

(2004) 11 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No's. 18095-18119, 18436-18447 and 23230-23239 of 2004

Ramesh Chandra Lahoti and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 300A
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 126 A, 3, 4, 5, 65 (2)

Citation : (2004) 4 KCCR 2652

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Subhash B. Adi, in W.P. Nos. 18095-18119, 18436-18447 of 2004 and T. Basavaraj, in W.P. Nos. 23230-23239 of 2004, for the Appellant; B. Anand, High Court Government Pleader for Respondents 1 and 2 and M.R. Vijayakumar, for Respondent 4 in W.P. Nos. 18095-18119, 18436-18447 and 23230-23239 of 2004 and B.G. Sridharan, for Respondent 3 in W.P. Nos. 18095-18119, 18436-18447 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—In all these cases, since common questions of fact and law are involved, these petitions have been clubbed together and a common order is passed.

2. The Petitioners in all these petitions, claim to be traders in notified agricultural produce and other commodities. The Petitioners, questioning the legality and validity of the impugned communication dated 22nd November, 2003 bearing No. MRE/173/BYELAW/2003 on the file of the Director of Agricultural Marketing, Bangalore, issued in pursuance of the Government Order vide Annexure-C and Annexure-B dated 27th November, 2003 bearing No. APMC(B)291/BYE-LAW of 2003-04 on the file of the Agricultural Produce Marketing Committee represented by its Secretary and also assailing the correctness of the Government order

dated 23rd September, 2003 in proceedings No. Sa/E/277/MRE/2002 (Division) Bangalore on the file of the State Government represented by its Secretary vide Annexure-C, have presented the instant writ petitions. Further, the Petitioners have sought to declare Section 63(2)(a)(xiii) as ultra vires and unconstitutional.

3. It is not in dispute that, all these Petitioners are traders carrying on trade in notified agricultural produce and other commodities and having their business premises in the respective Yards of the Agricultural Produce Marketing Committee. They also claim to be the holders of valid licence issued by the competent authority. In view of the direction issued to the Director of Agricultural Marketing in pursuance of the Government order, the Director of Marketing has directed all the Agricultural Produce Marketing Committees (hereinafter called "APMC") in the State of Karnataka to enhance the market fee with immediate effect from 01% to 1.5% and in pursuance of the direction issued by the State Government through the Director of Agricultural Marketing, the respective APM Cs have amended their bye-laws by inserting new by-laws as stated supra, on respective dates. Further, the case of the Petitioners is that, the decision of the Government to enhance the market fee in the name of creating "Revolving Fund" is one without jurisdiction and without authority of law and the same is in violation of the mandatory provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the "APMC Act"). As provided under Sections 3, 4, 5 of the said Act, the State Government has the power to declare a market area for a Market Committee. Section 8(1) of the Act confers power on the Market Committee to control the Marketing of agricultural produce in as much as the Market is established and no person shall without or otherwise than in conformity with the terms and conditions of licence granted by the Market Committee, shall use in place in the market area for marketing of notified agricultural produce or apart in market area or in any market therein as a trader, commission agent, broker, processor, weighman, warehouseman or in any other capacity in relation to marketing of notified agricultural produce. Similarly, as per Section 8(2) of the Act, no place except the market yard, or sub-yard or sub-market yard, as the case may be, shall be used for purchase or sale of notified agricultural produce. A dealer in this is required to have a licence u/s 72 of the Act read with Rule 76 of the Karnataka Agricultural Produce Marketing (Regulation) Rules, 1968 ("APMC Rules" for short). It is also mandatory on the part of the market functionary to carry on sale and purchase of the notified agricultural produce in the respective market yards for which the licence has been obtained. Section 63 of the Act provides for the powers and duties of Market Committee. According to the said provision, it is duty-cast on the respective Market Committees to provide adequate facilities and services for the purpose of better marketing of notified agricultural produce. As per Sub-section (2) of Section 65 of the Act, the Market Committee shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be specified in the by-laws but shall not be more than Rupees two per one hundred rupees of the value of such produce

bought. The object of Section 65(2) of the Act is to confer power on the Market Committee to make bye-laws in regard to fixing of market fee as against services rendered by it and it is in this context, the APM Cs under their bye-laws have fixed the market fee at Rs. 01 per Rs. 100/- of value of such produce. The determination of market fee is based on the Actual amount required to meet the expenditure in relation to providing the infrastructures and also providing services to the agriculturists and the market functionaries and also these Petitioners have been paying market fee in consonance with their respective bye-laws. The bye-laws are framed by the Market Committee in exercise of power conferred on it u/s 148 of the Act. As per the provisions of Section 65 read with Section 148 of the Act, it is clear that so far as fixation of market fee is concerned, it is the absolute power vested in the Market Committee alone, however, subject to the requirement of a particular Market Committee. Further, fixation of market fee may also vary from one Market Committee to another depending upon the Actual requirement of the amount to meet the expenditure in relation to the services provided by the Market Committee. The collection of market fee at the rate of 01 per cent itself would not only meet the expenditure required to be met by the Market Committee, but will be more than sufficient and therefore, there is no justification in relation to enhancement of market fee from 01 per cent to 1.5 per cent. The amendment of the bye-law for enhancement of market fee from 01 per cent to 1.5 per cent by the Market Committee based on the Government decision, to enhance the market fee, unilaterally, irrespective of the fact as to whether fee could be enhanced or not, in pursuance of the Government order mechanically and unilaterally, is contrary to the mandatory provisions of the amended bye-law. Therefore the amendment of bye-law based on the Government decision has no effect in law and cannot be in force and the said decision taken by the Market Committee for enhancement of market fee to meet the expenditure in relation to services provided by it is not in strict compliance of the mandatory provisions of the Act.

4. The Petitioners further contended that, as per Sub-section (2) of Section 65, it is the Market Committee which fixes the market fee and the said market fee is determined by way of quid-pro-quo in as much as it must have the co-relation with the services rendered by the Market Committee and the fee sought to be levied. However, it is not the Market Committee that is sought to collect, but the enhancement is sought to be made for the purpose of keeping apart for the "Revolving Fund" ("Avartha nidhi") and there is no such power conferred under the provisions of the Act either on the first Respondent or on the second Respondent in the matter of collection of market fee for the purpose of establishing a fund. As such, the decision of the Government is one without any jurisdiction and without authority of law. It is the further case of the Petitioners that, the Respondents vide their letter have published in the local newspaper the decision of the Government in relation to exempting certain processed goods from the purview of levy of market fee and it is in this context that the State Government has decided to levy the market fee. However, the decision of the

Government to exempt processed goods from levy of market fee has not been materialised so far. If that being the object of the Government to exempt proceeded goods from the purview of levy of market fee and to levy the uniform 01% market fee throughout the State and if it has not been materialised in the name of exempting certain processed goods from the purview of liability of payment of market fee, the State Government ought not to have decided to enhance the market fee in respect of the notified agricultural produce much less when the decision of the Government has not been given effect to and the same cannot be made use only for the purpose of enhancement of market fee. Therefore, the decision of the Government to enhance the market fee is arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Having regard to all these backgrounds, the Petitioners felt necessitated to approach this Court by presenting these petitions.

5. The principal submission canvassed by Sri Subhash B. Adi, learned Counsel appearing for Petitioners is that, the Government Order dated 23rd September, 2003 issued by the Respondents is one without authority of law in as much as Article 265 of the Constitution of India prohibits levy of tax or fee without authority of law. The Karnataka Agricultural Produce Marketing Regulation Act, 1966 was legislated in exercise of power conferred on the State legislature under Entry 28 list II of VII Schedule of the Constitution of India. Entry 66 of List II of VII Schedule confirms the power on the State Legislature to legislate in the matter of levy of fee in respect of the matters referred in list II. The levy of market fee itself is a legislative power and the said power has been delegated to the Market Committee exclusively under subordinate legislation. He submitted that, Section 126-A of the Act does not confer any power on the State Government for levy of market fee nor it can issue a direction to levy market fee. As per Section 126-A of the Act, the State Government has got power to give direction only for carrying out the purposes of the Act and the purpose of the Act being clear u/s 65(2) that the matter of levy of market fee being exclusively delegated power given to the respective Market Committees. Therefore, the direction issued by the State Government in contravention of Section 65(2) of the Act is one without authority of law. Further, he vehemently submitted that, there is no power under the provisions of the Act for the State Government to formulate, levy and collect the market fee. Thus, the order of the Government is without authority of law. Any levy of market fee in pursuance of the Government order is violative of Articles 265 and 162 of the Constitution of India. Further, the submitted that, the Director of Agricultural Marketing has been conferred with certain power under the provisions of the Act and the said power can be exercised by the Director alone and not at the instance of the State Government as otherwise the provision of Section 150 becomes redundant. Therefore, the statutory power conferred on the Director of Agricultural Marketing is to be exercised only by the said authority and not by any other authority. The Government Order dated 23rd September, 2003 is in exercise of executive power as envisaged under Article 162 of the Constitution of India and not in exercise of

any statutory power nor in exercise of any delegated legislation. In order to exercise the executive power under Article 162 of the Constitution of India, there must be legislative power to the State Legislature to make law in the said subject matter. The State Legislature can make law in respect of matters enumerated in list II of VII Schedule. The State legislature is given power under Entry 66 of the said list to levy market fee or any fee. The said power has been delegated to the Market Committee and once the said legislative power has been confirmed on a particular authority, the same is not available for issue of an executive order by the State Government. Further, he specifically contended that, the so called Scheme referred by the Respondent is also issued in exercise of the executive power by the State Government. The alleged Scheme is not traceable in respect of the matters in list II and if there is no legislative power for the State Legislature, the State Government cannot exercise the executive power to issue the Government Order or implement any Scheme. As per Section 148 of the Act, the power for amendment of bye-law has been delegated exclusively on the Market Committee because the Market Committee alone can decide as to what should be the quantum of market fee depending upon the circumstances and requirements of the each Market Committee. Therefore, the amendment of bye-law which can only be suggested by the Director of Agricultural Marketing is only in respect of the bye-laws connected to market and Market Committee and not in the matter of market fee. The market fund or the market fee cannot be adverted for any other purpose other than the one provided under chapter VIII of the APMC Act. The market fee is a part of Market Fund u/s 90 of the Act. The said market fund can be contributed to the consolidated fund of the State only u/s 91 of the APMC Act and to the State Agricultural Marketing Board u/s 92 of the APMC Act. Rules 60 and 68 make it clear that, the use of market fund is only for the purpose provided under Rule 64 which provides for submission of budget and Form 29-A provides for preparation and estimation of the budget and the same makes it clear that, there is no provision under the Act of the Rules for diverting the market fund for any other purpose other than the one enumerated under the said provision. Even for contribution u/s 63(2)(a)(xiii), no market fund nor market fee nor licence fee could be used. The said Section relates to contribution by the Market Committee towards the floor price and it does not refer to the contribution towards the Revolving Fund nor the floor price could be contributed from the market fund. With regard to requirements of elements in order to levy market fee valid, he submitted that, there must be an element of quid pro quo and there must be co-relation between the levy of fee and the service sought to be rendered and the service must be rendered to a person or the purpose from whose account the market fee had been collected, but does not provide for any levy of fee for any other purpose which has no correlation with the service. Therefore, the enhancement of market fee towards the creation of Revolving Fund is in no sense be called as a service for the transaction of sale and purchase of notified agricultural produce in the market yard nor it has any relevance towards the establishment of markets or marketing of agricultural produce. Therefore, creation of Revolving Fund is outside the scope of the Act in as much

