

(1959) 04 MAD CK 0039
In the Madras High Court
Case No : Writ Petition No. 606 of 1957

Shanmugha Oil Mill, Erode

APPELLANT

Vs

Coimbatore Market Committee and Another

RESPONDENT

Date of Decision : 24-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Commercial Crops Markets Act, 1933 — Section 4
Madras Commercial Crops Markets Rules, 1948 — Rule 28(1)

Citation : AIR 1960 Mad 160 : (1960) ILR (Mad) 171 : (1940) 72 LW 752

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Judgement

(1) This is a petition under Art. 226 of the Constitution for the issue of a writ of mandamus, directing the first respondent to forbear from enforcing its notice, S. No. 610 dated 11-7-1957, calling upon the petitioner to pay cess for the groundnuts purchased from 23-11-1955 to 30-6-1957, under S. 11(1) of the Madras Commercial Crops Markets Act 1933, Rule 28(1) of the Madras Commercial Crops Market Rules, 1948, and bylaw 23 of the Coimbatore Market Committee by-laws.

(2) The petitioner is a merchant carrying on business at Erode in the name of the Shanmuga Oil Mill engaged in the purchase and sale of groundnuts. He has taken a licence for dealing in groundnuts under Ss. 5(1) and 5(3) of the Madras Commercial Crops Act (Madras Act XX of 1933), which I shall refer hereafter as the Act. The first respondent is the Coimbatore Market Committee constituted under S. 4-A of the Act. Coimbatore District is a notified area under the Act in respect of groundnuts and certain other commercial crops, such as cotton, tobacco and turmeric.

As the petitioner's business place is situated within the notified area, the market committee of Coimbatore would be entitled to collect certain fees and cesses for which provision has been made under the Act, the rules and the bylaws. Under

S. 11(1) of the Act the petitioner would be bound to pay a cess, provided for therein. On 11-6-1957, the first respondent issued a notice, calling upon the petitioner to render accounts for the purchase of groundnut between 23-11-1955 and 30-6-1957, and to pay cess on the quantity purchased in accordance with the rates fixed by the rules and regulations aforesaid.

The case for the petitioner is that the demand for the cess could not be held to be under the authority of law, and that, therefore, a direction of this Court is necessary to prohibit the first respondent from levying or collecting the cess.

(3) The Act was passed on the 25th July 1933 with a view to provide satisfactory conditions for the growers of commercial crops to sell their produce to the best advantage. It was intended to regulate buying and selling of commercial crops by providing suitable and regulated markets, eliminating the middlemen and reducing the scope of exploitation of the producers by financiers. The historical background and the purport of the legislation have been considered in P.P. Kutti Keya and Others Vs. The State of Madras and Others, and in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, .

Except in regard to one provision of the Act the legislation has been held to be valid. Under the Act a machinery is set up for controlling and regulating the sale of commercial crops. The State Government is given power to notify an area in respect of commercial crops and constitute a market committee for that area. Provisions are made for the constitution, supersession etc. of the market committee. The State Government is empowered to make rules for working the Act and the market committee could make its own by-laws for regulations of trade.

Establishment of a market for enabling the meeting of buyers and sellers and provision for its building amenities are provided for. To facilitate the object of the enactments being fulfilled certain restrictions have been imposed on traders in the notified area. In view of the contentions raised in this petition, it is necessary to consider briefly the provisions of the Act in its original form as enacted in 1933 and the change effected by the Amending Act, Act 33 of 1955.

(4) Section 2(1)(a) of the Act defines "commercial crop" to mean "cotton, groundnut or tobacco and includes any other crop or product notified by the State Government in the Fort St. George as a commercial crop for the purposes of the Act." Section 3 enables the State Government by notification in the official Gazette to declare their intention of exercising control over the purchase and sale of such commercial crop or crops and in such area as may be specified in the notification. The notification would call for any objections or suggestions which may be offered within a period to be specified in the notification.

After the expiry of the period specified in the notification under S. 3 and after considering such objections and suggestions as may be received, the State Government may declare the area specified in the notification, or any portion thereof to be notified area for the purposes of the Act in respect of the

commercial crop or crops specified in the notification. Section 4-A authorises the State Government to establish a market committee for every notified area and it is for the market committee to enforce the provisions of the Act and the rules and bylaws in such notified area.

It is also the duty of the market committee to establish such number of markets and provide for such facilities as the State Government may from time to time direct for the purchase and sale of the commercial crop or crops concerned. Section 11(1) authorised the market committee, subject to such rules as may be made in this behalf, to levy a fee on the notified commercial crop or crops bought and sold in the notified area at such rates as the State Government may determine, and till such rates are determined the rates mentioned in the specified schedule to the Act are to be adopted.

