras Act in several of the States in India.

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

17. It is next argued that even if marketing legislation should in general be held to fall within the scope of Article 19(6), some of the provisions contained in the impugned Act and the rules go far beyond what is reasonable, having regard to the purpose of the Act and must therefore be rejected as void, and that further, as those provisions are inseparably mixed up with the rest of them, the Act and

the rules must in their entirety be held to be void.

Reliance was placed on the decision of the Supreme Court in -- Chintaman Rao Vs. The State of Madhya Pradesh, , where an Act which prohibited the carrying on of the business of beedi manufacture during agricultural season was held to be in excess of the requirements as the prohibition extended not only to agricultural labour but to other labour as well.

The following observations of Mahajan J., were quoted:

"The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality." (p. 119).

And again,

"The law even to the extent that it could be said to authorise the imposition of restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right. So long as the possibility of its being applied for purposes not sanctioned by the Constitution, cannot be ruled out, it must be held to be wholly void." page 120).

On this reasoning it was argued that the restrictions imposed by the Act and by the rules were excessive and unreasonable in three particulars: in respect of (1) the persons who can do business, (2) the place where it could be done, and (3) the manner in which it should be done; and that the entire scheme of regulation based thereon must be held to have become void. These objections must now be considered.

18. (1) "Restrictions as to persons who can do business": The contention with reference to this matter is based on Section 5, Clauses (1), (3) and (4). The argument is that these provisions make it obligatory on a person to take out a licence before he can do business in a notified area but that the Collector has discretion to grant or refuse the licence at his sweet will and pleasure and that it is much more than a regulation of trade and amounts to a prohibition of it. It cannot be argued that the system of licensing introduced by the Act and by the Rules is by itself bad. When once it is recognised that there is need to regulate the trade in commercial crops, it must follow that a system of licensing introduced for the purpose of that regulation must be valid. That, however, does not preclude the petitioners from contending that particular conditions relating to licence are unreasonable and could not be upheld under Article 19(6). Section 5 (4) (a) does confer on the collector an unlimited and uncontrolled discretion to

grant or refuse licences as he might choose and a provision which makes the exercise of a fundamental right dependent on the absolute discretion of administrative authorities must be held to be unconstitutional.

The learned Advocate General did not dispute the correctness of this position; he merely stated that as a fact there had not even been a single instance of refusal to grant a licence. It may be conceded that the intention of the legislature was that all persons who apply for licences should get them and that none should be refused, though being a pre-Constitution enactment, the language is undoubtedly wide. As it stands, the section must be held to be void in so far as it confers on the Collector an authority to refuse a licence at his will. This conclusion however does not entail the consequence of the entire licensing regulation becoming void, because its only result is that all applicants are entitled to obtain licences provided they pay the prescribed fee and comply with the other conditions.

19. "Rule 37": This rule provides that buyers and sellers whose names are not registered by the Market Committee shall not buy or sell within the notified area. This provision, it is contended, is not a mere regulation of trade but a prohibition of it and cannot be upheld under Article 19(6). We are in agreement with this contention. The only section in the Act which provides for licences being taken is Section 5. That enacts that no business shall be carried on in a notified area except under a licence and apart from this there is no other restriction on the right to do business. The body of the Statute as originally enacted did not authorise the further restriction that only persons whose names had been registered by the Market Committee could carry on business.

In 1945, Madras Act 21 of 1945 introduced certain amendments; and one of them related to Section 18 which confers on the Government power to make rules in respect of various matters. Therein a new provision Section 18 (2) (v-a) was inserted and that gave power to the Government to enact rules regulating

"the registration of buyers, sellers and buyers, in the notified area; the form in which and the conditions under which such registration may be renewed; the fees to be charged therefor; and the prohibition of buying or selling of commercial crops in the notified area by persons not so registered."

Rule 37 which was framed in accordance with this section runs as follows:

"Any person shall, on application at the office of the Market Committee, be entitled to have his name registered as a buyer or seller or as a buyer and seller immediately on his executing an agreement in such form as the Market Committee may, from time to time, prescribe, agreeing to conform to the Madras Commercial Crops Markets rules.

A person who is not registered shall not buy or sell within the notified area. Any person buying or selling without having been duly registered by the Markets Committee shall be punishable with fine which may extend to one hundred

rupees in the case of a first offence and to two hundred rupees in the case of every subsequent offence."

20. There can be no doubt that the Government and the Legislature which passed Section 18 (2) (v-a) forgot the true purpose for which registration of buyers and sellers had been originally introduced, section 6 of the Act provided that an Electoral register should be maintained and that in that register the names of the merchants should be entered. That was purely for the purpose of election to the Committee, and had nothing to do with and was not hi the least intended to affect, the rights of merchants to carry on business. In other words, that section was enacted only as part of the first group of provisions establishing the machinery for the enforcement of the Act and its inclusion by the enactment of Section 18(2)(v-a) and Rule 37 is the second group of provisions relating to the regulation of business is an extension based on a misapprehension of the true purpose of Section 6.

The contention of the petitioners that these provisions are inconsistent with Article 19(1)(g) and could not be upheld under Article 19(6) is well founded. -It is true that under Rule 37 the buyer or seller is entitled to get his name entered in the register as a matter of right but if he does not choose to do so, the only penalty which he incurs is that he is not entitled to take part in the election to the Market Committee. He is not further liable to be deprived of his right to carry on business. To this extent Rule 37 is void. This conclusion again does not affect the validity of the rest of the provisions as the only result of it is that merchants who would be entitled to carry on business but for Rule 37 would have the right to do so notwithstanding that rule.

21. (2) "Restriction as to places:" u/s 5 when a market is established, no licence should be granted to any person to carry on business within an area to be notified by the Government; and even outside such area, the section provides that it should be carried on only in licenced premises. The question is whether these restrictions are unreasonable.

