

(2005) 07 KAR CK 0041

In the Karnataka High Court

Case No : W.A. No's. 4818, 5076, 5097, 5120, 5175, 5249 and 5333 of 2004 and 1432 of 2005

Ramesh Chandra Lahoti and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 126 A, 63 (2) (a) (xiii), 65

Citation : (2005) ILR (Kar) 4030 : (2006) 6 KarLJ 102 : (2005) 4 KCCR 332 SN

Hon'ble Judges : H.N. Nagamohan Das, J;H.L. Dattu, J

Bench : Division Bench

Advocate : S.P. Shankar for T. Basavaraj, K. Vidyavati and D.C. Jagadeesh and Subhash B. Adi, for the Appellant; B.G. Sridharan, for C/R3 and R11, M.R. Vijayakumar, for C/R.4, C.S. Patil Advocate for C/R. 3-5, 14, 16, 19 and 22, H.K. Thimmegowda, for R4, 5, 6, 7, 8, 18 and 21 and Sujatha, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Nagamohan Das, J.—These appeals are directed against the common order of the learned Single Judge dated 4-11 -2004 dismissing the writ petitions in writ petition No. 18095/2004 and connected matters.

2. Agriculture is a way of life, a tradition, which for centuries, has shaped the thought, the outlook, the culture and the economic life of the people of India. Indian agriculture has since Independence, made rapid strides. In taking the annual foodgrains production from 51 million tonnes of early fifties to 206 million tonnes at the turn of the century. The use of increased agricultural inputs like hybrid variety seeds, fertilizers, pesticides, fungicides, agricultural machinery, fossil fuel, electrical power etc., pushed the cost of production, up during the last three decades. The increased cost of production has led to increased indebtedness among farmers and they are in the trap of debt. This phenomenon

resulted in distress sale of farm product. Distress sale means, selling the product for lesser price than the real cost of production and in economic terms, it is called "Deflation". Factors like deflation, crunch in rural credit, lack of post harvest processing and storage facility etc., resulted in farmers committing suicide. It is in this critical situation the State intervention is deemed essential to protect the interest of both producers and consumers and to maintain reasonable stability in the prices.

3. It is in this background the Government of Karnataka in the Budget speech for the year 1998-99 on the floor of the House announced to formulate a Scheme to go to the aid of farmers who are facing distress sale. Consequently, the Government vide notification dated 24.11.1999 formulated a Scheme called "Floor Price Scheme for Agricultural / Horticultural Commodities in Karnataka" (the "Scheme" for short). The preamble of the scheme reads as under:

"1.01 The Agricultural Policy Resolution of the Government of Karnataka stresses to bring in "Price and Market Reforms" in the Agricultural Sector of the State. Para 35 of the policy resolution reads as follows:

"Farmers in Karnataka often complain that they produce more only to get a lower price for their produce, indicating the absence of any effective support policy in the State. While it is recognised that the Central Government announces support prices of several agricultural commodities but the support mechanism remains effective basically for wheat and rice and that too primarily in the north-western States. There are several occasions when prices of coarse cereals go below minimum support prices announced by the centre...."

1.2 Para 36 of the policy resolution reads as follows:

"On pricing of produce, the broad policy of the state would be to go by the overall demand and supply conditions. This would be combined with the policy of providing a minimum support price, which would act as an insurance against any sudden and precipitous fall in its price...."

4. The object of the Scheme is to protect the farmers against distress sale of agricultural/horticultural commodities by assuring a minimum support price. A Revolving Fund is established to meet the capital required for implementation of the Scheme. The contribution to the Revolving Fund is by the APMC's in the State and by the State Government. The maintenance and operation of the Revolving Fund is entrusted to the Karnataka State Agricultural Marketing Board, the fourth respondent herein. The State level Committee in consultation with agricultural and horticultural department prescribes the floor price of the commodities covered under the Scheme. A District level Committee is constituted to supervise the operation of the Scheme and purchase agencies are identified for purchase of specified commodities under the Scheme.