Section 12 enacts that all moneys received by a market committee shall be paid into a fund to be called "the market committee Fund", that all expenditure incurred by the market committee under or for purposes of the Act shall be defrayed out of the said fund, and that any surplus remaining after such expenditure has been met shall be invested in such manner as may be prescribed by rules. The other provisions in the section enable the market committee to pay the staff employed by the State Government for giving effect to the provisions of the Act. Section 13 prescribes the purposes for which the market committee fund can be expended.

They are (i) the acquisition of a site or sites for the market, (ii) the maintenance and improvement of the market, (iii) the construction and repair of buildings which are necessary for the purposes of such market and for the health, convenience and safety of the persons using it, (iv) the provision and maintenance of standard weights and measures. (v) the pay, pensions, leave allowances, gratuities, compassionate allowance and contribution towards leave etc. for the employees, (vi) the expenses of and incidental to elections etc. Section 18 confers on the State Government power to make rules for carrying out all or any of the purposes of the Act.

Section 19 enables the market committee with the previous sanction of the Director of Agriculture, Madras and subject to any rules made by the State Government under S. 18 to make by-laws for the regulation of the business and the conditions of trading therein. In pursuance of the rule making power, the State Government framed rules, styled as the Madras Commercial Crops Market Rules 1948. Rule 28 relates to levy of fees. That rule prescribes the maximum fee that can be levied on commercial crops under S. 11(1) of the Act,.

The Coimbatore Market Committee have also framed by-laws for regulation and conduct of the business. By-law 23 prescribes the actual fees that can be levied on all quantities of goods bought and sold within the notified area.

(5) The validity of the Act, rules and by-laws framed thereunder were the subject-matter of challenge in P.P. Kutti Keya and Others Vs. The State of Madras and

Others, . This court, by its judgment, upheld the validity of the Act except in regard to three matters. The learned Judges held that the provision in S. 5 of the Act, which prescribed that a person could not sell within the notified area except under a licence and in accordance with the conditions therein granted to him by the Collector, was a valid provision and could not be held to be unreasonable restriction in carrying on the business of an individual.

But they held that the provisions of S. 5(4)(a) which vested in the Collector an unlimited and uncontrolled power to grant or refuse to grant a licence, was invalid though a regulation of trade by the grant of licence to all who apply, pay the fee and obey the conditions imposed therein was valid. They struck down R. 37 which required buyers and sellers to register their names with the market committee and execute agreements in such form the committee may prescribe as invalid in so far as it prohibited persons whose names had not been registered as buyers and sellers from carrying on the business in the notified area.

They also held that the provisions of the Act, under Ss. 11 and 11-A and R. 28(1) and (3) providing for the levy of fees on the notified commercial crops bought and sold in the notified area at such rates as it might determine, were not repugnant to Art. 286(2) of the Constitution, but that the amounts collected were taxes and not mere licence fees, they being in the nature of a sales-tax. The levy under R. 28(3) and S. 11-A being for service rendered, it was held to be valid. In so far as the decision upheld the validity of the enactment, an appeal was filed to the Supreme Court.

The judgment of the Supreme Court was reported in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, , where it was held that the impugned provisions of the Act constituted only reasonable restrictions on the citizens' right to do business, and that therefore, they were valid.

(6) After the decision in P.P. Kutti Keya and Others Vs. The State of Madras and Others, , the State Government passed Act 33 of 1955 to amend the Act in certain particulars. I shall refer to the sections which are material for the purpose of the present case. Section 11(1) was repealed and re-enacted thus:

"Notwithstanding anything contained in the Madras General Sales-tax Act, 1939 (Madras Act IX of 1939), the market committee shall, subject to such rules as may be made in this behalf, levy a cess by way of sales-tax on any commercial crop bought and sold in the notified area at such rates as the State Government may, by notification, determine. Explanation: For the purposes of this sub-section, all commercial crops leaving a notified areas shall, unless the contrary is proved, be presumed to be bought and sold within such area."

In the other sub-sections the word "cess" was substituted for the word "fee". Rule 28(2)(iv) relates to the maximum annual fees which may be levied by the market committee in respect of licence granted under S. 5. The words "and on the commercial crop or crops bought and sold in the notified area" are omitted with the result a rule can be framed only in regard to fee which is leviable under

S. 5 and not under S. 11. Rule 28 which enables fixation of maximum fee on the commercial crop or crops still remains with the alteration of the term "fee" into "cess".

There is also similar alteration in R. 9 where the word "fee" in Cl. 1 was converted into "cess". It may, however, be noticed that under S. 11(1), as amended, the market committee is authorised to levy such fees by way of sales-tax at such rates as the State Government may determine. After the amendment of the Act in 1955, the market committee also amended its bylaw 23 by substituting the word "cess" for the word "fee". It is however difficult to understand how this bylaw can be modified in the way in which it was done.