as it has no relevance of any service for the purpose for which they want to levy the market fee. The Revolving Fund is not the fund for the purpose of establishment of markets or is connected with the regulation of sale and purchase. But it is exclusively meant to provide assistance in the matter of sale made by agriculturists in distress and for that matter, the amount could be spent only from contingent fund and not even from the consolidated fund under Article 267 of the Constitution of India. The Scheme of a floor price of agricultural and horticultural commodity is not at all traceable under any provisions of the Act and the said Scheme is outside the purview of the Act. The said Government policy and the policy decision is not based on any power traceable under the mandatory provisions of the Act and Rules. In turn, the Scheme is dependent upon the Central Act on minimum supporting price Scheme. Hence, the Scheme has nothing to do with the object of the APMC Act and under the said Scheme, no levy of market fee could be enhanced, for the said Scheme does not even relates to notified agricultural produce and for providing fund for providing infrastructural facilities to the Market Committee. Therefore, the Scheme falls outside the ambit and scope of the Act. Further, he placed heavy reliance on the Government Order dated 9th December, 2003 wherein the implementation of the Scheme initially for onion and potato has been negatived by the Government. Therefore, he submitted that the same is violative of Article 14 of the Constitution of India so far as enhancement of fee in respect of other commodities is concerned. Therefore, there is no nexus between the Scheme and the enhancement of the market fee, collection of market fee and enhancement of market fee also constitute unreasonable restriction on the fundamental right to carry on trade and it is also in the arbitrary nature and as such it is violative of Articles 14, 19, 21 and 300-A of the Constitution of India. The Government has no power to divert the market fee for the general purpose. Finally, he submitted that, the control of price is traceable to Entry 34 of List III of VII Schedule of the Constitution of India. Therefore, Section 63(2)(a)(xiii) being ultra vires and unconstitutional, particularly it has no nexus to the object sought to be achieved under the provisions of the Act as has been held by the Hon"ble Supreme Court that, the market fee cannot be diverted for any other purpose other than for the services rendered for the persons in whose account the same is collected and in this regard, the Supreme Court consistently has held that, the said services must be given to the persons from whose account market fee is collected. He submitted that, the amendment of bye-laws by the Market Committee without considering their objections and without hearing them is not sustainable in view of the law laid down by this Court. To substantiate his submission, as referred above, he placed reliance on the following judgments of the Hon"ble Supreme Court:

(i) Kewal Krishan Puri and Others Vs. State of Punjab and Another,

(ii) 1983 (4) SCC 553 (paras 29 and 38) ;

(iii) AIR 1985 (Supp) SCC 476 (I.T.C. Limited and Ors. v. State of Karnataka and

Ors.)

(iv) AIR 1999 SC 125 (Belsund Sugar Co. Limited v. The State of Bihar and Ors.)

6. Sri Jayakumar S. Patil, learned senior Counsel appearing on behalf of Sri T. Basavaraj, learned Counsel appearing for Petitioners in some of the writ petitions submitted that, the order passed by the Government is not traceable under Sections 126, 65, 148 and 150 of the Act. Government has got no power to fix the market fee under any provisions of the Act. Therefore, the said order passed by the Government is one without authority of law. He further submitted that, as per Section 150, the Market Committee has to be given a reasonable opportunity of being heard and the said mandatory provision of the said Section has not at all been followed by the Director. Therefore, the amendment of Sub-section (2) of Section 65 of the Act is not in strict compliance of the mandatory provisions of the Act. The said amendment has been brought in pursuance of the direction issued by the Government and there is no independent decision as such taken by the Market Committees. Therefore, it has to be declared as illegal and bad in law and the purpose for which it was amended is not in consonance with the mandatory provisions of the Act and Rules. However, so far as the other contentions are concerned, he submitted that, he would adopt the submissions made by Sri Subhash B. Adi, learned Counsel appearing for some of the Petitioners.

7. All other Counsel appearing for Petitioners in other writ petitions submitted that, they would adopt the arguments advanced by Sri Subhash B. Adi and Sri Jayakumar S. Patil.

8. Per contra, Sri B. Anand, learned Government Advocate appearing for Respondents 1 and 2 namely State Government and the Director of Agricultural Produce Marketing, substantiated the direction issued by the Government and submitted that, the same is within the power conferred on it under the mandatory provisions of the APMC Act and APMC Rules. The Government, being the supreme authority, in order to achieve the aim, object and reasons, to fulfil the statement of object and reasons of the Act and taking into consideration the distress sale by agriculturists, has issued the direction for enhancement of market fee for the purpose of contribution to the fund called "Revolving Fund" and no error or illegality as such has been committed in doing so. To substantiate his submission, he has taken me through the definition of agriculturist, constituents of Market Committee, and the Director of Agricultural Marketing. The Director, being the representative of the State Government, has been appointed to carry out the object of the Act and the directions given by Government from time to time. Further, he submitted that, the Government has got the power to control the functioning and administration of the Market Committee through the Director of Agricultural Marketing and also submitted that, as per Section 41 of the Act, the Chairman and Vice-Chairman are elected from the agriculturists class only. Section 63(ia) inserted by Act No. 17 of 1980 facilitates for transport of notified agricultural produce in and to the yard and the

amendment has been brought to Section 63, (vii) to (viii.d) inserted during 1976, 1980 and 1991 respectively. As per Section 93 of the Act, the Market Fund shall be expended. As per Section 126-A of the Act, the Government has got the power to give directions to the Market Committee for achieving the object and reasons. As per Sections 148 and 150 of the Act, the Government being the supreme authority, has got every right to direct the Market Committee to make or amend the bye-laws in consonance with Sections 148 and 150 of the Act. Further, to substantiate the submission regarding quid pro quo, the learned Government Advocate placed reliance on the judgments of the Hon''ble Supreme Court as follows:

- (i) Kewal Krishan Puri and Others Vs. State of Punjab and Another, ;
- (ii) 1983 (4) SCC 354 (paragraphs 4 and 20) (M/s. Sangha Gupta Rice and General Mills and Ors. v. State of Punjab and Ors.)
- (iii) 1985 SC 476 (SC)(paragraphs 176, 177);
- (iv) The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., .

Further, he submitted that, there is no force in the submission made by Sri Subhash B. Adi that under Essential Commodities Act, the scope and object is to distribute all the essential commodities for a reasonable price and that the said Act is in no way concerned nor applicable to the facts and circumstances of the case on hand. Regarding the contention of the learned Counsel for the Petitioner in so far as "Revolving Fund" is concerned, he submitted that, the same is made only for a particular period keeping in view the distress sale by farmers/ agriculturists and the Government has got every power for creating such a fund. He placed reliance on the Commissioner of Income Tax, Gujarat-III, Ahmedabad Vs. Ahmedabad Rana Caste Association, (Paragraphs 18, 19, 20, 22) and submitted that, much importance need not be given to the non-mentioning of the provision, in Government Order vide Annexure-C as long as the said order is in accordance with the mandatory provisions of the Act and non-mentioning of the provision will not take away the power of the Government as envisaged under the Act. Regarding the submission made by the learned Counsel appearing for the Petitioners that, the Petitioners have not been heard by the authority, he submitted that, the said submission has no substance for the reason that only few Petitioners have filed their objections and their objections have been considered by the respective Market Committees and have been overruled and amended the bye-laws. He submitted that, in the judgment relied upon by the learned Counsel for the Petitioners viz. 1982 (2) KLJ 357, nowhere a positive direction, as such, has been issued by this Court that, the Petitioners should be heard. Only during the course of order, it has been mentioned that, the objections filed by the Petitioners therein should be considered. Further, he vehemently submitted that, when the statute itself has not provided for hearing, the question of giving personal hearing to the Petitioners does not arise. Further, he vehemently submitted that, a historic evaluation is necessary having regard

to the present ground reality and the farmers in distress due to drought and uncertainty of natural rain and also the fact that, in recent times, several farmers have committed suicides. In order to protect their interest, a Revolving Fund has been created to give a just, fair and reasonable price for their commodities. Therefore, the submission made by the learned Counsel appearing for the Petitioners that, Government has no power to issue directions has no substance nor any force. Hence, it is liable to be rejected.

9. Sri B.G. Sridharan, learned Counsel appearing for APMC in some of the writ petitions, inter alia, contended and substantiated the impugned order and submitted that the amendment of the bye-law by the Market Committees is in strict compliance of the mandatory provisions of the APMC Act and no error or illegality as such has been committed in issuing the same and in implementing the said order. To substantiate his submission, he submitted that, under Sections 2(19-A), 3, 4, 5, 6, 8 and 117, the interest of the agriculturists and marketing of agricultural produce has been fully safeguarded and as per Section 63(2)(ia), 63(2)(a)(vii), 63(2)(a)(xiii) and 63(2)(b)(viii) read with Rule 60C, necessary infrastructural facilities for the transport of notified agricultural produce in and to the yard etc., is to be provided by the Market Committee. As per Sections 90, 91, 93 of the Act and other provisions of the Act, is obligatory on the part of the Market Committee to safeguard the interest of the distressed agriculturists and provide other infrastructure facilities. Further, he submitted that as per Section 126-A, the Government, being the supreme authority, has got every power to issue such a direction to the Market Committee for implementation of the object and reasons as mentioned in the preamble of the Act. So far as the "Revolving Fund" is concerned, the Government has thought it fit to bring the said Scheme in order to give a just, fair and reasonable price to the farmers in distress. The said enhancement is made after taking into consideration the economic status, condition of the farmers and distressed agriculturists in general and the said enhancement made is just and proper and is well within the mandatory provisions of the APMC Act. Further, regarding the submission that, excess funds are available with the Market Committee, he submitted that, as a matter of fact, the Market Committee is lacking funds and due to lack of funds, they are not in a position to provide the necessary infrastructural facilities for scientific development of the Market Committee. Therefore, it was thought fit by the Government and the authorities concerned, that the market fee has to be enhanced to make good for the "Revolving Fund". So far as the amendment of Sub-section (2) of Section 65, and Section 148 of the Act, he submitted that, the authority has acted under the delegated legislation and that power has been given to the Market Committee. It is not open for the traders to question the amendment of bye-law now, on the ground that it is bad in law. The Committee has got its own power as envisaged under the mandatory provisions of the APMC Act. The said bye-law has been amended after considering the objection filed by some of the traders and in strict compliance of the mandatory provisions of the APMC Act and no error or illegality as such has been committed. To substantiate

his submission regarding the object and Scheme of the Karnataka Agricultural produce Marketing Regulation Act, he placed reliance on the well settled law laid down by the Supreme Court in *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, ; and 1972 and 2 KLJ 173 (8 and 9) AIR 1979 Kar 195 . Regarding quid pro quo, he placed reliance on AIR 1983 SC 1246 (paragraphs 15, 29, 30 etc). So far as 1985 supplement SCC 476, and submitted that, the finding regarding the regulations of tobacco under the Karnataka Act was held impermissible. But in the subsequent decision, the said finding has been reversed by the Constitution Bench in *Bhagwan Dass Sood Vs. State of Himachal Pradesh and others*, (paragraphs 126, 169 and 193), 1995 1 SCC (paragraphs 21, 24 and 28); *Bhagwan Dass Sood Vs. State of Himachal Pradesh and others*, (paragraphs 35, 36, 37); 1982 (2) K.L.J 357 (paragraphs 3, 4 and 5) and 2001 (5) K.L.J 23 (21 and 24). Further, regarding the question of not affording hearing to Petitioners, he has taken me through the reliance placed on *Sri Subhas B. Adi*. 1982 (2) KLJ p. 357 (paragraphs 58 and 65) and pointed out that, at the request of the learned Advocate General and the Counsel appearing for APMC, the Court has observed the modality to be followed in future regarding giving opportunity to the parties, the Court has observed, but there is no direction as such or law as such laid down. He submitted that, in the said decision, it is mentioned that, if any body files objections, they should be given hearing and hearing is not contemplated under the mandatory provisions of the APMC Act and any assurance given by the learned Counsel appearing for the parties therein during he course of submission in that case, was only with regard to that case and the same is not binding in all cases as held by Supreme Court in *Vasavi Traders case*.

