

(1982) 01 KAR CK 0022

In the Karnataka High Court

Case No : Wps. Nos 11603179, etc, 343180 etc & 26/81

Vasavi Traders

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-01-1982

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 6(2), 65(1)

Citation : (1982) 2 KarLJ 357

Hon'ble Judges : M. Rama Jois, J;M. N. Venkatachaliah, J

Judgement

Venkatachaliah, J.-These Writ petitions are amongst a batch of a large number of petition-nearly 4298 in number-arising out of the Karnataka Agricultural Produce Market (Regulation) Act, 1966, (hereinafter to be referred to as the Act). As one or more of the contentions were common to all the petitions, all the petitions were heard together so as to afford opportunities to the learned counsel appearing in the cases to address arguments. The present batch of writ petitions disposed of by this order is representative of the contentions urged and argued at the hearing. The rest of the writ petitions-which have been heard, along with these cases-will be disposed of in convenient batches following the findings on the various contentions recorded in the course of this order.

2. Petitioners in these writ petition as in the other writ petitions comprised in the batch,-are either "Buyers" or "Sellers" or other "Marked functionaries" as defined under the "Act". A wide range of contentions have been urged in the writ petitions. Principally, however, the challenge is, (i) to the constitutional validity of S.65 (1) of the "Act" as substituted by the Karnataka Agricultural produce Marketing (Regulation) (Amendment) Act, 1980, Act 47 of 1980) which sought to validate the Market-fee levied on the "sellers" of notified agricultural produce under S. 65 (1) for and during the period: of its operation prior to its being struck down by this Court in Rajasekhariah v. Tiptur APMC, 1979 (1) Kar.L.J. 43, (ii) to the enhancement of Market-fee from 1% to 2% effected by the various respondent-Market Committees by amending their bye-laws after the permissible

maximum levy of the fee on the Buyers under S.65 (2) was raised to 2% by the said Amendment Act 17 of 1980, the challenge being both on the grounds that the amendment of Bye-laws was made in violation of the mandatory requirements of prior publication and prior sanction contemplated by S. 148 and on the ground that the enhanced fee fails for want of quid-pro-quo and (iii) to the inclusion of certain items such as wood, cardamom, sugarcane tobacco in the list of notified agricultural produce incorporated in the schedule to the "Act".

So far as the Regulated Market of Bangalore is concerned, the further challenge is to the notification dated 13.11.1975 under S.6 of the Act shifting the main market-yard from the place in the heart of the city originally declared as the "Market-yard" to a place in Yeshwantpur in the out-skirts of the city.

We will advert to the pleadings and the contentions urged on each of these questions while we take up and deal with the contentions individually.

3. Before we proceed to examine the merits of the contentions, we shall make a brief reference to the scheme of the Act. The present "Act" replaced the various marketing legislations of the former Mysore, Bombay, Madras, Hyderabad and Coorg as were in force in the areas of these State as from 1.11.1956. S.154 of the present "Act" has repealed, those enactments as in force in the respective areas.

4. The need for and the importance of the regulation of marketing of agricultural produce, in the general interests of the country's economy, are well recognised and accepted. The Report of the Royal Commission. (1928) examined several aspects of the matter. The report of the National Commission on agriculture (1976) has made important recommendations. The report of the National Commission on Agriculture which is in 15 parts, deals with "Marketing" (Part-12) in Chapter 56, of its report. The terms of reference to the National Commission are set-out in Chapter-I of part 1 of the Report.

Though the protection of the farmer-producer, whose economic vulnerability and commercial gullibility arising from a want of parity of bargaining power which had) become proverbial, was one of the primary objects of the legislation as originally conceived, the objects and purposes of modern marketing legislations are more comprehensive. The sweep of the present day Marketing legislations-referable to Entries 26 and 28 of List-II of the VII Schedule of the Constitution dealing with "Trade and Commerce" and "Markets and Fairs" respectively,-is not confined to the mere protection of small and marginal farmers, but is commensurate with the recognition of certain larger implications of marketing of Agricultural Produce for the well being of the country's economy as a whole and with the awareness that any sound policy of industrial growth and development is linked with and directly proportional to a sound agrarian economy and that no industrial growth of any moment is either possible or worthwhile and enduring without a sound agrarian base. The long range and the more important-and perhaps less appreciated-benefits of effectively regulated

marketing of agricultural produce are in the area of inter-dependence of marketing and productivity. Improved marketing, generates incentive to productivity. Observation of a professional expert in the field is this.^{1a} . . . The relationship between marketing and production is overlooked and the possibility that marketing must play an important role in agricultural development is seldom considered.....

Unfortunately most "Government participation has been based upon inadequate and faulty advice, with the belief that ills can be cured by Governmental decree alone. The common practice of issuing marketing legislation without any attempt to implement it is an example of this attitude....."

5. "Agricultural Marketing", it is said, "is a process which starts with a decision to produce a saleable farm commodity and institutional, based on technical structure or system, both functional and institutional, based on technical and economic considerations and includes pre and post-harvest operations, assembly, grading, storage, transportations and distribution and dissemination of market information and intelligence". Regulated Markets are now conceived of as nodal points of rural growth.

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

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

However in the area of achievement's and performance-levels the comments (1a) Attitude Towards Agricultural Marketing in Asia and Far East". Food and Agricultural Organisation of the United Nations Monthly Bulletin of Agricultural Economics & Statistics, Vol. 19, No. 1, January, 1970 P.P. 1-9. of an expert^{1b}, who, it is stated, was a member of the Expert team of International Development Association, which reviewed the projects in the State, are these:

"In Karnataka the total market income was Rs. 5.6 crores in 1975-76."

"Hence it is also clear that fees levied on producers and traders at regulated markets represent a transfer of resources to support a fraction of the state bureaucratic apparatus whose productivity and effectiveness has not been demonstrated with respect to food grains marketing".

"Finally, it is by no means certain that consumers benefit from regulated marketing".

"Furthermore, market regulation, may even strengthen the monopoly power of merchants over producers at the unregulated first point for the vast majority of

transactions at the village or periodic market cannot be supervised".

"We have no convincing evidence yet of improved market competitiveness as a result of the massive extension of state power in, this way. The economic power of existing private systems of exchange clearly far exceeds that of the State....."

This criticism is for the authorities administering the marketing legislation to take note of.

6. Now turning to the provisions of the "Act", Chapter-I of the Act contains the preamble, the short title and the statutory definitions. Chapter-II deals with the establishment of Markets. The Act envisages a three tier-as distinguished from the two tier "Market-Area" and "Market" de-limitation under the Maharashtra and Punjab legislations-territorial de-limitation of areas in which marketing is to be regulated. The three areas constitute concentric circles. The Market-area is the outer most circle. The next and intermediate concentric-circle within the market-area is the "Market". The market yard is the inner most concentric circle.

S.3 of the Act empowers the State Government, by notification, to declare its intention of regulating the marketing of such agricultural-produce, in such area, as may be specified in the notification. Sub-sec (2) of S. 3 envisages inviting of objections and suggestions in regard to the intention declared under sub-section (1). S. 4 enables the Government, after considering the objections and suggestions, to declare areas specified in the notification under S. 3 (1) or any portion thereof to be a "market-area" and that agricultural produce specified in that notification shall stand regulated under the Act. Section 5 empowers the State Government to alter, from time to time, the extent of the "market-area" so notified or to add or delete from the list of agricultural produce notified in the notification under S. 3 (1).

S. 6 provides (1) that for every "market-area" there shall be a, "market" and there may be one or more "sub-markets" and (2) that for every "market" there shall be a "market-yard" and that there may be one or more "market sub-yards", (3) that for every sub-market there shall be a, sub-market yard.

While Ss.3, 4 and 5 empower the State Government to notify and alter the extent from time to time the Market area and specify the agricultural produce to be regulated therein, S. 6. (2) and (3) empowers the the Chief Marketing Officer (C.M.O. for short) to issue notifications declaring Markets, sub-markets and the corresponding Market yards. Market sub-yards and sub-Market yards. Section. 6 (2A) empowers the C.M.O.

(Ib). Social Scientist, Number 92, Barbara Harriss-"Regulated Foodgrains Markets: A Critique". to issue similar notifications in respect of Market-areas, constituted under the enactments repealed under 3. 154.

S. 7 provides for declaration of a date as the date on which the market and sub-markets shall be established Before so declaring, the C.M.O is required to satisfy himself "that the market committee has made arrangements for regulating the

marketing of notified agricultural produce in the market area". The proviso to S.7 further provides that in respect of markets and sub-markets, market-yards, market sub-yards and sub-market yards notified by the C.M.O. under S.6 (2A), the market or sub-market shall be deemed to have been established on the date of such notification.

S.8, inter alia, provides that after the market is established, no person shall, without, or otherwise than in conformity with the terms and conditions of, a license granted by the market committee in this behalf, use any place in the market area for the marketing of the notified agricultural produce. There are certain exemptions with which we are not presently concerned.

Chapter-III deals with the constitution and establishment of the first and the successive Market-Committees, its composition, provisions for election of the Chairman and the Vice-Chairman, qualification and disqualification for membership, prohibition for simultaneous membership, resolving of electoral disputes and allied matters-Chapter-IV deals with conduct of business of the market Committees. We may skip over the other chapters and turn to Chapter XIV which deals with miscellaneous matters including the power to frame rules, regulations and bye-laws. S. 148 (1), as it stood from the date of commencement of the Act and on the dates on which the impugned amendments to the bye-laws were made, until it was amended by an Ordinance after the petitioners pointed out in the course of arguments that the bye-laws had been made without complying with the requirements of the said provision, provided that, subject to the provisions of the "Act" and the Rules made under S. 146 the market committee might make bye-laws with the previous sanction of the C.M.O. and after previous publication in the prescribed manner. Similarly S. 150 (1), inter-alia, empowers the C.M.O. if it appears necessary and desirable in the interest of a market-Committee to amend any of its bye-laws to issue appropriate direction to the concerned Market Committee directing it do so. Sub-sec (2) thereof provided if the market committee failed to make a bye-law as directed by the C.M.O. he could himself amend the bye-law after hearing the Market Committee concerned and other interested persons. Sub-sec (3) provides for an appeal to the State Government against the order of the C.M.O.

7. A wide variety of contentions are taken in the memoranda of writ petitions. However, the questions which arise for our consideration in view of the contentions urged by the learned counsel appearing for the petitioners at the hearing of the batch of cases admit of being formulated thus:

1) Whether S.65 (1) of the "Act" (as substituted by the Amending Act 17 of 1980) read with S.42 of the said Amending Act retrospectively validating the levy and collection of market-fees, on the sellers at one per cent ad valorem, for the period between 19.5.1975 and 28.9.1978 is constitutionally valid?

Discussion is at paras 8 to 24; finding at Para: 25.

2) Whether the "Act" as amended by Act 17 of 1980 in so far it provides for

regulation of marketing of cardamom is repugnant to Cardamom Act, (Central Act 42 of 1965) and therefore inoperative?

(Discussion is at paras: 26 to 37; Finding at para: 38.)

3) Whether the "Act" as amended by Act 17 of 1980 in so far it provides for regulation of marketing of sugarcane is unconstitutional, as its marketing is regulated by the provisions of the Central Act, viz., The Essential Commodities Act, 1955, and the Sugarcane (Control) Order made thereunder?

(Discussion is at para: 39; Finding at Para; 40)

4) Whether the "Act" in so far it provides for regulating the marketing of tobacco is unconstitutional as being repugnant to a Central Act on the same topic, in that the marketing of tobacco is regulated by the Tobacco Act, 1975:

(Discussion is at para: 41: Finding at para; 42.

5) Whether the provisions of. S.2i (7) read with S.6 (2) (a) (b) and (c) empowering the "C.M.O" to notify "Markets", "Sub-markets", "Market-Yard" and "Sub-Market Yards" confer an uncanalised, unguided and arbitrary power and therefore bad on the ground of excessive delegation of Legislative function?

(Discussion is at paras: 43 to 46; Finding at para: 47

6) Whether the provisions of S. 11 as amended by Act 43 of 1980) providing for the constitution of Market Committees are, in the matter of proportion of representation, as between agriculturists on the one hand and "Traders" on the other are violative of Art. 14 of the Constitution?

(Discussion is at paras: 48 & 49; finding at para: 50).

7) Whether S. 65(2) which authorises levy of fees on "Buyers" alone, in the absence of an apportionment of that fee between "buyers" and "sellers" to both of whom services are rendered by the market-committees is constitutionally infirm as violative of Art. 14?

(Discussion is at para: 51 finding at para: 52).

8) Whether the inclusion of "wood" as Item IX and "forest produce" in Item V as agricultural produce in the schedule to the "Act" is constitutionally impermissible?

(Discussion is at paras: 53 & 54; finding at para: 55).

9) Whether S.65 (2) confers an unguided and arbitrary power on the Market Committee in the matter of specification of the rates of fee? Whether the amended bye-laws of the various respondent-Market Committees enhancing the impost under S. C5(2) from 1% to 2% ad valorem is void as being unreasonable and made arbitrarily without the application of mind to the relevant criteria and without an opportunity to the affected interests of being heard?

10) Whether the Amendment of the Bye-laws enhancing the Market-fee is invalid

for want of compliance with the mandate of S. 148 of the "Act" requiring "previous publication" and "previous sanction" of the C.M.O.?

(Discussions of Points Nos. 9 & 10 are at Paras: 56 to 64 Findings on Points Nos.9 & 10 at para 65).

11) Whether the Bye-laws of the various respondent-Market-Committees authorising levy of the same rate of Market-fee on all types of notified agricultural produce, irrespective of their market-price, brings about unconstitutional discrimination against traders dealing in commodities having higher price?

(Discussion is at para: 66 finding at Para: 67).

12) Whether the enhancement of market-fee leviable under S. 65(2) of the "Act" from 1% to 2% brought about by the amendments of the Bye-laws of the respondent-Market-Committees unsupportable in law and fails for want of correlation with the value of services rendered to the payers of the fee?

(Discussion is at paras: 75 to 110 finding at para: 111).

13) Whether outlay on "Rural-Markets" is not a permissible item of Expenditure and not relevant for purpose of ascertaining quid pro quo for the market-fee payable by the buyers.

(Discussion is at paras 68 to 73 Finding at para: 74).

(In addition to the above contentions, the following further contentions, which are peculiar to the, A.P.M.C. Bangalore and arising out of writ-petitions filed by the Licenced traders in the Bangalore market-yard also arise for consideration:)

14) Whether after the declarations of a market-yard in respect of a "Market" by the C.M.O. in exercise of his powers under S. 6 (2) (c) of the "Act", there is no power left in the C.M.O. to notify another place in the market as the market-yard in lieu of the earlier market-yard.

(Discussion is at paras 112 to 118; Finding at para: 119).

15) Whether consequent upon the Notification dated 11-6-1979 including "Rice" and one of the notified agricultural produce, it was necessary to issue fresh notification by the C.M.O. under S. 6(2) (a) and (b) declaring the "market" and the "market-yard" and the provisions of the "Act" are unenforceable for want of such notifications?

(Discussion is at para: 120 Finding at para: 121).

16) Whether the Notification dated 13-11-1975 of the C.M.O. declaring the Yeshwantapur "Market yard" is bad in law, as it does not specify the Notified agricultural produce as required by S. 6(2) (b) of the Act.

(Discussion is at paras: 122 & 123; finding at para: 124).

17) Whether there having been an alteration of the Market-area of Bangalore pursuant to the Notn. dated 6-6-1969 a fresh notification under S. 6 (2) (a) is required to be issued declaring a "Market" for the altered market-area? What is the effect of S. 6(4) introduced into the "Act" with retrospective effect by the Ordinance 20 of 1981? Whether the Ordinance is itself invalid?

(Discussion is at paras 125 & 126. Finding at para: 127).

18) Whether Notification dated 8-10-1979 and 31-10-1980 purporting to take effect retrospectively valid?

(Discussion is at para: 128; finding at para: 129).

19) Whether the "Market-yard of Bangalore in so far it relates to the Marketing of Rice, cannot be said to have been established as the necessary and requisite facilities are not provided?

(Discussion is at paras: 130 to 134; finding at para: 135).

20) Whether, even if the "Market-yard" at Yeshwantpur is established, the forcing of the Rice-Traders to shift forthwith without giving them reasonable time, for constructing the shops and godowns constitutes an unreasonable restriction on their right to carry on their trade under Art. 19(1)(g)? If, so, whether sufficient further time should be granted?

(Discussion is at paras: 130 to 134; finding at para: 135).

8.Re: Point (1): Petitioners contend that S. 65(1), as substituted by Act 17 of 1980, read with S. 42 of the Amending Act, seeking to validate the collection of market-fee on "sellers" made under the old S. 65(1) is constitutionally invalid.. The validation became necessary in view of the judgment of this Court in Rajasekharaiah's case, 1979 (1) Kar.L.J. 43, striking down sub-secs. (1) and (3) of S. 65 of the Act as they then stood. The present substituted. S. 65(1) read with S. 42 of the Amending Act seeks to validate the collections of Market-fee on sellers made when the earlier S. 65(1) was operative.