5. The Karnataka Government vide its notification dated 14-3-1996 bearing No.

PMDW 5 MR: 96 formulated a Scheme called "Raitha Sanjeevini Accidental Insurance Scheme". The object of the Raitha Sanjeevini Accidental Insurance Scheme is to provide financial assistance to a farmer who dies or sustains an injury due to an accident during agricultural operations or while marketing the produce. The Karnataka Agricultural Marketing Board and the APMC's having surplus fund will contribute to the Revolving Fund. The fourth respondent-Karnataka Agricultural Marketing Board is entrusted the administration of this Raitha Sanjeevini Accidental Insurance Scheme.

6. In order to make it statutorily enforceable the Floor Price Scheme and Raitha Sanjeevini Accidental Insurance Scheme, the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (the "Act" for short) came to be amended by inserting Section 63(2)(a)(xiii) by Act of 8 of 2001 with effect from 24.1.2001 and the same reads as under:

Section 63: Powers and duties of market Committee-

(1) ...

(2) Without prejudice to the generality of the foregoing provision-

(a) a market committee shall-

(i) ...

(ii) ...

(xiii) contribute to the Floor Price Scheme and Raitha Sanjeevini Accidental Scheme at such rate as may be determined by the Director of Agricultural Marketing.

7. Section 126-A of the Act empowers the Government to give directions to the market Committee as in its opinion are necessary or expedient for carrying out the purpose of this Act and it shall be the duty of the market Committee to comply with such directions. The Government by exercising its power u/s 126-A of the Act issued directions to the market Committees vide Government Order dated 23.9.2003 bearing No. Sa.E.277 MRE 2002 (PART)-Annexure "C" to the writ petitions/appeals and the same reads as hereunder:

"In view of all the facts as narrated in the preamble, it is ordered to collect the agricultural market fee at 1.5 percent in accordance with Sub-Clause (2) Section 63 of the Karnataka Agricultural Produce Market (Regulation) Act, 1966, with immediate effect and until further orders, for the convenience of mobilising more resources to the Revolving Fund and in the interest of public.

This order is issued with the concurrence of the Finance Department vide Unauthorised Note No. FD 661 EX.2/2003, dated 23.6.2003".

8. The second respondent-Director of Karnataka Agricultural Marketing by exercising his power u/s 63(2)(a)(xiii) of the Act directed the market Committees to amend their byelaws and collect the market fee by enhancing the same from 1

percent to 1.5 percent vide order/communication dated 22.11.2003-Annexure A" to the writ petitions/appeals and the same reads as under:

"To,

The Chairman/Secretaries of All the Agricultural Produce Market Committees in the State.

Sir,

Sub: Recovery of market fee as 1.5 per cent from the notified purchasers of Agricultural Produce, by the Agricultural Produce Marketing Committees in the State.

Ref: Government Order

No. Sa.E/227/MRE/2002 (Part), Bangalore, dated 23-9-2003.

With reference to the subject cited above, I am to bring to your knowledge that in the Government Order referred above, it has been directed to recover, with immediate effect and until further orders, the market fee by enhancing it from 1 percent to 1.5 percent with a view to mobilise the resource towards "Revolving Fund".

As per the Government Order, permission has been granted to collect the market fee at 1.5 percent with effect from 1-12-2003 by amending the bye-laws of Agricultural Produce Market Committees coming under their jurisdiction and the said sanctioned bye-laws are sent herewith and it is directed to publish this amended bye-laws immediately on the notice board of the Committee. Therefore, it is directed the Secretary of the Committee to take necessary steps with regard to issue notice/ notification to the Traders Associations and the public, in respect of market fee fixed in the sanctioned bye-laws and this increase in market fees and also to publish the same as news in the local daily newspapers regarding collection of market fee at 1.5 per cent with effect from 1.12.2003, from the buyers.

Yours faithfully,

Sd/- For Director"

9. In compliance of Budget speech of Government in 1998-99, the Government order dated 23-9-2003 (Annexure "C") and the second respondent order dated 22-11-2003 (Annexure "A"), the market Committees in the State amended their bye-laws by enhancing the market fee from 1 percent to 1.5 per cent and are collecting at that rate. The Market Committees are now contributing the enhanced 0.5 percent market fee to the Revolving Fund created under the Floor Price Scheme. The Revolving Fund is now grown upto Rs. 182.59 crores and on several occasions, there is market intervention under the scheme and nearly 214353 fanners are benefited as on 8-6-2005.