10. Sri Thimmegowda, learned Counsel appearing for APMC in some of the other writ petitions also substantiated the impugned order passed by the Government and submitted that, the amendment made by the Market Committee is just and reasonable and no error or illegality as such has been committed. As per Section 111(iii), the Market Committee is duty bound to give aid to the functionaries and as per Section 112(g) it is duty cast on the APM Cs to arrange for safety insurance of the life of the farmers and the agriculturists, being the market functionary. To safeguard the interest of the agriculturists several amendments have been brought by the Market Committee. Government, being the supreme authority as well as the final authority, has issued the direction within the mandatory provisions of the APMC Act. Further, he submitted that, Section 131-A provides for establishment of National Integrated Produce Market etc., for the farmers who are involved in the NDDB Scheme under the NDDB Act namely the Karnataka Silk Worm Seed (Cocoon and Silk yarn) (Regulation of Production, Supply, (Distribution and Sale))Act, 1959. Section 17-A of the said Act provides for establishment of Development and Price Stabilisation Fund and as per Rule 17-1 (c), the licenced trader who purchases silk yarn in a silk exchange shall pay a market fee at the rate of 02% of the price of silk yarn sold or purchased. To substantiate, the Government has issued the notification as permissible in view of the law laid down by the Constitution Bench of the Supreme Court in AIR 1962

SC 1517 (Paragraph 6), wherein it is held that, the notification issued is not discriminatory in nature. As per Amar Nath Om Prakash and Others Vs. State of Punjab and Others, ; AIR 1980 SC 1023; AIR 1985 SC P. 218 (para.20), he submitted that, there is no burden on the trader for collecting the enhanced fee. The enhanced fee that is collected by the trader is passed on to the consumer and the traders are only acting like agents and the said proposition of law has been laid down by the Supreme Court following the seven bench decision reported in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, , holding that the market fee paid is passed on to the subsequent purchaser and no burden or liability falls on the traders. Further to substantiate his submission, he placed reliance on Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, ; wherein it is held that, the market fee collected by the trader belongs to the Market Committee and the burden will be passed on to the third party namely the purchaser. As held by the Supreme Court in Sanjay Kumar Vs. The State of Bihar and Others, , the rights of the traders are not infringed and hence, the question of interference does not arise. Government has taken the decision taking into several factors and the Government has issued Government Orders earlier in 1999 and 2001 and those orders have not been challenged by the Petitioners. Without challenging the earlier orders, the Petitioners cannot maintain these petitions by assailing the present order. The earlier order issued by the Government is as early as in the year 1999 and after lapse of more than four years, the Petitioners have now approached this Court and they are not entitled to maintain these petitions and hence, they are liable to be dismissed on the ground of delay and laches. To substantiate the said submission, he placed reliance on the decision of the Supreme Court reported in Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, . Further he submitted that, majority of the Petitioners have not filed their objections and such persons have no right to challenge the bye-laws as held by the Hon"ble Supreme Court in AIR 2000 SC 3737 Head Note C. Further, he vehemently submitted that, the purchase agencies are liable to pay 50% of the profit to the Revolving Fund as per 12.09 of the Fair Price Scheme and at the time of making amendment of the bye-law, the Market Committee has taken independent decision, and not on the basis of the direction issued by Government, and the submission made by the learned Counsel appearing for the Petitioners is wrong and baseless.

11. Sri C.R. Patil appearing for APMC in some of the other petitions submitted that, he would adopt the submission made by the learned Counsel appearing for APMC. He submitted that, the Government has got the power to issue the direction and placed reliance on Samsher Singh Vs. State of Punjab and Another, (paragraph 9); 2002 SC 1295 (paragraphs 16 and 17) and AIR 2004 SCW 3789 (para.142). He submitted that, the Petitioners have no locus standi nor they are entitled to seek for the reliefs before this Court on the ground that, they are not affected parties. Instead of encouraging the farmers, they have resorted to come up before this Court without realising that without the farmer the survival of the

traders will be jeopardized. Therefore, he submitted that, the order issued by the Government and the amendment of bye-law is in strict compliance of the mandatory provisions of the APMC Act.

12. Sri M.R. Vijaya Kumar, appearing for Agricultural Marketing Board, submitted that, he would also adopt the submissions made by the learned Government Advocate and the Counsel appearing for Market Committees. Further, he submitted that he would urge the points other than the one urged by other Counsel. He submitted that, the enhancement of the market fees is uniformly fixed and no arbitrary or illegality as such has been pointed out by the learned Counsel for the Petitioners and except making oral statement, no authenticated document as such has been produced. The uniform market fee could be fixed by the authority as held by the Supreme Court in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, Head Note D (paras. 9 and 11) and also B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., Head Note B (paragraphs 11 and 12) and Head Note C (paragraphs 39 and 40); *Sirsilk Ltd. Vs. Textiles Committee and Others*, (paragraphs 31,34,35); AIR 1989 SC 2091; AIR 1999 SC P. 635; AIR 2003 SC 1742 (Para. 17,20 to 23). Further, he submitted that the bye-law has been approved by the Director and the same has been communicated to all the Market Committees. He has not issued any direction to amend the bye-law. Annexure-A is only communication issued to the Committee to implement the Scheme called the "Revolving Fund" Scheme which has been introduced in pursuance of the Minimum Support Price (MSP) Scheme introduced by the Central Government as early as in the year 1999 to fix the Minimum support price. As per 10.1 of the Fair Price Scheme, the selected agencies notified will purchase the commodity; and as per 11.02 of the Scheme, if the auction or tender price for any notified commodity under this Scheme is above the Fair Price (FP) declared such commodities shall not be purchased under this Scheme. This Scheme is not a profit agency and is introduced only to safeguard the distress sale by farmers/agriculturists. As per 12.02, the APMC should contribute Rs. 15 Crores, and Rs. 5 Crores to be contributed by the State Government for Revolving Fund. As per 12.11 of the said Scheme, the amount drawn from the fund shall be repaid as and when the sale proceeds are released and in any case within the date prescribed by the State Level Committee. The provision for introducing "Revolving Fund" is not at all violative of Article 19(1)(g) of the Constitution of India because it leaves the burden on the notified agencies and not on the traders. Therefore, the traders have got no say in the matter nor they are entitled to seek for any relief at the hands of this Court. Section 63(2)(b)(x) and Rules 60, 60-A and 60-B provide the loan facilities for the producers of food grains namely the farmers/agriculturists and where they are not getting just and reasonable price for their commodity. "Revolving Fund" scheme is a unique Scheme introduced by the Government taking into consideration the ground reality of the matter. It can be seen that, the Market Committee consists of eleven members from agriculturists class and only one member from traders

category and the burden of payment of enhanced fee ultimately falls on the purchaser and not the trader. The trader's role is just as an agent and not more than that. The Government has every right to issue the direction to enhance the market fee and the said direction issued is in consonance with Section 126-A of the Act. The learned Counsel for Board submitted that, out of the said fund, the said Scheme has been substantially implemented and wherever, need has arisen, funds have been released region wise such as Gulbarga, Belgaum, Mysore, Bangalore, etc. The Central Government and the State Government, having regard to the difficulty and the financial constraints, has introduced the said Scheme as provided under the Act and not beyond the scope, object and reasons and the purpose for which the Market Committee has been established. Therefore, he submitted that, there is no force in the submission made by the learned Counsel appearing for Petitioners nor they have produced any authenticated documents to substantiate their stand except making oral submission and taking the ground. The reliance placed by the learned Counsel appearing for the Petitioners have no bearing on the facts and circumstances of the present case. Nor they have made out any good grounds to interfere in the impugned order and the amendment of bye-laws for enhancement of market fee. Therefore, the writ petitions filed by the Petitioners are liable to be dismissed.

13. After hearing the learned Counsel appearing for the Petitioners and the learned Counsel appearing for Respondents for considerable length of time and after microscopic evaluation of the material available on record, threadbare, and taking into consideration the rival contentions urged by the learned Counsel appearing for the parties, the points that arise for consideration are as follows:

(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, comes 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?

14. Before considering points, stated above, let me consider the objects and reasons of the introduction of the Karnataka Agricultural Produce Marketing

(Regulation)Act, 1966 read with Karnataka Agricultural Produce Marketing (Regulation)Rules, 1968. Now turning to the provisions of the Act, Chapter - I of the Act contains the preamble, short title and the statutory definitions;Chapter II deals with Establishment of Markets, where under, Sections 3, 4 and 5 empowers the State Government for regulation of marketing of specified agricultural produce in specified area, declaration of market area and alteration of market area and of items of regulated agricultural produce. Section 6 (2) and (3) empowers the Director of Agricultural Marketing to issue the Notification, declaring any specified area in the market area to be a Market, submarket, and alter or any market or sub-market or any market yard or exclude any area from any market or sub-market or any place from any market yard. Section 6(2-A) empowers the Director of Agricultural Marketing to issue similar Notification in respect of market area, declared under the enactment repealed u/s 154. Section 7 provides for declaration of a date, on which the market and the sub-markets, shall be established. Section 8, inter alia, provides that, no person shall, without, or otherwise, than in conformity with the terms and conditions of a licence granted by the Market Committee in this behalf, use any place in the market area for the marketing of the notified agricultural produce. Chapter III deals with the constitution and establishment of the first, second and subsequent Market Committees, provision for elections of the Chairman and Vice-Chairman, qualification of candidates, disqualification for membership, prohibition for simultaneous membership, resolving the electoral disputes and allied matters. Chapter IV deals with the Conduct of Business of a Market Committee, such as powers and duties of Chairman and Vice-Chairman, modifications and cancellation of resolutions etc. Chapter XIV deals with Miscellaneous matters including power to frame Rules, Regulations and bye-laws. u/s 148(1), a Market Committee may make bye-laws for the regulation of the business and the conditions of trading in the market area, as it stood from the date of commencement of the Act and on the date on which the impugned amendment to bye-laws were made. Similarly u/s 150(1) of the Act, if it appears to the Director of Agricultural Marketing that, it is necessary or desirable in the interests of a Marketing that, it is necessary or desirable in the interests of a Market Committee to make any bye-law or to amend any bye-law, he may be order require the Market Committee concerned to make the bye-law or the amendment of the bye-law within such time as he may specify in such order. Sub-section (2) of Section 150 provides that, if the Market Committee fails to make such bye-law or such amendment of the bye-law and forward the same to the Director of Agricultural Marketing for sanction in accordance with the provisions of Section 148 within the time specified in such order, the Director of Agricultural Marketing, may, after giving the Market Committee a reasonable opportunity of being heard, by order make such bye-law or such amendment of the bye-law, and thereupon, subject to any order under Sub-section (3), such bye-law or such amendment of the bye-law shall be deemed to have been made or amended by the Market Committee in accordance with provisions of the Act. Sub-section (3) of Section 150 provides for an appeal to the State Government from any order of the

Director of Agricultural Marketing and the order of the State Government on such appeal shall be final.