It is difficult to see how a provision that business should be done only at a market, if there is one, is unreasonable. It is obviously in the interests of the growers; they could get the best competitive prices in an open market and they would not have to pay the middleman. Sales in markets are likely to be ready cash transactions, and therefore advantageous to the seller and the user of standard weights must eliminate the possibility of his being victimised by sharp practice. These are the advantages which are stressed in all the marketing reports already referred to, & must be conceded to be reasonable; and it is to secure them to the seller that the provision is made that all business should be carried on in a market if there is one.

It is argued that the prohibition against carrying on trade extends not merely to the market building but to an area around to be determined by the State. In the Report on Fairs and Markets in 1943 it was pointed that such a provision was

necessary to prevent local business being diverted to other places and the object of the scheme being defeated (Vide page 93). The area around the market which is notified as included therein must no doubt be reasonable and regard must be had to facilities for transporting commodities to the market. The notifications u/s 5(1) show that the area declared as market area is generally a radius of 5 miles around the building and occasionally 10, and it is not shown that there is anything unreasonable in this.

22. In "C. M. P. No. 13169 of 1950" it was argued that the by-law of the Malabar Coconut and Arecanut Market Committee provided that the licensee could sell and purchase only in his own premises and it was contended that while it is not unreasonable to provide that sales should be made in licenced premises, it would be impossible to carry on business if purchases could be made only in one's own premises; and that that would be compelling the sellers to seek purchasers in their own premises and would render business impossible. It is conceded for the respondents that the condition that a person should purchase commodities in his own premises is unreasonable; that it was sufficient if purchases were made from persons who had licence to sell in their premises and that that was all that was meant to be laid down in the by-law. If it went further, it would be in excess of the Statute and must be held to be void.

23. (3) "Restriction as to the manner of carrying on business". The only contention that was urged under this heading was that there were certain provisions for compulsory arbitration and that they were a restraint on the freedom to do business. The relevant provisions are Section 18(2) (ix) and Rule 10 (3) and (4), Provisions of this kind are usual in marketing regulations and it is difficult to hold that they are unreasonable; and even if they are invalid, that does not affect the validity of the Act as a whole and in that view, the question whether they are valid does not arise for decision at this stage. It may be mentioned that there is no provision in the Act or in the rules for filing an award into court or obtaining a decree thereon and their precise legal position may have to be fully examined when it becomes necessary to determine it. In the result, the contention of the petitioners that the impugned provisions are unreasonable should fail on all the three grounds urged in support of it.

24. Mr. K. Rajah Aiyar next argued that even though the impugned provisions might in themselves be reasonable, they might become unreasonable by reason of provisions contained in other Statutes dealing with the same subject-matter; that when a question is raised whether any provision of law is reasonable, it would be necessary for the purpose of arriving at a just decision to consider all the enactments relating to the same subject-matter and then determine whether the restrictions taken as a whole are unreasonable and if that is found, the law in question should be held to be void.

Thus it is argued that with reference to tobacco trade, for example, there is the Central Excise Act I of 1944 which enacts that all growers of tobacco and dealers therein should obtain licences and maintain accounts; that there is then the

Madras General sales Tax Act 9 of 1939 which again provides for obtaining licences and maintaining accounts; that thus in respect of the same trade three licences have to be taken and three sets of accounts maintained and that this would entail heavy expenses by way of licence fees and establishment charges and that the cumulative effect thereof was to impose an unbearable burden on business.

Similarly, it is argued, there is in the cotton trade, the Cotton Control Order of 1950 and also the Madras General Sales-tax Act. The contention is that if the impugned Act and the rules are considered not in isolation but in conjunction with the other enactments relating to the same trade referred to above, the provisions in question would be found to be unreasonable. We are unable to agree with, this contention. In the first place, it is not quite correct to say that the various enactments referred to by the petitioners relate to the same subject-matter. The Central Excise Act of 1944, for example, is a measure of taxation, as is also the Madras General Sales-tax Act; and their object is to bring money into the coffers of the State. The Commercial Crops Markets Act is a licensing regulation and its object is to give protection to producers of commodities. The position is the same as in the professions where there are both the Income Tax and the profession tax imposed by two different statutes. Secondly, it is a novel and somewhat startling proposition to advance that a Statute good in itself, should become bad in conjunction with others. Article 13 enacts that any law which is inconsistent with the fundamental rights declared in Part III should be void; and when it is alleged that a particular law is bad as infringing the right to free trade guaranteed by Article 19(1)(g) the court has power to strike it down only if that law is not reasonable and in the interests of the general public. It does not possess a general jurisdiction to conduct an enquiry into the totality of the burdens imposed on a citizen by all the laws and to grant any relief, if it is satisfied that it is heavy. That is a matter for the legislature to consider.

The error involved in this argument will be manifest when once it is actually sought to be applied to a particular legislation. Supposing the court to hold that the aggregate of the burdens imposed by the several statutes taken together was unreasonable, are all of them to be struck down or some of them? If some of them, which? To put it concretely, the Madras Commercial Crops Markets Acts was passed in 1933. Let it be assumed that its validity is to be judged by the provisions of the Constitution as on the date of its enactment. It would certainly be valid as its provisions are in themselves reasonable and there were no other statutory restrictions at that time burdening the business. The Madras General Sales-tax Act was enacted in 1939 and the Central Excise Act in 1944.

The cumulative effect of all these three statutes is, let it be granted, to impose an unreasonable burden on the tobacco trade. Are all the three Acts to be held to be void? That is not contended for because, they have to be upheld under Article 19(6) to the extent that the burden is reasonable. If some of them are to be held bad, which? If it is the Madras Commercial Crops Markets Act of 1933 that is to

be struck down, then the position is that while that Act was valid when it was passed in 1933 and continued to be valid till 1944, it became invalid during that year when the Central Excise Act came to be enacted, and it would follow that it might again become valid if the Central Excise Act should at any time be repealed. No authority has been cited in support of such an anomalous doctrine and we have no hesitation whatever in rejecting it.

