
(1986) 08 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No's. 12732 of 1986 etc.

Sri Siddalingeshwara Adike Stores

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-08-1986

Acts Referred:

Constitution of India, 1950 — Article 213, 254 (2)
Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Ordinance, 1986
— Section 78, 79 A

Citation : (1986) ILR (Kar) 4073

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, Indra Kumar and B.M. Krishna Bhat, for the Appellant;
N. Santosh Hegde, General, N. Devadas, HCGP, H.B. Datar and R.N.
Narasimhamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—In these Writ Petitions, presented by the petitioners, who are traders as also commission agents licenced under the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, (the Act for short), the following question of law arises for consideration :

Whether Sections 78 and 79-A of the Act introduced into the Act by the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Ordinance, 1986 (Ordinance for short), which provides for the collection of commission, payable to commission agents from the buyers, are unconstitutional?

In order to appreciate the question arising for consideration, it is necessary to make a brief survey of the relevant provisions of the Act, as it stood prior to the ordinance as also the substantial changes brought about by the Ordinance. The Act was enacted to provide for the better regulation of buying and selling of agricultural produce and the establishment and administration of markets for agricultural produce in the State. By Act 43 of 1976, the words "buying and

selling" in the preamble were substituted by the word "marketing". The significance of this change has been explained by this Court in the case of Vasavi Traders v. State of Karnataka ILR (Kar) 198 : 1982(2) KLJ 357 to which we shall refer later. Section (8) of the Act defined the words "commission agent". It read :

"commission agent" means a person who on behalf of his principal and in consideration of a commission or percentage upon the amount involved in each transaction keeps in his custody the goods of his principal and sells the same and holds himself liable to deliver it to the buyer and to make payment of its price to his principal ;"

Section 2(21) defines the words "market functionary". The expression includes Traders and Commission Agents. The petitioners in the first 11 petitions are traders and the petitioner in the last petition, is a commission agent. Section 75 of the Act made provision regarding payment of price, which read :

"Payment of price :- Subject to such deductions, if any, as are authorised to be deducted according to this Act or the rules or the bye-laws or under any other law for the time being in force, by way of-

i) fees,

ii) market charges,

iii) taxes, and

iv) the advances, if any, on the goods made and evidenced by authentic vouchers with interest, if any, due thereon, the price of the goods sold in the yard and outside the market or the sub-market in the market area.

Shall be paid to the seller by the buyer in cash, immediately after the sale except in a case where a commission agent agrees in writing, in the form prescribed by the bye-laws, to give delivery to the buyer on credit of a term which shall in no case exceed the maximum period of credit prescribed by the bye-laws."

Section 78 before its amendment read as follows :

"Commission agents" commission and responsibility--(1) No commission agent shall be entitled to charge commission to any person other than his principal, and such commission shall not exceed the rate prescribed in the bye-laws, which shall not be more than 2 per cent of the price for which the agricultural produce of the principal is sold, for the services rendered to his principal including the facilities provided by the commission agent for the storage of the goods of the principal."

Section 79 prohibited collection of any remuneration or fees for the services rendered except as prescribed under the rules or bye-laws made under the Act. Sub-section 2 of Section 79 further provided that no commission agent shall receive any fee or commission from any person other than his principal and other than those permissible under the Act. Sub-section 2 of Section 85 provided that

no trader shall buy or take delivery of any goods from any commission agent on credit basis, except to the extent provided under the said proviso on furnishing Bank guarantee prescribed for different classes of traders. Sub-section 2 of Section 86 provided that no licensed commission agent shall remain indebted to his principals in respect of the sums payable to them as a result of the sale of their goods entrusted to such commission agent for sale, to such an extent as the security or guarantee deposited or furnished falls short of such percentage as shall be provided in the bye-laws which shall not be less than one per cent of the aggregate amount of the indebtedness arising out of such sales. The substance of these provisions to the extent it is relevant for these cases was "commission agents" were regarded as agents of sellers and they could collect commission, at the rate prescribed only from their principals i.e., sellers and from no other.