10. The appellants before us are the petitioners before learned Single Judge. The

petitioners are traders having their business premises at the third respondent. Market yard situated at Yeshwantpur in Bangalore. These petitioners are traders-cum-buyers. u/s 65 of the Act, it is the buyers who are liable to pay market fee. The petitioners being the buyers are liable to pay the market fee, are aggrieved by the enhancement of market fee from 1 percent to 1.5 percent, filed writ petitions questioning the validity of amended Section 63(2)(a)(xiii) providing the market Committees to contribute to the Floor Price Scheme and the Raitha Sanjeevini Accidental Insurance Scheme and to quash the Government order dated 23-9-2003 directing the market Committees to collect market fee at 1.5 percent (Annexure-"C") and the order of second respondent-Director of Agricultural Market dated 22-11 -2003 (Annexure "A"), directing the market Committees to amend their bye-laws to enhance the market fee from 1 percent to 1.5 percent so as to contribute to the Revolving Fund. On the basis of pleadings and the rival contentions, the learned Single Judge framed the following points for his consideration.

"(i) Whether the Government has got power to issue direction to the Agricultural Produce Marketing Committees to levy market fee by invoking Section 126-A, giving to implement the object of the Act?

(ii) Whether the amendment of the bye-law, enhancing the market fee from 01% to 1.5% is in accordance with the mandate of Section 148 of the Act?

(iii) Whether the enhancement of market fee leviable u/s 65(2) of the Act from 01% to 1.5% by way of amendment of the bye laws of the Market Committees, fails for want of co-relation with the value of services rendered by the payers of the said fee?

(iv) Whether the creation of "Revolving Fund" for the purpose of providing assistance to the distress sale by agriculturists, come within the parameters of the aim and object of APMC Act?

(v) Whether the contribution by the Market Committees towards the Floor Price Scheme as envisaged u/s 63(2)(a)(xiii) of the Act is ultra vires and unconstitutional?".

11. The learned Single Judge by a detailed order rejected the contention of the petitioners and answered all the points against the petitioners and dismissed the writ petitions. Hence, these writ appeals.

12. Sri S.P. Shankar, learned Senior Counsel and Sri Subhash B. Adi, learned Counsel for the appellants submit that amended Section 63(2)(a)(xiii) providing for contribution by the market Committees to the Floor Price Scheme and Raima Sanjeevini Accidental Insurance Scheme is ultra-vires and unconstitutional. The object of the Act is to create a platform where the producer/farmer and the trader/buyer meets and the farmer is assured of correct weight, price and prompt payment of price and nothing more. The object of the Act is not got to the aid of a farmer who is forced to sell his produce for a lesser price and suffers

lessen on account of various factors. The Government having delegated its power to the market Committees to fix the market fee and its collection, has no power to enhance the market fee from 1 percent to 1.5 percent and to direct the market Committees to collect the market fee and to contribute to the Revolving Fund under the impugned notification dated 23-9-2003 Annexure "C Therefore, the impugned notification dated 23-9-2003 is without authority and arbitrary exercise of power. The market fund is to be spent/invested/ contributed in accordance with Section 90 to 94 and Chapter VIII of the Act and contribution of the same to Revolving Fund is not permissible under the Act.

13. It is contended that the amendment of bye laws by the 3rd respondent Market Committee enhancing the market fee from 1 percent to 1.5 per cent is without application of mind and without hearing the petitioners. The market Committee shall not enhance the market fee arbitrarily and particularly when there is no need. At the instance of respondents 1 and 2 Market Committee amended the bye-laws by enhancing the market fee and as such the same is bad in law. There is no correlation to the enhanced market fee and the services rendered to the petitioners. The purpose of enhancing the market fee is to contribute to the Revolving Fund and no additional services are rendered to the petitioners and therefore the same is illegal.