Under S. 11(1) of the Act it is for the State Government to fix the cess by way of sales-tax. There is no power in the market committee to fix the fee under any bylaw as it could only adopt the fee prescribed by the Government.

(7) In pursuance of the authority vested under S. 11(1) the Government issued a notification on 28-8-1958, fixing the rates of levy of cess on goods bought and sold within the notified area. That notification could not, however, govern the present case, as the demand was for a period anterior thereto, that is from 23-11-1955 to 30-6-1957. The demand was purported to be made under R. 28 and bylaw 23, in their unamended form. As I stated at the beginning the notice of demand was on 11-7-1957, sometime prior to the notification by the Government fixing the rates. It will be seen that for that period there had been no determination of the fee by the Government and no notification was made in regard to the same.

(8) The validity of the demand has been contested on behalf of the petitioner. Mr. M. K. Nambiar, the learned counsel for the petitioner, urged substantially three contentions. (1) The amendment of S. 11(1) under which what was originally levied and sought to be collected as a fee was made a tax, was a colourable piece of legislation intended to circumvent the decision of this Court which declared the invalidity of the levy as a fee. (2) The levy under S. 11(1) would be invalid even as a tax as such a tax would not be included in the Consolidated Fund of the State to which all taxes levied by its Legislature should go under Art. 266(3) The delegation of the power to fix the rate of tax to the executive was illegal and therefore the entire provision was illegal.

(9) It was urged that Act 33 of 1955 was a piece of colourable legislation intended merely as a cloak or guise for continuing the retention of the levy of a fee when the fee was found to be not permissible under the old Act. According to the argument the amending Act 33 of 1955 only introduced verbal change, and in the essence the levy should be deemed to be fee, and, as the levy of fee by way of tax or cess is unauthorised by the Constitution, S. 11(1) in its present form, should be held to be void. The learned counsel also criticised the use of the legislative phrase, "cess" by way of "sales Tax" as a thing unknown to legislative phraseology.

I cannot, however, agree with the contention. No question of colourable legislation or of motive can at all arise in this case. It is undisputed that there is power in the State Legislature to levy a tax in the shape of sales tax on goods. This legislation has the effect of levying an additional sales tax in regard to commercial crop or crops. The Legislature having the power and there being no question of its trespassing on the legislative power of another state or the Union of India, no question of colourable legislation can at all arise. In *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, Mukerjea J. observed;

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular Legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the Legislature lacks competency the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by which could not be challenged on the ground of incompetency, and a Legislature which enjoys only a limited or a qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the Legislature in a particular case has or has not, in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a Legislature in passing a statute purported to act within the limits of its powers yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise."

It cannot be said that in repealing the old S. 11(1) of the Act and re-enacting it in its present form the State Legislature has transgressed the limits of its enumerated powers. Art. 246(3) read with Entry 54 of List 2 in the 7th Schedule to the Constitution confers plenary powers to the State Legislature to impose a tax on the sale of goods. S. 11(1) which levies only a cess by way of sales tax cannot be impugned as a colourable legislation and as such invalid. Secondly it was held in *P.P. Kutti Keya and Others Vs. The State of Madras and Others*, , that the fee sought to be levied was really in the nature of tax, though mistakenly termed as fee.

Therefore, the intention of the Legislature even originally was really to levy a tax, as its object was to utilise the amounts collected, for construction of the market

and for allied purposes. The amendment has proceeded only to effectuate the real intention of the original enactment by substituting in its place the word "cess" by way of sales tax in the place of "fee". This would only amount to carrying out of the original intention and not colourable device for collecting fee when such fee was not authorised. The contention, that notwithstanding the amendments referred to above S. 11(1) in its present form continues to levy only a fee, cannot therefore be accepted.

(10) It was next contended that the words "cess by way of sales tax" were intended to camouflage what was really a fee and would rather indicate that it was not levied as a sales tax and that the levy being more than what was required for the services rendered by the market committee should be held to be invalid. The word "cess" has a definite legal connotation, indicating tax allocated to a particular thing, not forming part of the general fund. Instances may be found among Central Acts, Cotton Cess Act, 14 of 1923, the Indian Lac Cess Act, 24 of 1930, Agricultural Produce Cess Act, 27 of 1940, the Coffee Market Expansion Act, 7 of 1942, Coconut Committee Act, 10 of 1944, Salt Cess Act, 49 of 1953, the Central Tea Board Act 13 of 1949(a) and Tea Cess Act, 9 of 1903(b). All these enactment's authorise levy of a cess. Amongst local Acts mention may be made of the Madras Sugar Factories Control Act (Act 20 of 1949) which authorises the State Government to levy cess. Art. 277 of the Constitution refers to "cess" as a special category of the taxes. According to its import the word "cess" is only tax and not a mere fee. It is, therefore, not necessary for the purpose of levy of cess there should be quid pro quo between the service actually rendered and the amount of tax levied, as it is not a fee but a tax.