2. The changes effected by the Ordinance are as follows:

The definition of the word "commission agent" has been replaced by Section 2(iii) of the Ordinance. It reads :

"For Clause (8), the following clause shall be substituted, namely :

"(8) "Commission agent" means a person who in the ordinary course of business makes or offers to make a purchase or sale of agricultural produce on behalf of the owner or seller or purchaser of such agricultural produce for commission;"

There is a significant departure regarding the definition of the "commission agent". According to the original definition, the commission agent was an agent of only the seller, but, according to the amended definition a commission agent could be the agent either for the seller or for the buyer. The substituted Section 78 and the newly inserted Section 79-A read :

"78. Commission agents, commission and responsibility :

(1) A Commission agent shall recover his commission only from the buyer at such rates not exceeding two per cent of the price for which the agricultural produce is sold as may be specified in the bye-laws :

Provided that in case of agricultural produce like fruits, vegetables and flowers, a commission agent may charge commission at such rates not exceeding four per cent of the price for which such agricultural produce is sold as may be specified in the bye-laws:

(2) A Commission Agent shall :

(a) arrange for the storage of the goods of the seller ;

(b) keep the goods of the seller in safe custody and adequately insure against fire ; and

(c) pay the seller in cash the price of the goods as soon as such goods are sold."

"79A. Market charges by whom payable :

All market charges payable after the sale of the agricultural produce shall be recovered from the buyer."

3. According to the substituted Section 78, in respect of every transaction that takes place in the market yard, in which, a commission agent is involved, the commission payable to the commission agent concerned according to the rates prescribed under the Act and the bye-laws has to be paid by the buyer. Instead of the seller as it was in the original Section 78. Section 79-A provides that the market charges payable after sale shall be recovered from the buyer for the reason that commission payable in respect of a transaction is also one of the market charges as defined u/s 2(19-A) which reads :

"market charges means all charges in connection with the handling of agricultural produce such as the commission of commission agent, brokerage, remuneration for weighing, loading, unloading, cleaning and dressing of agricultural produce; "

Various types of charges payable for services rendered are incorporated in the definition and according to Section 79-A, such of the market charges which are payable after the sale have got to be collected by a commission agent from the buyer, and one such charge is the commission. The petitioners who are traders and commission agents have urged the following contentions :

(1) The new Section 78 is violative of Article 14 for the reason that it is an arbitrary exercise of legislative power, in that, there was no basis at all for compelling the buyer to pay commission to the commission agents though commission agents render service exclusively to the seller.

(2) Under the law of contract, a commission payable in respect of an agent has to be paid by the principal, to whom the agent renders service and therefore, the ordinance is inconsistent with the provisions of the Contract Act enacted by the Parliament, and therefore, the ordinance is invalid as it has not received the instruction from the President as required under the proviso to Article 213(1) of the Constitution and therefore, Section 78 should be declared invalid.

(3) In support of the first contention, learned Counsel for the petitioners Sri K. Srinivasan, Sri Indra kumar and Sri B. M. Krishna Bhat submitted as follows :

In the nature of things and having regard to the various provisions of the Act set out earlier, a commission agent is a person whose services are engaged by a seller for the purpose of storing his agricultural produce and who is required to render all assistance to him in the marketing of agricultural produce. Except regarding the change brought about for the collection of commission from the buyer, the other provisions of the Act, which prescribed the duties and responsibilities of a commission agent remain unaltered. Therefore, the Section which provides for the collection of commission from a buyer for the services rendered to the seller was arbitrary.

4. In support of the contention that even a legislative provision can be struck

down on the ground that it is arbitrary, the learned Counsel relied on the Judgment of the Supreme Court in *Indravadan H. Shah Vs. State of Gujarat and Another*, 4. As far as this position of law is concerned, it is no longer in doubt. This aspect of Article 14, which had remained dormant was brought out by the Supreme Court in the case of *E.P. Royappa Vs. State of Tamil Nadu and Another*, and was reiterated in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . The question, however, for consideration is whether Section 78 which requires the collection of Commission from the buyer is arbitrary and therefore, violative of Article 14 of the Constitution.