14. Per contra, Sri B.G. Sridharan, learned Counsel for respondent-3 in W. A.4818/04, contends that originally the object of the Act 1966 was only to regulate the buying and selling of agricultural produce. Now the word "buying and selling" is substituted by the word "marketing" in the object of the Act with effect from 29-5-1976. The word "marketing" is also defined in Section 2(18-A) of the Act, giving wider meaning and scope to the object of the Act. Therefore, the two schemes are within the object of the Act, and the same are not alien to the object of the Act. The Floor price scheme is in force from the year 1999 and Raitha Sanjeevini Accidental Insurance Scheme is in force from the year 1996. To make it statutorily enforceable these schemes, the Act 1966, came to be amended by introducing Section 63(2)(a)(xiii) with effect from 24-1-2001. The object of these schemes is to intervene in the market at the time of distress sale by farmers. It is contended that the farmers are users of market and they are entitled for the benefit of market fee. Under the Floor Price Scheme, the market fee is spent for the benefit of farmers who are market users and therefore the same is just, legal and proper. By following the procedure and by providing opportunity to the traders the market committees amended the bye laws. The market committees consisting of farmers and traders by applying their mind and by realising the fact that the enhanced market fee will enure to the benefit of farmers who are in crisis, amended the bye laws. He justifies the order of the learned single Judge.

15. Sri Vijaya Kumar, learned counsel for respondent-4 and Smt. S. Sujatha, learned Government Advocate, contends that the two schemes in question are only extension of activities of market committees. These two schemes are

independent of the contribution made to the Marketing Board u/s 92 of the Act. the Marketing Board is empowered to implement the scheme. The Marketing Board is not diverting the fund contributed to it u/s 92 of the Act. He further contends that Section 112 of the Act, specifies the function of the Marketing Board. One such function is to arrange safety insurance on the life of farmers and if necessary to contribute towards the premium payable in respect of all agriculturists in the State. It is contended that Section 93 specifies purposes for which the market fund shall be expended. u/s 93 of the Act, the market fund shall be expended to any other purpose within the scope of the Act. Therefore, he contends that the two schemes are within the scope of the Act.

16. Sri Thimme Gowda, learned Counsel for 3rd respondent contends that the farmers in the State are in financial crisis resulting in number of suicides. With an object to go to the aid of farmers, the two schemes in question are framed. The market committees amended the bye laws by following the procedure and by giving opportunity to the traders. The petitioners have not availed the opportunity given by the 3rd respondent cannot now complain that they are not heard in the matter and that behind their back the bye-laws are amended. He justifies the order of learned single Judge.

17. Heard the arguments and perused the entire writ appeal papers. Though several grounds are taken in the memorandum of appeals, finally the following are the only points that are principally canvassed:-

- a) Whether the amended Section 63(2)(a)(xiii) of the Act, 1966 is ultra vires and void?
- b) Whether the enhancement of market fee is opposed to the doctrine of quid pro quo?
- c) Whether the market committee amended the bye laws by violating the procedure under the Act, and principles of natural justice?

18. In the course of arguments both sides invited our attention to several provisions in the Act and to a number of decisions. We think it is sufficient if reference is made to the relevant provisions and decisions necessary for determining the above three points.

POINT No: a:-

19. There can be no progress without History. It is the History that builds a system. And the Law develops with the system silently and un-consciously from one age to another. In this perspective it is necessary to look at the History and development of Marketing Legislation in India. The Royal Commission on Agriculture in India appointed in 1928 observed:-

"That cultivator suffers from many handicaps: to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing

difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation, the establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation."

The Marketing Committee of the U.N. Conference on Food and Agricultural held at Quebec (1945) said:-

"Marketing is the crux of the whole food and agricultural problems. It would be useless to increase the output of food, and would be equally futile to set up optimum standards of nutrition, unless means could be found to move food from the producer to the consumer at a price which is remunerative to the producer and is within the consumer's ability to pay. Similar considerations apply to other agricultural products and to fish and forest products".