15. To deal with wide variety of contentions taken in the memorandum of these writ petitions, the definitions of some of the mandatory provisions of the Act which have bearing on these matters are reproduced below.

Section 2(2): "Agriculturist" means a person cultivating any agricultural land, who is an occupant of such land, or a tenant of an occupant;

Section 2(12-A): "Director of Agricultural Marketing" means the Officer appointed by the State Government as such and includes any other officer or officers empowered by the State Government, by Notification to exercise or perform such of the powers or functions of the Director of Agricultural Marketing under the provisions of this Act or the Rules as may be specified in such Notification:

Section 2(19-A): "Market Charges" means all charges in connection with the handling of agric

Section 10: "Constitution of the first Market Committee".-(1) Notwithstanding anything contained in Section 11 the first Market Committee constituted for a market are ad

(i) Eleven agriculturists of whom one shall be a woman, one person belonging to the Scheduled Castes, one person belonging to scheduled tribes, , one person falling under category A and one person falling under category B residing in the market area, xx xx xx xx xx:

(ii) One person from amongst commission agents or traders other than retail traders residing in the market area, xx xx xx;

(iii) xx xx xx

(iv) One shall be a member of the Committee of management of a Co-operative Marketing Society carrying on business in notified agricultural produce within the market area, xx xx xx

(v) One shall be a member of the Committee of management of an Agricultural Co-operative Processing Society carrying on business in notified agricultural produce within the market area, xx xx xx;

(vi) xx xx xx

(vii) xx xx xx

(viii) One shall be an officer not below the rank of the Secretary of the concerned Market Committee, nominated by the Director of Agricultural Marketing, who shall have no right to vote u/s 44;

As per Sub-section (2) of Section 10, the State Government shall by notification nominate the Chairman and the Vice-Chairman from among the members

nominated and proceed further in accordance with Sub-section (3) and Sub-section (4)(a) to 4(c).

16. After careful perusal of Section 10, it can be seen that, majority committee members are represented from agriculturists class only, and the Chairman and Vice-Chairman are also elected from agriculturists class only. This proves beyond all reasonable doubt that, the State Government has got the power to control, administer, and conduct elections through the Director of Agricultural Marketing and this proves that, the Government is the supreme authority for implementation of the objects and reasons of the APMC Act. Section 41 of the APMC Act deals with election of Chairman and Vice-Chairman from agriculturists class only. Further, Section 63(i-a) of the APMC Act inserted by Act No. 17 of 1980 provides that, a Market Committee shall provide either independently or along with some other authority necessary facilities for the transport of notified agricultural produce in and to the yard. Section 63(2)(a)(xiii) inserted by Act No. 8 of 2001 deemed to have come into effect from 24th January, 2001 deals with the contribution to the Floor Price Scheme and Raita Sanjeevini Accidental Insurance Scheme at such rate as may be determined by the Director of Agricultural Marketing. Section 63(2)(b) (vii) and (viii) inserted in 1976, and (x) to (xii), inserted in 1986, 1988, and 1998 respectively. Section 93 stipulated the purposes for which the market fund shall be expended from time to time. u/s 111(iii), the Marketing Development Fund shall be expended for the purpose of giving aid to financially weak (or needy) market Committees in the form of loans and grants; As per Section 112(1)(g), the function of the Board is to arrange for safety insurance on the life of farmers and if necessary to contribute towards the premiums payable in respect of all agriculturists in the State. u/s 126-A, the Government has got the power to give direction to the Market Committee for fulfilling the aim, object and reasons; and Section 148 read with Section 150, pertains to the amendment of bye-laws and the power for making or amendment of bye-laws. It is worthwhile to reproduce Section 126-A of the APMC Act which reads as follows:

Section 126-A. Government's power to give directions to the Market Committee.- The State Government may give such directions to the Market Committee as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Market Committee to comply with such directions. (emphasis supplied by me)

17. After careful reading of Section 126-A, it is crystal clear that, the State Government may give such direction to the Market Committee as in its opinion are necessary or expedient for carrying out the purpose of the Act and it shall be the duty of the Market Committee to comply with such directions.

18. Having regard to the facts and circumstances of the case, I think it is necessary to go into the grass root of the status of the agriculturists in rural areas and the resources available to them, their financial difficulties, and marketing of their agricultural produce. However, it is significant to note that, an

agriculturist, to carry on agriculture, must have minimum infrastructural facilities such as the land for cultivation, agricultural equipments, irrigation facilities, skilled labour etc. For example, he must level the land by ploughing with the help of oxen or tractors taken on hire basis. He has to fertilize the land by using natural fertilizers for better yield or else buy fertilizers from the Market. For all these purposes, he has to avail the loan from Co-operative Societies, PLD Banks or Nationalised Banks. During Spring season, he starts his agricultural work obtaining loan from the Co-operative Society, or PLD Bank or Nationalised Bank, and out of the said loan, he must buy fertilizers, seeds, pay wages to the labourers, and other expenses and wait for timely monsoon. He also depends upon the cycling monsoon, climate and the conducive environment. If all these three things coincide, then only he can expect reasonable yield. Thereafter, the agricultural produce is supplied to the Market Committee.

19. Due to failure of timely monsoon since 3 to 4 years, severe drought conditions prevailed in majority of the Districts in the State. The major portion of the land in the entire State being dry land, the agriculturists are entirely depending upon the timely natural rain alone. There is no assured water facility through canals and the water resources are not sufficiently available when compared to other States. After doing hard labour with the assistance of the skilled labour, they are able to produce some agricultural produce. When the agriculturists go to the Market Committee to sell the agricultural produce, and if they do not get a just and reasonable rate for their produce, then, the entire hard work done by them in growing the agricultural produce will go in vain. The failure of timely monsoon will result in drought condition in view of which the agriculturists are unable to produce any yield and repay the loan obtained by them through various Banks. When the repayment of loan becomes impossible and the situation becomes unbearable, they go to the extreme extent of committing suicides. Having regard to all these difficulties faced by agriculturists, the Central Government, in the larger public interest, and in the interest of the agriculturists, in particular, who are the backbone of the country, has introduced the Floor price Scheme. The Deputy Secretary to Government, Co-operative Department has issued the order as early as on 24th November 1999 introducing the "Floor Price Scheme" for Agriculture and Horticulture commodities in Karnataka and also creating the "Revolving Fund" with an amount of Rs. Twenty Crores, major portion to be contributed by the Market Committee and the remaining by the State Government.

20. To achieve the aim and object, the Agricultural Produce Marketing Committees have been introduced by legislation and particularly to safe guard the interest of the distress agriculturists, who are not getting just, fair and reasonable price for their produce, the Government thought it fit to introduce the "Revolving Fund". Having regard to the all these background as stated supra, the State Government, being the supreme authority has thought it fit to issue a direction to the Director of Agricultural Marketing for enhancing the market fee from 01% to 1.5% and communicated the same to the said authority. The

Director, in turn, has communicated to all the Market Committees to make necessary amendment to their bye-laws. Accordingly, all the Market Committees have amended the bye-laws after following due procedure as envisaged under the mandatory provisions of the APMC Act and Rules. The Petitioners herein are claiming to be carrying on trading activities in the licenced market area, sub-market area, and it is their grievance that, the enhancement of market fee from 01% to 1.5% made is not justifiable on the ground that, the said enhancement made, if at all is to provide the basic infrastructural facilities to the respective Market Committees, then, the authorities cannot divert the said enhancement to other purpose such viz., the "Revolving Fund", that too, by exercising the executive power.

21. Now, let me consider each one of the points for consideration in detail.

Re: Point(i): As provided u/s 126-A of the APMC Act, The State Government may give such 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. It is pertinent to note here itself that, this is not the first time the Government has exercised Section 126-A of the Act for issuing the Direction to the Market Committee regarding enhancement of market fee. Even on earlier occasions also, by inserting Act No. 17/1980, Act No. 8/2001, etc., during 1976,1980,1991 etc., Section 126-A has been exercised by the State. After careful perusal of the object and reasons, in detail, as stated supra, and having regard to the grass root and ground reality of the problems faced by the agriculturists and also taking into consideration the Scheme introduced by the Central Government, after thorough evaluation and consultation with the experts in the Department, after making statement on the floor of the house, this unique Scheme called "Revolving Fund" has been introduced for the first time in the country to safe guard the interest of the traders, agriculturist by fixing a just and reasonable price for the agricultural produce produced by the agriculturists. The distress in the agricultural community in the State is due to drought condition prevailing in the State since 3 to 4 years and also since major population of the State staying in rural areas are purely dependent upon monsoon for their agricultural activities. The agriculturists, after using skilled labour, produce the agricultural commodities and when they bring the said produce to the Market Committee for sale, if they do not get just, fair and reasonable price, then, the said produce will be purchased by specialised agencies notified under the Scheme, by assuring the Minimum Support Price. Moreover, the said enhancement of market fee which is made, will in no way affect the turnover or income of the traders/Petitioners herein. The Government, being the supreme authority has issued the directions directing the Director, to give appropriate direction to the respective Market Committees to make necessary amendment of their bye-laws for enhancing the market fees as permissible u/s 65(2) of the APMC Act. The Market Committees have made necessary amendment of bye-laws as provided u/s 148 read with 150 of the APMC Act. The learned Counsel appearing for the Petitioners vehemently

submitted that, the Government has no power u/s 126-A of the APMC Act for issuing the directions which is mandatory in nature, to enhance the market fee from 01% to 1.5% and in turn direct the Market Committees to make necessary amendment of bye-laws and the same is without authority of law. He submitted that, the enhancement which is now sought to be made is for the purpose of contribution towards the "Revolving Fund" introduced by the State Government by issuing an executive order instead of exercising legislative power as envisaged under the Constitution. The learned Counsel appearing for the Petitioners did not dispute the power of the Government for making necessary amendments by way of legislation, but their dispute is that the Government has no power to make amendment by issuing executive order and the same is impermissible under Article 162 of the Constitution of India. The said submission made by the learned Counsel appearing for the Petitioners is strongly opposed by the learned Counsel appearing for Respondents stating that, this is not the first time that such a direction is issued. From 1976 to 2001, whenever it has been felt necessary by the Government, to achieve the aim and object and to carry on the purpose of the Act, the Government, being the supreme authority, has issued the directions. To substantiate the said stand, the learned Counsel appearing for Respondents has placed heavy reliance on the judgment of the Constitution Bench decision of the Supreme Court in the case of Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, and submitted that, in enacting Section 126-A, the legislature had not stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power the purpose and policy of the Act. Hence, it cannot be said that, the said Section gives uncontrolled power to the State Government and therefore, the submission of the learned Counsel appearing for the Petitioner that, the authorities have got no power, has no substance.