5. Learned Advocate General for the State and Sriyuths H.B. Datar and R. N. Narasimhamurthy, learned Counsel appearing for other respondents submitted as follows :

Having regard to the object and purpose of the Act, namely, regulating the marketing of agricultural produce, the services rendered by the Agricultural Produce Marketing Committee or any of its functionaries like the commission agents were for the benefit of not only the seller, but also the buyer. The plea that no services is rendered by a commission agent to the buyer and therefore, the provision which requires collection of commission from a person to whom no services were rendered was arbitrary is untenable. In support of their submission, the learned Counsel relied on the following Judgments :

The Warangal Chamber of Commerce Vs. Director of Marketing, Government of Andhra Pradesh, Hyderabad and Others, Kewal Krishan Puri and Another Vs. The State of Punjab and Others, The Belsund Sugar Co. Ltd. and Another Vs. The State of Bihar and Others, , D.V. Kempaiah and Others Vs. The Chief Marketing Officer, Karnataka and Others, , Vasavi Traders v. State of Karnataka and Ors. ILR (Kar) 198 : 1982(2) KLJ 357.

6. In particular, the submission made by the learned Counsel for the respondents was based on similar change effected in Section 65 of the Act earlier and the decision of this Court upholding the said provision. Section 65 of the Act as it stood at the time when the Act was enacted provided for the collection of market fee from the sellers. Subsequently, the Act was amended and according to the amended provision, the market fee was required to be collected from the buyer. At that stage also, the traders challenged the constitutionality of the amendment before this Court, on the ground that when the entire scheme of the Act was intended to benefit the Agriculturists /Sellers on the ground that traders and commission agents were denying the gullible agriculturists a fair price for their produce, the provision directing the collection of market fee from the buyers was violative of Article 14 of the Constitution on the ground that it discriminated the buyers and favoured the sellers. This plea was in the first instance considered by a Division Bench of this Court in the case of *Waman Rao v. State of Karnataka*, W.P. 53 of 1974 dated 17-12-1974. This plea was again raised in the case of *Vasavi Traders* ILR (Kar) 198 : 1982(2) KLJ 357 with great vehemence. This constituted point No. 7, considered in that case. The relevant part of the

Judgment in which this point was considered is found in paragraph 51. It reads ;
The contention of the petitioners on this point is another facet of point No. 6 and is somewhat on these lines :

Having regard to the history of marketing legislation in India and the provisions of the "Act" in particular, as it stood when it was enacted, the main object and purpose of the legislation was to ensure a fair return to the producers and to prevent their exploitation by the middlemen and the trading community. The scope of the "Act" was subsequently widened, in particular, by Act 43 of 1976. Consequent upon the widening of the objects and purposes of the Act and to the circumstances that the present legislation is one of regulation of marketing of agricultural produce, the parties concerned are both the sellers and buyers. Every transaction of sale is a bilateral transaction there being a buyer only in relation to a seller and the regulation of a sale concerns as much the seller as the buyer. Consequently, the various services required to be rendered by the Marketing Committees in regard to the sale of notified agricultural produce is geared up for the benefit of both the parties to the transaction, viz., the sellers and the buyers. But u/s 65(2) of the Act, Market-fee is levied only on the buyers. Market fee levied on the buyers is admittedly being utilised for rendering services in the Market-Yard and other services which, generally speaking, cannot be demarcated as those pertaining only to and for the benefit of the "buyers" and those to the sellers. "The services are composite and under marketable ; but the levy is only on the "Buyers". Section 65(2) offends Article 14 in that similarly circumstanced equals are treated unequally. Even if it was considered convenient to collect the fee from the Traders, the absence of a provision for deducting it from the purchase price as provided in Section 27 of the Bihar Agricultural Produce Marketing Act, 1960 (See AIR 1985 Pat 267), the provision is discriminatory. At all events, the quid-pro-quo vis-a-vis the buyers can be reckoned only to the extent of 50% of the value of services and, therefore, at least to that extent the fee should have been levied on the sellers, or the buyers should have been permitted to deduct the same out of the amount payable to the seller. While the Act provides for the collection of entire fees from the traders the management of the entire funds is placed exclusively in the hands of the producer by giving overwhelming representation to the producers in the Market-Committee and this was one of the reasons for indiscriminate raising of the Market-fees, as the fee burden does not fall on the producers while their representatives have the power to manage the funds. These are the arguments of the petitioners in a nutshell.