(11) The next contention of the learned counsel for the petitioner was that the levy as a tax was invalid, as admittedly it would not be brought into the States' consolidated fund. It may be noticed that the cess is levied for the purposes mentioned in S. 13 of the Act. Sec. 13 provides that the market committee fund shall be expended for the purposes mentioned therein only. The tax was, therefore, intended solely for the purpose of enabling the market committee, providing it with a suitable building and for other expenses in connection therewith. A market committee, if, as I shall presently show, it is to be local authority, the tax levied for its purposes would not augment the general revenues of the State. The tax collected being solely for the benefit of the local authority it is but appropriate that it should be termed a cess. It is, therefore, relevant to consider as to what a market committee is. S. 4-A of the Act authorises the State Government to establish a market committee for every notified area.

The committee has the duty of enforcing the provisions of the Act and the rules and by-laws made thereunder in such notified area. The committee has also power to establish a number of markets and providing facilities therefor. S. 6(2) enacts that the District Agricultural Officer shall ex officio be a member of the market committee. S. 7 enacts that the market committee shall be a body

corporate. S. 9(3) enacts that the chairman, vice-chairman and every officer or servant of the market committee shall be deemed to be public servants within the meaning of S. 21 of the I.P.C. Licence under S. 5(1) is granted by the Collector. I have already stated the purposes for which the market committee is local authority for the purposes of the notified area charged with the duties prescribed under the Act. S. 3(17) of the Madras General Clauses Act defines local authority thus:

""Local Authority shall mean a municipal committee, District Board, Body of port commissioner or other authority legally entitled to, or entrusted by the Government with, the control or management of municipal or local fund."

The market Committee fund being a fund to be expended only in connection with the purposes of the market would be a local fund. In *Paul Ltd. v. Wheat Commission*, 1937 A. C. 139, it was held that the Wheat Commission constituted under the Wheat Act of 1932 (22 and 23 Geo. 5 C. 24) was a public authority. In *Griffiths v. Smith*, 1941 A. C. 170 it was held that the managers of non-provided public elementary school, a statutory body created by the Education Acts, were public authority within the protection of the Public Authorities Protection Act of 1893. A similar protection was also given to the officers of minister of War Transport under the Crown. Vide *Western India Match Co. Ltd. v. Lock*, 1946 K. B. 601.

It was held in that case that the minister, by his officers, was exercising the powers conferred upon him for the benefit of the public or for what he considered to be for the benefit of the public and so was exercising a public duty, although no member of the public could complain or take proceedings against him if he did not act as he did. Similarly a market Committee being an organisation for the purpose of regulating the trade of commercial crops so as to give benefit to the producers, will be one which will be exercising an authority entrusted to it as public duty. Its duty is not of a commercial nature, there being no profit motive. It is thus a local authority restricted in its operations to the notified area. The tax levied under S. 11(1) and collected by such authority would be of a local nature like a Municipal tax.

(12) The question then arises whether such taxes are valid and should be brought under the consolidated fund. Although to start with the various presidencies in India were independent of each other, the Regulating Act of 1773 made the Governor of Bengal as Governor General and the Supreme Head of all the provinces. The Charter Act of 1853 gave legislative power to the Governor General and deprived the local Governments of the power of independent legislation. After the passing of the Indian Councils Act, the local Legislatures had gradually acquired power. But the Government of India's control over revenues and expenditure was derived from the Acts of 1853 and 1858, which treated the revenues of India as one and applied them to the purposes of the Government of India as a whole.

This denied to Provincial Governments the right to use revenues which they raised, and they had to look to the Central Government for expenses. But gradually that system was changed. Later on, each local government was given a fixed grant for the upkeep of definite services, and a classification of revenue heads into Indian, and provincial was made. Section 80-A of the Government of India Act, 1919 invested the local Legislature of a province to make laws for the peace and good Government of its territories. Section 80-A(3) enacted that the local Legislature of any province might not, without the previous sanction of the Governor General, make any law imposing any new tax unless the tax is a tax scheduled as exempted from this provision by rules made thereunder.

Section 45-A of the Act enables provision being made by rules under the Act for the classification of subjects, in relation to the function of Government, as central and provincial subjects, for the purpose of distinguishing the functions of local Governments and local Legislatures from the functions of the Governor General in Council and the Indian Legislature and for the devolution of authority in respect of provincial subjects to local Governments Rules were framed under S. 45(1) of the Government of India Act, 1919.