25. The petitioners also urged that on the facts the notifications u/s 4 extending the Act over the areas in question were wholly unreasonable and should be declared void. This contention rests in the main on the fact that no market has in fact been established in these areas.

It was argued that the policy behind marketing legislation was that the Government should first establish a market, then arrange that business should be transacted only there and charge reasonable fees for the use of the market facilities by the merchants; but that this order had been reversed in the actual working of the Act; that that Market Committees had first been constituted and those Committees were expected to construct markets with funds to be raised by exercising the power of taxation u/s 11 of the Act, they being otherwise without any means to do so.

It is contended that to bring the Act into operation and to appoint a Marketing Committee before establishing a market is to put the cart before the horse and that the proposal to raise the necessary funds for building a market by what is, in substance an exaction from the merchants was unjust and opposed to the true spirit and purpose of the Act.

In W. P. No. 75 of 1953, there is this further fact that there is in Virudhunagar a market owned and maintained by a charity known as "Virudhunagar Nadar Abhivridhi Panjukadai Mahimai". This market has been in existence for over half a century and has been largely used by the merchants of the locality. It contains stalls for effecting sales, godowns for stocking goods, hotels, parks and other amenities. Certain charges called "mahimai" are collected on all transactions that take place within the market; and they are constituted into a trust fund which is utilised for the maintenance of schools and for religious purposes.

The petitioners complain that the result of this notification would be to put this ancient and useful market out of commission, and how is it reasonable, asks Mr. Rajah Aiyar, to close the existing market without substituting another in its place? It must be admitted that there is considerable force and justice in these contentions. But then the Act provides special machinery for the consideration of these matters.

Under Section 3 of the Act a preliminary notification is made calling for objections and suggestions and a final notification is to be made by the Government after considering them. The petitioners in W. P. No. 155 of 1953 did in fact make such representations and the Government passed suitable orders thereon. The other petitioners, it is stated, did not raise any objection u/s 3 and

the final notification u/s 4 followed automatically. Though it might be that it is open to this Court to go into the reasonableness of the notifications u/s 4 as it relates to a fundamental right, it is not bound to do so when the parties have not availed themselves of the opportunity given to them under the Act, to put forward their objections before the proper authorities. It should be remembered that these are matters of business details in which the executive is in a better position to come to a decision and the policy underlying Section 4 is to entrust the final decision on such questions to the Government. This of course does not preclude the Government itself from reconsidering its decision in the light of any representations which the parties might make and cancelling the notification if it is satisfied that it is not reasonable and in the interests of the general public. For these reasons we must decline to entertain this objection.

26. Another contention which is of the same character is that to declare a whole district as a notified area and to require that business should be carried on only in licenced premises lays a heavy and unreasonable burden on the merchants. Mr. M.K. Nambiar for the petitioners in C. M. P. No. 13169 of 1960 argued that in the whole of the district of Malabar which had been notified, there was no market at all, that cocoanuts, which had been notified to be a commercial crop had to be plucked from trees scattered over an area of 1300 sq. miles, & when gathered, stocked in huts built amidst gardens; that road facilities were generally absent and that to require that these articles should be sold in licensed premises might paralyse the trade.

Mr. K. Rajah Aiyar for the petitioners in W. P. No. 75 of 1953 argued that for the extensive cotton tracts in the district of Ramnad, only three markets were proposed to be built and that would work great hardship because the producers would be driven to hawk their goods be lore licensed premises scattered over the district before they could find a purchaser. We must again hold that these are matters which should more appropriately be placed before the Government for consideration and cannot be urged in these proceedings. In the result it must be held that though Section 5(4) and Rule 37 are void to the extent mentioned above, that does not affect the validity of the rest of the provisions and that the Act and the rules must be held to be valid under Article 19(6).

27. 2. The next point for decision is whether the Act and the rules fire in contravention of Article 301 of the Constitution. The argument on behalf of the petitioners is that this Article is based on Section 92 of the Constitution Act of Australia which provides that a trade and commerce amongst States shall be "absolutely free"; that decisions on that section have held that marketing Statutes are void as repugnant to it; that in enacting "that trade, commerce and intercourse throughout the territory of India shall be free", Article 301 extends the principle of Section 92 to Intra-State as well as Inter-State commerce and in consequence, Marketing Acts would be bad even in respect of intra-State trade and the Act and the rules in question must accordingly be held to be repugnant to Article 301 and void.

28. Before considering the decisions on Section 92 of the Australian Act relied on by the petitioners, it may be noted that under that Act, while States have full power to legislate on intra-State commerce, it is the Commonwealth alone that has power to make laws in respect of inter-State commerce.

Then there is Section 92 which enacts that "trade, commerce and intercourse amongst States shall be absolutely free" & it was held in -- *W. and A. McArthur Ltd. v. Queensland*", 38 CE.R 530 (F), that the protection afforded by the section extended to inter-State trade in all its stages, production, transport and delivery. In -- "*James v. South Australia*", 40 CLR 1 (G) the question arose about the validity of a marketing Statute passed by the State of South Australia. The Act constituted a Board and gave it absolute discretion to decide when and in what quantity dried fruits grown in the State could be marketed, it was held that this provision infringed the rights of producers to carry on inter-State trade in dried fruits and was obnoxious to Section 92.

In -- "*Peanut Board v. Rockhampton Harbour Board*", 48 CLR 266 (H) the Act in question was a marketing legislation of the State of Queensland and that provided that all the peanuts produced in the State should vest in a Board which was to arrange for their sale inside the State and also outside and account to the growers for the price of their commodities.