It is no doubt true that Article 14 of the Constitution combining, as it does within itself, both the English doctrine of rule of law and the American equal protection clause of the 14th amendment is an equalising principle which permeates and informs the whole of the constitutional frame-work. Tax Laws are as much subject to Article 14 as any other law ; but a wide latitude is available to the legislature in the choice of persons and things in the matter of taxation. It need

not tax everything to tax something. A strict dichotomy of services and apportionment of fee is neither imperative in law nor practicable in fact. The essential question is whether the services are principally intended for the benefit of the buyers. The argument itself presupposes and recognises service to the "Buyers".

However, a similar argument of violation of Article 14 was urged in Waman Rao's case⁹. Repelling the contention on the basis of reasonableness of classification, the Bench of this Court observed ;

"It was contended that Sub-section (1) of Section 63 of the Act offends Article 14 of the Constitution as it authorises levy and collection of Market-fee only from the buyers even though services are required to be rendered under the Act only to the sellers and at any rate to the sellers and the buyers..."

"The classification between the buyers and sellers, it is conceded is made on a rational basis. The only question that requires examination is as to whether the classification has a just relation with the object sought to be achieved by the Act."

"The traders buy agricultural produce in bulk from the sellers with a view to sell the same at profit. In the process, they can always pass on the market-fee, which they pay, to persons to whom they, in turn sell the produce."

"Having regard to all these circumstances, it is clear that there is justification for levying market-fee only on the buyers and not the sellers. As there is just relation between the classification and the object sought to be achieved by the Act, we hold that Section 65(1) of the Act does not offend Article 14 of the Constitution."

It may be seen from the above paragraph that the contentions urged for the petitioners therein had been set out in full and it was rejected following the ratio of the Judgment in Waman Rao's case, W.P. 53 of 1974 dated 17-12-1974. The two grounds on which the contention rejected were :

- 1) It is not correct to say that services rendered by the Market Committee was only to the sellers and not to the buyers. Every service rendered in connection with the marketing of agricultural produce accrued not only to the seller, but also to the buyer and therefore it was not possible for the Traders to contend that service rendered by the Market Committee was only to the seller.
- 2) Among the two classes of persons, namely, sellers and traders, who were benefitted by the services rendered by the Market Committee, the legislature had selected the buyers for collection of market fee for the reason that the buyers had the opportunity of passing on the said liability to the consumers, whereas the sellers would not be in a position to pass on the liability on anyone.

The above judgment was taken in appeal before the Supreme Court, and was confirmed, except regarding the applicability of the Act for the marketing of tobacco, with which, we are not concerned in this case. The Judgment is I.T.C.

Ltd. v. State of Karnataka & ors. AIR 1985 SC 476.

7. The services rendered by the Market Committee in relation to the marketing of Agricultural produce are through market functionaries or its employees. In the present case, we are concerned with the services rendered by the commission agents, who are market functionaries. From the decisions of the Andhra Pradesh, Punjab and Patna High Courts referred to earlier also it is clear that the benefit of services rendered by the commission agents accrues not only to the seller, but also to the buyer. It is a matter of common knowledge that in every sale or purchase of agricultural produce, with the assistance of a commission agent, three persons, namely, the seller, the buyer and the commission agent are involved. While the seller is desirous of selling the agricultural produce, the buyer is desirous of buying the agricultural produce for the purpose of his own business and therefore, every service rendered or assistance given by a commission agent before or after sale, certainly accrues to the benefit of both the seller and the buyer. It is for this reason the preamble of the Act was amended to indicate that the object of the Act was to regulate the marketing of agricultural produce and in the light of changed complexion of the Act so brought about, the definition of the words Commission Agent was also amended so that it can no longer be contended that the service rendered by the Commission Agent was only for seller. That being the position the same basis on which the validity of Section 65(2) of the Act as amended was upheld by this Court in the case of Vasavi Traders ILR (Kar) 198 : 1982(2) KLJ 357 applies on all fours to this case. If a provision, which provides for collection of market fee from buyers only, is held to be not violative of Article 14 of the Constitution on the ground that service rendered is for both and therefore the provision providing for collection of market fee from buyer was not discriminatory, on the same analogy, a provision which provides for the collection of commission for the services rendered by a market functionary, viz., commission Agent in respect of the sale transaction from the buyer, has to be held, not to be violative of Article 14. In this case also, the buyer would have the opportunity of passing on the liability to the consumers, whereas the seller would not be in a position to do so. Hence, we reject the first contention.