These were called the Devolution Rules. Subjects were classified as central and provincial and provincial legislatures were given powers to legislate on provincial subjects without overriding the power of Imperial Legislature to legislate on all subjects for all provinces. Under that system, distribution of legislative power was only a matter of administrative convenience. The Provincial Legislatures were able to enact laws under the Devolution Rules for taxation in regard to certain specified matters, one of them being for the benefit of the local authorities. Section 143(2) of the Government of India Act, 1935, recognised this power in the provinces. It stated,

"Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any provincial Government, Municipality or other local authority or body for the purposes of the province, Municipality, District or other local area under a law in force on the first day of January nineteen hundred and thirty five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal list, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

Article 277 of the Constitution saves all taxes, duties, and cesses or fees of the kind mentioned above till provision to the contrary is made by the Parliament by law. It follows, therefore, that the taxation for the purposes of a local authority could be made by the Provincial Legislatures under the Government of India Act, 1919, and that right was preserved by the Government of India Act, 1935, and the Constitution. Under the Constitution the levy of taxes for the benefit of local authority is within the competence of State Legislature.

Article 246(3) specifically vests the State Legislature with exclusive power to

make laws for such state or any part thereof with respect to any of the matters enumerated in List II in the 7th Schedule. Thus both before and after the Constitution the Provincial or State Legislature had or has power to enact measures to enable a local authority to raise funds for its activities by taxation. In *Dow v. Black*, (1875) 6 PC 272, a question arose as to whether the Provincial Legislature New Brunswick had power to make law so as to impose taxes in connection with the construction of railway line in the State.

Under Art. 2 of S. 92 of the British North America Act, 1867, the Provincial Legislature was enabled to impose direct taxation for a local purpose upon a particular locality within the province. It was held by the Privy Council that the Act in question related to "a matter of a merely local or private nature in the province"" and it did not relate to the railway, or any local work within the excepted subjects mentioned in Art. 10.

(13) The levy of taxes under S. 11(1) for the purposes mentioned in S. 13 of the Act would, therefore, be a local tax within the competence of the State Legislature. Being a local tax, it will not form part of the consolidated fund envisaged in Art. 266 of the Constitution. That Article only prescribes that all public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State.

By reason of the fact that under the Statute itself the funds collected have been allocated to the local authority, it could not be deemed to be one received by the State and that therefore, such taxes need not and indeed could not go into the consolidated fund of the State under Art. 266 of the Constitution. It cannot therefore be held that the levy under S. 11(1) of the Act would be invalid on that ground.

(14) Mr. Nambiar next contended that the provisions of amended S. 11(1) amounted to excessive delegation of legislative powers to the State Government, and that therefore, it should be struck down as invalid. Section 11(1) imposes a tax and such a tax is levied for the benefit of a local authority. A power to tax is exclusively legislative one. But it is not uncommon to find that such power being vested in Municipalities and local boards etc., which are also representative institutions. But the power to tax in those cases cannot be justified for the reason that they are representative institutions but depend on the conferment of the same by the appropriate Legislature.

To take an example the power to tax by a municipality in the Madras State is derived from an Act of a Legislature namely, the Madras District Municipalities Act. Under Art. 265 of the Constitution a tax can be imposed by the authority of the law, that is, by an express legislative provision. Under the Constitution power to legislate is vested only in the Union and State Legislatures. Vide Art. 246. There could therefore be no power to levy a tax either in the executive government or local authority except perhaps under a valid delegation by the

appropriate legislature. It is therefore necessary to ascertain as to how far a Legislature can delegate its own function to other authorities.

(15) In England there are no constitutional restrictions, as Parliament is supreme. In matters other than taxation the Crown had certain prerogatives. A delegation by the appropriate authority would appear to have no constitutional invalidity. But from the 18th Century the powers of the State were shared between the King, Parliament and the Courts. The Donoughmore Committee stated that it was not so much the theory of separation of powers but the fact that officials and bodies had a large measure of autonomy that enabled them to develop under the exigencies of the duties entrusted to them. (Report of the Committee on Member's Powers, page 9).

In *R. v. Burah*, 1878-3 AC 889 at p. 906, it was stated "legislation conditional on the use of particular powers or the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence is no uncommon thing and in many circumstances may be highly convenient." The necessity for such delegation was held to be (1) that the Parliament had no time for discussion of details or no ability to decide technical details and (2) there may be necessity for speedy action as in cases of emergency. The safeguards adopted in England against abuse of delegated powers has been laid down in Craies on Statute law at page 271:

"The safeguards against abuse of delegated powers lie in the following: (i) the delegation must be to some trustworthy authority, e.g. a public department, (ii) the limits of the delegated powers should be strictly defined by the statute, (iii) if the interests of any particular section of the community are likely to be affected it should be consulted by the delegated authority before the regulations are made, (iv) publicity. This is extremely important and judges have from time to time pointed out the difficulty of discovering the relevant rules and regulations affecting any particular line of conduct or branch of industry, (v) there should be machinery provided for revoking or amending the delegated legislation, c. f., the Interpretation Act, 1889 S. 32. The provisions for laying the rules before Parliament afford, or should afford, a valuable safeguard."