22. Further, the learned Counsel appearing for Respondents placed reliance on another Constitution Bench judgment of the Supreme Court in the case of Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another, . The said Constitution Bench decision of the Hon''ble Supreme Court, following the seven Judges'' Bench decision, has held that, the Notification by itself does not impose any fee on any commodity. What it says is to carry out the terms of Section 11 which require the maxima to be prescribed subject to which the Market Committee can levy fees on agricultural produce. The imposition of fees still remains to be made by the Market Committee under the power conferred on it by Section 11 subject to the maxima prescribed in the Notification and therefore, the notification by itself cannot be said to be discriminatory in nature. In the instant case also, the Government exercising the power as envisaged u/s 126-A of the APMC Act, has issued necessary direction to the Director of Agricultural Marketing for enhancement of market fee. The said direction issued by the Government is within the parameter of the mandatory provisions of the APMC Act, referred above. Therefore, I do not find any error or illegality as such committed by the authorities in exercising the power by issuing

direction to the Director of Agricultural Marketing. Therefore, the contention and the grounds urged by the learned Counsel appearing for Petitioners pertaining to this aspect cannot be sustained. Hence, it is held that, the direction issued by the Government is in accordance with law.

Re: point (ii): The learned Counsel appearing for the Petitioners vehemently submitted that, without following the procedure as envisaged u/s 148 of the APMC Act, the respective Market Committees have amended the bye-laws, enhancing the market fee from 01% to 1.5% without considering the objections filed by some of the traders wherein they have opposed the enhancement of market fee stating that the same is not for the benefit of the respective Market Committees. The reason for amending the bye-laws is that, on the basis of the direction issued by the Government, directing the Director to communicate to all the Market Committees to enhance the market fee from 01% to 1.5%, the respective Market Committees thought it fit to make the amendment and not on the ground that the same is required for providing necessary infrastructural facilities to the Market Committee. Further, he pointed out that, some of the Petitioners have filed the objections and the same have not at all been considered and that, the said amendment has been made without giving reasonable opportunity of being heard to the Petitioners. Therefore, the amendment to Sub-section (2) of Section 65 of the APMC Act is not in strict compliance of mandatory provisions of the APMC Act. To substantiate the said submission, Sri Subhash B. Adi, the learned Counsel appearing for the Petitioners placed heavy reliance on the judgment of the Division Bench of this Court in the case of Vasavi Traders reported in 1982 (2) KLJ P.357 and submitted that, the learned Advocate General and learned Counsel appearing for Market Committee in the above referred case, during the course of submission in that case, had submitted that, this Court can consider and issue appropriate guidelines as to how the objections if any filed by the parties should be dealt with. In the course of submission in that case, it was also stated that, if any guidelines or direction is issued, the same will be carried out and ill be followed. The Court has placed the submission made by the parties on record. But inspite of that, the Respondent - Market Committee has failed to consider the objections filed by some of the traders and they are not given an opportunity of being heard and therefore, the said amendment brought by the concerned Market Committees is liable to be set side on this ground. The learned Counsel appearing for APMC in some of the writ petitions, Sri B.G. Sridharan submitted that, no doubt the said submissions made by the then Advocate General and the Counsel appearing for Market Committee in the said case have been recorded but there is no direction as such given to the authority or no law as such laid down and that, no statement as such has been made by the then Advocate General or the learned Counsel appearing for Market Committee to the effect that, the interested parties will be heard. To substantiate his submission, he has taken me through Section 148 of the APMC Act and pointed out that, the statute does not provide for giving hearing to the parties. So far as the mandate of the statute is concerned, he submitted that the

objections filed by some of the traders have been duly considered before making amendment and necessary amendments have been brought in strict compliance of Section 148 and Section 150 of the APMC Act and under Sub-section (2) of Section 65-A and that no error or illegality as such has been committed. Further, Sri B.G. Sridharan has filed additional statement of objections, contending that, the Market Committee held its meeting on 25th March, 2003 and passed the resolution amending the bye-law No. 11(1)(a) so as to enhance the market fee from 01% to 1.5% and also invited objections from the persons concerned and the said proposal for amendment was duly published in the local newspapers namely "Sanje Vani" and "Ee Sanje" on 25th March 2003 and 27th March 2003 respectively inviting objections from the interested persons to file their objections for the proposed amendment. In response to the said paper publication, referred above, several objections were received by the Market Committee within the stipulated period. The said objections filed by some of the traders were placed before the Market Committee in its meeting held on 17th May, 2003. The Market Committee has considered the objections and suggestions given by the persons concerned and has overruled the same and passed the resolution resolving to enhance the market fee from 01% to 1.5%. After the resolution was passed, the same was forwarded to the Director of Agricultural Marketing for necessary approval as envisaged under the APMC Act on 29th May, 2003. Thereafter, the Director gave approval to the said resolution on 22nd November, 2003. Thereafter, the Market Committee published the said resolution as approved by the Director in the notice Board of the Market Committee on 27th November, 2003 and also circulated the same amongst the various market functionaries, stating that, the enhancement of market fee will come into force with effect from 1st December, 2003 and so on and after 1st December, 2003, the market fee has been enhanced from 01% to 1.5% and the same is enforced amongst all the market functionaries in the entire market area.

23. Further, Sri H.K. Thimmegowda, the learned Counsel appearing for Market Committee in some of the writ petitions, submitted that, no traders or interested parties have filed their objections. Wherever, objections are filed, the same have been considered and decision has been taken independently and not on the basis of the direction issued by the Government or at the instance of the Director of Agricultural Marketing. The Director has not issued any direction to the Market Committees to enhance the market fee, but on the other hand, he has only communicated the direction issued by the Government.

24. Further, the Counsel for Marketing Board, Sri, Vijay Kumar has taken me through the impugned communication dated 22nd November, 2003 vide Annexure-A issued by Director of Agricultural Marketing, and submitted that, the entire order must be read as a whole and the same cannot be read between the lines. He submitted that, after approval by the Director of Agricultural Marketing to amend the bye-law for collection of market fee from 1st December 2003, the market fee has been enhanced from 01% to 1.5% and the Director of Agricultural Marketing directed all the Market Committees to publish the

amended bye-law in the respective notice board in the respective market area. Therefore, he submitted that, the submission of the learned Counsel appearing for the Petitioners that, the Director has issued the direction to the Market Committees to amend the bye-law has no basis. Therefore, approval has been given by the Director of Agricultural Marketing to amend the bye-law with effect from 1st December 2003 for collection of market fee from 01% to 1.5%. Therefore, no error or illegality as such has been committed.

25. Further, it is significant to note here itself that, this Court directed Sri B.G. Sridharan, learned Counsel appearing for Market Committee in some of the writ petitions to produce a chart, showing therein as to how many Petitioners have filed the objections and what is their stand in their objections, if any filed. The learned Counsel has produced the chart showing that, about nine traders have filed their objections between the period from 8th April, 2003 to 24th April, 2003 and Petitioners in Writ Petition No. 19027/2004, Writ Petition No. 18999/2004, Writ Petition No. 19632-19634/2004, Writ Petition No. 19026/2004, Writ Petition No. 18813/2004, Writ Petition No. 19031/2004, Writ Petition No. 19033/2004 and Writ Petition No. 18113/2004 have filed their objections. It reveals from the chart made available to the Court that another seven persons namely the Bangalore Fruits and Commission Agents Association, Bangalore, Sindhu Caveri Enterprises, Bangalore, The Bangalore Aalugadde mathu Eerulli Varthakara Sangha Yeshwanthapura, Bangalore. The Bangalore Wholesale Food Grains and Pulses Merchants Association, The Bangalore Grain Merchants Association, The Karnataka Roller Flour Mills Association, Bangalore and Grasim industries Limited, Haveri, who have filed objections, have not at all filed any writ petitions before this Court. Further, it is pertinent to note that, out of nine traders, referred above, who have filed objections, not a single trader has opposed the introduction of "Revolving fund". However, the traders who have filed objections have stated that, they do not have any objections for introduction of the "Revolving Fund" Scheme proposed to be introduced by the Government and they have stated that the enhancement of market fee from 01% to 1.5% is an additional burden to the customer and also their trade. This proves that, no trader has got any objection to the introduction of unique Scheme by the Government viz., the "Revolving Fund" Scheme. After careful perusal of the additional statement of objections filed by the learned Counsel appearing for APMC, Bangalore, after going through the procedure envisaged under the mandatory provisions of the APMC Act, the objections filed by the traders, consideration of the objections by the APMC and over ruling of the same. I am of the view that the Market Committee has applied its mind and over ruled the objections on the ground that no trader has opposed the introductions of "Revolving Fund" Scheme and there is no objections for the amendment and they have only stated that there will be additional burden on the customer. It is pertinent to note that, there will be no burden as such on the Petitioners being the traders and they are already discharging their duty by collecting 1.5% i.e., 0.5 more than what they were collecting prior to the amendment and remitting

the same to the respective Market Committees. The Petitioners/traders are acting just like agents and not more than that. Moreover, what the extra market fee they are collecting will not be treated as income of the trader nor it will be included in the turnover of their business in the respective market area. After careful perusal of the stand taken by traders in the objections filed by them to the proposed amendment of bye-law, and the reason given by them, it shows that, the traders do not have any objections for bringing the amendment having regard to the aim and object and for contribution to the "Revolving Fund" Scheme introduced by the Government. Therefore, in my considered view, there is no force in the submission made by the learned Counsel appearing for the Petitioners that, due procedure has not been followed and the amendment of bye-law made is in strict compliance of the mandatory provisions of the Act as envisaged under Sections 148 and 150 of the APMC Act.