8. Elaborating the second contention, the learned Counsel for the petitioners submitted as follows :

There is in existence The Indian Contract Act which is a central Law falling under Entry-7 of the concurrent list in the VII Schedule to the Constitution. In Chapter-X of the Contract Act under Sections 182 to 238, the law governing contract of agency has been incorporated. Section 182 of the Contract Act defines "an Agent" as a person employed to do any act for another or to represent another in dealings with third persons, the person for whom such act is done, or who is so represented, is called the "principal". Section 213 thereof provides that an agent is bound to render proper accounts to his principal on demand. Section 217 entitles an agent to retain, out of any sums received on account of the

principal, moneys due to him from the principal. Section 218 requires the agent to pay the principal all sums received on his account and Section 219 provides that the agency comes to an end after the work entrusted to him by the principal is over. Thus, these provisions fully cover the law of agency. Section 78 as amended brings about drastic changes in the law of agency. Article 254(2) of the Constitution provides that when the law enacted by a State is on a matter in the concurrent list and there is already a law enacted by the Parliament or an existing law on the same topic, if there were to be any repugnancy between the provisions of the State Law and the Central Law, the State Law to the extent of repugnancy is invalid. However, if there has been an assent of the President to such law enacted by the State, then the State Law would prevail over the Central Law. In the present case, if the State were to pass an enactment similar to the Ordinance and secure the assent of the President to it, it would become operative in the State, notwithstanding the repugnancy. That being the position in view of Clause (2) of Article 213 of the Constitution, any such Ordinance promulgated by the Governor would be valid if only it had received the instructions from the President. In the present case, the Ordinance has been promulgated by the Governor without any such instructions and therefore, the amending Act and in particular, Sections 78 and 78-A are invalid.

9. In support of the above contention, learned Counsel for the petitioners relied on the following authorities : The Check Post Officer and Others Vs. K.P. Abdulla and Bros., ; Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat, ; The State of Bihar Vs. Sir Kameshwar Singh Bahadur, ; B. Badalachand and Co. and Others Vs. The Agricultural Market Committee and Others, Attorney General For Saskat v. Attorney For Canada 1949 AC 110 : Australian Boot Trade Federation v. Whybrow & Co., (1910) - 11 CLR 311; AIR 1981 1127 (SC) ; Clyde Engineering Company Ltd. v. Cowburn (1926) 37 CLR 466 : In all these decisions, the principles governing the law of repugnancy have been elaborately dealt with.

10. As against the above submissions, the learned Advocate General for the State and the learned Counsel for the other respondents submitted as follows :

The Act and the Ordinance or legislation enacted by the State legislature under Entry 28 "marketing and market" as also under Entry-14 "Agriculture" and Entry-26" "trade and commerce" in the state list, Article 254(2) would be attracted only when both the Central and the State legislation fall under concurrent list. Therefore, this essential condition for invoking Article 254(2) itself does not exist in the pie-sent case. In support of this submission, the learned Counsel for the respondent relied on the following decisions of the Supreme Court :

A.S. Krishna Vs. State of Madras, ; Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, ; Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, ; Kewal Krishan Puri and Others Vs. State of Punjab and Another,