In order to appreciate this contention, it is necessary to examine the previous S.65 and the infirmity, therein which attracted and sustained the challenge thereto and the manner in which the infirmity is now sought to be cured. S. 66(1) as it initially stood read:

65. Levy of market fees: (1) The market committee shall levy and collect market fees from the buyer in respect of agricultural produce brought by,- (i) any trader or other person in the yard; and (ii) any trader outside the market or sub-market in the marked area, at such rate as may be specified in the bye-laws (which shall not be more than thirty paise per one, hundred rupees of the price of the agricultural produce) in such manner and and at such times as may be specified in the bye-laws."

Each of the market committees, accordingly, by framing and promulgating

appropriate bye-laws levied the market-fee. The rates varied from 25 paise to 30 paise per hundred rupees of the price of agricultural produce. This sub-section was challenged in *Marutiradhya v. Regulated Market Committee, Shimoga*, 1969 (1) Mys.L.J. 533. This Court, after referring to the scheme of the provisions held that the above sub-section authorised the recovery of fee only on the first purchase of agricultural produce by a trader from producer. The sub-section was amended by Karnataka Act 20 of 1973 raising the maximum fee leviable from 30 paise to 1 rupee. This enhancement was challenged in *Vaman Rai v. APMC, Sagar*, W.P. 53 of 1974 D.D. 17-12-1974. The challenge was repelled holding that S. 65 (1) as amended was valid. This Court after scrutinising the estimate of expenditure of each market committee projected for a period of 15 years i.e., from 1974-75 to 1988 to 89 prepared and produced" before the Court by it held that the requisite correlation between the permissible items of expenditure for rendering service by the Market-Committee and the fee levied had been established.

9. Again by the Karnataka, Act 24 of 1975, a new S.65 was, with effect from 19-5-1975, substituted in place of the old section. The substituted section provided by its first sub-section that market-Committees shall levy and collect Market-fees from every seller in respect of agricultural produce sold by such seller in the Market area at the rate of one rupee per one hundred rupees of the, price of such produce, sold. Sub-sec. (2) dealt with fee leviable on the "Buyers". Sub-sec. (3) required that every Market-Committee to credit the fee collected from the sellers to "the Karnataka Roads & Bridges Fund constituted under the Karnataka Motor Vehicles Taxation Act, 1957, for being spent for the purpose of construction, repair, improvement and maintenance of rural roads in the State." This Court struck down S.65 (1) and (3) "The grounds on which S.65 (1) was struck down can be summarised thus:

(a) That though the fees levied under S.65 (1) were required to be spent on construction, repair, improvement and maintenance of rural roads, the construction or repair or improvement and maintenance of Rural roads was not one of the obligatory functions of the Market Committees under the Act; and the construction and maintenance of rural roads, which were public-roads, were the primary responsibility of the State and its instrumentalities such as the authorities under the Karnataka Municipalities Act, 1976; Karnataka Municipalities Act, 1964; Karnataka Village Panchayats and Local Boards Act, 1959, and the Karnataka High Ways Act, 1964.

(b) Secondly, having regard to the essential element in the concept of fee requiring some special benefit, by way of quid-pro-quo, to flow to the class of persons on whom fee is levied, the construction and maintenance of public roads cannot be said to constitute or provide any such special benefit to the payers of the fee who, as members of the public, are entitled to the use and benefit of public roads and that they could not be compelled to pay a fee for what they, in common with the general public, were otherwise entitled to as of right.

Pursuant to the judgment in Rajasekharaiah's case, 1979 (1) Kar.L.J. 43, the State was exposed to the liability to refund the fee collected for the period between 19.5.1975 when S.65 (1) and (3) were introduced by the Amending Act 24 of 1975 and 28.9.1978 when that judgment was pronounced. By the present Act 17 of 1980 this levy is sought to be validated and the fee retained by the State Government.

10. In regard to this validation, four provisions of Act 17 of 1980 call for notice. First, by S. 19 of the Amending Act, which by virtue of S. 1 (2) thereof, is deemed to have come into force on 19.5.1975. By the second, clause (ii) of sub sec. (1) and item (ii) of clause (a) of sub-sec (2) of S. 63 as amended, the expression "Marketing" is substituted by the words "transport and marketing". In clause (ii) of sub-sec (2) of S.63, item (i-a) was newly introduced, making the providing of, either independently or along with some other authority, necessary facilities for the transport of notified agricultural produce in and to the yard, as one of the obligator/function of the market committees.

Thirdly, S.20 of the amending Act brings about certain changes in the structure of S.65, while S.65 (1) which provides that in respect of agricultural produce sold in a market area, there shall be levied and collected by the market" committee thereof, from every seller, market fee at the rate of one per cent of the sale proceeds of the produce so sold, it is also provided that the said sub-Sec. shall be deemed to have come into force on 19-5-75, i.e., the date in which it was originally introduced and shall be deemed to have been omitted with effect from 28.9.1978 i.e., the date on which it was struck down by this Court in Rajasekhariah's case. Sub-sec (3) of S 65 is deemed always to have been omitted.

Fourthly, S.42 of the Amending Act provided:

"42. Validation of levy of market-fee etc.-(1) Notwithstanding anything contained in any decree, order or judgment of any court, or other authority any levy or collection of market fee made or purported to have been made, any action taken, or thing done in relation to such levy or collection under the provisions of the principal Act before the commencement of this section shall be deemed to be as valid and effective as if such levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly,-
(a) all acts, proceedings or things done or action taken by any market committee in connection with the levy and collection of such market fee shall for all purposes be deemed to be or to have always been made, done or taken in accordance with law.

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such market fee; and (c) no court shall enforce any decree or order directing the refund of any such fee".

The other amendments brought about by Act 17 of 1980 are not material for the present discussion.

11. Learned counsel for the petitioners contended that the market fee collected from the sellers between the date 19.5.1975 and 28.9.1978 under the old S.65 (1) has gone to the credit of and merged in the "Karnataka Roads and Bridges Fund" constituted under the Karnataka Motor Vehicles Taxation Act, 1957; that the market-fee has, obviously, been spent for purposes and objects of the said "Karnataka Roads and Bridges Fund", and that by deleting S.65 (3)-even if it be with retrospective effect,-the events that have factually happened pursuant to S.65 (3), when it was operative, cannot be reversed. The effect of the amendment is not, it is urged, to put the funds back into the coffers of the respective market committees enabling them to spend them for such of the purposes authorised by the "Act" as would also afford correlation by way of service to the fee. It is further contended that all that, at best, the amendments could be said to have achieved is that providing "facilities for transport" which was not one of the duties and functions of the market-committees earlier, has now been made one of their duties and functions. Even if the "facilities for transport" can be said to include construction of rural-roads, only the first defect or infirmity pointed out in Rajasekharaiah's case can be said to have been cured or removed but not the more important the second.

12. Learned Advocate General contended that the only ground on which the previous judgment invalidated the levy on the sellers was that the market committees were not statutorily charged with the duty of constructing and maintaining rural roads, and) now that, the duty of providing, either independently or along with any other authority, necessary facilities for transport, which includes the making of roads in the market area leading to and from the market-yards, the defect noticed in the law has been removed and the legal basis for the levy supplied. Learned Advocate General submitted that as a result of Rajasekharaiah's case, 1979 (1) Kar.L.J. 43, the State was exposed to a liability to refund several crores of rupees which had been realised by way of sellers fee under S.65 (1), and which according to him, had, in fact, been spent for providing facilities for transport in the form of construction, improvement, repair and maintenance of rural roads.

13. It is true that power to legislate carries with it the power to cure any defect in any law, with retrospective effect and to validate acts done or taken under the defective law and which were declared invalid by the Courts on any ground. It is equally well settled that if such validating law cures the constitutional vice from which the earlier legislative measure suffered, the validation must be given effect to. If the defect noticed in Rajasekharaiah's case in regard to S.65 (1) has been removed and the legal basis for the levy supplied, the legislature by thus getting over the effect of the judgment, cannot be said to be trespassing on the preserve of the judiciary. (See. *Misrilal Jain v. State of Orissa*, AIR 1977 SC 1686. If, however, the Act merely declares that invalid legislative measure-struck down as such by Courts-shall be deemed to be valid, the constitutional vice from which the original Act suffered is not removed; what the legislature attempts to do by such a measure would be a legislative over-ruling of a judicial decision, which is

impermissible under the constitutional balance of powers amongst the three organs of the State. The tests to be applied to decide the Constitutional validity of validating legislations are also well settled.

In *Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, AIR 1970 SC. 192, a constitutional Bench of the Supreme Court stated:

"..... we may say a few words about validating statutes in general. When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed; before validation can be said to take place effectively. The most important condition of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind, for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered) that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statutes or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the reenacted law".

(ii) In *Ahmedabad, Corporation v. New Shrock Spg. and Wvg. Co., Ltd.*, AIR 1970 SC 1292, the Supreme Court, observed:

"7... The legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those powers, the legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts.....".

(underlining (italics) supplied).

(iii) In *Misrilai Jain's case*, AIR 1977 SC 1686, reiterating these principles, Supreme Court observed:

"6. ...Courts have to be vigilant to ensure that the nice balance of power so thoughtfully conceived by our Constitution is not allowed) to be upset, but the concern for safeguarding the judicial power does not justify conjuring up trespasses for invalidating laws. There is a large volume of authority showing

that if the vice from which an enactment suffers is cured by due compliance with the legal or constitutional requirements, the legislature has the competence to validate the enactment and such validation, does not constitute an encroachment on the functions of the judiciary. The validity of a validating taxing law depends upon whether the legislature possessess the competence over the subject-matter of the law, whether in making the validation it has removed the defect from which the earlier enactment suffered and whether it has made due and adequate provision in the validating law for a valid imposition of the tax.....". (underlining (italics) supplied.

(iv) In *I.N. Saksena v. State of M.P.*, AIR 1976 SC 2250, the Supreme Court referring to the requirements as to what a validating law should comply with in order to be valid, observed:

"23. In *Hart Singh v. Military Estate Officer*, (1973) 1 SCR 515=(AIR 1972 SC 2205) a Bench of seven learned Judges of this Court laid down that the validity of a validat law is to be judged by two tests. Firstly, whether the legislature possesses competence over the subject matter, and, secondly, whether by validation the legislature has removed the defect which the courts had found in the previous law. To these we may adds a third: Whether it is consistent with the provisions of Part III of the Constitution.

We shall now have to see, by these tests, whether the defects noticed in *Rajasekharaiah's* case, 1979 (1) Kar.L.J. 43, have been removed and a legal and constitutionally valid basis for the levy supplied by the validating law.

14. This exercise necessarily lakes us to the concept of "fee" and whether the expenditure on construction of rural roads, which are works of general public utility, affords the requisite quid-pro-quo for the fee levied on and collected from the sellers of notified agricultural produce. There are series of pronouncements of the Supreme Court commencing from the *Shirur Mutt's* case, AIR 1954 SC 282 explaining the concept of fee. However, it is sufficient to refer the case of *Kewal Krishan Puri v. State of Punjab*, AIR 1980 SC 1008, which arose in the context of the levy of. Market-fee itself. In that case after reviewing all the earlier decision on the point, the Supreme Court said.

8.....Generally speaking a fee is defined to be a charge for a special service rendered to individuals by some governmental Agency. A question arises-"Special service" rendered to whom, which kind of individuals.....

The authorities more often than not almost invariably, will not be able to know the individual or individuals on whom partly or wholly the ultimate burden of the fee will fall. They are not concerned to investigate and find out the position of the ultimate burdenThe element of quid-pro-quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the

fee". (Underlining, (italics) supplied).

15. Learned counsel for the Market Committees sought to contend that the concept of fee is undergoing a change and that a strict view of the need for and correlation of special services visa-vis a fee is no longer tenable. Reliance was placed on certain observations of the Supreme Court in *Southern Pharmaceuticals and Chemicals v. State of Kerala*, AIR 1981 SC 1863, where, after a reference to *Kewal Krishan Puri's* case, AIR 1980 SC 1008, it was observed:

"25. To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether, there, was any justification for the increase in rate from Rs. 2 per every hundred rupees to Rs. 3. There was no material placed to justify the increase in the rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation".

These observations were made while considering the validity of some of the tests for distinguishing a "tax" from a "fee" and one of the aspects the Supreme Court was examining was whether one of the generally accepted tests, namely that a "fee" would lose its character as such if it merged in the consolidated fund" of the State could be said to be valid in view of the express provisions of Art. 286. Even in *Kewal Krishan Puri's* case, AIR 1980 SC 1008, the (Supreme Court pointed out that all the criteria informing the distinction between "tax" and "fee" are not to be understood as inflexible but must change according as the statutory context and purpose. Even the mixing of the amount with the general funds of the State might, in some cases, be neither impermissible nor conclusive one way or the other. Indeed, in some cases, for instance in the case of registration-fee, the test of quid-pro-quo is not to be satisfied by direct, close or approximate correlation as in the case of many other kinds of fees. Each case it was pointed out, has to be judged from a reasonable and practical point of view. It was, however, pointed out that rendering of some service, however, remote the service may be, cannot satisfy the element of quid-pro-quo.

We need not pursue this argument any further, as in our view the authority of *Kewal Krishan Puri's* (9) decision does not stand denuded by the observations in *Southern Pharmaceuticals*", AIR 1981 SC 1863, case and even the learned counsel for the respondents did not make any submission to the contrary.

16. The Supreme Court in *Kewal Krishan Puri's* case, AIR 1980 SC 1008, also formulated seven principles for determining the existence of quid-pro-quo in so far as the levy of "Market-fee" is concerned (see: Para-23 in *Kewal Krishan Puri's* case, AIR 1980 SC 1008).

What emerges from the pronouncements of the Supreme Court on the point is that the essential character of the impost is such that there ought to be special

service rendered to the class which pays the fee, though, however, the services rendered might-as they very often do-incidentally or indirectly become available to and benefit: the public in general. The true test is the primary object of the levy and the essential purpose it is intended to achieve. Therefore, if in a given case, though the general public may derive an indirect or incidental benefit from the special service intended primarily and essentially for the benefit of the payers of the fee, the levy would be "fee" in the real sense of the term and, would be valid. It follows as a corollary that if the essential purpose to be achieved is for the benefit of the public in general and the class of persons paying the fee derive benefit, not, as a class as such, but as part of the general public, service. cannot pass the test of a special service contemplated in relation to a fee.

17. Then arises the question whether the construction of rural roads-for which purpose the fee levied on the sellers is stated to have been appropriated-can be said to be a special service primarily and directly intended for the benefit of the class which pays the fee.

In Rajasekharaiah"s case, 1979 (1) Kar.L.J. 43, the reasoning on the point was:

"17We have earlier stated that when roads are constructed, every member of the public has a right to use it. It is not only those who use the public roads that get the benefits, but, in the broader sense the net work of roads in a country benefits the whole country; otherwise, the means of transportation, and perhaps communication also, would be lacking and the country will be divided into isolated pockets..... .".

In examining this question an important aspect that should be borne in mind is that even if the function of construction of rural roads can be regarded as falling within the function of "the creation of facilities for transport" entrusted to the Market-Committees under S.63 (1) (1a) inserted by Act 17 of 1980, on which we express no opinion, it does not, ipso-facto, constitute a special service, and afford a quid-pro-quo, to the class of persons paying the fee. Not all the services rendered by the Market-Committees in obedience to the mandate of the statute will automatically constitute quid-proquo for the different classes of persons paying the fees. Some of them may constitute quid-pro-quo in relation to the payers of the fee and some of them not. In the latter cases the Market Committees may legitimately undertake the task of rendering the services, but they would have to find resources otherwise than through the collection of the Market-fee. Therefore, the question as to whether the construction of rural roads can be regarded as affording quid-pro-quo to the sellers in relation to the fee recovered from them requires to be examined with the above mentioned distinction in mind.

18. Rural roads for the construction, improvement and maintenance of which sellers" fee is stated to have been applied, it is not disputed are public roads, spread out all over the State. Each Market-Committee has jurisdiction over only limited areas. It is not the case of the respondents that Market-fee collected from

the sellers by each of the Committees has been utilised for the construction of the rural roads lying within the area of each of those Committees. Even assuming that an area-wise break-up of this expenditure on the rural roads in each Market-area is possible to be ascertained and it would show that the amount collected by way of sellers' fee has, in fact, been expended for rural-roads in that particular area, the question that still remains is whether the construction, improvement and maintenance of such public roads can at all in law constitute and satisfy the concept of special service which can be said to be primarily intended for the benefit of the class of persons who were made to pay the fee and only incidentally form part of service to the public in general, or it is the other way about.