Re. Point (iii): The first part of controversy of the Petitioners that, Section 65(2) gives an unguided power to the Market Committee in the matter of specifying the fee and the same has been amended without hearing the interested parties and without following the procedure, is bereft of any substance. As per the statutory guidelines, the outer limit for the levy of fee is fixed at 02% under the statute. It can only relate to notified agricultural produce sold in the market area. The concept of fee is itself a further limitation. It contemplates requisite services. To say that non-contemplation in the Act of an obligation to consult the affected interest vitiates this power would be to make a right of prior hearing imperative in legislation. Therefore, I am unable to accept the contention of the learned Counsel appearing for the Petitioners that the decision taken by the authority is in exercise of unguided power which is one without authority of law and the Market Committee or the Government have not taken the relevant criteria into account and have acted arbitrarily in promulgating the bye-laws and therefore, the amendment brought is bad in law. He submitted that the impugned amendment of bye-law is unreasonable and is amenable to judicial review and is required to be struck down on the ground that it is highly unreasonable, unjust and improper and the Market Committee has not applied its mind before the bye-law are amended. Hence, the amendment of bye-law is vitiated for not following the procedure and is ultra vires of Section 65(2) and the said enhancement of fee from 01% to 1.5% is without application of mind by the Committee which is done without taking into consideration the relevant criteria and is only based on the direction issued by the Government. Hence, the same is not permissible. He submitted that, if at all the Market Committee wants to make necessary amendment for enhancement of the market fee, then the same has to be utilised for providing infrastructural facilities and services to the market functionary. But it is significant to note that in the instant case, only few Petitioners have filed the objections stating that, there will be an additional burden on the customer and it can be seen from the objections filed by them before the Committee that, they have not opposed the introduction of the "Revolving Fund" Scheme introduced by the Government and for contributing the enhanced market fee towards the

"Revolving Fund" Scheme to safe guard the interest of the agriculturists. It is also significant to note that, some of the traders who have filed objections have not filed any writ petitions before this Court. Now, in the instant case, the Petitioners are in no way affected either with regard to their turnover or liability of tax. Further, already these traders are collecting the market fee at the rate of 01% market fee and in turn they are re-depositing the same to the Market Committee and there is no additional service to be rendered or burden for collecting additional 0.5%. Therefore, the enhancement of market fee made is within the mandate of the statute which confers right to enhance upto 02%. But, in the instant case, the enhancement made is 1.5%. Therefore, the submission of the learned Counsel appearing for Petitioners that the enhancement of market fee from 01% to 1.5% is bad in law cannot be accepted for the reason that, the Petitioners except making oral statement, have not produced any authenticated document to show that, the traders have been put to additional burden for such collection. The Petitioners have failed to make out a case that the amended bye-law is manifestly unjust, capricious, unequitable or partial in its operation or oppressive or gratuitous interference with the rights of those subject to it and the question of its unreasonableness is one to be decided by the authorities making it and these facts have been considered elaborately by this Court and the enhancement made by the Market committee has been upheld in case of Vasavi Traders v. State of Karnataka reported in 1982 (2) KLJ 357. The impugned amendment has been brought for contribution towards the "Revolving Fund" and to safe guard the interest of agriculturists at the time of distress sale by them, by fixing the minimum support price. The learned Counsel appearing for the Petitioners vehemently submitted that, the affected party has to be heard in the matter before bringing the amendment of bye-laws and introduction of Sub-section (2) of Section 65 of the APMC Act is not in accordance with law, has got no substance because, what emerges is that, as per the statute, a person affected has no right to be heard before amendment of statutory rules or bye-laws. In the instant case, the statute has not provided any right to hear the affected parties before the statutory rules or bye-laws are made and unless and until the statute has conferred right upon the parties to be heard, then only, such persons are entitled for hearing. In the instant case, as stated supra, only few persons have filed objections and those who have filed objections have not raised any objections with regard to the creation of "Revolving Fund" Scheme or contribution towards the same. But, they have stated that, additional burden is going to fall on the customer. As rightly pointed out by the learned Counsel appearing for Respondents, the Petitioners themselves have stated that they are not the affected parties and it is the ultimate customer on whom the burden is going to fall. Therefore, these Petitioners have no locus standi to come up before this Court by filing these writ petitions contending that, the amendment brought to Sub-section (2) of Section 65 by way of amending the bye-law for enhancement of market fee is without following the procedure and without hearing the Petitioners and the same cannot be accepted and is liable to be rejected on the ground that they are not at all the affected parties. The learned

Counsel appearing for Respondents submitted that, the Petitioners being traders, the enhancement of market fee is definitely not going to be a burden on them. There is considerable force in the submission made by the learned Counsel appearing for Respondents. After careful perusal of the mandatory provisions of the APMC Act, it can be seen that, it is not the requirement of statute that, the Petitioners are entitled to be heard before bringing the amendment. The only requirement is that, if any interested or affected parties have filed objections, the same shall be considered and appropriate order shall be passed. I have already considered elaborately this aspect while answering point No. (ii) supra, and held that these Petitioners are not entitled to be heard because the statute itself has not provided for hearing the affected parties. Therefore, I do not find any justification or good grounds to interfere with the amendment of bye-laws made under Sub-section (2) of Section 65 of the APMC Act for enhancement of market fee from 01% to 1.5% and the said enhancement made is just and reasonable and that, creating the "Revolving Fund" is within the parameter of the statute. In this type of matters, the Court must have a pragmatic approach and much credibility cannot be given to the stand taken by the Petitioners that they have filed the objections and the same have been considered and they have not been heard. The specific grounds and the contentions taken by the Petitioners will not suffice their case, until and unless they produce some authenticated document to establish that they have filed the objections and opposed the proposed amendment for enhancement of market fee from 01% to 1.05% u/s 65(2) of the Act. Therefore, the said specific ground taken by the Petitioners in the instant writ petitions cannot be accepted and interference by this Court is uncalled for.

Re. Point (iv): The preamble of the Government Order dated 24th November 1999 in G.O. No. CMW.239/MRE/97 stipulates that the 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. Preamble 1.2 Para.36 of the policy resolution reads as follows:

on pricing of produce, the board policy of the State would be to go by the over all 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...

The object of the said Scheme as per point 2.01 is to protect the farmers against distress sale of agricultural/horticultural commodities by assuring a minimum support price.

"Floor Price" (FP) has been defined under item No. 6(c) which means, "a price declared by the State Level Committee constituted for this purpose as a minimum price for a commodity having the prescribed FAQ standards to be purchased under this Scheme, not covered by MSP Scheme of Government of

India."

The "Revolving Fund" (RF) means that fund which is created for the operation of this Scheme.

The district Level Committee and State Level Committee have been constituted at the District level and State Level respectively. Further, under item No. 10. "Purchase Agency" has been defined. The same reads as hereunder:

- a. Karnataka State Co-operative Marketing Federation, Bangalore.
- b. Horticultural Producer's Co-operative Marketing Society Limited, Bangalore.
- c. Karnataka Horticultural Producer's Co-operative Marketing and Export Society Limited, Hubli.
- d. Karnataka Agro-Industries Corporation Limited, Bangalore
- e. Karnataka Food and Civil Supplies Corporation Limited, Bangalore.
- f. Taluk Agricultural Produce Co-operative Marketing Societies.*****
- g. Karnataka Co-operative Consumer's Federation Limited, Bangalore.
- h. Karnataka Agricultural produce Export Corporation, Bangalore.
- i. Karnataka Co-operative Oil Seeds Growers Federation Limited, Bangalore.
- j. Karnataka State Agro Corn Products Limited, Bangalore.
- k. Any other agencies identified by the SLC from time to time.

11. Operation of the Scheme:

11.2 If the auction or tender price for any notified commodity under this Scheme is above the Floor Price declared such commodities shall not be purchased under this Scheme.

12. The Revolving Fund:

12.01: The capital requirement for implementation of the floor Price Scheme shall be met by the Revolving fund established for this purpose.

12.02: To start with, the corpus of Revolving Fund shall be an amount of Rs. 15 crores contributed by the APM Cs of the State and Rs. 05 crores sanctioned by the State Government to the Revolving Fund.

As per 12.11, the amount drawn from the fund shall be repaid as and when the sale proceeds are realised and in any case within the date prescribed by the State Level Committee.

26. After careful perusal of the Scheme, referred above, at Annexure-R2 produced by the Respondent No. 3 along with statement of objections, the Government Order has been passed vide Annexure-R-1 wherein the Government

has taken a decision on 24th November, 1999 for introduction of Floor Price Scheme and Revolving Fund and after their introduction, the said Scheme has been functioning effectively.

27. Further, it is the case of the Respondents in their statement of objections that, the steps were also taken to request the Central Government to contribute towards the "Revolving Fund" under the Scheme known as "Marketing Intervention Scheme" and it is further specifically clarified that the purchase agencies were also identified for marketing of specified agricultural commodities covered under the Scheme. Incidentally, it is relevant to know the meaning of Floor Price. "Floor Price" means a price declared by the State Level Committee constituted for this purpose as a minimum price for a commodity having the prescribed Fair Average Quality standards and the said price will be fixed in consultation with the expert Committee and after collecting details from the respective Agricultural Universities regarding the nature of crops grown by agriculturists. The reason for introducing the said Scheme is to save farmers from the distress sale of their produces, having regard to the grass root and ground reality of the problems faced by the agriculturists. If there is timely monsoon, conducive climate and environment coinciding each other, the agriculturists may produce more on the other hand, if all these factors do not coincide each other, then he cannot grow more and if he does not get reasonable price for whatever produce he has grown, then he sells the produces in distress. In order to avoid such circumstances, after deliberations with the experts, the Government thought it fit to introduce the said Scheme. If the farmers/agriculturists do not get reasonable price for their produce, then, the said commodities will be purchased by specified purchase agencies at such price as may be fixed by Government after consultation with the Taluk, District and State Level Committees constituted under the said Scheme. After making a statement on the floor of the house by the Hon'ble Chief Minister and on the basis of the Government proceedings, this unique Scheme has been introduced by the Government, which is the first of its kind in the country. The Petitioners without making a research and home work as to what is the purpose for which the Scheme has been introduced, have filed these writ petitions. If a party wants relief at the hands of this Court, he must make research and home work and he must make out a proper case. But, in the instant case, the Petitioners are in no way affected by collecting enhanced market fee of 0.5%. The Petitioners/traders are only acting as agents and not more than that. Further, they have not taken into consideration the fact that, the producers are the natural resources of the Market Committee and they are future for the successful functioning of the Market Committee. The Government, after taking into consideration all these criteria, has taken a decision. In such matters, time and again, the Apex Court and this Court have held that, the Court must be reluctant to interfere in the uniform policy decision taken by the Government to safeguard the agriculturists in general throughout the State. If the Petitioners had thought over of all these factors and the reason behind the enhancement of market fee, they would not

have approached this Court by presenting the instant writ petitions, assailing the impugned orders.

28. Therefore, having regard to the facts and circumstances of the case and taking into consideration the totality of the case and the Scheme, I do not find any good grounds to hold that, contribution towards the "Revolving Fund" by way of enhancement of market fee from 01% to 1.5% is unreasonable nor the State Government as well as the Market Committee have committed any error or illegality. Hence, interference by this Court is not justifiable.

Re Point (v): The contention of the learned Counsel appearing for the Petitioners that, there is no provision for providing any market fee for the purpose of contribution towards the Raitha Sajeewini Accidental Scheme or Floor Price Scheme. Even if the State wants to ensure such Scheme, it could be done only from the Consolidated Death Fund or from the Contingent Fund and not from the Market Fund. He submitted that; in view of the Scheme of the Act and the definition of Market Fund and its utilisation, the impugned amendment falls outside the scope of the legislative power. Therefore, the amendment brought by the Government inserted by Act No. 8/2001 to Section 63(2)(a) as Sub-clause (xiii) is deemed to have come into force with effect from 24th January 2001, is one without authority of law and it is ultra vires and unconstitutional. In order to consider the specific contention taken by the learned Counsel appearing for the Petitioners, it is necessary to have a glance at Section 63 of the APMC Act and Sub-clause (xiii) to Section 63(2)(a) inserted by Act No. 8/2001 which is reproduced as under;

Section 63(2)(a)(xiii); contribute to the floor Price Scheme and Raita Sanjeevini Accidental Insurance Scheme at such rate as may be determined by the Director of Agricultural Marketing.