In holding that the legislation was bad Rich J. stated:

"The feature which at once challenges attention is that these instruments provide a means of marketing. They are concerned with establishing a compulsory pool through which growers producing peanuts for sale must dispose of their product for distribution and receive their reward. The pith and substance of the enactments is the establishment of collective sale and distribution of the proceeds of the total crop and the concomitant abolition of the grower's freedom to dispose of his product voluntarily in the course of trade and commerce whether foreign, inter-State or intra-State," (pages 275-276).

There were similar observations by Dixon J. at pp. 287 and 288. The petitioners strongly rely on these observations.

"*Australian National Airways Pty., Ltd. v. The Commonwealth*", 71 CLR 29 (I) is not very relevant as it only decided that an Act of the Commonwealth granting monopoly of the right to transport passengers and goods by air, to a commission appointed under the Act was void in so far as it denied the rights of others to engage in inter-State intercourse.

Clements and Marshall Pty., Ltd v. Field Peas Marketing Board, (Tas)", 76 CLR 401 (J) relates to a Tasmanian statute which provided that a commodity notified under the Act should vest in a Board which was to arrange for its sales within and without the State. This was held to infringe Section 92. This decision is similar on the facts to the one in -- "*48 CLR 266 (H)*".

In -- "*Cam and Sons Pty., Ltd. v. The Chief Secretary Of New South Wales*", 94

CLR 442 (K) an Act of New South Wales requiring that the first sale of fish or oysters should be in a market established or recognised under the Act was held to be obnoxious to Section 92 in so far as it related to fish or oysters intended for inter-State trade. But not in so far as it related to intra-State sales.

In -- "Wilcox Mofflin Ltd. v. state of New South Wales", 85 CLR 488 (L) the question was as to the validity of a New South Wales Statute which provided that all the hides produced within the State should be produced for appraisalment before a Board and that the Board should have the power to compulsorily acquire such quantity of them as was not intended or required for inter-State trade. It was held that this was not repugnant to Section 92 as it controlled only intra-State trade. Mr. K. Rajah Aiyar contends on the strength of these decisions that marketing. Saws are an interference with the free trade guaranteed by Section 92 and that the same result must follow under Article 301.

29. The decisions cited on behalf of the petitioners are some of them, distinguishable, on the ground that the Acts there in question were not marketing laws simpliciter. Thus, in -- "48 CLR 266 (H) and -- "76 CLR 401 (J)", there was a compulsory acquisition of the commodity and marketing thereof by a Board. Such a legislation had been held in -- "the State of New South Wales v. The Commonwealth (wheat case), 20 CLR 54 (M) to be valid on the ground that the powers of a. Slate to acquire property remained unaffected by Section 92. This view however was overruled in -- "James v. Cowan", 1932 AC 542 (N), wherein Lord Atkin observed:

"If the real object of arming the Minister with the power of acquisition is to enable him to place restrictions on inter-State commerce as opposed to a real object of taking preventive measures against famine or disease and the like, the legislation is as invalid as if the legislature itself had imposed the commercial restrictions," (page 558).

In -- "84 CLB 442 (K)", the Act in question was much more than a marketing regulation as it compelled the fish owners to effect their first sales in the State market and that must necessarily Interfere with their right to transport the goods directly across the frontier of the state in inter-State trade.

30. There is also considerable authority that Section 92 hits only laws which prohibit or hamper inter-State trade and not those which merely regulate it. In -- "Milk Board (N. S. W.) v. Metropolitan Cream Pty., Ltd.", 62 CLR 116 (O), Latham C. J. observed:

"Such a law does not regulate such trade; it merely prevents it. But a law prescribing rules as to the manner in which trade (including transport) is to be conducted, is not a mere prohibition and may be valid in its application to inter-State trade notwithstanding Section 92", (page 127).

In -- "Commonwealth of Australia v. Bank of New South Wales", 1950 AC 235 (P) dealing with this aspect of the question, Lord Porter observed (at p. 309):

"On this, and on a cognate matter, the distinction between restrictions which are regulatory and do not offend against Section 92 and those which are something more than regulatory and do so offend, their Lordships think it proper to make certain further observations, it is generally recognised that the expression "free" in Section 92 though emphasised by the accompanying "absolutely" yet must receive some qualification. It was, indeed, common in the present case that the conception of freedom of trade, commerce & intercourse in a community regulated by law presupposes some degree of restriction on the individual. As long ago as 1916 in -- "Duncan v. State of Queensland", 22 CLR 556 (Q), Sir Samuel Griffith C. J. said, "But the word "free" does not mean "extra legem" any more than freedom means anarchy".

We boast of being an absolutely free people, but that does not mean that we are not subject to law; and though, all the subsequent cases in which Section 92 has been discussed, the problem has been to define the qualification of that which in the Constitution is left unqualified. In this labyrinth there is no golden thread. But it seems that two general propositions may be accepted: (1) that regulation of trade, commerce and intercourse among the States is compatible with its absolute freedom, and (2) that Section 92 is violated only when a legislative or executive Act operates to restrict such trade, commerce and intercourse directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote."

It is possible to argue, on the strength of these observations that marketing legislation pure and simple such as the one now under challenge could not be considered to be repugnant to Section 92. But it must be conceded that the authorities as they stand would seem to support the contention of Mr. K. Rajah Aiyar that marketing legislation is obnoxious to Section 92.

31. it was Observed in -- "28 CLR 530 (P)", that the limitations prescribed in Section 92 apply only to the States and not to the Commonwealth and to some extent this view softened the rigour of the strict construction which had been put on Section 92 therein. It was in accordance with this opinion that the Commonwealth enacted the marketing legislation which was eventually held by the Judicial Committee in *James v. Commonwealth of Australia*" (No. 2), 1936 AC 578 (R) to be void on the ground that the restrictions contained in Section 92 bound the Commonwealth as well as the States.