In *Saghir Ahmad v. State of U.P.*, AIR 1954 SC 729, Supreme Court approved the following observations of the Madras High Court in *C.S.S. Motor Service v. State of Madras*, AIR 1953 Mad. 279, in regard to the concept of public roads:

"The true position, then is, that all public streets and roads vest in the State, but that the State holds them as trustees on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the path-ways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally:

19. In *Kewal Krishan, Puri's case*, AIR 1980 SC 1008, a question, similar to the one arising for consideration, was considered and answered by the Supreme Court. Section 28(vii) of the Punjab Agricultural Produce Markets Act, required the Market-Committees to expend funds on construction and repair of approach roads, culverts, bridges. Construing the provision the Supreme Court held that the construction of such link roads, culverts and bridges anywhere in a notified area was not what was contemplated by the Clause, but in the context of the language of sub-clause (viii) such constructions could only be for the purpose of facilities of going into the Market from the nearest public road. Some of the observations in regard to expenditure on "rural-roads" are instructive. It was observed:

"33.....But as we have pointed above, if one were to give a very wide meaning to this phrase of "construction and repair of approach roads, culverts and bridges" to say that such construction can be permitted anywhere in the Market-area for the facility of the agriculturists which ultimately will benefit the traders also, then the whole concept of correlation of fee and its character of having an element of quid pro quo will dwindle down and become an empty formality. Uplift of villages and helping the agriculturists by all means is the duty and the obligation of the State no doubt and it has to do it by incurring expenses out of the public exchequer consisting of the income from various kinds of taxes etc."(underlining (italics) supplied).

20. If the true position in law relating to all public streets and roads is that the members of the public are entitled to their use as of right as beneficiaries and that the State holds such streets and roads as trustees, that position would be inconsistent with-and would indeed militate against-any notion that construction, repairs and maintenance of rural-roads was primarily and essentially meant for the benefit of the specified class of fee payers and that the general public was intended to derive only an incidental and indirect benefit. It follows that the rural-roads are primarily and essentially intended for the benefit of the public in general and the class of fee payers are, as part of the general public entitled to the benefit of their user. Therefore the question that arises is whether the amount which the sellers were called upon to pay as fee can legitimately be regarded as fees. In *Kewal Krishan Puri's* case, AIR 1980 SC 1008, the Supreme Court posed the question thus:

"Is it permissible to spend the market fees realised from the traders for any purpose calculated to promote" the national or public interest?". and answered:

"Obviously not. No Market-Committee can be permitted to utilise the fund for an ulterior purpose howsoever benevolent, laudable and charitable the object may be".

21. Even in regard to the funds of the State Marketing Agricultural Board to which contributions are required to be made by the several Market-Committees in the State, the Supreme Court observed:

"35 We would, however, like to emphasise that the Marketing Development Fund can only be expended for the purposes of the Market-Committees in a general way, or to be more accurate, as far as practicable, for the purposes of the particular Market-Committee which makes the contribution".

"37. On a parity of reasoning which we have applied in the case of Market Committee Fund, we may point out that the Marketing Development Fund constituted primarily and mainly out of the contributions by the Market Committees from realisations of Market fees, can also be expended for the purposes of the Market in the notified Market-area in relation to the transactions of purchase and sale of the agricultural produce and for no other general purpose or in the general interests of the agriculture or the agriculturists....."

22. The Supreme Court, after referring to the observations of the Punjab High Court, which had held that expenditure on the construction of link roads was justified as it was for the benefit of the growers, licence dealers and the general public and promoted the interest of the notified Market-area, observed:

"43. We have said a bit earlier that the Market Committees and the Board laboured under a mistaken notion that they could spend the income from the Market-fee for all good purposes and objects of the Act in the general interest of agriculture and agriculturists in the village "

"45 Everybody seems to have allowed himself to be carried too far

by the sentiment of the laudable object of the Act of doing whatever is possible to do under it for the amelioration of the conditions and the uplift of the villagers and agriculturists. Undoubtedly the Act is primarily meant for that purpose and to the extent it is permissible under the law to achieve that object of utilising the money collected by the Market-fee, it should be done. But if the law does not permit carrying on of the sentiment too far for achieving of all the laudable objects under the Act, then primarily it becomes the duty of the Court to allow the law to have an upper hand over the sentiment and not vice-versa."

23. It was contended before us by the respondent-Market-committee that the construction of rural linkroads, as part of facilities for transport of agricultural produce to the marketing centres, was essential for effectuating provisions of the Act and for working the marketing system efficiently and usefully. Reliance was placed on the Reports of the Royal Commission and the National Commission on Agriculture. A similar argument was urged before the Supreme Court in Kewal Krishan Puris case, AIR 1980 SC 1008. But the Supreme Court said:

"46.....Neither the Royal Commission nor the National Commission suggested as to how the integrated development of marketing and the agricultural produce is to be financed.

"They were not concerned with that aspect of the matter. None can have any objection to the carrying out of the integrated development but it must be carried out by legal means raising the finance in a way known to law".

The only achievement, by the conferment of authority on the Market-Committees to render these services either by themselves or along with some other authority which is claimed to have been supplied by the amendment is that it might render the expenditure on those services, which was earlier ultra vires of the powers of the Market-Committees, now intra-vires.

24. A Careful consideration of all the aspects of the matter compels that the answer to the question mentioned earlier be in the negative and it appears to us that the second and the major defect noticed in the law authorising the levy on the sellers, in Rajasekhariah's case, 1979 (1) Kar.L.J. 43, namely that the construction of rural roads would not qualify for being reckoned as a special service to the class of persons paying the fee, has not been cured or removed by the law which seeks to validate the levy. As pointed out earlier, the sellers' market-fee collected is not transferred to the respective Market-Committees back from the Karnataka Roads and Bridges Fund, constituted under the Karnataka ,Motor Vehicles Taxation Act 1957, in which it has merged in terms of sub-sec. (3) of S. 65. The roads constructed, improved repaired and maintained did not become the properties of the Market-Committees and shed their character as public roads. The concept of public roads is inconsistent with and does not admit of and indeed excludes-any idea of such roads constituting special service to a particular class of persons. It is rudimentary that a grantee of a power cannot determine the nature of its act by choosing for it a nomenclature

that corresponds with the grant.

25. In view of these circumstances, our finding on Point No. 1 is that S. 65(1), as substituted by S. 20 of the Amending Act 17 of 1980, as well as S.42 of the Amending Act, are not constitutionally valid and are liable to be struck-down.

26. Point No. 2: This point relates to the permissibility of regulation of marketing of cardamom under the Act.

Under the Mysore Agricultural Produce Markets Act, 1939, (hereinafter referred to as the "Old Mysore Act") a notification No. AF 7258/Mark/201 531 dated 13.10.53, was issued declaring the Sakaleshpur Town Municipal Limits as the "Market" established under the "Old Mysore Act" for marketing of cardamom. The Cardamom Act 1965, a Central Legislation, received the assent of the President on 9-12-65. The relevant provisions of the Act came into force on 5.4.66. The Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, received the assent of the President on 19.8.66. It was brought into force with effect from 1.5.68. The Act did not make any specific reference to Cardamom as an agricultural produce the marketing of which was sought to be regulated under the Act. It was for the first time specially included in the schedule to the Act, by Act 17 of 1980 to which the assent of the President has not been taken. The petitioners contend as both the Cardamom Act and the "Act" are legislations under Entry 33 of the concurrent List, there is repugnancy between the two laws, the State law, to that extent i.e., in relation to the regulation of marketing of cardamom, is inoperative.

27. The first basis on which the learned Advocate General sought to resist the contention of the petitioner was by placing reliance on S. 154 of the Act. That section repealed amongst other enactments, the "Old Mysore Act". But proviso (a) of S. 154 of the Act, however, provided that the repeal shall not affect the previous operation of any enactment so repealed and anything done or action taken, and that any notification issued by or under the provisions of the repealed Acts, shall be deemed to have been issued under the corresponding provisions of the "Act" and shall continue in force unless and until substituted by anything done or any action taken under the "Act". The contention of the learned Advocate General is that, at all events, the notification of 13.10.53 issued under "Old Mysore Act" was saved under S. 154 of the Act and was saved under Art. 254(2) of the Constitution also in view of the presidential assent to the "Act".

28. The contentions urged by Sri Sundaraswamy learned counsel for the petitioners, are:

(a) The Union Parliament having made a legislative declaration under S.2 of the Cardamom Act, 1965, in regard to the Cardamom industry, all aspects of Cardamom industry, including the marketing of products of the industry, are taken out of the competence of the State Legislature and the measure of denudation of the State's power is proportional to the extent of the exercise of the legislative powers by the Union;

(b) That, at all events, even if the industry as a topic of legislation under Entry 52 is limited" to the "Process of manufacture", the Cardamom Act 1965, which is referable to and draws sustenance from Entry 33 of List III being a legislation of a superior legislature covering the whole field, the State Act on the same matter is repugnant to the Central legislation and must be held to be void so far as cardamom is concerned; and (c) that the Presidential assent for the "Act" does not save the Notification No.AF 7528/Mark/20/53 dated 13.10. 1953 issued under the "Old Mysore Act in as much as, the said notification had become void and, non-est much earlier upon the coming into force of the Cardamom Act, 1965.

29. On the contention (a), the argument of Shri Sundaraswamy is that by reason of the declaration by Parliament contained in S. 2 of the Cardamom Act, 1965, the cardamom industry, control of which is declared to be expedient in public interest, all aspects of that "industry" including trade and commerce in and the production, supply and distribution of cardamom stands subtracted from the State-list and; the measure of such subtraction or denudation of the States" power is the extent to which provisions are made in the Central legislation. Sri Sundaraswamy sought to rely on observations of the Supreme Court made in several cases, in which the court was interpreting Entry 54 of List-I.

It is not possible to accept this contention The pronouncements of the Supreme Court relied upon by Shri Sundaraswamy are mostly in the context of Entry 54 in List-I vis-a-vis Entry 23 in List-II on the topic "Regulation in Mines and Mineral development." This analogy is quite inapposite in the context of Entry 52, List-I, for Entry 54 specifically provides that on the topic of regulation of mines and mineral the Parliament can make law to any extent and therefore the extent of the Legislative power of the State on the same topic under entry 23 of List-II stands reduced or even excluded depending upon the extent to which the matter stands regulated by the law made by the Parliament. The exclusiveness of Parliamentary jurisdiction over the topic denuding pro-tanto that of the States is therefore the result and incident, directly of the very language of the relevant entries themselves. Entry 54 of List-I reads:

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Entry 23 of List-II reads:

"23. Regulation of mines and mineral development subject to the provisions of List-I with respect to regulation and development under the control of the Union". (underlining (italics) by us.)

This scheme shows that the measure of denudation of States" power under Entry 23, List-II is proportional to the extent to which regulation, of mines and mineral development under the control of the Union is covered, by Parliamentary Law. To use an expression of common parlance Entry 54, List-I is a self-expanding entry

in that Parliament itself, by law under Entry 54 List-I can determine the extent of the erosion of the States power under Entry 23, List-II. The analogy of Entry 54, List-I vis-a-vis Entry 23, List II cannot be a guide for the interpretation of and reconciliation as between Entry 52. List-I and Entry 24 List-III. Unlike Entry 54, Entry 52 of List-I is not a self-expanding entry. Within the powers assigned to it, under the Constitution each legislature-whether the Union or the State-has plenary powers of legislation within its legislative competence.

30. That apart, the scope and ambit of industry within the meaning of Entry 52, List-I in relation to and as limited by the corresponding entries in Entry 24, List-II and Entry 33 (a) of List III is the subject of authoritative pronouncements of the Supreme Court. In *Tika Ramji v. State of U.P.*, AIR 1956 SC. 676, it was observed.

"(24) Industry in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List 2. The process of manufacture or production would be comprised in Entry 24 of List 2 except where the industry was a controlled industry when it would fall within Entry 52 of List-I and the products of the Industry would also be comprised in Entry 27 of List-2 except where they were the products of the controlled industries when they would fall within Entry 33 of List 3."

Tikaramji's case, AIR 1956 SC. 676, has been referred to and the view taken therein has been reiterated in a number of subsequent pronouncements of the Supreme Court. As recently as in *Ganga Sugar Corporation v. State of U.P.*, AIR 1980 SC 286, the Supreme Court while re-iterating the principles of *Tikaramji's* case, AIR 1956 SC. 676, cautioned against arguments inconsistent with its authority-and finality. It was observed.

29. ... Pronouncements by Constitution Benches should not be treated so cavalierly as to be revised frequently. We cannot devalue the decisions of this Court to brief ephemerality which recalls the opinion expressed by Justice Roberts of the U.S. Supreme Court in *Smith v. Allwright* (1944) 321 US 640 at p. 669 that adjudications of the Court were rapidly gravitating into the same class as a restricted railroad ticket, goods for this day and train only."

We are, therefore, unable to accept the contention (a) supra.

31. Contentions (b) and (c): The contention of the petitioners is that the provisions of the "Act" in so far as Cardamom is concerned are repugnant to the provisions of the Cardamom Act, 1965. Art. 254 deals with concurrent powers of the Union and the State Legislatures. It provides that in case of repugnancy, the law of the Union prevails and the law of the State, to the extent of such repugnancy is invalid. In a Federal Constitution, it is said, that it is inevitable that the two governmental authorities should touch each other at many points. There

is, consequently, bound to be some over-lapping which may be lessened though not altogether eliminated by the accurate definition of their spheres. Any conflict between the repositories of the concurrent power can only be resolved by appeal to a provision in the fundamental law. Where both the legislatures have exercised a power over a subject which is common to both of them, the State law fails not because it is ultra-vires, but because its operation is overridden by the authority of a legislature which is considered superior for the purpose. In dealing with the exercise of legislative powers in the concurrent field questions of great nicety arise. The Supreme Court has dealt with the conflicts in the laws made in exercise of concurrent-powers, in varying contexts:

32. In *State of Orissa v. M.V. Tulloch & Co.*, AIR 1964 SC. 1284, it was observed:

"15. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other, then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not however, the only criterion of repugnancy, for it a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of S. 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession of the State Act."

In *M. Karunanidhi v. Union of India*, AIR 1979 SC. 898, it was observed that before Art. 254(1) is attracted and a State Law is invalid, following conditions must be satisfied:

24. 1. That there is a clear and direct inconsistency between the Central Act and the State Act,
2. That such inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions" of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other"

Following observations of Sulainan, J. in *Shyamakant Lal v. Rambhajan Singh*, 1939 FCR 193, were approved:

29. When the question is whether a provincial legislation is repugnant to an

existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a pre- sumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other, and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on possibility."

Art. 254(1) comes into play when the exercise of legislative power is in the concurrent field and when the legislation is with reference to the same "matter". Even if the two legislations are on the same topic, but cover separate parts of the same area a repugnance between them cannot be considered inevitable. In *Baliah v. Rangachari*, AIR 1969 SC. 701, it was observed:

4. Before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment: It is therefore necessary in this connection to scrutinise the terms and consider the true meaning and effect of the two enactments and having regard to the terms and language of the two enactments, we are of opinion that there is no repugnancy or inconsistency and the two enactments can stand together and they must therefore be treated as cumulative.....

(Underlining (italics) supplied)

33. The contention of Sri Sundaraswamy is that the Cardamom Act, 1965 is a legislation which draws sustenance from more than one entry viz., Entry 52 of List-I and Entry 33 of List-III: that the provisions of the-Act point inevitably to the superior legislature evincing an intention to cover the whole field of marketing of, and trade and commerce in, cardamom and that therefore the State law on the same topic and covering the same area is over-borne on the ground of repugnance. He contends that the provisions of the two Acts actually collide, and obedience to one will result in disobedience to the other. It is not merely a case of the law controlling a sale but a case of a comprehensive law of regulating the marketing of cardamom.

34. This takes us to the provisions of the Cardamom Act and the Rules made thereunder. The Cardamom Act, as the preamble sets out, is an Act to provide for the development, under the control of the Union, of the cardamom industry . S. 2 incorporates the legislative declaration that it is expedient in the public interest that the Union should take under its control the cardamom industry. S. 4 deals with the establishment and constitution of the Board called the Cardamom Board. The composition of the Board envisages the representation on the Board of the Governments of the principal cardamom growing states; the cardamom-growing interests; the cardamom-trade interests; the interest of labour; and the consumers etc., S. 9(1) charges the Board with the duty of promoting, by such

measures as the Board thinks fit, the development under the control of the Central Government of the cardamom industry. S. 9(2), inter-alia, provides:

"9. (2) Without prejudice to the generality of the provisions of subsection (1) the measures referred to therein may provide for-

(a) ** ** *

(b) Ensuring remunerative returns to growers of cardamom;

(c) ** ** *

(d) regulating the sale and export of cardamom and stabilisation of prices of cardamom;

(e) ** ** *

(f) increasing the consumption in India and elsewhere of cardamom and carrying on propaganda for that purpose;

(g) registering and licensing of brokers (including auctioneers) of cardamom and persons engaged in the business of cardamom.

(h) improving the marketing of cardamom in India and elsewhere.

(i) to (l) ** ** *

S. 14(1) levies a cess on all cardamom exported. S. 20(1) provides that the Central Government may by order, notify in the Official Gazette, fix in respect of cardamom of any description specified therein, the maximum price or the minimum prices, or the maximum and minimum prices, which may be charged by a grower of cardamom or cardamom dealer, wholesale or retail, whether for the Indian Market or for export. S. 33(1) empowers the Central Government to make rules to carry out the purposes of this Act."