11. In these decisions, the Supreme Court has clearly expounded the principle governing the law of repugnancy. In the earliest Judgment of the Supreme Court in A.S. Krishna Vs. State of Madras, Supreme Court enunciated the principle. Para 12 of the Judgment in A.S. Krishna Vs. State of Madras, reads :

"The position, then, might thus be summed up : when a law is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are intra vires, and what are not. Now, the Madras Prohibition Act is, as already stated, both in form and in substance, a law relating to intoxicating liquors. The presumptions in Section 4(2) are not presumptions which are to be raised in the trial of all criminal cases, as are those enacted in the Evidence Act. They are to be raised only in the trial of offences u/s 4(1) of the Act. They are therefore purely ancillary to the exercise of the legislative power in respect of Entry 31 in List II. So also, the provisions relating to search, seizure and arrest in Sections 28 to 32 are only with reference to offences committed or suspected to have been committed under the Act. They have no operation generally or to offences which fall outside the Act. Neither the presumptions in Section 4(2) nor the provisions contained in Sections 28 to 32 have any operation apart from offences created by the Act, and must, in our opinion, be held to be wholly ancillary to the legislation under Entry 31 in List II. The Madras Prohibition Act is thus in its entirety a law within the exclusive competence of the provincial legislature, and the question of repugnancy u/s 107(1) does not arise."

The principle is reiterated in large number of subsequent decisions of the Supreme Court and one of them is Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, . The relevant portion of the judgment in the said case is at paragraph 70 which reads :

"This construction of ours is supported by the observations of Venkatarama Ayyar, J., speaking for the Court in A. S. Krishna's case (AIR 195(sic) SC 297) (supra), while dealing with Section 107(1) of the Government of India Act, 1935 to the effect :

"For this section to apply, two conditions must be fulfilled : (1) The provisions of the Provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied

that the Provincial law will, to the extent of the repugnancy become void."

Now the question for consideration is whether the Agricultural Produce Marketing Regulation Act is a law falling under any of the entries in the State list ? The very title of the Act gives the clearest indication that it relates to marketing of agricultural produce which necessarily involves trade and commerce and therefore, the law substantially falls under Entry-28 and also relates to Entry 7 and Entry 1(sic) of the State list. As indicated by the Supreme Court in A.S. Krishna's case¹⁹ when the constitutionality of a law is questioned on the principle of repugnancy that the Court first should see is whether the law is relatable to entry in the list in respect of which, it had exclusive jurisdiction to make the law or it falls under one of the entries in the concurrent list. If on an examination of the scheme and the provisions of the Act, the Court comes to the conclusion that it is a law enacted in respect of the entries in the State list, the question of invoking Article 254(2) does not arise at all. The Supreme Court has also made it clear that in examining the provision of an Act as to whether it falls within the exclusive jurisdiction of the legislature concerned, or not the Court should not try to examine each clause or section, but should try to find out as to under which entry the Act as a whole falls. If the Court finds that the law is relatable to an entry within the exclusive jurisdiction of the legislature which had enacted it, that would be conclusive of its validity.

12. As stated earlier, the title to the Act, indicates that it is a law enacted for regulating the marketing of agricultural produce. It is within the exclusive jurisdiction of the State Legislature under Entry-28 of State List. The preamble to the Act, shows that this was an Act to provide for the better regulation of marketing of agricultural produce and the establishment and administration of markets for the marketing of agricultural produce in the State of Karnataka. All the Sections incorporated in this Act including those inserted or substituted by the Ordinance are all intended to regulate the marketing of agricultural produce. In this situation, we fail to appreciate as to how the provisions of the Ordinance can be regarded as a law relatable to Entry-7 in the concurrent list. Once we are convinced that the law falls under one or more of the entries in the State List even if it incidentally regulates certain matters which might form the subject matter of legislation by the Parliament under the concurrent list it constitutes no ground to hold that the legislature was devoid of competence in making the said law. It is needless to state that while enacting a law for regulating the marketing of agricultural produce, having regard to the fact that wholesale trade of the agricultural produce takes place, in which, three categories of persons, namely, the sellers, the buyers and the commission agents are involved, the legislature has the power to regulate the relationship between all these three categories of persons. The definition of the word "market functionary" would indicate that both commission agents and traders are market functionaries in relation to the sale of agricultural produce. They acquire that status through licenses issued by the Agricultural Produce Marketing Committee. The legislature has considered expedient that the commission including market charges chargeable by the