The result of this decision is that there is no authority in Australia which could legislate in respect of the area covered by Section 92. The impasse created by this decision was sought to be resolved by an amendment of the Constitution so as to confer on the Commonwealth power to enact marketing laws. But the referendum held in 1937 failed to get the requisite majority and the attempt at amendment failed. A further attempt in 1944 to amend the Constitution so as to enable the Commonwealth to pass marketing laws for a period of five years similarly failed.

The framers of our Constitution being aware of the problems with which the Australian Governments had been confronted by reason of Section 92 sought to solve them by enacting limitations in Part XIII itself on the freedom guaranteed in Article 301. In this case we are concerned with two of them Articles 302 & 305, Article 304(b) confers on the State Legislature power to pass a law imposing

"such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest provided that no bill or amendment for the purposes of Clause (b) shall be introduced or moved in the legislature of a State without the previous sanction of the President".

It will be within the competence of the State legislature to enact marketing laws under this provision. Article 304(b) applies in terms only to legislation to be enacted after the Constitution and the present Act which was passed in 1933 will be outside its operation. Article 305 provides that

"nothing in Articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise provide".

In W. P. Nos. 75, 87, 119, 135 and 155 of 1953, the notifications u/s 4 extending the operation of the Act over the areas in question were made in 1951 after the Constitution came into force. The question is whether the Madras Commercial Crops Markets Act 20 of 1933 could in its application to these areas be held to be existing law within the meaning of that expression in Article 303. Article 366(10) defines existing law as meaning

"any law passed before the commencement of the Constitution by any legislature having power to make such a law".

The impugned Act would be an existing law as defined in Article 366(10), as it was passed before the Constitution by an authority competent to enact it. The fact that its operation had not been extended before the coming into force of the Constitution is not material for the purpose of this definition. On the other hand, when the Constitution intends to refer to a law which is in force at the time of the Constitution, it used the expression "law in force", (vide Article 372). That the two expressions denote two distinct subject-matters will also be clear from Article 13(3)(b) which provides that "laws in force" include laws passed before the Constitution by a competent authority, that is to say, existing laws as defined in Article 366(10): The two expressions therefore cannot be said to be synonymous and the provision in Article 13(3)(b) that laws in force should include existing laws is only for the purpose of that Article.

"Existing law" in Article 305 therefore includes all laws which had been validly passed and had not been repealed even though they might not have been brought into operation in whole or in part. Therefore the Act in question is an existing law falling within the purview of Article 305 notwithstanding that the notifications in question bringing it into operation were made after the

Constitution. Article 301 therefore does not affect the validity of the Madras Commercial Crops Markets Act.

32. We have so far dealt with the argument of Mr. Rajah Aiyar that as marketing laws have been held to be repugnant to Section 92, a similar conclusion should be reached with reference to Article 301. The further contention of Mr. K. Rajah Aiyar is that while Section 92 is limited to trade and commerce amongst State Article 301 is wider in his terms and extends to commerce throughout the territory of India and that on that language what would be bad u/s 92 in respect of inter-State trade would also be bad under Article 301 in respect of intra-State trade.

The question thus raised is one of some difficulty. There is in support of the contention of the petitioners the language of the Article which is a deliberate departure from that of Section 92, and this wording is again repeated in Article 304(b), where the expression "within that State" cannot apply to inter-State trade, though the marginal note, if reference to it is legitimate, would support the contention that it could. But if Article 301 is to be Miterpreted as guaranteeing freedom in intra-State commerce as well, there may be difficulty in reconciling it with Article 19(6) which enacts that restrictions on the right to trade would be valid if they are reasonable and made in the interests of the general public. It is true that there is a similar saving in Article 304(b), but then it is subject to a condition which does not find a place in Article 19(6) that the previous sanction of the President should have been obtained therefor.

It is suggested that Article 19(1)(g) views the matter from the point of view of the citizen, whereas Article 301 views it from the point of view of trade. In other words, the operation of Article 19(1)(g) is "in personam", while that of Article 301 is "in rem", using these expressions not in their technical but etymological sense. That difference undoubtedly there is, and that was also recognised in -- Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, .

There is also this difference pointed out by the learned Advocate General that while the guarantee in Article 19 is for the benefit of the individual and can be waived, no such consideration can arise under Article 301. But the question still, remains, how does this difference practically bear on the rights of the parties now under consideration? Even when a regulation infringes the terms of Article 301, it is the individual whose rights are affected that could bring it before the Court, and he has the right to do so.

A similar contention was advanced with reference to Section 92 of the Australian Act and it was argued that that section was enacted in the interests of commerce in general and conferred no rights on the individual. In rejecting this contention. Lord Porter observed in -- "1960 AC 235 (P)":

"First may be mentioned an argument strenuously maintained on this appeal that Section 93 of the Constitution does not guarantee the freedom of individuals. Yet

James was an individual and James vindicated his freedom in hard won fights (the reference is to -- "1932 AC 542 (N)" and -- "James v. Commonwealth of Australia", 1936 AC 578 (R)). Clearly there is here a misconception. It is true as has been said more than once in the High Court, that Section 92 does not create any new juristic rights, but it does give the citizen of State of Commonwealth, as the case may be, the right to ignore, and, if necessary to call on the judicial power to help him to resist, legislative or executive action which offends against the section. And this is just what James successfully did," (page 305).

33. The word "free" in Article 301 means in its technical acceptation freedom from economic restrictions such as duties which one State lays on goods passing into it from, or out of it into, other State. Mr. K. Rajah Aiyar quoted the following definition of free trade by Prof. Bastable in Palgrave's "Dictionary of Political Economy", Vol. II, p. 143:

"Free trade is that system of commercial policy which draws no distinction between domestic and foreign commodities, and, therefore, neither imposes additional burdens on the latter nor grants any special favours to the former."

That clearly is the sense which the words bear in Article 301 in so far as it relates to inter-State trade, it may be mentioned that the view had been expressed on Section 92 of the Australian Act that the freedom guaranteed therein was freedom from interference at the frontier where the goods pass from one State into another and support for it was found in the setting of that section in the Constitution Act.