The National Commission on Agriculture in its Report in 1976, emphasised the importance of orderly marketing system and expressed its view that-

"It is necessary to improve the marketing system to aid the process of agricultural development for two reasons; firstly, if the additional produce does not move to the market to bring additional revenue to farmers, it may work as a disincentive to increase production, secondly if the system does not supply food grains and other agricultural commodities, such as oils, fruits, vegetables, milk, meat, eggs at reasonable prices to consumers at the time and place needed by them, increased production has no meaning in a welfare society."

20. From an almost non-entity in 1928, when Royal Commission on Agriculture submitted its Report, the institutions of regulated markets has today emerged as the most powerful instrument to revamp and radicalize the age old and tradition bound system of agricultural marketing in India. Originally the regulated markets brought the producer and buyer face to face to buy and sell commercial crops only. Today the Marketing Act and Rules framed thereunder provides for multifarious activities. The Supreme Court of India in *Bhagwan Dass Sood Vs. State of Himachal Pradesh and others*, summed up the marketing activities as under:-

"35. By a series of decisions of this Court, reference to which have already been made, the principles for upholding constitutional validity of imposition of levy of market fee in a notified market area have been laid down. The Agricultural Produce Marketing Acts have been enacted by various State legislatures. The beneficial legislation is aimed to prevent exploitation of growers of agricultural produce in the hands of dealers, traders and middle men. There is commonness;

by and large, in such legislations. The Marketing Act and the Rules framed thereunder usually contain provisions for establishing organised market and market yards, provisions to ensure sale and purchase of agricultural produce at a fair price to be notified, to ensure correct weighment of such produce brought and sold in the market yards, to ensure storage of agricultural produce by giving reasonable advances against the produce stores in the godowns of the market committee so that distress sale at a lower price at the time of harvesting is prevented for the benefit of farmers and agriculturists, to provide roads and pathways for transport of agricultural produce to organised market yards, to disseminate information to the farmers about improved techniques in cultivation, to ensure supply of good quality seeds, manures, agricultural implements etc. for intensive cultivation, to provide place of rest for farmers bringing their produce in the organised market yards after ensuring sanitary conditions in and around such organised market yards etc. etc. In order to ensure generation of funds in the hands of market committee and Boards constituted under the Marketing Act, so that organised markets and market yards are established with necessary infrastructures involving substantial cost, the Marketing Act invariably contains provisions for imposition of levy of market fee at a specified rate on the traders and dealers in specified agricultural produce operating within the specified market area and in principal and sub-market yards established by the market committee. The dealers and traders are required to take licence for their trading activities in such area in respect of specified agricultural produce so that their trading activities are monitored and controlled and they may not escape the liability of imposition of market levy".

21. Now coming to Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 it was stated in its object and reasons-" An Act to provide for better regulation of buying and selling of agricultural produce and the establishment and administration of markets for agricultural produce in the State of Karantaka." The law makers amended this object of the Act by Act No. 43 of 1976 with effect from 29.5.1976 by substituting the words "marketing" in place of the word "buying and selling". Further the amended Section 2(18-A) defines the word "marketing" means buying and selling of agricultural produce and includes grading, processing, storage, transport, packaging, market information and channels of distribution. Thus by amendment Act No. 43 of 1976, the scope and ambit of the Act 1966 is enlarged and expanded by embracing multifarious activities concerning the farmer and marketing of his agricultural produce.

22. Chapter XI of the Act, 1966 provides for establishment of State Agricultural Marketing Board Section 111 of the Act, 1966 specifies as to how the Board shall expend the Marketing Development Fund, such as improvement of the regulation of marketing in the State, to extend financial aid to the weak or needy market committees, to pay wages to the employees of the Board, to propagate and publicise the matters relating marketing of agricultural produce, imparting of education in regulated marketing of agricultural produce, etc., By an amendment Act No. 17 of 1980 Section 111(ix)(a) came to be introduced providing to spend

for general improvement of the facilities for the transport of notified agricultural produce to the market yard. Further by amendment Act No. 35 of 1986, Section 111(xa) came to be introduced to spend on providing technical and administrative assistance to market committees. Section 112 of the Act 1966, specifies the functions of the Marketing Board and one such function is to arrange for safety insurance on the life of farmers. It is under this provision the Raitha Sanjeevini Accidental Insurance Scheme is framed.