commission agents, should be collected by the commission agents from the buyer. The legislature has also provided that various services should be rendered by the Commission agent to the sellers, who initially approach them to bring about the sale of the agricultural produce in favour of a buyer. As stated earlier, every service rendered by the commission agent would be to the benefit of both the seller and the buyer. The commission agent's commission come into the picture not merely by virtue of contract, but only after securing a licence given by the concerned Market Committee. Their relationship and the remuneration chargeable by the commission agents either to the seller or to the buyer are all regulated under the provisions of the Act. The commission chargeable by a Commission Agent is restricted to not more than 2%. Before the introduction of new Section 78 under the Ordinance, the commission agent was required to collect the commission from the seller and the change brought about is that he has to collect it from the buyer. The reason for this change as indicated in the statement of objection is that the seller would not be in a position to pass on the liability to the consumers. In fact, it is on this basis the collection of market fee from the buyer instead of seller as it was originally under the Act was upheld by this Court in the case of Waman Rao, W.P. 53 of 1974 dated 17-12-1974 as well as in Vasavi Traders ILR (Kar) 198 : 1982(2) KLJ 357. Therefore, an essential part of legislation, for the purpose of regulating of marketing of agricultural produce, the legislature had to regulate the relationship as amongst sellers, commission agents and buyers and therefore, even if the law of agency is modified to some extent in relation to the marketing of agricultural produce still the pith and substance of the law is under Entry-28 read with Entry 14, 26 and 28 of the State List. For these reasons, we find no substance in the second contention of the petitioner that the impugned provision is repugnant to Central Law and therefore, invalid in view of Article 254(2) of the Constitution.

13. Coming to Section 79-A of the Act inserted by the Ordinance, it should be pointed out that it is only a consequential one. All that it provides is that market charges payable after the sale shall be collected from the buyer. Out of the various categories of market charges as defined some are payable before sale, some after the sale. Commission payable to the Commission Agent is payable after sale. In view of new Section 78 of the Act. Section 79A has been incorporated to make it clear that only such of the market charges payable after the sale of agricultural produce shall be borne by a buyer. Therefore, once the validity of Section. 79 is upheld, there is nothing in Section 79-A, in respect of which, the petitioner can have any grievance.

14. Sri. R.N. Narasimhamurthy, learned Counsel appearing for one of the respondents addressed an alternative argument. He submitted that even if the impugned provisions should be regarded as law falling under entry 7 of the concurrent list, it would not suffer the vice of repugnancy. He submitted that the provisions of the Contract Act were not at all intended to cover every type of contract and agency including those relating to marketing of agricultural produce in respect of which specific legislative power is given to it under entry-28. He

submitted that on an analysis of the provisions of the Contract Act, if we come to a conclusion that it is intended to cover the whole field of contract, in respect of every item, the question of repugnancy would arise, but factually, it was not there.

15. It is unnecessary for us to consider this contention, which is based on the hypothesis that the impugned provisions fall under the concurrent list. As we have held that the impugned provisions fall squarely under the State list, the question of examining as to whether the centre has evinced interest in respect of the whole field of contract does not arise for consideration.

16. Lastly, we have got to consider the Writ Petition presented by a commission agent. Under the provisions of the Act, both earlier to the Ordinance and subsequent to the Ordinance, a commission agent was entitled to collect commission for the service rendered not exceeding 2%. There is no change brought about in respect of this. The only change brought about is that when the sale of agricultural produce takes place, the commission agent is required to collect his commission from the buyer, instead from the seller. Therefore, the grievance of the commission agent is only imaginary. They are in no way affected by the amendment. All other contentions relating to the constitutional validity of the provisions addressed by commission agents are also the same as those addressed by the traders, which we have rejected.

17. For the reasons set out earlier, we make the following order :

Writ Petitions are dismissed. No costs.