The said amendment Act viz. sub clause(xiii) shall be deemed to have come into force with effect from 24th January, 2001. The Director has specifically invoked his power u/s 63(1)(i) r/w. Section 63(2)(a)(xiii) and read with Section 150 of the APMC Act. Section 63 of the APMC Act provides for powers and duties of Market Committee. As per Section 63(2)(a)(xiii), it is the duty of the Market Committees to contribute towards the Floor Price Scheme and Raita Sanjeevini Accidental Insurance Scheme at such rate as may be determined by the Director of Agricultural Marketing.

29. After careful perusal of the said mandatory provisions of the APMC Act, it is crystal clear that, the said Act clearly empowers the Director of Agricultural Marketing to determine the rate at which the Market Committee shall contribute towards the Floor Price Scheme, in order to raise additional fund required towards the Floor Price Scheme and hence the Market Committee was required to necessarily increase the market fee u/s 65(2) of the APMC Act. The market fee may be fixed by the Market Committee by amending its bye-laws up to a maximum level of 02% for every Rs. 100/- worth of commodity. Bye-law No. 4(1)

(a) of the bye-laws as existed on the relevant date, provided for fixing the market fee at 01% on every buyer. For the purpose of making contribution towards the Floor Price Scheme, the Director issued an order directing the Market Committee to fix the market fee at 1.5%. that is, by raising the fee from 01% to 1.5% collected by the Traders. Therefore, it became necessary for the Market Committee to amend the bye-law. Accordingly, the Director of Agricultural Marketing also issued the direction, directing the Market Committees to amend their respective bye-laws so as to increase the market fee from 01% to 1.5% to achieve the purpose enumerated therein. Therefore the amendment of the bye-law effected by the Market Committee is valid and the same is done in strict compliance of the mandatory provisions of the APMC Act. Therefore, the stand taken by the Petitioners has got no substance and hence it is liable to be rejected. The prayer sought for by the Petitioners to declare the amendment of bye-law as unconstitutional and ultra vires cannot be considered at this belated stage.

30. It is pertinent to note that Sub-clause (xiii) of Section 63(2)(a) of the APMC Act, inserted by Act No. 8/2001 is be deemed to have come into force with effect from 24th January, 2001 and the Petitioners have presented the instant writ petitions before this Court on 19th August 2004. There is delay of more than three and a half years in presenting these petitions seeking the instant reliefs. The said inordinate delay in filing the instant writ petitions has not been properly explained by the Petitioners by assigning cogent reasons, except taking specific contentions, referred above. The Petitioners being traders and doing business in the market yard, are well aware of the insertion of Sub-clause (xiii) to Section 63(2)(a) of the APMC Act. After lapse of nearly three and a half years, the Petitioners have come up before this Court under the guise of enhancement of market fee from 01% to 1.5%. Therefore, on the ground of delay and laches also, the prayers sought for by the Petitioners are liable to be rejected at the threshold itself. It is the duty of the authorities to safeguard the interest of the market functionaries by rendering service to the agriculturists and farmers, which is one of the important functions of the Market Committee in forming the Scheme of the Act. It is also the duty of the Market Committee to come to the aid of Agriculturists/farmers in fixing the Fair Price to the agricultural produce grown by them. If the price in the market goes down for any good reason, at such point of time, the Market Committee intervenes and sees that, the loss that is likely to be caused to the farmers is subsidised and made good through the "revolving Fund" created for the purpose. It is incorrect on the part of the Petitioners to say that, there is no relation between the enhancement of market fee and the services rendered and the element of quid pro quo is not satisfied. Therefore it is not permissible for the Petitioners to contend that the action taken by the authorities and the Market Committee is not in accordance with law and the said decision taken by them is in strict compliance of the aim and object of the APMC Act. Therefore, when this Court is dismissing the prayers sought for by the Petitioners on the ground of delay and laches, going further on the merits of

the case and the contentions urged by the learned Counsel appearing for the Petitioners is not justified. Hence, the prayers sought for by the Petitioners are liable to be rejected on the ground of delay and laches.

31. Further, the learned Counsel for the Petitioners has specifically contended that, the Petitioners have got fundamental right to carry on trade. In fact, the business run by the Petitioners is regulated and duly controlled under the provisions of the APMC Act and the regulations and restrictions imposed under the said Act are a reasonable restrictions and the said point is fully covered by host of judgments of the Hon''ble Supreme Court and this Court and there is no unreasonable increase of market fee as alleged by the Petitioners in these petitions. It is further submitted that, the collection of market fee is in the nature of tax and therefore is violative of Article 265 of the Constitution of India. However, the enhancement of market fee from 01% to 1.5% is made uniformly and the same is in accordance with the mandatory provisions of the APMC Act and Rules. The said enhancement of market fee is uniformly done by the Market Committee in the State on the basis that Revolving Fund" had been introduced for the purpose of providing aid to the agriculturists/farmers at the time of distress sale by them. The levy of market fee in the present case is ad Valorem and satisfies the element of quid pro quo. So long as the Market Committee renders service to the market functionaries by and large there is co-relation with the levy and the services rendered by the Market Committee and it cannot be said that, the element of quid pro quo is absent. Therefore, looked from any angle, the Petitioners do not have a case on merits.

32. Regarding the specific contention taken by the learned Counsel appearing for the Petitioners that, there is no quid pro quo service rendered by the Market Committee for enhancement of market fee from 01% to 1.5%, he placed heavy reliance on the judgment of the Apex Court reported in AIR 1980 SC P.1008 (Kewal Krishan Puri and Anr. v. State of Punjab and Ors.) and drew my attention to paragraph 8 page. 1015, the relevant portion of which reads as hereunder:

The authorities more often than not, almost invariably, will not be able to know the individual or individuals on whom partly or wholly the ultimate burden of the fee will fall. They are not concerned to investigate and find out the position of the ultimate burden. It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the prayer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payer of the fee and what proportion went to others. But generally and broadly speaking it must be shown with some amount of certainty. reasonableness or preponderance of probability that quite a

substantial portion of the amount of fee realised is spent for the special benefit of its payers.

33. The Constitution Bench of the Supreme Court after evaluating the entire mandatory provisions of the APMC Act, has laid down the principles for satisfying the tests for a valid levy of market fee on the agricultural produce bought or sold by licensees in a notified market area which read as follows;

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

2. That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

3. That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objections of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

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

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

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

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

34. With regard to the submission of the learned Counsel appearing for the Petitioners that, in spite of the well settled principles of law laid down by the Constitution Bench of the Supreme Court of India, in Kewal Krishan Puri's case, formulating guidelines in the interest of the Market Committee in the entire State, the said guidelines have not been followed and that there is no element of

quid pro quo in the instant case, and therefore, the order issued by the Government and the amendment of the bye-law is in no way beneficial to the market functionaries, I am of the view that, there is no dispute or quarrel regarding the well settled law laid down by the Constitution Bench of the Supreme Court in the case of Kewal Krishan case and also the guidelines which is issued to the benefit of the respective Market Committees in the country. But, after careful perusal of the same, it is seen that, the facts and circumstances of the said case are entirely different from the facts and circumstances of the instant case, because, the said law has been laid down based on the facts and circumstances that existed/prevailed at that point of time. However, in the said case, the Court has up held the enhancement of the market fee and to some extent has modified the same and has not rejected the same in toto. Therefore, there is no substantial force in the submission made by the learned Counsel for the Petitioners that, the said judgment is binding on the State and the Market Committee and they ought not to have resorted to enhance the market fee from 01% to 1.5% when there is no element of quid pro quo.

35. Further, the learned Counsel appearing for Petitioners placed reliance on the judgments of the Supreme Court reported in A.I.R. 1983 (4)SCC 353; A.I.R 1985 SCC 476; and AIR 1989 SC 3125, and vehemently submitted that, consistently, the Hon"ble Supreme Court has followed the well settled law laid down by it in Kewal Krishan Puri's case and another Constitution Bench has followed the said judgment in AIR 1999 SC 3925. Therefore, he submitted that, if the ratio of law laid down by the Hon"ble Supreme Court in Kewal Krishan Puri's case as well as in the subsequent judgments, referred above, are taken into consideration, then, the decision taken by the authorities for enhancing the market fee is one without authority of law. In my considered view, there is no dispute regarding the settled position of law laid down by the Supreme Court and relied upon by the learned Counsel appearing for the Petitioners. But the facts and circumstances in those cases are entirely different from the facts and circumstances of the case on hand and I do not find any direct applicability of the said judgments to the instant case.

36. Per contra, the learned Government Advocate and the Counsel appearing for Marketing Committee, inter alia submitted that the enhancement of market fee from 01% to 1.5% in accordance with the mandatory provisions of the APMC Act. The learned Government Advocate, to substantiate the said submission has taken me through the paragraph 37 of the Apex Court judgment in the case of Kewal Krishan Puri and pointed out that, in fact the said judgment is applicable directly to the stand taken by the Respondents in their statement of objections.

Paragraph 37 of the said judgment reads as follows;

37. On a parity of the reasoning which we have applied in the case of Market Committee Fund we may point out that the Marketing Development Fund constituted primarily and mainly out of the contributions by the Market Committees from realisations of market fees, can also be expended for the purposes of the market in the notified market area in relation to the transactions

of purchase and sale of the agricultural produce and for no other general purpose or in the general interests of the agricultural or the agriculturists. On that basis we may, as at presently advised hold as valid the purposes mentioned in Clauses (i), (ii), (iii), (iv), first part of Clause (v), Clauses (vi), (vii), (viii), (ix), (xii), first part of Clause (xiii), Clauses (xiv), (xv) and (xvi). At the same time we hold that the Marketing Development Fund constituted out of the Market fees cannot be expended for the purposes mentioned in second part of Clause (v), Clauses (x) (xi), second part of Clause (xiii) and Clause (xvii). We do not propose to strike down these provisions as being constitutionally invalid as the purpose of the law will be served by restricting the operation of Section 26 in the manner we have done.

37. Further, the learned Government Advocate submitted that, the law laid down by the Constitution Bench of the Apex Court at paragraph 37, extracted above, is directly applicable to the facts and circumstances of this case and submitted that, the enhancement has been made in the interest of the agriculturists in general uniformly through out the State to see that, the distress agriculturists do not suffer and that, they get just, fair and reasonable price for the produce brought to the Market Committee. In case, they do not get just and reasonable price for their produce, then, the said produce will be purchased by specified agencies as and when it is required and not otherwise. Therefore, he submitted that the reliance placed by the learned Counsel appearing for the Petitioners is not at all applicable to the instant case.