23. Chapter III of the Act, 1966 provides for Constitution of Market Committees. Section 63 of the Act, specifies the powers and duties of market committee, such as to maintain and manage the market yards, to grant licences for the market functionaries, to settle the dispute between seller and buyer, to take steps to prevent adulteration of goods, to prevent adulteration of goods, to prevent over trading etc. By amendment Act No. 17 of 1980; Section 63(2)(a)(ia) came to be introduced to provide transport facilities to agricultural produce to the yard. Subsequently by Amendment Act No. 8 of 2001, Section 63(2)(a)(xiii) came to be introduced providing contribution to the Floor Price Scheme and Raitha Sanjeevini Accidental Insurance Scheme and the validity of this provision is now questioned before this Court.

24. Law is not static but is dynamic. History of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 is no exception to this principle. As seen from the above, the law makers went on amending the Act, from time to time whenever the need and necessity arisen. By these amendments the scope and the activities of the institutions under the Act went on expanding and embracing multifarious activities relating to marketing of agricultural produce. Despite all this development studies on the working of regulated markets suggest that they are not free from limitations and are yet to bring about substantial change in our tradition system of agriculture marketing. Therefore, the amended Section 63(2)(a)(xiii) of the Act is only an extension of few activities already carried on under the Act. Distress sale of farm produce by the farmer is an act relating to marketing. State intervention at times of distress sale is also related to marketing of agricultural produce. Therefore, contribution to the Floor price scheme by the market committee is not alien to the object and purpose of the Act, 1966.

25. The Supreme Court of India in Sri Krishna Das Vs. Town Area Committee, Chirgaon, held as under: -

"It is for the legislature or the taxing authority to determine the question of need, the policy and to select the goods or services for taxation. The Courts cannot review these decisions. In paragraph 16 of the counter affidavit the TAC tried to explain the reason for not taxing salt, sugar and rice stating that they were not local produce but were imported from distant places and that the tax was levied only on the local produce which came from the neighbouring places. Courts cannot review the wisdom or advisability or expediency of a tax as the Court has no concern with the policy of legislation, so long as they are not

inconsistent with the provisions of the Constitution. It is only where there is abuse of its powers and transgression of the legislative function in levying a tax, it may be corrected by the judiciary and not otherwise. Taxes may be and often are oppressive, unjust, and even unnecessary but this can constitute no reason for judicial interference. When taxes are levied on certain articles or services and not on others it cannot be said to be discriminatory. Cooley observes: "Every tax must discriminate; and only the authority that imposes it can determine how and in what directions."

26. In *Aswathanarayana Setty v. State of Karnataka* ILR 1989 Kar 1 the Supreme Court held as under:-

"The State enjoys the widest latitude where measures of economic regulation are concerned. The measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and Economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, Courts give a larger discretion to the Legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the Legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there was letter ways of adjusting the compelling interests and claims. The Legislature possesses the greatest freedom in such areas. The analogy of principles of the burden of tax may not also be inapposite in dealing with the validity of the distribution of the burden of a "fee" as well.

The Legislature has to reckon with practical difficulties of adjustments of conflicting interests. It has to bring to bear a pragmatic approach to the resolutions of these conflicts and evolve a fiscal policy it thinks is best suited to the felt needs. The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental models. Social and economic problems of a policy do not accord with preconceived stereotypes so as to be amenable to predetermined solutions.... The lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services."

27. Keeping in view the above principle enunciated by the Supreme Court, we have to examine the validity of Section 63(2)(a)

(xiii) of the Act, 1966. The Legislature in their wisdom and expediency framed the two schemes in question. In order to implement the two schemes the

Legislature amended the Act, 1966 by introducing the impugned Section 63(2)(a) (xiii). This power of Legislature cannot be interfered by the Courts on the ground that it is likely to cause some inconvenience to the traders. It is for the Legislature to balance and adjust the conflicting interest of different sections of the society. Therefore, we decline to interfere with this power of the Legislature.