(16) But under the American law where, as in India, legislative power is vested exclusively in the Legislature, and there is a separation of powers between the Legislature, Judiciary and the Executive, the propriety of a delegation is a constitutional issue. The general rule is that the Legislature cannot surrender or abdicate its powers. A power not legislative in character could be delegated. The Legislature can also delegate to the executive or other bodies the authority to promulgate rules and regulations.

But before doing so, they should declare the policy of the law and fix the legal principles, that is, a policy and a standard should be laid down. It should be a case of exercising an authority under the law not one to make the law. In *Statutory Construction* by Crawford, at page 26, it is observed:

"So far, however, as the delegation of any power to an executive official or administrative board is concerned, the Legislature must declare the policy of law and fix the legal principles which are to control in given cases and must provide a standard to guide the official or the board empowered to execute the law. The standard must not be too indefinite or general. It may be laid down in broad general terms. It is sufficient if the Legislature will lay down an intelligible principle to guide the executive or administrative official..... or if the rule laid down was "reasonable and in the interests of the public interest". From these typical criteria, it is apparent that the courts exercise considerable liberality toward upholding legislative delegations, if a standard is established. Such delegations are not subject to the objection that legislative power has been unlawfully delegated. The filling in or mere matters of detail within the policy of, and according to the legal principles and standards established by the legislature, is essentially ministerial rather than legislative in character, even if considerable discretion is conferred upon the delegated authority. In fact, the method and manner of enforcing a law must be left to the reasonable discretion of administrative officers, under legislative standards. It should be noted, however, that the standard established in Criminal statutes must be more exacting and precise, if the statute is to avoid being fatally defective for vagueness and uncertainty, since criminal statutes are strictly construed by the courts."

(17) Mr. Nambiar contended that in enacting Sec. 11(1) the Legislature completely abdicated its functions, as it did not determine or lay down any policy to be followed by the State Government in determining the tax payable by the traders to the market committee. In support of his contention, the learned counsel has referred to *Panama Refining Co. v. Ryan*, (1934) 79 Law Ed 446. It was held that the question whether such a delegation of legislative power was permitted by the Constitution was not answered by the argument that it should be assumed that the President had acted, and would act, for what he believed to be the public good, and that the point was not one of motives but of constitutional authority. At page 459, Chief Justice Evans observed,

"The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly, legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits, and the determination of facts to which the policy as declared by the Legislature is to apply. Without capacity to give authorisations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the

limitations of the authority to delegate, if our constitutional system is to be maintained.'"

This principle has been fully considered in re, Art. 143, Constitution of India and Delhi Laws Act (1912) etc., In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, , where majority of the Supreme Court Judges held that it was competent for the Legislature to delegate to other authorities power to frame rules for carrying out the purposes of the law made by it. At page 792 (of SCR): (at p. 345 of AIR), Kania C. J. observed,

"It was contended by the learned Attorney General that under the power of delegation the legislative body cannot abdicate or efface itself..... The true test in respect of "abdication" of "effacement" appears to be whether in conferring the power to the delegate the legislature, in the words used to confer the power retained its control. Does the decision of the delegate derive sanction from the act of the delegate or has it got the sanction from what the legislature has enacted and decided? Every power given to a delegate can be normally called back. There can hardly be a case where this cannot be done because the legislative body which confers power on the delegate has always the power to revoke that authority and it appears difficult to visualise a situation in which such power can be irrevocably lost..... In my opinion, therefore, the question whether there is "abdication" and "effacement" or not has to be decided on the meaning of the words used in the instrument by which the power is conferred on the authority. Abdication according to the Oxford Dictionary, means abandonment, either formal or virtual, of sovereignty. Abdication by a legislative body need not necessarily amount to a complete effacement of it. Abdication may be partial or complete. When in respect of a subject in the legislative list the legislature says that it shall not legislate on that subject but would leave it to somebody else to legislate on it, why does it not amount to abdication or effacement? If full powers to do anything and everything which the legislature can do are conferred on the subordinate authority, although the legislature has power to control the action of the subordinate authority, by recalling such power or repealing the Acts passed by the subordinate authority, the power conferred by the instrument, in my opinion, amounts to an abdication or effacement of the legislature conferring such power."