38. Further, the learned Government Advocate placed heavy reliance on the judgment reported in I.T.C. Ltd. and Others Vs. State of Karnataka and Others, . In para 177 of the said judgment, it is held that:

xx xx xx It is necessary to find out the primary object and essential purpose of the imposition. If the primary object and essential purpose of the imposition be service of some special kind to the users of the market or payers of fee, other consequences or other benefits to others do not in the least affect the position. The concept of benefit to the users of market must be looked at from a broad common sense point of view. Xx xx

Further, at Paragraph 188, it is held thus:

188. xx xx xx The concept of quid pro quo should be judged in the context of the present days - a concept of markets which are expected to render various services and provide various amenities, and these benefits cannot be divorced from the benefits accruing incidentally to others, (4) a reasonable projection for the future years of practical scheme is permissible, and (5) services rendered must be to the users of those markets or to the subsequent users of those markets as a class. Though fee is not levied as a part of common burden yet service and payment cannot exactly be balanced. (6) The primary object and the essential purpose of the imposition must be looked into.

Further, at Paragraph 210, it is held as follows;

210. xx xx xx xx xx xx xx xx xx xx xx xx In the facts and circumstances, it should be presumed and assumed that the funds spent by the "Karnataka Roads and Bridges Fund" under the Motor Vehicles Act have in fact been spent as an agency of the market committees in discharge of the functions and obligations of these committees. In my opinion, realisation of fees for such facilities would be justified and valid.

39. Further on the reliance placed by the learned Counsel for the Petitioners on the judgment reported in A.I.R.1999 SC 3125, the learned Government Advocate submitted that, the law laid down in Kewal Krishan Puri's case has been incidentally referred and nowhere in the said judgment, it is held that the law laid down by the Apex Court in Kewal Krishan Puri's case is a good law. Therefore, the reliance placed by the learned Counsel for Petitioners is not sustainable.

40. Sri B.G. Sreedharan, learned Counsel appearing for Market Committees in some of the writ petitions, on the theory of quid pro quo, has placed reliance on the judgment reported in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, and AIR 1985 (Supp) SCC 476 and submitted that, the finding regarding quid pro quo under the Karnataka Act was held not desirable but in the subsequent decision, the said finding was reversed by the Constitution Bench.

41. Further, the learned Counsel appearing for Respondents placed reliance on paragraphs 21, 24 and 28 of the judgment reported in A.I.R (1995) 1 SCC 655 (Krishi Upaj Mandi Samiti and Ors. v. Orient Paper and Industries Limited). The Hon'ble Supreme Court held that, it will be obvious from the above purposes for which the market fee is to be utilised that the said purposes are in furtherance of the object of the Act that is, to regulate the buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce for the benefit of the agriculturists who are the primary producers of the said produce. Further it is held in the said judgment that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general correlation between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

42. Further, the learned Counsel for Respondents placed reliance on the judgment reported in A.I.R.1997 (1) SCC 227 (Bhagwan Dass Sood v. State of H.P. and Ors.) wherein, it is held that, "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 middlemen.

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". Further, it is held that the "levy of market fee being essentially a fee and not a tax, such imposition of levy of market fee necessarily inheres in it the essence of quid pro quo between the fees levied and services returned to the payer of such fees. What should be the extent of service rendered to the payers of levy of market fees so as to keep such levy of fees within the bounds of accepted principle of fee involving existence of reasonable quid pro quo has been a vexed question agitated before various High Courts including this Court from time to time. Some of the decisions of this Court on this question have been indicated."

43. Further, the learned Counsel appearing for Respondents placed reliance on the Single Judge decision of this Court in the case of Smt. Tungamma and Ors. v. State of Karnataka and Ors. reported in 2001 (5) Kar. L.J. 23 wherein, it is held that, "the power exercised by State Government in issuing such notification is legislative in character and not "administrative" as it is not addressed to any particular case or any one single instance. There is no obligation on part of State Government to comply with principles of natural justice like hearing persons to be affected by division or considering their objections before issuing notification". Therefore, he submitted that, the contention of the learned Counsel appearing for Petitioners that, the Petitioners are not heard and principles of natural justice has not been complied with cannot be considered nor they are entitled to take such a contention in view of the law laid down by this Court, referred above.

44. Further, Sri H.K. Thimme Gowda, learned Counsel appearing for Market Committee in some of the writ petitions placed reliance on the judgment of the Apex Court in the case of Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, and submitted that, "the market fee payable to Commission Agent cannot be included in the turnover of purchases. Therefore, it cannot be included in the turnover of purchases for the purpose of levy of tax. Therefore, the fee collected by these Petitioners as traders has neither been included in their total turnover nor they are liable to pay the tax. When that is the fact and settled law laid down by the Supreme Court, the Petitioners are not at all entitled to come up before this Court, assailing the Government Order and the impugned Notification. Hence, the writ petitions filed by the Petitioners are liable to be rejected on this ground at the threshold itself.

45. Further, the learned Counsel appearing for Respondents submitted that, majority of the writ Petitioners have not filed any objections and only a few have filed the objections and those traders who have filed objections have not at all filed any writ petitions. Therefore, he submitted that, the Petitioners who have not filed objections have no right to challenge the amendment of the bye-laws. To substantiate the said contention, he placed reliance on the judgment of the

Hon"ble Supreme Court in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, and pointed out that "there can be certain situations in which an order passed in violation of the natural justice need not be set aside under Article 226 of the Constitution of India. For Examples, where no prejudice is caused to the person concerned, interference, under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Gadde Venkateshwara Rao v. Government of Andhra Pradesh* and it is not necessary to quash the order merely because of violation of principles of natural justice." (emphasis supplied). Therefore, he submitted that, in the instant case, the Petitioners being traders their rights are neither infringed in any manner nor affected and hence, the question of interference by this Court in the instant writ petitions does not arise.

46. Further, the learned Counsel appearing for Respondents submitted that, u/s 17-A of the Karnataka Silk Worm Seed, (Cocoon and Silk Yarn) (Regulation of Production, Supply, (Distribution and Sale)) Act, 1959, the Karnataka Silk Worm Cocoon and Silk Yarn Development and Price Stabilisation Fund is Constituted and the market fee is fixed at the rate of 02% of the price of the silk yarn sold or purchased. Therefore, he submitted that, this is not the first time the Government has taken the decision for issuing the direction to the Market Committees to enhance the market fee from 01% to 1.5% and in another enactment of the State also, referred above, 02% fee has been levied. Therefore, there is no unjust, improper and unreasonable decision as such taken by Respondents in the instant case. The Petitioners have got no right to assail the impugned order and the amendment of bye-law. Hence, the writ petitions filed by the Petitioners are liable to be rejected.

47. After carefully analysing the reliance placed by the learned Counsel appearing for the parties, as stated supra, there is no dispute or second opinion regarding the well settled principles of law laid down by the Supreme Court and this Court in series of matters. When the matters are come up before the Courts, the Courts take into consideration the ground reality and go to the grass root level and also takes into consideration the purpose of the enactment brought by legislatures to safeguard the interest of the producers who are the backbone of the Market Committees. Therefore, the enhancement of 0.5% market fee for contribution towards the "Revolving Fund," in my considered opinion, is highly just and reasonable and it satisfies the theory of quid pro quo. The only thing the Court should take into consideration is whether the element of service is there or not. As discussed in the above paragraphs in detail, I hold that, the element of quid pro quo is very much covered under the facts and circumstances of the case in hand.

48. Further, the learned Counsel appearing for the Petitioners contended that, even the Scheme is arbitrary as the decision of the Government to implement the said Scheme initially for onion and potato has been negated by the

Government itself by subsequent Government order dated 9th December, 2003 bearing No. SE-374/MRE/2003 and hence, the same is violative of Article 14 of the Constitution of India. The said specific contention taken by the learned Counsel for Petitioners cannot be accepted on the ground that, the Government has taken a decision not to implement the said Scheme for onion and potato in view of the fact that, the said commodities cannot be stored for longer periods like other commodities. The Government, after detailed deliberations in the matter with the concerned experts, having realised the nature of the said commodities and other factors, has taken a decision not to implement the Scheme so far as onion and potato are concerned and it does not violate Article 14 of the Constitution of India as contended by the learned Counsel for Petitioners. It is significant to note in the instant case that these Petitioners being traders, the direction issued by the Government for amendment of bye-laws for enhancement of market fee from 01% to 1.5% for contribution towards the "Revolving the "Revolving Fund" is only for a limited period and the said scheme nowhere affects the interest of the traders and hence, the traders ought not to have resorted to come up before this Court by assailing the impugned orders. The traders ought to have realised the fact that, without the producers, the traders cannot survive and without the traders, the producers cannot sell their produce. It can be said that, both are inter dependent and this basic concept has not been realised by traders. Moreover, this arrangement is made applicable only whenever there is distress sale by agriculturists with regard to particular produce and only whenever the agriculturists do not get just, fair and reasonable price for the commodities produced by them, in such circumstances only, the "Revolving Fund" Scheme will be implemented. Otherwise, there is no need or necessity for the Market Committee or the Government to resort to make applicable this Scheme for producers in general in respect of all commodities. Therefore, in my considered view, the submission made by the learned Counsel for the Petitioners that, it violates Article 14 of the Constitution of India has no substance and hence, it is liable to be rejected.

49. Further, in reply, the learned Counsel appearing for the Petitioners submitted that, as per Section 3 of the Essential Commodities Act, the controlling of the price of essential commodities is by the Central Government and once it has been exercised by the Central Government by fixing the price of essential commodities, the State Government has no power for exercising the same. In reply to the submission of the learned Counsel appearing for Petitioners the learned Government Advocate submitted that, the scope and object of the Essential Commodities Act is, for equal distribution of essential commodities at reasonable price only. However, so far as "Revolving Fund" is concerned, it is meant for a particular period and that too, only at the time of distress sale by farmers/agriculturists in respect of only those commodities that are covered in the Central Scheme under the Essential Commodities Act. Therefore, he submitted that, the facts and circumstances of the cases in hand have no bearing whatsoever on the control of price under the Essential Commodities Act by the

Central Government. As rightly pointed out by the learned Counsel appearing for Respondents, the ambit, scope and object of the Essential Commodities Act is entirely different and it does not have any bearing to the facts and circumstances of the instant case. Therefore, I do not find any force in the submission of the learned Counsel appearing for the Petitioners. Accordingly, the writ petitions filed by the Petitioners are liable to be rejected.

50. Having regard to the facts and circumstances of the case, as stated above, and having regard to the factual legal aspect of the matter as enumerated above, I do not find any justification or good grounds to interfere with the impugned communication dated 22nd November, 2003 vide Annexure-A issued by second Respondent-The Director of Agricultural Marketing, in pursuance of the Government order dated 23rd September, 2003 vide Annexure-C and also the Notification issued by the third Respondent dated 27th November, 2003 vide Annexure-B nor these Petitioners have made out any good grounds for quashing of the Government order dated 23rd September, 2003 in No. Sa.E. 277 MRE 2002 vide Annexure-C, nor I find any good grounds to declare that, Section 63(2) (a)(xiii) is ultra vires and unconstitutional.

51. For the foregoing reasons, the writ petitions filed by the Petitioners are dismissed.