28. In *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, Justice V.R. Krishna Iyer, speaking for the Bench held:

"The true key to constitutional construction is to view the equity of the statute and sense the social mission of the law, language permitting, against the triune facets of justice, highlighted in the Preamble to the Paramount Parchment, read with a specious signification of the listed entries concerned. If this programme is fed into the judicial cerebration with the presumption of constitutionality super added, the result would tell whether the measure is ultra vires or not. The doctrine of ancillary and incidental powers is also embraced within this scheme of interpretation."

Benjamin N. Cardozo, in his *Lecture-The Methods of History, Tradition and Sociology*, observed thus:-

"I do not mean of course, that Judges are commissioned to set aside existing rules at pleasure in favour of any other set of rules which they may hold to be expedient or wise. I mean that when they are called upon to say how far existing rules are to be extended or restricted, they must let the welfare of society fix the path, its direction and its distance."

(emphasis supplied)

29. If we follow the observations of Justice V.R. Krishna Iyer, and Benjamin N. Cardozo, our task becomes easy. The social mission and the welfare of the society shall guide our path, direction and distance. As already stated due to deflation, crunch in rural credit, lack of post harvest processing and storage facilities, etc., the farmers are forced to sell their produce for a distress price. This situation lead to farmers committing suicide every now and then. It is to be remembered that we put an end to feudal system and wedded to the concept of welfare state when India became Republic Welfare State and the farmer committing suicide on account of distress sale cannot go together. It is in this background the Government framed the two schemes in question. Contribution to these Scheme by the market committee under the Act, 1966 is for the welfare of farming community who are in crisis. The law makers in their wisdom is to face the practical difficulties amended Act 1966, by introducing Sections 63(2)(a) (xiii) of the Act. This power of the Legislature is neither violative of Article 14 nor Article 19 of the Constitution. We hold that amended to Section 63(2)(a)(xiii) of the Act, 1966 providing for contribution to the Floor Price Scheme and Raitha Sanjeevini Scheme by the Market Committee as valid.

POINT NO. b:

30. The petitioners contend that the Market Committee amended the bye law by enhancing the market fee from 1 per cent to 1.5 per cent. This enhanced 0.5 per cent market fee is completely diverted as contribution to the Floor Price Scheme and as such the same is opposed to the doctrine of Quid Pro Quo. In support of this contention, reliance is placed on the Supreme Court Judgment in Kewal Krishan Puri and Others Vs. State of Punjab and Another, wherein it is held that the fee must have direct nexus with the services provided by the market committee and since the increase was not intended to provide any additional service, the same cannot be lawfully imposed.

31. The Supreme Court in Srinivasa General Traders v. State of A.P. 1983 (4) SCC 354 held as under:-

"30. In the ultimate analysis, the Court held in Kewal Krishna Puri case that so long as the concept of fee remains distinct and limited in contrast to tax, such expenditure of the amounts recovered by the levy of a market fee cannot be countenanced in law. A case in an authority only for what it actually decides and not for what may logically follow from it. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case in which such expressions are to be found. It would appear that there are certain observations to be found in the judgment in Kewal Krishna Puri case, which were really not necessary for purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value. The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely (SCC p. 435, para 23): "At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the prayer of fee", appears to be an obiter."

In view of this decision of Supreme Court, the decision in Kewal Krishan Puri, is of no help to the petitioners.

32. (I) The Supreme Court in SRINIVASA GENERAL TRADERS case held as under:-

"38. It is obvious that the phrase " payer of the fee" used by this Court in the authorities referred to above represents collectively the class of persons to whom the benefit is directly intended by the establishment of a regulated market in notified agricultural produce, livestock or products of livestock and not the actual individual who belongs to that class i.e., the trader. No doubt, the petitioners initially pay the market fee under Sub-section (2) of Section 12 of the Act, but there is passing on of liability by them to the consumer as part of the price. The observation in Kewal Krishna Puri case, as to the service to the "payer of the fee"

must, therefore, be understood as meaning service to the users of the market. The services are rendered to the users of the market i.e., the growers of agricultural produce, livestock or products of livestock and persons engaged in the business of purchase or sale of the same."