Pursuant to S. 33, Central Government has made the Cardamom (licensing & Marketing) Rules, 1977. Rule 2 (b) and (c) define "auctioneer" and "dealer". Rule 3 provides:

"3. Conditions to carry on business in cardamom.-(1) No person shall carry on business as auctioneer, dealer or exporter of cardamom, except under and in accordance with the terms and conditions of a licence issued under these rules and such other instructions as may be issued, from time to time, by the Board for the development of the cardamom industry.

(2) No producer of cardamom shall sell his produce otherwise than through a licensed auctioneer or to a dealer licensed to purchase cardamom from producers:

Provided that the Board may, if it is satisfied that to ensure remunerative returns to growers, it is necessary to route all cardamom through auctions, require producers to sell their produce to the licensed dealers through auctions."

Forms, of the Licence to be granted to the auctioneer, dealer and exporter are at I, II and III of Form B respectively. The conditions of the licence which are statutorily prescribed are: that the auctioneer shall conduct the auction at a place on a day and timespecifiedby the Board. The auctioneer shall draw 500 grams out of each lot of cardamom offered for sale as sample, expose 350 grammes out of it for bidders to examine the same at the place of auction four hours before the commencement of the auction and circulate a list indicating the quantity of each lot, weight in grammes per litre and the reserve price. A copy of the list shall be sent to the Board". 100 grammes of the sample shall be given to the highest bidder and the balance of 50 grammes shall be kept by the auctioneer in a sealed polythene bag for a period of seven days for verification in case of any dispute. On the expiry of the said period or on settlement of the dispute, as the case may be, the owner of the cardamom shall be entitled to receive back the cardamom remaining from the sample drawn by the auctioneer. The auctioneer shall not charge more than one percent of the sale price as commission for the services rendered by him. The auctioneer shall maintain a register in form "X" and periodically send the extracts of the register to the Board.

The conditions prescribed in Dealers" licence are that he shall not purchase cardamom from an estate owner who has not registered his estate or from an auctioneer who has not been licensed by the Board. There are certain other conditions with which we are not presently concerned.

In regard to the place of the auction, the terms of the auction-sale, the commission payable, person eligible to buy, provisions of the Cardamom Marketing Rules are materially at variance with those of the "Act" and the bye-laws made thereunder. For instance, under the Act. sale of the notified agricultural produce cannot be effected in the "market" but only in the "yard". But the place for the conduct of auction of cardamom specified by the Board under the Cardamom (Marketing & Licensing) Rules may well be in an area which is demarcated as the "market" under the Act. The obedience to one set of provisions entail violation of the other set of provisions. In addition, the mode of sale of cardamom is sale by sample which carries its own incidents under the law of Sale of Goods.

35. Learned Advocate General, however, contended that the purpose of the central legislation was for promoting the interests of the cardamom industry and that it nowhere prohibits a levy similar to the one under the "Act." We are afraid, this approach is an over simplification of the matter. The question of levy of market-fee depends on whether the provisions of the "Act"-in view of the legislative field having been occupied by a central legislation-could be said to apply to the marketing of the cardamom at all. The learned Advocate General said that the provisions of the "Act" might well be read down-so far as cardamom is concerned to hold that such of those regulatory measures in the "Act" which are not covered by the Cardamom Act could yet be enforced. As

pointed) out in Tolloch's case, AIR 1964 SC. 1284, repugnancy might arise by reason alone of the mere existence of the two legislations if the superior legislature had evinced an intention to cover the whole field and in such case, the inconsistency need not be demonstrated by an actual comparison of all the provisions. An examination of the provisions of the Cardamom Act and the rules framed thereunder indubitably indicates that the Whole field of marketing of cardamom is occupied by the Cardamom Act. Therefore there is no scope for the State Law to operate on the same field, unless saved under Art. 254 (2) i.e., with the assent of the President. Act. 17 of 1980 which, for the first time, specified cardamom as an agricultural produce for the purpose of regulating its marketing has not received the assent of the President.

36. The Cardamom Board which is impleaded in the concerned writ petitions supported the case of the petitioners.

The contention at Point (b) urged by Sri Sundarswamy in regard to cardamom is therefore well founded.

37. So far as Notification of 13.10. 1953 issued under the "Old Mysore Act" is concerned, it became void on the date when the Cardamom Act, which is the later central enactment came into force. Therefore the 154th section of the Act which received the assent of the President on 19th August 1966 cannot come to the rescue of that notification, because even before its enactment and the Presidential assent to it that notification had ceased to exist in the eye of law and therefore, not admit of being saved by S. 154 of the "Act". The Amending Act 17 of 1980 by incorporating "Cardamom" in the schedule to the Act, cannot also exclude the operation of the Cardamom Act in the State for want of assent of the President. The contention of the petitioner at Point (c) must, therefore, succeed.

38. In view of the above discussion, it requires to be held that the provisions of the Act, so far as the marketing of cardamom is concerned, are repugnant to the Central Act on the same topic. Point No. (2) requires to be answered in favour of the petitioners.

39. Point No. 3: This point concerns permissibility of regulation of marketing of sugarcane. The Sugarcane (Control) Order, 1966, is a statutory order made in exercise of the powers conferred by S. 3 of the Essential Commodities Act, 1955. The Essential Commodities Act, 1955, is a legislation made under Entry 33 (b) of List-III, the legislative topic being foodstuffs including edible oilseeds and oils. Sugarcane is a food-stuff (see: A.K. Jain v. Union of India, AIR 1970 SC P. 267, Act p. 268, para 4. The provisions of the Order which is made under S. 3 of that Act regulate the price of sugarcane and reservation of cane growing areas for factories. Under Para-3 of the Order Central Government may, after consultation with such authorities, bodies or associations as it may deem, fit, by notification in the Official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar, having regard to certain criteria statutorily fixed. Para-3 (2) prohibits sale of sugarcane at a price lesser than that fixed. The price

of sugarcane so sold to the factories is required to be paid within a specified time. The delivery of the cane is either at the factory premises or at the cane-collection centre. Para-6 empowers the Central Government to regulate distribution and! movement of sugarcane. It is no doubt true that notwithstanding the regulatory measures under the Sugarcane (Control) Order, the transaction between the grower-producer and the factory respecting sugarcane is a transaction of sale in law. But the question is whether in view of the provisions regulating marketing of sugarcane contained in the Sugarcane (Control) Order, "it is permissible for the State Legislature to regulate the marketing of sugarcane. It appears to us that the Sugarcane Control) Order regulates every aspect of marketing of sugarcane and its provisions are irreconcilable with the provisions relating to the marketing under the "Act". For instance, the place of delivery, the price, the manner of its payments are all fixed by the statutory order. The same aspects of marketing are sought to be regulated by the Act. The two sets of provisions colvide. S.6 of the Essential Commodities Act gives overriding effect to the Orders made under S.3 of that Act as against any other Law. The small portion of the sugarcane grown by the grower the sale of which is left regulated under the statutory Order is again a matter-and part-of the policy of the regulation itself.

40. Applying the principles governing repugnancy set out earlier, while dealing with the provisions of the Cardamom Act, we hold and answer Point (3) in favour of the petitioners.

41.Point No. (4): This point concerns the alleged repugnance and conflict as between the provisions of the Tobacco Board Act, 1976, and those in the present Act. It was for the first time by the Amending Act 17 of 1980, that Tobacco was enumerated as an agricultural produce for the purpose of the "Act". The amending Act was not reserved for the consideration of the President and receive Presidential assent. Unlike the laws governing the marketing of Cardamom and Sugarcane, the Tobacco Act does not cover the marketing of Tobacco in its entirety but only covers a part of the area of the topic of marketing of tobacco. The two legislations can co-exist and operate cumulatively. Any intention by the superior legislature to cover the whole field and make a comprehensive law in regard to marketing of tobacco is not manifest in the legislation. It was not disputed during the arguments that the only provision on what may be called the area of marketing covered under the Tobacco Act was the one requiring the auctioneers of tobacco to hold a licence for establishments of auction-platforms. As long as the Market-Committees become such licencees. there is no further requirement under the Tobacco Act which can be said to render the provisions of the "Act" regulating marketing of Tobacco under the Act repugnant to or irreconcilable with those in the Tobacco Act. That apart, even on the limited aspect of marketing provided for in the Tobacco Act as indicated above, it makes provisions only in relation to Virginia Tobacco and not all varieties of Tobacco.

42. Accordingly, it requires to be held that the provisions of the Act are not

repugnant to the provisions of the Tobacco Act and that all that is necessary for the Market-Committee is to obtain auctioneer's license under the provisions of the Tobacco Act. Subject to this, the provisions of the Act in relation to the regulation of Tobacco are not repugnant to the Act. That apart, in the writ petitions challenging the regulation of marketing of Tobacco, there is a further infirmity; the Union Government and the Tobacco Board are not impleaded.

Point No. 4 is answered against the petitioners-

43. Point No. 5: It is contended by Sri Javali, learned Senior Counsel appearing for some of the petitioners, that both the provisions in S.2 (7) and S. 6 (2) (a) (b) and (c) confer an unguided arbitrary power in the matter of the choice of the authority referred to in S. 2 (7) and investing certain important powers in that authority.

S.2 (7) defines the "Chief Marketing Officer" to mean the Officer appointed by the State Government as such. The "Act" designates, ex-officio, the Chief Marketing Officer of the State as the authority to exercise certain powers, discharge certain duties and perform certain functions under the Act. Sri Javali contends that the qualifications and attainments of a person who may be appointed as the "Chief Marketing Officer" not having been stipulated in the Act, the provision in S. 2 (7) in so far as it enables the Government to appoint any person who, by his attainments may not be equal to the responsibilities that go with the wide powers vested in him under the "Act", amount to an excessive delegation of power. There is a basic fallacy in this argument. It is to be pointed out that S. 2 (7) does not by itself provide for appointment of a person as the Chief Marketing Officer. It merely identifies an authority in whom certain powers under the Act are vested. As to the qualifications and eligibility of the person for appointment as the Chief Marketing Officer, one must look to the relevant Cadre & Recruitment Rules of the Marketing Department made under Art. 309. A person appointed as Chief Marketing Officer under those rules is designated as the authority to exercise the powers conferred on the chief Marketing Officer under the "Act". We are unable to appreciate the point Sri Javali seeks to put across in regard to the alleged legal infirmity in S.2 (7). We see no substance in it.

44. It is next contended that under S. 6(2) (a) (b) and (c), the Chief Marketing Officer is required, as soon as may be after the issue of a notification by Government under S. 4, to declare any specified area in the Market area to be a "Market" and also declare by the same or a similar notification any specified place in the "Market" to be a "Market yard". He may also declare sub-markets and corresponding sub-market yards. The contention of Shri Javali on the point is that the specification of any place for location of "Market" and "sub-market" and corresponding "Market-yard" or "Market sub-yard" is vitally important in the scheme of regulation of marketing and no guidelines having been provided in the "Act" so as to condition and guide the wide and otherwise unfettered discretion of the Chief Marketing Officer in this behalf, the power admits of abuse and

arbitrary exercise so as adversely to affect not only the interests of sellers and buyers, but also the larger, public interests. As to when a statutory provision can be said to suffer from the vice of excessive delegation of power is referred to in several cases of the Supreme Court from the Delhi Law Act case, AIR 1951 SC. 332 and the case from State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC. 75, to Air India v. Nergesh Meerza and others, AIR 1981 SC. 1829. These decisions indicate that while the legislature cannot delegate essential legislative function, it can, having laid down its policy in clear terms, delegate power to any authority to make statutory rules or orders. The preamble to the "Act" and other provisions as we would presently show contain sufficient guidelines and control exercise of power by the Chief Marketing Officer.

There are in-built guidelines in S.6 itself in regard to the choice of the location and the delimitation of the areas of the "Markets" or "sub"-markets" and of "Market-yard" and "Market sub-yard" and "sub-market-yard" as the case may be. First a "Market" can only be an area within the "Market-area" declared by the State Government under Section 4. The proviso to Section 6 (2) requires that the limits of a "Market" or "sub-Market", as the case may be, shall not include any area beyond the limits of the area of the city, town or village within which the Market-yard; or a sub-market-yard, as the case may be, is situated. A Market-yard or a subyard has to be located only within the boundaries of the concerned Market, and a sub-market-yard "has got to be located only within the area of sub-market. Having regard to the object, the Chief Marketing Officer has to declare an area as a yard which is suitable in all respects for the marketing of agriculture produce, These are the broad guidelines for-and limitations on-the exercise of power of the Chief Marketing Officer in regard to specification of "Markets" "sub-Markets", "Market-yards", "Market-sub-yards" or "sub-market-yards". This power as indeed any statutory power for that matter-has to be exercised reasonably and for the advancement of the objects and purposes which it is intended to advance. Any unreasonable or arbitrary exercise of the power so as to adversely affect the rights of the sellers and buyers and operate as unreasonable restrictions on their freedom of trade would be amenable to judicial review. But the provisions themselves do not suffer from the vice of excessive delegation

45. It is no doubt true that before the, power under S. 6(3) enabling the Chief Marketing Officer to include any additional area in any "Market" or "sub-market" or any additional place from any "Market-yard", "Market-sub-yard" or "sub-market-yard" or exclude there-from any "area" or "Place", as the case may be, is exercised the Chief Marketing Officer must follow the/procedure of calling for and considering objections and suggestions as prescribed by Ss. 3 and 4 and that that procedure is not required to be followed in the exercise of a more important power under S. 6(2) (a) (b) and (c) relating to the initial declaration of Markets and yards. Legislative intent in omitting to prescribe this procedure at the initial stage is perhaps for the reason that the legislature intended that after the declaration of Market-area and the specification of agricultural produce (the

marketing of which is sought to be regularised by a notification issued by the State Government) which is required to be made after complying with the procedure prescribed in Ss. 3 and 4, there should be no further delay in the establishment of the Market. The establishment of the Market would be possible only by the declaration of a Market for that Market-area and a yard for that Market, in respect of which, as pointed out earlier, sufficient guidelines are inherent in the relevant provisions of the Act. Whatever be the reason that omission, by itself cannot justify the conclusion that the power under S.6 (2) (a) (b) and (c) conferred on the Chief Marketing Officer is an uncanalised and arbitrary power.

46. Sri Javali next urged that even if there is no provision for the calling for objections and suggestions, the exercise of power by the Chief Marketing Officer in declaring Yeshwanthpur-Market Yard for Bangalore is vitiated for "want of an opportunity for the persons affected of being heard. The observations of the Supreme Court in R.K. Porwal v. State of Maharashtra, AIR 1981 SC 1127, Para 17, apropos a similar argument, though in a slightly altered context are worth recalling:

"It was said that even as there was express provision for inviting and hearing objections before a "market area" was declared under the Act, so should objections be invited and heard before a "Market-yard" was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with the legislative activity; we are concerned with the, making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by Statute follow forthwith. The making of the declaration, in the contest, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice". The above observations are a full answer to the contention of Sri Javali.

We are also unable to see any sub stance in the argument of Sri B.V. Katageri that the, function of declaring a "Market" "and "Market-yard" is an essential legislative function and that S. 6(2) (a) and (b) is an instance of excessive delegation.

47. We, accordingly, hold and answer Point No. 5 against the petitioners.

48. Point No. 6: The argument of Shri Javali on this point is that the disproportion in the representation on the Market-Committees provided by. in S. 11 of the "Act" as between the "Traders" and "Agriculturists" is unreasonable and based on irrelevant criteria which have no relation to the objects of the legislation. Shri

Javali points out that even prior to the amendment of S. 11 by Act 17 of 1980, the Committee was loaded with agriculturist-members. There were only two representatives of "A" class, "B" Class and "C" Class Traders of the Market-area in the Market-Committee and that by the amendment of 1980, even these two seats were reduced to one, while the number of agriculturist-members was increased from 7 to 9. Sri Javali says that while for the purpose of levy of Market-fee the legislature has selected the Trader-buyers and has thrown the entire burden on them, when it came to the question of entrusting the management of the affairs of the regulated markets, nine seats were reserved for being filled by agriculturists whereas only one seat is reserved for the "Traders" resulting in a hostile discrimination against the Traders.

49. This question is indeed covered by a decision of this Court in K.N. Marularadhya v. Regulated Market Committee, Shimoga, 1969 (1) Mys.L.J. 533. Shri Javali contends that the reasoning in Marularadhya's case, 1969 (1) Mys.L.J. 533, in favour of the validity of the provision was in the context of the then limited ambitions of the legislation, namely, to protect farmer producer and that that reasoning will not hold good after the scope of the legislation is enlarged to regulate marketing. We do not think the widening of the scope of the objects of the legislation makes any difference so far as this aspect is concerned. While the number, of agricultural producers is very large, the number of traders is proportionately, very small. Besides what is sought to be regulated in the markets is the agricultural produce. There is thus no merit in the argument that classification between agriculturists and traders has no nexus.