This argument found some favour with Lord Wright who observed in 1936 A. C. 578 (R),

"The true criterion seems to be that what is meant is freedom as to the frontier or to use the words of Section 112, in respect of goods passing into or out of the State," (page 630).

The matter was again considered in 1950 A. C. 235 (P). After referring to the observations of Lord Wright quoted above, Lord Porter observed.

"Those words must (as must every word of every judgment be read "secundum subjectam materiam". They were appropriate to their context and must be read in their context. They cannot be interpreted as a decision either that it is only the passage of goods which is protected by Section 92 or that it is only at the frontier that the stipulated freedom may be impaired. It is not to be doubted that a restriction, applied not at the border but at a prior or subsequent stage of inter-State trade, commerce or intercourse, may offend against Section 92," (p. 308).

34. The law on the subject is thus summed up by Nicholas in his "Australian Constitution," 2nd Edn. Pp. 277-278:

"The restriction of freedom may occur at any stage of the inter-State journey The section does not refer only to restriction at the frontier, so long

as the law relates to a passage across the frontier. It refers to one "operating against transference from one State to another at whatever point the burden or restriction is imposed. It may be before or after the actual" movement from one State to another. Per Dixon J. in --"Field Peas Marketing Board (Tas) v. Clements & Marshall Pty. Ltd.", 76 C. L. R. 414 (T)."

It is probable that it is this view that was sought to be embodied in the expression "throughout the territory of India" occurring in Article 301, and if that is the correct interpretation, the trade within the State protected by Article 301 and Article 304(b) would be not intra-State trade pure and simple but inter-State trade in its how in the state.

That was the view which commended itself to Narayan and Sarjoo Prasad JJ. who expressed the opinion in -- Atma Ram Budhia Vs. State of Bihar, , that the trade "within that State" in Article 304(b) had reference only to interstate trade, with its ramifications in the State and not intra-State trade. Das J. however took the view that the words which were general could not be limited to inter-State trade. The question is not free from difficulty and in the view taken by us that the impugned Act is existing law within the meaning of Article 305 and that it is in consequence unaffected by Article 301, it is not necessary to express any opinion thereon.

35. The next contention advanced by the petitioners is that the Act and the rules impose a tax on inter-State sales and are therefore repugnant to Article 286(2) and as those provisions are inseparably mixed up with those relating to intra-State sales, the whole body of them must be held to be unconstitutional. The relevant provisions are Section 11, Section 11-A and Rules 28(1) and (3).

Section 11 provides that the Market Committee shall levy fees on the notified commercial crops bought and sold in the notified area at such rates as it may determine. This is followed by an explanation which is as follows:

"For the purpose of this sub-section, all notified commercial crops leaving a notified area shall, unless the contrary is proved, be presumed to be bought and sold within such area."

Section 11-A provides for the levy of subscription for collecting and disseminating marketing information. Rule 28(1) prescribes the scale of fees to be levied u/s 11(1); and Rule 28(3) the licence fees chargeable u/s 5. The question is whether these charges are valid.

On our finding that there is need for regulation of the marketing of commercial crops and the system of licensing is a part of a scheme to carry it out, there can be no valid objection to the levy of a licence fee, and though it was suggested that it was heavy, there are no materials on which the suggestion could be supported. Rule 28(3) must accordingly be held to be valid. Nor can there be any objection to the levy u/s 11-A. It is a fee charged for obtaining and disseminating information on marketing and it is only those that subscribe therefore that are

liable to pay it. It is therefore clearly valid.

It is the legality of the levy u/s 11 and Rule 28(1) that has been the main target of attack. The argument on behalf of the petitioners is that this levy, though called a fee, is in reality a tax, and as that is imposed on inter-State trade, it is obnoxious to Article 286(2): The question is whether it is a fee or a tax and to ascertain its true character, we must examine the relevant provisions relating thereto.

Section 11(1) enacts that the Market Committee shall levy a fee on the sales of commercial crops within the notified area; and Section 12 provides that the amounts collected by the Market Committee shall be constituted into a market fund. Section 13 provides that the fund should be utilised for acquiring a site for the market, constructing a building, maintaining the market and meeting the expenses of election to the Market Committee and all the salaries, gratuities, pensions etc. of the officers and servants employed by the Market Committee and so forth. It is argued for the petitioners that the true object of the levy was to raise funds from the merchants for construction of a market and that it is in substance a tax. This contention is, in our opinion, well founded.

A fee is what is charged for services rendered by the person who charges it. When the State, for example, introduces licensing, it is entitled to charge for the expenses incurred in mainlining an establishment for licensing and that it is properly termed a fee. The fee prescribed in Rule 28(3) falls under this category and is perfectly legitimate. But the levy u/s 11 is for no services rendered. It is really a tax levied for raising funds for constructing the market.

In -- "Attorney General for British Columbia v. Esquimalt and Nanaimo Ry. Co.", 1950 AC 87 (V), the Judicial Committee had to consider whether a charge made under the Forest Act on the owners of timber land was a tax or a service charge imposed for protecting forests from fire and the like. In holding that it was a tax, the Judicial Committee observed:

"It is suggested, however, that there are two circumstances which are sufficient to turn the levy into what is called a "service charge". They are, first, that the levy is on a defined class of interested individuals and, secondly, that the fund raised does not fall into the general mass of the proceeds of taxation but is applicable for a special and limited purpose. Neither of these considerations appears to their Lordships to have the weight which it is desired to attach, to them.....The fact that in the circumstances the persons particularly interested are singled out and charged with a special contribution appears to their Lordships to be a natural arrangement. Nor is the fact that the levy is applicable for a special purpose of any real significance. Imposts of that character are common methods of taxation -- taxation for the road fund in this country was a well-known example", (pp. 121-122).