II) In VASAVI TRADERS CASE 1982 (20 K.L.J. 357, a Division Bench of this Court upheld the enhancement of market fee from 1 per cent to 2 per cent. In this case, Justice M.N. Venkatachalaiah, as he then was speaking for the Bench observed that in ascertaining whether the necessary correlation between the services and the fee exists or not, what is required to be examined is only a broad and general correlation and not equivalence with arithmetical accuracy and precision.

III) The Supreme Court in B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., held that it is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee is being paid. If the prayer of fee receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is further held that the requirement of quid pro quo need not be confined to contributories alone.

IV) The Supreme Court in Agriculture Market Committee, Rajam and Another Vs. Rajam Jute and Oil Millers Association, Rajam, held that though quid pro quo is required in relation to a fee which is changed and collected by a market committee, the quid pro quo cannot be in exact proportion to the fee levied. Mathematical proportions are not possible in such matters. If some services and amenities were already provided for in the notified market area then the levy of market fee is justified.

33. The long journey from Kenwal Krishna Puri case in 1980 to Rajam Jute Oil Mills Association case of 2003, the traditional view about the doctrine of quid pro quo has undergone a radical change. Keeping in view the change in the thinking of Courts on quid pro quo we have to examine the case on hand. Section 65 of the Act 1966, specifies that the market fee shall not be more than 2 per cent. It is not in dispute that, in Vasavi Traders case, a Division Bench of this Court upheld the enhancement of market fee from 1 per cent to 2 per cent. Subsequently, the Government by a notification reversed the levy of market fee to one per cent. It is not the case of petitioners that necessary amenities are not provided to them by the market committee. It is brought to our notice that substantive portion of the market fee had been spent on providing necessary infrastructure and amenities to the Traders. The farmers are also the users of market yard. The contribution of 0.5 per cent enhanced market fee to the Revolving Fund is to intervene in the market to buy the notified agricultural produce at times of distress sale. The purchases so made during distress sale are again sold in the market yard to traders. Therefore, the petitioners who are all traders receives general benefit in the process. Even otherwise the farmers who are users of market receives the benefit of enhanced market fee is sufficient to

justify the levy of additional market fee. Merely because the traders who are payers of market fee are not deriving any additional service is not a ground to say that there is no quid pro quo. Therefore, we are not inclined to accept the contention of petitioners that there is no correlation to the services rendered and the levy of enhanced market fee.

POINT No. c:-

34. The petitioners contend that they are not heard nor an opportunity is given to them by the market committee before the bye laws are amended enhancing the market fee from 1 per cent to 1.5 per cent. Without following the procedure as required under the Act, the bye laws are amended and therefore the same is bad in law. On the other hand the respondent No. 3 placed the relevant record before us. On perusal of the record it is found that the Market Committee notified in "Sanjeevani" Kannada newspaper in its edition dated 25-3-2003 and "Ee Sanjey", Kannada daily in its edition dated 27-3-2003 inviting objections from interested persons for the proposed amendment of bye laws to enhance the market fee. In response to these paper publications, the market committee received several objections from traders. The market committee in its meeting held on 17-5-2003 considered the objections and resolved to enhance the market fee from 1 per cent to 1.5 per cent. Subsequently, on 22-7-2003 the Director of Marketing Board approved the resolution of Market Committee and notified to all the traders. The relevant record placed before us reveals that the market committee by following the procedure and by following the principles of natural justice had amended the bye laws. The petitioners having not availed the opportunity given to them cannot now complain that there is violation of principles of natural justice. There is no substance and merit in the contention of petitioners that they are not heard and procedure is not followed before amending the bye laws.

35. We are in respectful agreement with the order of the learned single judge dismissing the writ petitions. There are no justifiable grounds to interfere with the order of the learned single judge and to take different view. Hence, the writ appeals are liable to be dismissed.

36. In the result, these writ appeals are rejected with no order as to costs.