In N. Sreerama Murthy v. The State of Andhra Pradesh, AIR 1981 AP 395, a Bench of the Andhra Pradesh High Court dealing with a similar argument observed:

"10. It was next feebly contended that greater representation was given to the growers as compared to the traders on the Market Committee, ...This contention is without substance for there is no law that all the interests which may be represented on a given Committee constituted under the enactment, should be equally represented. The representation on a particular Committee is itself a right granted by the Statute and not a fundamental right or a natural right. If the Legislature, in its wisdom, having regard to the large number of growers of agricultural produce and owners of livestock and products of livestock, has given a larger representation to them on the Market-Committee, than to the traders who are infinitesimally few as compared to the growers, that legislation cannot be struck down as vesting an arbitrary power or as discriminatory."

We respectfully agree.

50. We accordingly hold and answer point No. 6 also against the petitioners.

51. Point No. 7: 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 under 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 undemarcatable; but the levy is only on the "Buyers". S. 65(2) offends Art. 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 S. 27 of the Bihar Agricultural Produce Marketing Act 1960 (See AIR 1965 Pat. p 267 and at 270), the provision is discriminatory. At all events, the quid-proqua 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 nut-shell.

It is no doubt true that Art. 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 Art. 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 Art. 14 was urged in Vaman Rao's case, W.P. 53 of 1974 D.D. 17-12-1974. "Repelling the contention on the basis of reasonableness of classification, the Bench of this Court observed:

"It was contended that sub-sec. (1) of S. 65 of the Act offends Art. 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 S.65 (1) of the Act does not offend Article 14 of the Constitution."

52. The above decision concludes the point against the petitioners. Following the said decision, we hold and answer Point No.7 also against the petitioners.

53. Point No. (8): This point relates to the inclusion of "wood)" and "forest produce" as Items Nos. IX and V respectively as agricultural produce in the schedule to the Act. The matter is again covered by the pronouncement of the Supreme Court in Ram Chandra Kailash Kumar & Co., v. State of U.P., AIR 1980 S.C. 1124. The Supreme Court observed:

"A licence is granted to a Paper Mill and to other kinds of dealers for cutting wood from the jungle and bringing it to their factories for manufacture of various articles such as paper etc., It was argued that there was no transaction of sale and purchase involved in the above operation. Moreover, the wood is cut from the jungle area which although has been roped in the market area but no service is rendered in that jungle area by any Market Committee. In our opinion in the licence is involved sale of wood and a right to go to that land to cut that wood. The wood may be used by the manufacturer for manufacturing furniture or may be used in the manufacture of paper or any other commodity, The owner of the jungle where from the wood is cut and brought will be a producer within the meaning of the Act and the licensee-producer of that wood be a purchaser of an agricultural produce within the meaning of sub-clause (2) of section 17 (iii) (b) of the Act liable to pay market fee. It matters little what use is made of the wood by him. The question of quid pro quo and service cannot be decided by a

dichotomy of service to every payer of fee as held by this Court in Kewal Krishan Puri's case. The matter has to be judged in a broad sense and not in the sense of rendering service to every individual payer of the fee."

The above pronouncement of the Supreme Court fully answers the contention of Shri Ujjannavar.

54. A subsidiary contention on the point is that "fee" is being charged even on the sale of "forest coupels" and that sales are of standing trees and not "wood" or "forest produced. It was also contended that if the coupes sold contain trees other than the varieties included in the Schedule, the price paid being composite and not apportioned or apportionable as between the species of trees included in the definition of "wood" on the one hand and those not so included, "fee" cannot be levied. This contention bears serious examination. But, we need not examine the point in these cases in view of a memo filed by the Chief Marketing Officer that no fee would be levied on the buyers of forest coupes. The Memo is placed on record.

The further contention of Shri Ujjannavar is that some species of "wood" are alone included in the schedule and the omission to include other violates Art. 14. We have referred to some aspects of this question while dealing with point No.7. Having regard to the wide latitude available to the legislature in matter of taxation, we find no substance in this argument.

55. Accordingly, we hold and answer Point No. (8) also against the petitioners.

56.Points Nos. (9) And (10): First part of the controversy in Point (9) is that S.65 (2) gives an uncanalised and excessive power to the market committee in the matter of specifying the rate of fee, The argument is benefit of substance. We think that the statutory guidelines and safe-guards are quite adequate. In the first place the authority which specifies the rate of the fee is a democratic elective-body consisting, inter alia, of the representatives of the producers and the traders. The upper limit for the levy is fixed at 2 per cent. It can only be related to the notified agricultural produce sold in the market area. The concept of fee is itself a further limitation. It contemplates requisite services. To say that non-contemplation in the "Act" of an obligation to consult the affected interests vitiates this power would be to make a right of prior hearing imperative in legislation.

We are unable to accept the contention of Sri Indra Kumar that S. 65 (2) confers an excessive and unguided power.

57. The contentions on the second part of the controversy are three fold:

(a) That the Market-committees, not having taken the relevant criteria into account, have acted arbitrarily in promulgating the Bye-laws and therefore the amendments are bad;

(b) That the bye-laws are unreasonable and are amenable to judicial review and

require to be struck-down on grounds of unreasonableness; and (c) That Market-Committees, not having complied with even a minimal requirement of hearing of affected interests before the Bye-laws are made, the Bye-laws are vitiated by procedural ultra-vires. Section 65 (2), having regard to the nature of the power i.e., fixing the rate of "fee", upon a proper construction implies such an obligation to hear affected-interests.

Sri Byra Reddy, learned counsel appearing for some of the petitioners, has raised some questions which he presented with some emphasis. Some aspects of the contention were permitted to be urged by way of an amendment to the Memoranda of writ petitions.

It was contended that the very process by which the amendment to the bye-laws enhancing the rate of fee from 1% to 2 was ushered in is without the application of mind of the committees to the relevant criteria and requires to be struck down on that score.

Sri Byra Reddy sought to point out that the amendment to S.65 (2) became effective from 30.6.1979. S. 65 (2) merely enhanced the permissible upper limit from 1% to 2 . The Market-Committees lost no time and mechanically enhanced the levy from 1% to 2 without any application of the mind to the question whether such an enhancement was justified having regard to the financial resources available and resources required to meet the outlay on the services they proposed for the future. According to Sri Byra Reddy, no budget estimates and balance-sheets were prepared and considered before the enhancement was made.

58. It becomes necessary to examine the nature of power conferred by S.65

(2) on the Market-Committees. The power is essentially a legislative power. Sri Byra Reddy sought to point out that the view expressed in *State of Bihar v. Rameshwara Singh*, AIR 1952 S.C. 52 and for long accepted as the correct constitutional position the "constitutional of statute passed by a competent legislature cannot be challenged on the ground that the law made is not reasonable or just has undergone rethinking in the light of the new dimensions of Art. 14 expounded in the recent pronouncements of the Supreme-Court. He referred to the decisions of the Supreme Court in *Royappa's case*, AIR 1974 SC 555. *Meneka Gandhi's case*, AIR 1978 SC 597 and *Ajay Hasia's case*, AIR 1981 SC 487 and in, particular to the following statement in *Ajay Hasia*:

"Wherever therefore there is arbitrariness in State action whether it be or legislature or of the Executive or of an authority" under Article. 12, Art. 14 immediately springs into action and strikes down such State Action ..." (Underlining (italics supplied).

A legislative measure cannot be invalidated, on the ground that the relevant-criteria are not shown to have been taken into account in making the legislation. That, such a legislation, like all state action will fail if it" is arbitrary and un-

reasonable in its operation and violative of Art. 14 is a different-aspect altogether. Indeed in *Tulsipur Sugar Co. v. Notified Area Committee, Tulsipur*, AIR 1980 S.C. 882, Supreme Court approved the following observations of Megary, J. in *Bates v. Lord Hailsham of St. Marylebone*, (1972) 1 W.L.R. 1373:

"..... Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation whether primary or delegated. Many of those affected by delegated legislation, and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy.....".

In *R.K. Porwal v. State of Maharashtra*, AIR 1981 SC 1127, Para 17, the following observation of Prof. Paul Jacksoni was referred to with approval:

"There is no doubt that a Minister, or any other body, in making legislation, for example, by statutory instrument or by-law, is not subject to the rules of natural justice"

Prof. Wadeii says:

"In the case of rules and orders which are clearly legislative as opposed to administrative there is no room for the principle of natural justice which entitles persons affected to fair hearing in advance".

De Smithiii says:

"... It is still generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides".

"Practical convenience may explain why the rule is thought not to apply to the making of regulations of a legislative character."

The contention urged by Shri Byra Reddy and" Shri Sundaraswamy was that having regard to the nature of the power implicit in fixing a "fee", which requires evaluation of several objective

(i) "Natural Justice".

(ii) "Administrative Law".

(iii) "Judicial Review of Administrative Action 4th Edn. pages 185, 192. criteria, it is a combination of both administrative and legislative powers and, that, that part of the process which is antecedent and which later expresses itself in the legislative formulation in the form of a bye-law is essentially administrative. It is difficult to accept this contention. It is to be pointed out that the power is not any the less legislative merely because that certain objective criteria have got to be taken into account. Supreme Court in *S.I. Syndicate Ltd. v. Union of India*, AIR 1975 S.C. 460 at 464, though in a different context stated:

"13. The petitioners did not challenge the price fixation on the ground that a quasi-judicial procedure had to be adopted before prices are fixed even if such price fixation affects, as it must, each factory. Price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price. Nevertheless, the criterion adopted must be reasonable. Reasonableness, for purpose of judging whether there was an "excess of power" or an "arbitrary" exercise of it, is really the demonstration of a reasonable nexus between the matters which are taken into account in exercising a power and the purposes of exercise of that power. This was made clear by this Court in the two cases cited on behalf of the appellants *Shree Meenakshi Mills Ltd. v. Union of India*. (1974) 1 SCC 468=(AIR 1974 SC 366): *Panipat Co-operative Sugar Mills v. Union of India* (1973) 2 SCR 860=(AIR 1973 SC 537)".

The contention (a) cannot, therefore, be accepted.

59. So far as contention (b) is concerned, it is no doubt true that the vulnerability of a bye-law in judicial review extends a little beyond other types of subordinate legislations, in that a bye-law can be held bad for unreasonableness. Sri Byra Reddy says that the bye-law in this case was made in an unreasonable manner and therefore it should fail for unreasonableness. Sri Byra Reddy referred to the following statement of the law in Halsbury's Law of England, 3rd Edn. Vol. 24. Para 952:

"A bye-law to be valid must be reasonable. Unless it is manifestly unjust, capricious, unequitable or partial in its operation, or involves oppressive gratuitous interference with the rights of those subject to it, the question of its reasonableness is one to be decided by the authority making it.....".

In Wade's Administrative Law, IV Edn., it is stated:

"Just as with other kinds of administrative action, the courts must sometimes condemn rules or regulations for unreasonableness. In interpreting statutes it is natural to make the assumption that Parliament could not have intended powers of delegated legislation to be exercised unreasonably, so that the legality of the regulations becomes dependent upon their content.

This assumption has often been called into play in the case of local authorities' bye-laws, which they are empowered to make for the good rule and Government of their area....." (P. 713).

In Allen's Law and Orders, the following passage occurs:

"It is a very ancient principle dating back to the Year Books, that bye-laws are subject to certain judicial tests which have crystallised in the course of time."

"A bye-law must not be vague and uncertain in its terms and, finally it must not be unreasonable. In this last respect, as we have seen, it is under stricter control

than a great deal of modern delegated legislation." (p. 232).

The question arises as to what is "unreasonableness" in this context. Maxwell* says:

"But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say Parliament never intended to give authority to make such rules; they are unreasonable and ultra-vires."

An examination of the authorities would show that "unreasonableness" of the Bye-law in this context is the unreasonableness or vagueness in its effect and operation. The concept of unreasonableness in operation of the bye-law is intimately inter-mixed with, and not separate from, the question of quid-pro-quo. Indeed, according to the statement of the law on the matter in Halsbury (Supra) the tests of reasonableness are negative and unless a bye-law is manifestly unjust, capricious, unequitable or partial in its operation, the question of its reasonableness is one to be decided by the authorities making it. In our opinion, therefore, an appeal to the principle that bye-law ought to fail for unreasonableness may not be available to the petitioners as an argument distinct from the existence or otherwise of the quid-pro-quo.

The contention (h) cannot, therefore, be accepted.

60. The contention (c), however, bears examination. The challenge is not on constitutional grounds. It is, rather, an appeal to the doctrine of ultra-vires on the basis that hearing of interests affected was an imperative exercise-not in compliance with rules of natural justice but as a duty implicit in the nature of the power. S. 148(1) as it originally stood provided that a market-committee could frame bye-laws after previous publication in the prescribed manner and also with the previous sanction of the C.M.O. The contention was that no procedure having been prescribed by the Rules, the concepts implicit in previous publication and incorporated in S. 23 of the General Clauses Act were attracted. It was urged that there had been no compliance with the requirement of previous sanction and publication envisaged in the section. Obviously having no answer to this plea the State has now come-up with an Ordinance viz., Karnataka Ordinance No. 22 of 1981 promulgated during the period when the arguments in these cases were coming to a close. The Ordinance was published in the Karnataka Gazette on 17-12-1981. The Ordinance called the "Karnataka Agricultural Produce Marketing (Regulation) (Second Amendment) Ordinance, 1981, seeks to amend Ss. 134, 148 and 158 of the principal Act. By S. 3 of the Ordinance which amends S. 148 of the Principal Act, the words "after previous publication in the prescribed manner" occurring in S. 148(1) of the Principal Act have been deleted with retrospective effect i.e., from the date of commencement of the Act itself.

Learned counsel for the petitioners, however, contend that the requirement of hearing of interests affected was not conferred, by S. 148 (1) so as to admit of being done away with by amending S. 148(1); but was in

* Maxwell on The Interpretation of Statutes, 12th Ed. page-149. incorporated in S. 148 in recognition of an obligation implicit in S. 65(2) of the "Act" authorising an impost in the nature of "Fee." This obligation is not, it is contended, a mere procedural requirement of S. 148(1) but an exercise inherent in the exertion of powers of delegated legislation. The very concept of "fee" and the determination of its extent and incidence by subordinate legislation would require for its reasonable exercise an opportunity for the interests affected being heard in compliance with what is implicit in the exercise of the power. Did the legislature, ask counsel, intend that Market committee do arbitrarily fix some rate of fee, enforce its collection and then find out ways of spending it to show some correlation between the fee, and the expenditure? The intendment of the legislature, it is contended is that the extent of the services to be rendered is first to be determined, as tentative determination, and thereafter an opportunity to the affected interests is afforded to prefer objections and suggestions and thereafter the rate of fee finally determined. If this is not done, the fixation, it is urged, would be procedurally ultravires of the powers of the Market Committees under the "Act". The principle is, it is contended, that legislature never intended to give authority to make the bye-laws regarding the quantum of the fee in any other manner and that S. 148(1) only recognised this intendment implied in S. 65 (2) and prescribed a procedure therefor. By the Ordinance of 17-12-81 what was deleted, it is urged was only the particular mode of consultation and not the very implication of hearing of affected interests. The baby, they say, was not thrown out with the bath water.

Shri Datar, however, contends that upon a proper construction of S. 65(2) such, an implication of a duty to hear affected interests does not at all arise. Any argument of such a statutory implication cannot survive the amendment made by Ordinance of 17.12.81 which, in turn clearly took away the obligation of prior hearing. The right to be heard, says Sri Datar, was a creature of S. 148(1) and was not in recognition of or corollary to any obligation which can be said to be inbuilt and implied in S. 65(2) and what was statutorily given was statutorily taken away. Any implication of a right of hearing would Sri Datar says, run in the teeth of the express provision of the law.

Petitioners relied on certain passages in Wade's Administrative law in their support.

"In Britain the practice counts for more than the law. Consultation with interests and organisations likely to be affected by rules and regulations is one of the firmest and most carefully observed conventions. It is not a matter of legal right, any more than it is with Parliament's own legislation but it is so well settled a practice that it is most unusual to hear complaint". (p.728).

Difficult problems may therefore lie ahead in the wide area in which legislative and administrative functions overlap. But although the law gives no general right to be consulted, a duty of consultation is widely acknowledged in practice..." (p.717).

In *Kruse v. Johnson*, (1898) 2 QB 91. Lord Russell of Killowen C.J. said:

"If for instate, they were found to be practical and unequal in their operation between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires".

Kruse v. Johnson was a, case which considered the aspect of unreasonableness of the Bye-laws. The last portions of the excerpt relied upon by petitioners must also be understood in that context.

The authorities relied on by the learned counsel themselves show that the procedural safeguards in the form of an opportunity of consultation and hearing of affected interests before promulgation of delegated legislation, in the absence of statutory compulsion, are merely informal and extra judicial, Prof, Wade says:

"...A few statutes however provide for a right to make objection to draft regulations and for a right to a public inquiry in some circumstances. Examples are the Factories Act 1961 and the Offices shops and Railways Premises Act 1963, Under these Acts certain "special regulations" must be published in draft and written objections lodged by persons affected must be considered by the Minister. If a majority of persons affected lodge a "general objection" they are entitled to a, public inquiry, But apart from these exceptional eases no-one has a right to a hearing before regulations are made".

"In this respect English law has moved in the opposite direction from American law.....

It may be that consultation, which is not subject to statutory procedure is more effective than formal hearing, which may produce legalism and artificiality. The duty to consult is recognised in every sense except the legal one, (underlining (italis) supplied).