In *Hampton Jr. and Co. v. United States*, (1927) 72 Law Ed 624, Taft C. J. held that if Congress shall lay down by legislative act an intelligent principle to which the person or body authorised to fix the rate of customs duties on imported merchandise is directed to conform, such legislative action is not a forbidden delegation of legislative power. Referring to the division of the Government's power into three branches, namely, legislative, executive and judicial, the learned Chief Justice observed that it was not to say that the three branches were not co-ordinate parts of one Government, that each in the field of its duties might not invoke the action of the two other branches in so far as the action

invoked should not be an assumption of the constitutional field of action of another branch, and that the Congress had found it frequently necessary to use officers of the executive branch within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of providing for penalising a breach of such regulations. The learned Judge approved of the statement of Judge Ranney in the following words:

"The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority to or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

In *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, , the decision in the *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, was considered. It was held in that case that a valid delegation could go to the extent of authorising an executive authority to modify the law made but not in any essential feature. Such a modification could not include a change of policy, as essentially the legislative function consisted in the determination of legislative policy and its formation as binding the rule of conduct.

In a recent case *D.S. Garewal Vs. The State of Punjab and Another*, , the Supreme Court again considered the question of propriety of delegation of legislative power. In that case disciplinary proceedings were started against the appellant who was a member of the Indian Police Service under R. 5 of the All India Services (Discipline and Appeal) Rules, 1955, framed under S. 3 of the All-India Services Act, 1951. The propriety of the proceedings initiated against him was the subject-matter of an application under Art. 226 of the Constitution.

It was contended that Art. 312 laid down a mandate on Parliament to make the law itself regulating the recruitment and the conditions of service of all India services, and therefore, it was not open to Parliament to delegate any part of the work relating to such regulation to the Central Government for framing rules for the purposes. Section 4 of the All-India Services Act enacts:

"All rules in force immediately before the commencement of this Act and applicable to an all India service shall continue to be in force and shall be deemed to be rules made under this Act."

The Supreme Court held that it was in effect a statutory provision adopting all the rules which were in force at the commencement of the Act, governing the recruitment and the condition of service of the two all India Services and that it was valid. A reference was made to the following observations of Mukherjea J. (as he then was) in *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, .

"The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the frame-work of that policy. So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the legislation is to apply.""

In *V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another*, , the question as to how far the Legislature was competent to delegate its powers to other bodies was considered in detail. In that case it was held that what the Legislature had done was merely to authorise the rule-making authorities to carry out the policies enunciated in the statute and to fill up the details. The rules themselves were to come into operation only after they were approved by a resolution of the House.

Far from effecting self-effacement, the Legislature had retained complete control over the legislation. This decision was approved by the Supreme Court in *V.M. Syed Mohammad and Company Vs. The State of Andhra*, . In *S. Gopalan Vs. State of Madras*, , it was held that it was open to the Legislature to delegate its powers to the subordinate authorities, but in that case the assessment was placed before the Legislature annually under Art. 203 of the Constitution and was subject to its control and was therefore held to be a valid delegation.

The learned Advocate General relied upon a recent decision of the Supreme Court in *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, . In that case the power conferred on the State Government by S. 6(2) of the C. P. and Berar Sales-tax Act, 1947, to amend the schedule relating to exemption was held to be in consonance with the accepted legislative practice relating to the topic and was not unconstitutional. At page 394 (of STC): (at p. 913 of AIR), it is observed as follows:

"On these observations, the point for determination is whether the impugned notification relates to what may be said to be an essential feature of the law, and whether it involves any change of policy. Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

It may be seen that in the instant case before the amendment by act 33 of 1955, there was maximum fee fixed in regard to rate of levy under the rules, but under the amended S. 11(1) there was no maximum or minimum fixed. There is no indication in the enactment by way of guidance to the assessing authority. Being

a local tax which will not come under the consolidated fund, the Legislature would have no voice to question its propriety.

There is thus no power to control the assessment that may be levied by the executive Government by the authority granted to it under S. 11. I have referred to the authorities which establish that the existence of a mere power to repeal would not be sufficient to say that the legislature has control over the assessment. It has been held that a taxing provision has essentially three features (1) a declaration of liability, (2) assessment or quantification and (3) machinery for collection. Section 11(1), no doubt, declares a liability and provides the machinery.

But the rate of tax which is an essential part of the declaration and assessment has been completely delegated to the executive Government with no principles or basis laid down. Uncontrolled power is vested in the Executive to fix such rate as it pleases. In the absence of a legislative provision regarding any policy or limits of assessment for the guidance of the assessing authority, it must be held that the provisions of the section amount to excessive delegation of legislative power, and, therefore, invalid.

(18) The learned Advocate General contended that prior to the passing of Act 33 of 1955, there had been assessment and levies by the various Market committees and the Legislature should be deemed to have been aware of such levies, and when, therefore, they entrusted the power of assessment to the executive Government, they should be deemed to have been satisfied with the propriety of such assessment. Reference was made to S. 10 of the amending Act which validated all fees levied and collected, as affording an indication that the Legislature has applied its mind to the levy and approved of the same.