We must accordingly hold that the amounts to be collected u/s 11 are taxes notwithstanding that they are not brought into the consolidated fund of the

State under Article 266(1) but constituted into a separate fund and that the levy is only on a section of the public.

36. In this view, two contentions have been urged before us: (1) The tax levied under the explanation to Section 11 is really one on inter-State trade and therefore repugnant to Article 286(2). Mr. M.K. Nambiar also referred to by-law 23 framed by the Malabar Marketing Committee which provides that the licensee u/s 5 from whose premises cocoanut, copra or arecanut leaves for a destination outside the notified area shall be responsible for payment of cess to the Committee. It is argued that this is also in contravention of Article 286(2).

It is not disputed that if these provisions seek to levy a tax on inter-State sales, they would be void. The explanation to Section 11, however, does not, on its true interpretation, authorise levy of a tax on inter-State sales. The Act and the Rules contemplate the imposition of a tax only when the buying and selling take place in the notified area; the explanation only raises a presumption that goods leaving the notified area shall be presumed to have been sold within that area. It merely enacts a rule of evidence and is not a substantive provision imposing a charge, in contravention of Article 286(2).

It was argued that by-law 23 referred to above went further than the explanation and was capable of being construed as authorising the imposition of a tax on inter-State sales. If it sought to do that, it would clearly be void. On behalf of the Market Committee, it was represented to us that the by-law was not intended to deal with inter-State sales, but only with sales which take place within the notified area. In this view it is not necessary to consider the question whether, if in fact Section 11 imposed a tax on inter-State sales, the entire provisions should be held to have become void, on the ground that the Act and the rules made no distinction between intra-State and inter-State sales.

But it may be mentioned that the question is now concluded by the decision of the Supreme Court in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, where it was held that a taxing Statute should be upheld to the extent that it is "intra vires".

Mr. K. Rajah Aiyar raised the contention that construed as a tax, the levy u/s 11 is really in the nature of a sales tax and is as such unauthorised and illegal, and that on the principle of the decision in *Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another*, the petitioners are entitled to carry on business without any interference under the Act. The point for decision is whether the levy u/s 11 is, as a sales tax, illegal. The subject of sales-tax was within the exclusive jurisdiction of the Provincial Legislature under the Government of India Act, 1935, under Entry 48 in List No. 2 in the Seventh schedule. Under the Constitution also it is the State alone that has competence over it under Entry 54 in the State List in the Seventh schedule. Therefore a Law of the State imposing sales-tax will be valid even without resort to Section 143(2) of the 1935 Act or Article 277 of the Constitution.

The argument of Mr. K. Rajah Aiyar is that even though the State legislature has jurisdiction to impose a sales-tax, it did not purport to do so and so the levy must stand or fall as a fee. This is too wide a contention, for the legality of a charge must depend not on the label which is given to it but on what is, in substance, its true character. The matter however is complicated by the fact that there is in Madras a General Sales-tax Act 9 of 1939 in force and Section 3 therein fixes the maximum rate at which tax could be levied and it is open to argument that to construe the levy of a fee u/s 11 as a sales-tax would conflict with the express provisions of the Madras General Sales-tax Act.

But as no levy has been imposed u/s 11 on any of the petitioners, its legality does not directly arise for determination in these proceedings. The point is raised only as leading, on to the further contention that as the levy u/s 11 is illegal, the entire Act must fail. This however does not follow because the Act in question is a self-contained and complete Code for marketing legislation and can stand even if Section 11 is struck down.

The decision in -- Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, --, does not help the petitioners as what was ultimately decided therein was that the party was entitled to carry on business subject to licensing regulations but without the liability to pay the illegal tax. It was argued by Mr. K. Rajah Aiyar that if the levy u/s 11 was illegal, it would be impossible for the Market Committee to raise the necessary funds for constructing a market and that no purpose would be served by extending the operation of the Act to areas where no markets had been constructed. This however is a matter for consideration by the Government. At the present stage we are concerned only with the question whether the entire Act becomes void if Section 11 is void. Our answer is in the negative.

37. (4) It is finally contended that some of the provisions of the Act and the rules are discriminatory and that renders them void under Article 14. Mr. M.K Nambiar attacked the exemptions granted in favour of Co-operative Societies u/s 5 of the Act and Mr. Rajah Aiyar assailed the exemption in favour of small producers under Rule 38. These exemptions are based on considerations relevant to the object of the legislature and we are not disposed to hold that they are unreasonable.

It was also argued that it was not possible to discover any principle on which the Government notified some areas and not others; that for example, while the district of Ramnad was notified, for cotton, the adjacent district of Madura which grows more cotton was not notified; and that similarly, while South Arcot was notified for groundnuts, the neighbouring district of North Arcot which is also a large groundnut producing district was not notified. It is argued that notifications are made haphazard and that that results in discrimination. There is no explanation as to why these objections were not placed before the Government.

Moreover, the assumption underlying this contention is that the notifications u/s

4 put the merchants in the notified area in a disadvantageous position. But if marketing legislation is for the welfare of the general public, as we have held that it is, then the omission to notify other areas might be a matter on which the persons in the non-notified area might have grievance. We do not see that the merchants within the notified area themselves have any good ground for complaint. This objection also is overruled.

38. It remains to deal with the special contentions put forward by the petitioners in W. P. No. 75 of 1953. They are it will be remembered merchants of Virudhunagar and trustees of a charity which owns and maintains a market which is largely used by the merchants of the locality. The contention that there was no need to extend the operation of the Act to a place where there is already in existence a large and well-established market and especially when there is no market established under the Act has already been considered. The further contention advanced on their behalf is that as the result of the notification is that no business in cotton and groundnuts could be carried on in the market, the petitioners are prevented from running their markets as they might will and that that is an invasion of their right to hold a market.