The incidence and sustenance of the practice of consultation are, as pointed out, not a matter of legal right. Indeed, Franck's Committee on ministers' powers was told:

"No Minister in his senses, with the fear of Parliament before, his eyes would ever think of making regulations without (where practicable) giving the persons who will be affected thereby (or their representatives) an opportunity of saying what they think about the proposal".

What emerges is that persons affected have no right to be heard before statutory

rules or bye-laws are made unless the right is conferred by the statutes. Supreme Court in *Avinder Singh v. State of Punjab*, AIR. 1979 SC 321, said.

"6. Shri Yogeswar Prasad urged that S.90 (2) obligated the municipal body to offer an opportunity to the residents of the city to file objections to the tax proposed and consider them before, finalising the, impost. This fair procedure must attach to the exercise of the power even under S.90 (5); and since that has not been done the impugned notification must fail....."

Repelling it, it was observed: "6. May be, it is desirable that the State acquaints itself with the actual sentiments of the denizens of the local area before imposing tax on them. But it is not inherent in the constitutional requirements for the exercise of the State's power of taxation that objections should be called for and considered. "No taxation without representation" is a slogan with a different dimension and has nothing to do with a levy by a government controlled by an elected legislature exercising its power of taxation. We are unable to accede to the contention that representations from the residents not having been invited the taxation notification is bad in law What is whole-some is different from what is imperative". (under lining ours)

Again in *Bate's* case, Megarry, J. said:

"4. I do not know of any implied right to be consulted or make objections, or any principle upon which the courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given. I accept that the fact that the order will take the form of a statutory instrument does not per se make it immune from attack, whether by injunction or otherwise; but what is important is not its form but its nature, which is plainly legislative".

Supreme Court referred to this passage with approval in *Tulsipur's*, AIR 1980 S.C. 882, case.

61. However, in the present case, the proposition urged by the petitioners is whether a court of construction would find the provision by necessary implication, conferring a right of being heard before the rate of fee is specified as a matter of legislative intention revealed by statutory construction and not as a supplement of natural justice. Sri Datar contends that there is a clearly evinced legislative intention to exclude a hearing and Court "should not fly" in the face of that intention.

The contention urged for the petitioners that in the very nature of the exercise of the power under S. 65(2) invoking as it does, the determination of a rate of a "fee", the legislature implied an obligation to consult the interest-affected without which a reasonable discharge of that statutory function intended by the legislature would not be possible may not, altogether be without force. See: *State of Assam v. Bharti Kala Bhandar*. (AIR 1967 SC 1766 and *Govt of Mysore v. J.V. Bhat* (AIR 1975 SC 596). Which item of service is essential to the buyers,

what amount is necessary for such services are matters on which the, buyers for whose benefit the market committee is utilised would be in a better position to say. This is all the more essential because once the service proposed to be rendered is fixed and the money required therefor by way of fee determined and a correlation between the fee and services shown, it would not be open to the Courts in judicial review to sit in judgment of the need and wisdom of the services except in a case where the item of service is ultra-vires the power of the Market-Committee. The manner in which quid-pro-quo is sought to be established in these cases to which a detailed reference will be made later, would high-light, the desirability of hearing of the interests-affected.

But in the present batch of cases this contention loses its edge and can not be entertained because even on the basis that such an obligation of hearing of interests affected prior to the promulgation of the statutory bye-laws can be said to be inbuilt in S. 65(2), the impugned bye-laws cannot be invalidated on this ground in view of the specific and express provisions of S. 5(a) of the Amending Ordinance, which validates these bye-laws notwithstanding the fact that affected interests were not heard in any manner.

The question might however become a live-issue if the Market-Committees were to amend the bye-laws made under S. 65 (2) of the Act in future without such an opportunity of hearing affected-interests.

We should, however, place on record that the Advocate General appearing for the State and its authorities and the counsel for the Market-Committees in all fairness submitted, that though, according to them, no obligation for consultation with, or hearing of interests affected was implicit in S. 65(2). it would be eminently desirable that the Market-Committees should adopt some reasonable, procedure in that behalf and that the amendment to Section 148 made by the Ordinance was only intended to cure the defect in making the impugned bye-laws to avoid great public inconvenience resulting from the invalidation of Bye-laws and that there was no intention to make the deletion a permanent feature. They also submitted that any reasonable procedure, suggested by this Court, would be adopted in practice even if there was no such legal compulsion. It is not for us to express ourselves on what would be a reasonable procedure for the Market-Committees to adopt in future if and when occasion may arise for amendment of Bye-laws relating to fee in the matter of hearing of affected interests. However, since we were asked to indicate a procedure we would say this.

It appears to us that before a Market-Committee proposes to amend a bye-law to make an upward revision of the rate of fee, in future, the Market-Committees must, first, follow the directions of the Supreme Court at para 55 in Kewal Krishnan Puri's case, AIR 1980 SC 1008. It would also be proper for the Market-Committees to prepare a statement containing the particulars of the development works and services intended to be undertaken out of the Market-fee receipts together with post-projections thereof, also setting out the likely period

of execution. The plans and estimates for all civil engineering works should be prepared and sanctioned as prescribed in Rules 70 and 71 of the Rules framed under the Act. Then the Market-Committee should notify the proposals calling for objections and suggestions from the affected interests within a stipulated period, not being less than one month. The mode of inviting objections and suggestions may be, in addition to the publication on the Notice Board of Market-Committee's Office, by appropriate publication in a daily newspaper, having circulation in the area. Those who wish to file objections or offer suggestions shall be entitled to the inspection of the statements containing the estimates, costs and other financial projections. The Market-Committees shall take into consideration the objections and suggestions so offered and hear the interests affected before amending the bye-laws revising the fee. This appears to be the minimal requirement of a hearing of interests affected. The Market Committees shall, of course, be at liberty to afford a more comprehensive procedure. The C.M.O. should also look into the objection and suggestions before according his sanction. All that we need say at this stage is that following of such a procedure would help the market committee to render better and efficient service, and the bye-laws framed after following such procedure would be beyond approach on procedural grounds obviating needless and avoidable litigation.

62. Sri Srinivasan next contends that though requirement of "previous publication" in Section 148 (1) was done away with by the amending Ordinance No. 22 of 1981, requirement of "previous sanction" which continues to be retained has not been complied with. What has happened in all these cases is that amendment of S. 65 (2) enhancing the upper limit to 2% came into force on 9-1-1980. The CMO issued directions to the market committees to amend the bye-laws enhancing the fee to 2%. Thereafter the market committees or administrators, as the case may be, amended the bye-laws and sought sanction of the CMO before bringing them into force. The CMO accorded the sanction. It was only thereafter that the bye laws were brought into force. The sequence of events is not disputed.

What Sri Srinivasan says is that there ought to be first, a resolution of the market-committees proposing to amend the concerned bye-laws and a draft of it ought to be sent to the CMO for sanction; After obtaining the sanction to the draft amendment the market committees must pass further resolution of actual amendment to the concerned bye law. If this procedure is not adopted, says Srinivasan, the requirement of previous sanction cannot be said to have been satisfied. We are unable to agree. A similar contention was considered by the Andhra Pradesh High Court in *Sri Vijaya Cotton Traders v. State of A.P.*, AIR 1981 AP 203 at 208. In that case, the Director of Marketing (an authority analogous to the CMO under the Karnataka Act) addressed a letter on 16-2-1972 to all the market-committees in the State of Andhra Pradesh requesting the market Committees to agree to have the rate of market fee enhanced. Pursuantly market-committees passed resolutions enhancing the market-fee, and requested the Director to accord necessary sanction and approval for the amendment. The

Director thereupon issued a notification approving the amendment. It was contended that the sequence of events did not spell out what, in law, amounted to previous sanction. The High Court of Andhra Pradesh observed:

"14.....We are unable to agree with this contention. We consider that the communication of the Director dated 16-2-1976 requesting the Committees to enhance the market fee to Re. 1 per cent and communicate their consent to enhance the market-fee and to amend the bye-law, should be regarded as the previous sanction of the Director for the amendment of the bye law. The Director himself suggested that the market fee should be enhanced to Re. 1 per cent and the bye-law should also be amended to give effect to such increase. We see absolutely no reason why the letter containing the suggestion should not be regarded as a previous sanction for the amendment of the bye law".

63. We respectfully agree. Again, in *Mohd Shujat Ali v. Union of India*, AIR 1974 SC 1631, the expression "previous approval" in proviso to S. 115 (7) of the States Reorganisation Act 1956 came up for consideration. An earlier memorandum dt. 11-5-1957 addressed by the Central Government to all State Governments pointing out that so far as departmental promotions were concerned, the decision of the Central Government was to the effect that it would not be appropriate to provide any protection in the matter and that so far as that matter was concerned, the State Governments, if they so desired, could change the conditions of service did amount to "previous approval". Though the pronouncement is in a different context, the same principle is attracted to a case of previous sanction also.

64. We, therefore, find no substance in the contention of Sri Srinivasan that there was no previous sanction to the Bye-laws.

65. Accordingly, on points (9) and (10) our findings are:

(a) That S. 65 (2) does not confer an unguided, arbitrary power and there is no excessive delegation of legislative power to the market-committees and therefore not vitiated on that account;

(b) That the question whether, upon a proper construction, S. 65 (2), must be held to imply an obligation on the part of the market-committees to hearing affected interest before rate of fee is specified is left open with certain observations and directions contended in paragraph 61 supra;

(c) So far as Point No. (10) is concerned, the challenge to the bye laws for the alleged want of previous sanction under S. 148 (i) is held against petitioners. The contention that the bye-laws are invalid for want of previous publication or for want of consulting the interests affected, is in view of the Ordinance No. 22/1981, also held against petitioners.

66. Point No. 11: This question pertains to the alleged infirmity of S. 65 (2) on the ground of a hostile discrimination allegedly brought about by the levy of the same rate of fee on all types of produce only with reference to the price. Sri

Ujjannavar who argued this aspect of the matter contended that the nature and extent of services afforded by the Market-Committees must necessarily vary having regard to the nature and volume of the agricultural produce and are not dependent upon its value. Sri Ujjannavar says services to be rendered to a buyer who buys-say five tonnes of cotton-may quantitatively and qualitatively be more than the services that may be envisaged to the class of traders dealing with commodities such as cardamom,cashew,cloves, etc. The imposition of the fee on the basis of the value, according to Sri Ujjannavar, is arbitrary and brings about an unconstitutional discrimination, because the impost does not recognise and differentiate between the services which are inherently different for different classes and commodities and treats unequal equally.

We are unable to subscribe to this view. Indeed it appears to us that if the impost was adquantumand not ad-valorem, it might have attracted, quite legitimately perhaps, the criticism of being arbitrary. By an advalorum impost, the goods Independently of their volume and quality are treated equally in terms of their value. An impost ad-valoremis a well accepted concept in taxation. Indeed, in Ganga Sagar Corporation Ltd."s case, AIR 1980 SC 286, the Supreme Court dealing, though in a different context, stated:

"43. Art. 14, a great right by any canon by its promiscuous forensic misuse, despite the Dalmia decision has given the impression of being the last sanctuary of losing litigants Price is surely a safe guide but other methods are not necessarily violation. It depends

67. Accordingly, we hold and answer point No. 11 against the petitioners.

68.Points Nos. 12 and 13:-Points 12 and 13 admit of being dealt with and disposed of together. The question is whether the market committees are able to establish correlation between the services and the quantum of Buyers" fee under S. 65 (2).

Seven principles in this behalf have been laid down by the Supreme Court in Kewal Krishan Puri"s case, AIR 1980 SC 1008. They are these:

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

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

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

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

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

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

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

Establishment of this correlation was discussed and debated before us at considerable length. Pursuant to the amendment to S. 65 (2) by Act 17 of 1980 enhancing the permissible limit of market-fee impossible on the buyers at 2%, all the respondents Market Committees with perhaps exception of APMC, Mangalore, enhanced the market-fee from 1% to 2% by amending their bye-laws. It is said there are 113 regulated markets in the State.

69. In 1974 when the levy had come to be challenged in Vaman Rao's case, the several market committees had filed a financial projections for a 15 year period from 1974-75 to show the estimated income and expenditure. Just about that time all the market committees had occasion to prepare and furnish similar financial proposals to the Chief Marketing Officer in connection with certain proposals for development with the aid of a loan from the World Bank. As learned counsel wanted the Court to examine these proposals also having regard to the principles and guidelines laid down by the Supreme Court in Kewal Krishan Puri's case, AIR 1980 SC 1008, we directed, by our order dated 30-11-1981, the Chief Marketing Officer to furnish, in respect of each respondent Market-Committee, a comprehensive statement in a tabular form setting out the following, amongst other particulars:

1. The year of establishment of the Market-Committee.
2. Amount actually spent for capital or developmental works from the beginning till 30-6-1974.
3. The particulars (in Metric Tonnes) of the total annual arrivals of all notified agricultural commodities for the three years 1978-79, 1979-80 and 1980-81.

4. Average daily arrivals (in Metric Tonnes) for the years 1978-79, 1979-80 and 1980 81.
5. Total amount of market-fee collected for the said 3 years 1978-79, 1979-80 and 1980-81.
6. Revenue expenditure incurred for the years 1978-79, 1979-80 and 1980-81.
7. Cash on hand or at Banks or in the form of investments as on 1-7-1981.
8. Items of developmental works originally envisaged (for a period of 15 years during 1974-75 to 1988-89) together with item-wise estimated cost thereof; Revised estimates, if any, items-wise; Progress in execution (in terms of financial outlays) of work, item-wise in respect of each item up to 1-7-1981; Balance remaining to be executed (in terms of money) with a break-up for the future years upto 1988 89 if the work is to be completed in instalments in future; Any deletion of or alterations in the items of work envisaged in 1974-75; and any other additional developmental works proposed after 1974-75".

In response to this order, the Chief Marketing Officer has filed the statements which are at Exts. R-1 to R-111. In addition, several of the respondent-Market Committees have filed statements which, though not in the same form, also contain similar information.

70. The criticism of these statements and estimate by the petitioners is fourfold.

First is that these statements Exts. R-1 R-111 are totally at variance with the corresponding estimates furnished for the same period prepared and furnished in 1974-75. The present estimates and projections, it is contended, are prepared only with a view to supplying an artificial quid-pro-quo for the enhanced levy and are merely show-pieces on paper to get-over the present challenge. It is contended that having regard to the pace of growth and performance levels over the past 7 years out of the 15 year period, it is unreasonable to expect that the huge developmental activities now projected for the next 8 years is really intended to be acted upon.

Secondly, it is contended that the vagaries and disparities in the proportion of the proposed development from Market-yard to Market-yard are so glaring that no authority in the position of the Chief Marketing Officer could reasonably approve of such uncoordinated and desperate development of the regulated Markets.

Thirdly, it is contended that many of the items of works envisaged in the development such as construction of shops, godowns and the like are unrelated to the concept of special service to the buyers and cannot be reckoned as qualifying for correlation; and that if these impermissible items are deleted from the estimates, the Market Committees would not be in a position to establish the requisite quid pro-quo.

Fourthly, it is said, that a substantial part of the proposed financial out-lays

relate to the development of what are called "Rural Markets" the outlays on which are ineligible to be reckoned as special service to the buyers. This aspect is specifically covered by Point No. 13.

71. We have examined these contentions carefully with reference to the financial statements and projections filed by the market committees. The statements were discussed at considerable length in Court.

72. We may dispose of the fourth objection which is covered by Point No. 13 first. Several of the Market-Committees have included in their financial statements and projections, considerable out-lays on, the establishment and maintenance of what are called "rural markets". We find in the literature read to us at the arguments that the expression "rural Market" is used interchangeably with "village fairs" or "shandies". The proposed outlays on the capital-works and other services under the rubric "rural markets" are necessarily outside the Market-yard and spread out in the "market area". The question raised is whether the Rural Market provide any special service to the "Buyers". Learned counsel for the petitioners placed strong reliance upon an observation of the Supreme Court in Kewal Krishan Puri's case, AIR 1980 SC 1008, at para 26 which reads:

"The benefit of market-fee, therefore, has to be correlated with the transactions taking place at the specified place in the market-area and not in the whole of the area."

Since Rural-Markets are spread-out in the Market-areas and are not part of the market-yard, it is contended, that expenditures on the Rural-Markets must be excluded in finding out the correlation. Rural Markets are spread out in the Market-area where facilities for concourse between buyers and sellers is available and where certain basic service such as weighment facilities; storage and of Market information; etc, are provided for proper and purposeful regulation and overseeing of the transactions in notified produce.

The importance of development of Rural markets, it was submitted, consisted in the circumstance that only 32% of the marketable surplus of notified agricultural produce is known to be brought into and transacted at the regulated markets and sub-markets and that a large volume of the trade in the notified agricultural produce still goes unregulated resulting in what is described as "distress sales" by agriculturists who were economically weaker. These progressive establishments and expansion of Rural-Markets, it is said, would progressively increase the quantum of notified produce coming under the law.