I cannot, however, accept this contention. Section 11(1) does not purport to limit the power of the executive Government to levy cess by way of sales tax at the rates already fixed or to any particular amount by instead it gives uncontrolled powers in the matter of fixation of rate of tax. That is illegal.

(19) The learned Advocate for the petitioner then contended that the demand was invalid for the reason that the notification fixing the rate of tax under S. 11(1) was made only on 11-7-1957 and was liability to pay the tax does not arise till the rates were fixed, the market committee would have no right to levy a tax or fee for any anterior period. Section 11(1) does not have any retrospective effect. The demand for the anterior period however is sought to be justified under the provisions of S. 10 of the Amending Act 33 of 1955. That provision runs:

"10(1) Notwithstanding anything contained in any law or in any judgment, decree or order of any court, all fees levied and collected or purporting to have been levied and collected by market committees under S. 11 of the principal Act before it was amended by this Act shall be deemed always to have been levied under the principal Act as amended by this Act as if this Act was in force at all

relevant times.

(2) No suit or other proceeding shall be maintained or continued in any court for the refund of any fee so paid; and no court shall enforce any decree or order directing the refund of any fee so paid."

That section would only apply to the case where a fee had been levied and collected and not to a case like the present one where the market committee is only seeking to enforce a liability. I am of opinion that the provisions of S. 10 cannot apply for another reason as well. Section 10 says that the levy made and collected shall be deemed always to have been levied under the principal Act as amended by the Amending Act as if latter had been in force at all relevant times.

That could only mean that the levy was made by the executive Government as envisaged in S. 11(1) of the Act and not that fee levied and collected as if it were determined by or approved by the Legislature, that is to say, the levy had been made by the executive Government as if it acted under S. 11(1). I have already held that determination of the tax by the executive Government under S. 11(1) was invalid, the power not having been validly delegated by the Legislature. If, therefore, follows that S. 10 could not validate the collection of fees made before the amending Act.

(20) The learned Advocate General then contended that although the decision in P.P. Kutti Keya and Others Vs. The State of Madras and Others, , held that the licence fee for the purpose of S. 13 was invalid as in reality it was only a tax, the decision did not consider the propriety of the levy as a licence fee, whether it bore a legitimate relationship to the services rendered by the committee. In support of his contention, the learned Advocate General placed before me a statement of the receipts of the Coimbatore Market Committee from 1952 to 1956, demonstrating that the receipts were just sufficient to cover the expenses incurred.

But this contention could not be accepted because under S. 11, as it originally stood, levy was made for various purposes and not merely in connection with the services rendered by the market committee. Having regard to the purposes mentioned in S. 13, it should be held that what was levied was a tax though called a fee. The provisions of the old S. 11(1) having been found to be invalid, the levy thereunder could not be justified as licence fee.

Further, in view of the fact that S. 13 confers benefits which could be secured by raising a tax as well as a fee, it will be difficult in such a case to apportion between that which could be considered as a tax. In Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, , the Supreme Court held that where an assessment consisted of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation, rendered the assessment invalid in toto.

In the present case it will not be possible to dissociate the portion of the fee collected for the purpose of services rendered with the portion which was outside those purposes, that is, those that could be achieved only by collecting a tax. It, therefore, follows that the entire assessment is bad.

(21) The learned Advocate for the petitioners next contended that S. 11(1) should be held to be invalid, as it would be hit by Art. 14 of the Constitution. It is urged that the provisions of S. 11 are not general in their scope and are not applicable to all dealers within the State, but that only a few districts are picked out by the State Government. It is further contended that while under the Madras General Sales-tax, a dealer has right of appeal to the departmental authority and to an independent Tribunal with a power of revision by the High Court, there is no such right in a case of levy under S. 11(1) of the Act.

I am satisfied, that there is no substance in the contention. The object of the Act is to give protection to the producers of commercial crops and the Government could validly apply that Act, to begin with, to the selected areas. It cannot be said that there is infringement of Art. 14 of the Constitution. Marketing legislation of this type is for the welfare of the general public. As regards the procedural right, it is enough to point out that it is not an uncommon feature in enactments dealing with local bodies not to provide a right of appeal.

In such a case the assessee has got right of resort to the civil court if the assessing authority exceeded its jurisdiction. The levy of cess could also be challenged if prosecution is initiated to enforce it in a criminal court. There is, therefore, no substance in the contention that the provisions of the Act offend the equal protection of law guaranteed by Art. 14 of the Constitution.

(22) In the result, I am of opinion that the Market Committee cannot properly call upon the petitioner to pay the cess for groundnut purchased from 23-11-1955 to 30-6-57 under S. 11(1) of the Madras Crops Markets Act, as S. 11(1) is invalid. A writ will issue. No order as to costs.

(23) Writ issued.