The contention that the petitioners are prevented from holding their market is not accurate; because Section 5 does not prevent them from using the building for the purpose of a market; it only prohibits business in the notified articles from being conducted there. But it must be conceded that this must substantially cripple the future of the market where business in the main has been in cotton. But the question is whether any legal right of the petitioners has been infringed.

The right claimed by the petitioners that they are entitled to hold a market is one unknown to Indian law, though it is well recognised in the Law of England. In Halsbury's Laws of England, Vol. VI, p. 580, para. 740 it is stated that the right to hold markets and fairs is a franchise which could be granted by the Crown by virtue of the Royal prerogative. One of the incidents of "this franchise is that it confers on the grantee a right in the nature of a monopoly and that carries with it the right to exclude other persons from holding markets in the same area. But no such right has been recognised by the law of this country. The right to hold a fair or market is incidental to the ownership of the property wherein the market is held and is one of the modes in which that property can be enjoyed. It is not in the nature of a franchise as it is in the law of England: (Vide -- "Hemchandra Roy Choudry v. Kristo Chandra Saha", AIR 1920 Cal 255 (W) .)

Mr. Rajah Aiyar relied on the decisions of the Supreme Court in -- Rashid Ahmed Vs. The Municipal Board, Kairana, & Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, ", as supporting his contention that the right to hold a fair is one of the freedoms guaranteed in Article 19 of the Constitution.

In Rashid Ahmed Vs. The Municipal Board, Kairana, ", the Municipal Board of Kairana granted to one Habib Ahmad a monopoly to carry on wholesale business in a market as a result of which one Rashid Ahmed was prevented from carrying

on business there. It was held that while the Municipality had a right to regulate business through a system of licensing it had no right to prevent a citizen from carrying on business altogether, by grant of monopoly of it to another, and that that was in contravention of Article 19(1)(g),

In *Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another*, the facts were somewhat similar, with this addition that a by-law framed by the Town Area Committee provided that any person could sell within the area provided he obtained a licence on payment of the requisite fees. It was held that as this levy was unauthorised, the by-law requiring the trader to obtain a licence on payment of the prescribed fee was an unlawful interference with his right to carry on business.

Neither of these authorities is in point, as they are with reference to fundamental rights guaranteed by Article 19(1)(g). That article recognises the right of an individual to do business. It recognises the right of an owner to hold property and that will include the right to use it as a market. Independently of these rights, it does not recognise a further right in the citizens to hold markets. The petitioners cannot complain that they are prevented from carrying on business; nor can they state that they are prevented from using the building as a market. Apart from any contention that the restrictions placed on them in the matter of carrying on of business or in holding of property are unreasonable, there cannot be a claim that any right of theirs to hold a market has been infringed.

39. A question similar to the one now under discussion came up for consideration before the Supreme Court in -- *T.B. Ibrahim Vs. Regional Transport Authority, Tanjore*, . There the appellant was the owner of a bus-stand which was used exclusively by passenger buses moving into and out of the town of Tanjore. The Transport authorities condemned the bus-stand as not suitable from the point of view of "convenience of the travelling public", and fixed another bus-stand as the starting place and termini for outward journeys of passenger buses. The appellant disputed the validity of this order on the ground that it was repugnant to Article 19(1)(g) of the Constitution as being an invasion of his fundamental right "to run a bus-stand".

In rejecting this contention Ghulam Hasan J. observed :

"The next contention was that the order is repugnant to Article 19(1)(g) of the Constitution, according to which all citizens must have the right to practise any profession or to carry on any occupation, trade or business. It cannot be denied that the appellant has not been prohibited from carrying on the business of running a bus-stand. What has been prohibited is that the bus-stand existing on the particular site being unsuitable from the point of view of public convenience, it cannot be used for picking up or setting down passengers from that stand for outstations journeys. But there is certainly no prohibition for the bus-stand being used otherwise for carrying passengers from the stand into the town, and "vice versa".

The restriction placed on the use of the bus-stand for the purpose of picking up or setting down passengers to outward journeys cannot be considered to be an unreasonable restriction. It may be that the appellant by reason of the shifting of the bus-stand has been deprived of the income he used to enjoy when the bus-stand was used for outward journeys from Tanjore, but that can be no ground for the contention that there has been an infringement of any fundamental right within the meaning of Article 19(1)(g) of the Constitution. There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience. The restriction may have the effect of eliminating the use to which the stand has been put hitherto but the restriction cannot be regarded as being unreasonable if the authority imposing such restriction had the power to do so."

The considerations applicable to a bus-stand are also applicable to a market and by parity of reasoning it must be held that no fundamental rights of the petitioners have been infringed by the notification under challenge.

40. The last contention relates to a charge called "Mahimai" which is collected as a matter of trade usage on all transactions. Section 14 of the Act prohibits trade allowances which are not authorised by the rules or by-laws. By-law 25(b) framed by the Ramanathapuram Market Committee expressly prohibits deductions on account of "Mahimai". The contention of the petitioners is that this is a legitimate trade allowance, and that by-law 25(b) is illegal. This question does not arise for decision at this stage. But having heard full arguments on the question, we are satisfied that "Mahimai" cannot be claimed as a trade allowance. It is a deduction made out of the price payable to the seller and is intended to be utilised for purposes of charity. It has nothing to do with the transaction as such and is really a contribution levied at the time of the transaction for a purpose unconnected with it. It cannot therefore be properly regarded as a trade allowance, and bylaw 25 (b) is perfectly valid.

41. To sum up: Section 5(47)(a) of the Act is void to the extent that it confers on the Collector power to refuse licence at his own discretion. Rule 37 is void in so far as it prohibits persons whose names have not yet been registered as buyer and Seller from carrying on business in the notified area. Subject to this, the Impugned Act and the rules must be upheld under Article 19(6) of the Constitution as a valid piece of marketing legislation.

42. In the result, these applications are dismissed. There will be no order as to costs.