The Chief Marketing Officer produced into Court what was styled a "Type-Plan" for establishment of such "Rural Markets" designed by the Marketing Department. These Markets are intended to develop an extent of 5 acres of land for each Rural Market with facilities for storage, weighment and to afford wherever possible postal and banking services. The establishment of Rural Markets and legal frame-work under which they should function received the attention of the National Seminar on Rural Market Development, New Delhi,

during, December, 1979. This is what is contained in the proceedings of the National Seminar:

"It was accepted that a programme of development of rural markets needs to be supported by creating a proper legal framework which would ensure the efficient functioning of these markets. With the experience of implementing the regulated market system during the last so many years, it would be most appropriate to bring the rural markets also under the umbrella of the regulated market-system. This could be done by-declaring the rural markets as sub-yards of a nearby main assembling market. This has also the advantage of the main market being in a position to provide financial support to the sub-yard as and when necessary. The problem, however, would be with reference to the rural markets which are owned by the local bodies like panchayats or municipalities. Experience hitherto clearly points to the fact that the operation of most of the rural markets managed by local bodies leaves much to be desired. It was argued that panchayats are not appropriate agencies for handling the market functions. In Karnataka, the Panchayats manage the rural markets as agents of the Market Committee. 75% of the revenue is given to the Panchayat for managing the market and the remaining 25% is taken by the Market-Committee."

73. S. 63 (1) of the "Act", inter alia, lays down that it shall be the duty of a market committee,- (i) to implement the provisions of this Act, the rules and bye-laws made thereunder in the market-area;

(ii) to provide such facilities for marketing of agricultural produce therein as the State Government may from time to time direct.

Market Committees are thus charged with the duty of providing, facilities for marketing of agricultural produce in the whole of the market area. The services envisaged are not necessarily confined to market-yards. It could also be conducive to a more effective and purposeful implementation of the provisions of the Act to locate, in selected important rural centres in the market area, rural markets which will serve as centres for a group of villages all round providing marketing facilities. The regulatory measures under the Act will thereby cover progressively larger percentages of the marketing surplus of the notified agricultural produce which otherwise escape regulation. Essentially these measures, even as the market-yards, provide services to the "Buyers". The first point formulated in para 26 in Kewal Krishan Puri's case, AIR 1980 SC 1008, points to the permissibility of such services in the market-area. In view of these circumstances, we think that outlays on the establishment of Rural-Markets" cannot be held to be impermissible for purpose of reckoning the correlation.

74. Our finding on Point No. 13 is against the petitioners.

75. Continuing the consideration of Point No. 12, we may now advert to the other three criticisms levelled against the financial-statements. Petitioner's contention is that these financial estimates are not prepared bona-fide after a due consideration of the real needs and requirements of the Market-committees, but

are merely got up in a hurry just for the purpose of meeting the legal challenge. Some of the circumstances which, according to the petitioners, lend credence to the criticism are that in respect of most of the Markets there are steep escalations of and wide variations in the estimates prepared during 1974-75; that the performance levels of the past are such as would render the legitimacy of ambitions for future performance quite unconvincing and that, more importantly, the proposals for development of the various Markets are disparate and are not explicable on the basis of or reconcilable with any rational norms of development guided by the relevant factors such as the quantum of notified agricultural produce handled by the Markets annually; the quantum of Market-fee receipts; reasonable prospects of expansion of trading at the Markets and the like. We have carefully examined the statements and projections in Exts. R-1 to R-111. The escalation of the estimates from the 1974 figures might, as urged by the Market-Committees, be the result of the steep rise in costs of material and services. The levels of performance in the past which the petitioners characterised as indicative of the potentialities for the, future, may, perhaps, be attributable to several circumstances including the proverbially tardy motion of the wheels of public bodies. That may not compel any generalisation and need not necessarily exclude prompter executions of developmental works in the future.

But in regard to the criticism of disparate nature of the ambitions of development of the various Markets is concerned, this feature is so striking as to compel critical notice. The, statement filed by petitioners along with the Memo dated 6.1.1982 is quite revealing.

76. Source of instances which are typical and representative of such claims for disparate and disproportionate development in comparison with other markets are set-out in this memo. These instances relate to the market-yards of Tiptur (R-89); Ranebennur (R-103); Hosadurga (R-84); Sakelshpur (R-23); Kollegal (R-22); Badami (R-12); Nippani (R-3) Gadag (R-2); Bagalkot (R-101); Harihar (R-85) Bailhongal (R-8); Sirsi (R-13); Dharwar (R-16); Arsikere (R-31); Shimoga (R-79); Davangere (R-97); Mysore (R-33); Chhradurga (R-94) and Challakere (R-92).

77. Indeed, in the proposals for the development of the Market-Committees, it is legitimate to expect a scientific consistency and adherence to some broad norms of development. Under the "Act" the Chief Marketing Officer is required to sanction the budgets of these Market-Committees. Any project for development must take into account, and be reasonably related to, factors such as the quantum of notified agricultural produce handled annually at the Markets; the increases thereof expected in the, reasonable near future; the Market-fee and other annual incomes; the potentialities for expansion and the like. Any proposals for growth and development are to be scientific; they ought to be sensible. In quite a few cases they, prima-facie, appear to be neither. There ought to be some broad-norms reconciling the actualities and potentialities of the

Markets on the one hand and the ambitions of development of the Market-committees and the financial out-lays proposed thereon on the other. The criticism that the proposals for development disclose no uniformity or consistency with any norms cannot be said to be without justification. In several cases Markets with, decidedly lesser potentialities for expansion and handling lesser quantum than other markets, propose to spend sums on development which are several times higher than those proposed by these other Markets.

78. It is no doubt true that uniform standards, though desirable, may not be practicable in all cases and the requirements of a Market which handles, say ten thousand tonnes of cotton every year might differ very widely from those of a Market which may handle the same tonnage of some other notified produce which though in terms of weight may be equivalent but in terms of volume be very much lesser. A Market which deals predominantly with some seasonal commodities may have its own special problems and requirements. But in some cases before us even where there are similarities in the nature of the produce and in the other circumstances, the ambitions for development are irreconcilably disparate. Even amongst Markets which are similarly situate from the point of view of the Market-fee income; quantum of produce handled and transacted; potentialities for expansion and levels of development already reached, the proposals reveal a wide divergence. There is admittedly no uniformity or standardisation of norms for growth even broadly and each Market-Committee has its own plains of growth, adhoc.

79. Indeed the Indian Standards Institution has standardised the pattern of regulated Markets classifying them into "A", "B", "C", "D", "E" classes based on the quantum of the notified agricultural produce handled therein annually. The assessment of the Marketing projects in Karnataka made by Experts of the International Development Association in connection with the World Bank Aid for development of the Markets has classified and graded the Markets based on certain well accepted common-criteria. The cost-projections for various classes of Markets are also made therein. The present proposals have obviously not kept any of them in view. One explanation was that the whole concept of marketing is expanding and these precipitous are not now apposite.

However, the wide divergence in the plans for development lends some credence to the criticism of the petitioners that the estimates were not taken seriously even by the Market-Committees or the C.M.O.

80. On the basis of the financial statements and projections filed, the 93 Markets (out of the 113 regulated Markets in the State) in whose cases the quid-pro-quo were challenged at the hearing, can be classed into and dealt with under the five categories "A", "B", "C", "D", & "E". Here we must make it clear that the classification is made on the basis of the financial statements Exts. R-1 to R-111 filed by the C.M.O. as they stand and our observations are on the assumption that the statements represent correct and bona-fide proposals. In regard to the need to undertake a revision of the estimates reference would be made later.

(A) Market Committees where the routine recurring annual revenue expenditure is itself over 60% of the receipts of the, market-fee at 2% thereby, in itself, establishing a broad and substantial correlation. In the case of these Markets no further investigation into the income and expenditure apart from the undisputed figures as to annual Market-fee receipts and recurring expenditure need be gone into.

In this class of cases is included 33 Market-Committees (out of 113 Market-Committees in the State). Their names (with the corresponding financial statements relating to them furnished in brackets) are as under:

(1) Athani (R-106), (2) Gokak (R-62), (3) Kudchi (R-37), (4) Ramdurg (R-18). (5) Sankeshwar (R-41), (6) Hungund (R-61), (7) Hangal (R-10), (8) Hirekeiur (R-71), (9) Holealur (R-38), (10) Honnavar (R-108), (11) Tarikere (R-21), (12) C.R. Patna (R-27), (13) Hassan (R-30), (14) C.R. Nagar (R-24), (15) H.B. Halli (R-45), (16) Hospet (R-49), (17) Basavakalyan (R-69), (18) Humnabad (R-110), (19) Saidapur (R-109), (20) Shahapur (R-59), (21) Kustagi (R-67), (22) Chickaballapur (R-81), (23) Chintamani (R-87), (24), Gowribidanur (R-91). (25) Kolar (R-93), (26) Malur (R-86), (27) Mulbagal (R-98), (28) Channagiri (R-80) (29) Shikaripur (R-82), (30) Kunigal (R-74), (31) Madhugiri (R-77), (32) Bhalki (R-47) and (33) Kushalnagar (R-28).

(B) Market Committees where routine recurring annual revenue expenditure is somewhere in the range of 45% to 60% of the Market-fee receipts. In the case of these Market-Committees though revenue expenditure is not by itself sufficient to establish the requisite degree of correlation, it is reasonable to assume that-having regard to the extent of infra structural facilities presently available-even the most modest allocations on future developmental works of a non-controversial kind would bring about the establishment of correlation. In this class of cases, estimates for developmental works need not also be subjected to minute scrutiny. These Markets are:

(1) Doddaballapur (R-96), (2) Gubbi (R-76), (3) Sira (R-83), (4) Jamkhandi (R-20), (5) Kundgol (R-4), (6) Laxmeshwar (R-56), (7) Siruguppa (R-64), (8) Aurad (R-50), (9) Gulbarga (R-70), (10) Nalwar (R-48), (11) Shorapur (R-58), (12) Yadgir (R-57), (13) Yelburga (R-44), (14) Kollegal (R-22), (15) Bhadravati (R-15) and (16) Manvi (R-111).

(C) Market-Committees where the routine annual revenue expenditure plus proposed outlays on infra-structural and developmental works which are undisputedly relatable to services to the buyer (excluding the cost of items which are disputed) would show a broad correlation.

These cases are:

(1) Davangere (R-97), (2) Bangarpet (R-95), (3) Chitradurga (R-94), (4) Challakere (R-92) (5) Bellary (R-52), (6) Kottur (R-46), (7) Nanjangud (R-29), (8) Gonikoppal (R-34), (9) Harihar (R-39). (10) Pavagada (R-72), (11) Huliya

(R-75), (12) Bidar (R-54). (13) Hiriya (R-85) and (14) Sindhnoor (R-65).

(D) Cases where the proposals for outlays for "Rural-Markets" is taken into account as a permissible item of expenditure vis-a-vis the Buyers'-fee, the Market-Committees would be in a position to establish the requisite correlation. They are:

(1) K.R. Nagar (R-32), (2) Hunsur (R-36), (3) Belgaum (R-1), (4) Saundatti (R-5), (5) Bailhongal (R-8), (6) Dharwad (R-16), (7) Mandya (R-25), (8) Tumkur (R-90), (9) Kadur (R-105) and (10) Chikkanayakanahalli (R-73).

(E) Cases in which the financial estimates required to be individually examined. They relate to the regulated Markets of Bangalore, Hubli, Sagar, Bijapur, Raichur, Gadag, Tiptur and Siddapur.

31. Criticism on the relevance of some of the outlays on capital works to the services to the buyers is that huge outlays-such as those of 150 lakhs and 60 lakhs respectively on large godowns and "shops with small godowns" as in the case of Hubli Market-have no relevance to any service contemplated to the buyers. Alternatively, it is contended that even if it could be so reckoned the income by way of receipts by way of value of the godowns and shops to be allotted to the traders or in the event of the godowns and shops being let-out, the rental income should be accounted for on the receipt side.

The stand of the Hubli Market Committee and other Committees, however was that these projects were not intended to be transferred to the ownership of any of the Market-functionaries but, generally licences for their user would be granted to the market-functionaries. What is more important, is, their stand to the effect that these projects would not yield any income during the next eight-years as the construction would itself be spread over the period and, therefore the expected income by way of licence fee or rent which starts pouring in only after 1988-89 is not taken into account on the receipts" side. We think that it is reasonable to consider any proposed outlays on works or services as service to the class paying the fee only if the benefit of the services are available for a considerable part of the 15 years period covered by the estimates and which period is taken as a unit of time for ascertainment of the correlation. Correlation of fee and services cannot be reckoned on the basis of receipts and expenditure for one or two years. That is why both in Vaman Rao's case, W.P. 53 of 1974 D.D. 17-12-1974 and Rajesekharaiya's case, 1979 (1) Kar.L.J. 43, this Court wanted the financial projections to be made spread over a fairly comprehensive period sufficiently representative of the different phases of the, establishment, development and functioning of the Markets.

82. Regulated-Markets are yet in developmental stage, a stage which should be marked by rapid growth. To be effective they must indeed grow-up in a hurry. A wide variety of aspects of growth require to be attended to. A comprehensive infra-structure to admit of and accommodate future growth from time to time must be laid. The initial planning and the infra-structure must take into account

not only potentialities for growth and expansion in the immediately near future but also long-range possibilities, lest the infra-structure itself becomes a limiting factor on the future growth.

83. But apart from such basic infrastructural aspects, which stand on a different footing, the benefit of utilitarian projects relatable to and developed from fee resources must be available to the payers of the fee for at least a considerable part of the period covered by the financial estimates and projections. The logic of some of the Market-Committees in this behalf, if pushed to its logical or illogical conclusions, would mean that the present generation of fee payers would pay for services which would only be available to the next generation. In our opinion levy of fee cannot be justified on such wholly prospective services. It is no doubt true that during the period of execution of the works particularly at the formative stages of the Markets the actual benefit of the services may not be available to the payers of the fee; but if the execution, of the work is so planned as to be spread out over the years in future as to be incapable of providing any service to the class of fee payers for and during at least a considerable part of the unit of time-in these cases a 15 years" period from 1974-75 to 1988-89 fixed by the Market-Committees themselves-then the concept of quid-pro-quo will dwindle down to something which cannot but be characterised as illusory

84. We will now deal with some of the features of the, Markets referred to in Group "E" The observations we make in regard to them is on the assumption of correctness of the financial projections furnished. These observations are, of Course, subject to certain general directions to be given later in regard to the need for a reappraisal.

85. Bangalore: So far as Regulated Market of Bangalore is concerned, Market was established in 1957. The principal Market-yard was shifted to Yeshwantpur on 13.11.1975. Rice which is now the principal commodity and the main source of fee was included in 1979. Market fee income for the year 1980-81 is 1,17,41,040-00; the recurring expenditure for the year being 37,31,204/-. The market-Committee expects, after meeting the annual recurring expenditure, to be able to have a surplus of market-fee over the next 8 years in the sum of 7,99,97,673/-. The estimated outlays on developmental works over the next years is stated to be 8,24,27,500/-.

86. Shri Srinivasan objected to two items:

(1) The proposed outlay of 4.235 crores on the "Fruits and Vegetable sub-market" and (2) The proposed outlay of 1.21 crores on "Rural-markets" as being unrelated to the buyers" fee.

His contention so far as fruits and vegetable submarket is concerned, is two fold. First is that dealer in other commodities such as cereals, pulses, oil-seeds etc., could not be made to pay services rendered to the fruits and vegetable trade which constitutes a different class and the facilities in that sub-market are not available to the trade in other items.

87. We think that there cannot be a dichotomy of service, as between buyers of rice and buyers of vegetables for all of whom services are rendered in the market-area. The argument of Sri Srinivasan pushed to its logical ends would lead to the different buyers engaged in business of different commodity which may have varying volumes of turnover seeking apportionment of expenditure on services proportionate to the turnover. Such over-refinements are permissible apart from being unacceptable as ignoring practical and working problems.

88. The second objection is that the work on the fruits and vegetable market, as now scheduled, will be completed only by about the end of the 15th year period and no service will be available to the payer of the fee in that unit of time in relation to which correlation is reckoned. The market-committee has filed a memo dated 7.1.1982 stating that in view of the loan sanctioned by the State Bank of Mysore on the guarantee of the State Government for the establishment of "Fruits and Vegetable Sub-market-yards", the project would be completed before the end of the calendar year 1984. So far as the "rural-markets" are concerned, the memo says that the projects would also be completed before 1984.

89. So far as out-lay of 1.21 crores on rural market is concerned, the argument is similar to the one covered by Point No. 13.

90. Sri Ravindra, learned counsel for some of the petitioners, contended that the Market-Committee was not serious about implementation of any of these projects, but is merely setting them up merely on paper to show an artificial quid-pro-quo is demonstrable by the fact that even in regard to the furnishment of the financial estimates as to the costs of the projects variation to the extent of millions of rupees occur. Secondly, he pointed out that the contribution to the consolidated fund under S. 91 of the "Act" is bound to be reduced by nearly 12 lakhs of rupees per year having regard to the upward spurts in the Market-fee income in the last 2 years while the establishment charges are more or less constant. Sri Ravindra says that in the previous years the Market-fee receipts were comparatively very much smaller and therefore a higher percentage, i.e., 15% of the Market-fee-receipts was fixed as contribution under S 91 of the "Act" to meet the certain expenditure which was being incurred by the state for the requirements and for the benefit of the Market-Committee and now that Market-fee income has shown almost a four-fold increase and the expenditure to be met out of the contribution under section 91 has more or less remained the same, a much lesser percentage than 15% of the Market-fee receipt would be sufficient. The present provisions in the estimate of 15% should be reduced only to 3 per cent and the balance of 12% be added back on the receipts side. According to him, there would be a saving of nearly a crore of rupees over the next 3 years on this account alone. This argument, it must be said, is not without a point.

91. As stated earlier, in all these estimates, we have to go by the financial projections as now made by the Market Committees and cannot sit in judgment over the wisdom of and necessity for these projects. This is a general aspect

common to other Market-Committees. These aspects will have to be examined by the C.M.O. and the Market-Committees in terms of certain general directions we propose to give in the course of this order. However, on the basis of the estimates as they now stand we cannot quash the enhanced levy.

92.Regulated Market, Hubli: This Market-Committee was established in the year 1943 under the then Bombay Legislation. The agricultural produce dealt with in this Market is predominantly cotton Hubli cotton Market is stated to be second biggest Cotton Market in Karnataka and the fourth biggest cotton Market in India.

The receipts by way of Market-fees for the years 1979-80 and 1980-81 at 2% are, respectively, Rs. 42,55,496-02 and Rs. 47,64,649-28. The revenue expenditure for the corresponding two years is Rs. 14,84,313-90 and Rs. 16,98,336-75. The Market-Committee has, as on 1.7.1981, cash and other financial resources in the form of investments to the tune of Rs. 95,15,648-44. The Market-Committee expects to have a surplus Market-fee over recurring expenditure for the next 8 years in the sum of Rs. 81,82,649/- which along with resources on hand as on 1.7.1981 amount to Rs. 1,76,98,297-44. The estimates of outlay for developmental works over the next 7 to 8 years is stated to be Rs. 4,20,00-000/-.

Sri Srinivasan and Sri Ujjannavar, learned counsel appearing for the petitioners, contended that out of the 420 lakhs of the projected outlay, four items do not qualify for being reckoned as relatable to "Buyers" services. The first item objected to is outlay of Rs. 150 lakhs proposed for construction of large godowns; second item is of Rs. 60 lakhs for construction of shops and small godowns; the third item, is the proposed outlay on the "museum" and the fourth item, the estimated outlay of Rs. 75 lakhs for acquisition of 466 acres of land.

We think that having regard to what we have said earlier, the outlay of 150 lakhs and 60 lakhs respectively on "large godowns" and "shops with small godowns" might have to be eschewed if the benefit of these projects is not made available for a considerable part of the next 7 or 8 years or alternatively an estimated income for next 8 years or so by way of licence-fee or rental income should be taken on the receipt side. We think that if a mean period of the productivity of the project is taken and income for four years as 7% per annum is reckoned, a sum Anywhere between 75 lakhs to 100 lakhs might have to be added on to the receipt-side by way of income. Even if this addition is made, the Market-Committee will perhaps be in a position to establish a broad and general correlation of 66% on the basis of its present proposals.

93. So far as the proposed outlay of 75 lakhs on the acquisition of land is concerned, it was pointed out that the market being predominantly one for cotton, an extensive extent of land is necessary. It is said elaborate segregation and sectorisation for protection from fire-hazard will have to be done. The Market-Committee has stated that no part of the extent of 466 acres is proposed to be sold out in smaller lots to market functionaries. The provision of 75 lakhs

for the acquisition of land, it was stated, was a modest estimate and the ultimate liability for land acquisition could be ascertained only after final awards are made by Civil Courts in the land acquisition proceedings. This case of the Market-Committee does not appear unreasonable.

So far as the outlay of museum is concerned, it was stated that it was an essential amenity for dissemination of market information. On hearing learned counsel on both sides, we are of the opinion that the outlay on this item cannot be said to be irrelevant to the services to the "Buyers".

94.A.P.M.C. Sagar: The Regulated market was established in the year 1959. The financial statements and the estimates and projections for the future 7 to 8 years are at Ext. R-83.

The Market-fee receipts for the years 1979-80 and 1980-81 at 2% are Rs. 20,78,400-17 and Rs. 24,52,973-58 respectively. The recurring expenditure for the corresponding two years is Rs. 7,01,706-32 and Rs. 8,56,380-48 respectively. The Market Committee has cash and other resources to the extent of Rs. 6,98,732-00 as on 1-7-1981. The Committee is expected to save by way of Market-fee in excess of recurring revenue expenditure for next 7 to 8 years an estimated amount of Rs. 1,23,62,128/-. The development works are estimated at Rs. 1,40,0115/-. The main break-up of the developmental outlay is of Rs.88,50,624/- on the main market yard and an outlay of Rs. 51,50,000/- on the seven sub-market-yards at Anavatti, Sorab, Halesorab. Talaguppa, Rippenpet, Anakalpuram and Hosanagar.

95. The main contention urged for the petitioners is that the outlay on the sub-market-yards is not justified. It is also pointed out that in 1979, the elected market committee then functioning after a due consideration of the matter passed a resolution on 9-7-1979 which is Annexure-D in W.P. No. 13840/79 to 13850 of 1979 to the effect that no increase was justified. It is contended that one month thereafter the term of the elected body expired and the Administrator who took over mechanically amended the bye-law making enhancement. In our opinion the contention of the petitioners that the outlay on the sub-market yards should not be reckoned is not tenable. The argument that the administrator brought about the amendment cannot be conclusive against its validity either.

96. We may here advert to one other contention urged by Shri Hegde, learned counsel appearing for some of the petitioners. It was urged that having regard to the circumstance that the Market-Committee had passed a resolution declining to amend the Bye-law, the Administrator had no power to modify or cancel that resolution within the period of six months from the earlier resolution. Reliance was placed on S. 50 of the "Act" which provides that no resolution of a Market-Committee shall be modified or cancelled within 6 months after the passing thereof except by a resolution passed by not less than one half of the total number of members present. There is also a special provision as to notice of such meetings. It is argued that since the Administrator cannot satisfy these

requirements he has no power at all to modify or rescind the earlier resolution within six months as he purported to do in the present case.

97. It is not possible to accept this contention. S. 50 does not bar a modification or cancellation of the earlier resolution. But it stipulates a special majority of votes. Under S. 42(2) of the "Act", which is attracted to the case in the absence of a Market-Committee constituted under the "Act", all or any of the powers of the Market-Committees and its Chairman may be exercised by the Tahsildar who is empowered to act as Administrator until any other person is appointed under S. 130(1) of the Act. A resolution passed by such an Administrator must be held equivalent to an unanimous decision of the Market-Committee and, therefore, the requirement of special majority in S. 50 must be held to have been satisfied.

98.A.P.M.C. Bijapur: Bijapur regulated Market is one of the oldest regulated markets established under the then Bombay legislation. The Market-Committee exercises jurisdiction over Taluks of Bijapur, Indi and Basavanabagewadi. In addition to the main market yard at Bijapur, it has four sub-market-yards with corresponding sub-market yards at Indi, Basavanbaga-wadi, Sindgi and Chadachan.

The Chief Marketing Officer has filed financial statement and estimate at Ext. R-14. The Market-fee receipts at 2% for the two years 1979-80 and 1980-81 are Rs. 35,99,805-04 and Rs. 39,66,731-60 respectively. The corresponding revenue expenditure for the two years is Rs. 13,59,757-04 and Rs. 14,28,907-96. The Market-Committee has savings as on 1-7-1981 of Rs. 81,86,000. The estimates show that over the next 7 to 8 years, the Committee expects to have a surplus of 218 lakhs of market-fee over the recurring revenue expenditure for that period. The estimated outlay on developmental works over the next 7 to 8 years is Rs. 4,46,53,000. According to the estimates if the development works as envisaged are to be completed the Committee would have to find additional resources of about 60 lakhs. This is how the Market-Committee seeks to justify the increase of the fee from 1% to 2%.

99. As against this, Sri Srinivasan contends that this market-committee is attempting to firm the results by periodically raising the estimates of capital expenditure so as to justify increase in market-fee. It was sought to be pointed out that while in the 15 years' projection furnished in the year 1974-75, the total outlay on developmental works both for the main market yard and for the sub-market yard was Rs. 78 lakhs, this was later revised to Rs. 90 lakhs. In the first set of financial estimates filed in this Court, by the Secretary of the Market-Committee the total cost for developmental work was shown as 255.93 lakhs. Sri Srinivasan would say that what was originally 78 lakhs became 90 lakhs, thereafter 255 lakhs and now 446 lakhs. This, according to the learned counsel, would only betray the attempt on the Market-Committee to justify the illegal enhancement of the market-fee somehow or the other.

It is no doubt true that the estimates for developmental works have undergone

steep upward revision from time to time at the hands of the Committee.

100. Several explanations were offered by the market Committee in this behalf. It was sought to be pointed out that a number of new items had had to be envisaged for execution after 1974-75 estimates were furnished. For instance, an outlay of almost 14 crores had had to be contemplated for establishment of 28 rural markets. Financial statements for several items of work envisaged earlier had to be revised upwards owing to steep increase in the costs. Sri Srinivasan further urged that 154 lakhs proposed as outlays on the 28 rural markets had also to be excluded. Sri Srinivasan further pointed out that there were number of items which were not eligible to be reckoned as services to the buyers. He contended that the outlay of 2.28 lakhs for a cattle-shed; 0.40 lakhs for alteration of Ryo Bhavan; 0.10 lakhs for Ryot Bhavan; 13.00 lakhs each for acquisition of 2 plots of land; 5.00 lakhs for cattle-shed, 0.50 lakhs for veterinary hospital; 0.75 lakhs for milking-shed and out-lays on certain godown constructions and water troughs in the Market-yard had to be excluded. He also pointed out that a provision of 15.00 lakhs for maintenance of roads was an artificial expenditure which was not likely to arise at all.

101.A.P.M.C. Raichur: This Regulated Market was established in the year 1934. It is stated to be the oldest and biggest Regulated Market for cotton in Karnataka; the second biggest in South India and the third biggest in the whole of India. It is also pointed out that this market is scheduled to be developed as a "National Market" for Cotton.

The Committee has filed financial Statements at Ext. R. 60. The receipts by way of Market-fee for the years 1979-80 and 1980-81 are Rs. 67,15,525 30 and Rs. 94,22,365-12 respectively. The corresponding revenue expenditure for the corresponding two years is Rs. 17,37,101-02 and Rs. 20,43,225-55. The market Committee, has liquid resources, as on 1-7-1981, of Rs. 69,62,113-01. It is stated that over the next 7 to 8 years the Market Committee expects to have a surplus of Market fee income over recurring expenditure to the tune of Rs. 5,34,43,304. The total cash resources for developmental, works would thus be Rs. 6,04,05,417. The total out-lay for development of this Market as a National Market is stated to be Rs. 22,16,25,000. The only criticism of Sri Srinivasan is that unless the Market-Committee is able to show how it is going to find resources to bridge the deficit of Rs. 17 crores, the whole budget projections must be treated as unrealistic and impracticable. Learned counsel for the Market-Committee stated that there are certain special features of this Market which is being developed as one of the National Markets for Cotton and that several commercial Banks had come-forward to finance this project which is also stated to have been taken up by the Government of India for appropriate subsidies. It was also pointed out by him that certain studies have been made by the Institute of Developmental Studies in Mysore and a special State Level Committee has been constituted for the execution of this project. On the basis of these proposals as they now stand, there is no case for interference with the rate of the levy.

102.A.P.M.C. Tiptur: Regulated market at Tiptur was established in the year 1948. This Market is a typical illustration and justifies one of the strong criticisms generally levelled against the financial estimates now presented by the Market-Committees. This is a typical case where rationalisation of the proposals for future development particularly needs to be done. The financial statements, estimates and projections are at Ext. R-89. The market-fee income at 2% for the years 1979-80 and 1980-81 are Rs. 32,20,599-30 and Rs. 53,50,502-36 respectively. The revenue expenditure for the corresponding two years is Rs. 7,39,330-27 and Rs. 8,26,926-40 respectively. The Market Committee has, as on 1-7-1981, cash on hand and other financial resources in the form of investments to the tune of Rs. 94,15,899-25. The Committee expects to have a surplus of Rs. 3,22,49,369 over the next 7 to 8 years of market-fee over the revenue expenditure for that period. This amount, together with the financial resources presently held, is stated to account for Rs. 4,16,65,268 for developmental works over the next 7 to 8 years. The committee proposes to make a financial outlay of Rs. 4 crores over the next 8 years on the improvement of the main regulated market and establishment of 3 sub-markets at Kardalalu, Konchalli and Bajgur and 7 rural markets.

The contention of the petitioners is that the proposed out-lay of 30 lakhs on the rural markets is entirely inadmissible. In addition, a number of items of proposed capital works have been challenged as either not related to the buyers' services or wholly impermissible under the Act.

103. Shri Indra Kumar contended that the whole exercise made by the Market Committee before the Court in justification of the enhancement is not bona-fide but merely an attempt to support an unjust enhancement of the market fee made by it. He has, in an annexure to his statement of objections, made a graphic projection of the break-up of the out-lays on developmental works from the year 1974-75 to 1988-89. It shows that while over the past 7 years from 1974-75 upto 1980-81 the total amount spent on development is only 17 lakhs of rupees, there is a spurt in the proposed capital out-lay from 1981-82 onwards. Sri Indra Kumar says that the record of previous performance of the Market Committee over the last 7 years inspires little confidence in its readiness or ability to undertake developmental works of the magnitude now envisaged. Sri Indra Kumar is apparently strengthened by one another circumstance. In the year 1974-75 in W.Ps. Nos. 449 and 812/74 this Committee, which was a respondent in these proceedings, filed financial projections setting out its proposed developmental activities for the period from 1974-75 to 1988-89. An out-lay of 72 lakhs had then been estimated. Sri Indra Kumar would say that even that proposal had not been effectuated or implemented in that, though half of the period projected is now over, the actual position is that it has not even spent 25% of even that 72 lakhs. Shri Indra Kumar also pointed out that in respect of the development of sub-markets for which provision of Rs. 45 lakhs was envisaged in the estimates furnished in 1974-75 not a pie is spent till now. The whole claim for development of this Committee, learned counsel says, has

lost all credibility. Revised financial projections for the next 7 to 8 years produced by the Market Committee enhancing the out lay from Rs. 72 lakhs as then stood to Rs. 4.28, 18,546 as it now presented is, according to the learned counsel, a mere farce.

However, we think that on the basis of the proposals and the estimate as they now stand even assuming that many of the items, such as items 29, 30, 39, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 56, 59, 64, 66, 71 and 72 set out in Ext. R-89 challenged by petitioners are disallowed, even the remaining works do afford the requisite measure of correlation. This of course is a case for a careful reappraisal by the C.M.O. and the Market Committee in terms of the general directions we propose to make.

104.A.P.M.C. Gadag: This Market was established in the year 1943 under the provisions of the then Bombay Legislation. On 9-7-1979, the Market Committee amended its bye-law No. 12 enhancing the market fee to 2%. The Market Committee has filed several financial statements in justification of the enhancement of market fee.

In addition to the market yard at Gadag, it has two-sub-markets, one at Mulgund and the other at Hulkoti, with the respective sub-market yards. It is stated that the main commodities dealt with in the market are cotton and groundnut, which are said to be seasonal products. The Market-fee receipts for the years 1978-79, 1979-80 and 1980-81 are Rs. 16,57,011-39, Rs. 26,28,521-20 and Rs. 27,31,195-96 respectively, the corresponding recurring revenue expenditure for the three years being Rs. 8,72,282-48, Rs. 11,26,375-27 and Rs. 13,77,905-14. There is almost over 50% of surplus on the revenue side. The Market-Committee has cash resources of about 47 lakhs as on 1-7-1981. The details of the proposed developmental activities, which are phased out over the next 8 years furnished in one of the statements show that for both the main Market and the sub-market yards, a total sum of Rs. 4,24,12,000-00 is envisaged. The savings of Market-fee in excess of the revenue expenditure over the next eight years is said to be nearly a crore of rupees which in addition to the cash resources on hand-would meet this developmental out-lay to the extent of Rs. 1,44,80,000-00 leaving a deficit of Rs. 2,79,32,000.

The learned counsel for the Market-Committee contends that in view of this deficit that the Committee would be confronted with if it undertakes the developmental work, the proposals are not unrealistic and the enhancement fee from 1%, 2% unjustified.

Shri Ujjannavar, learned counsel for the petitioner, was unable to point out to any particular item of the contemplated developmental work as unrelated to the functions of the Market-Committee or unrelated to the services to be rendered to the buyers. He, however, stated that having regard to arrival of the produce to the Market-yards, which is hardly about 143 Mt. Tons on the average daily, the developmental activities contemplated by the Market-Committee appears to be

over-ambitious and totally unrelated to the purposes it can serve having regard to the very limited quantity of Market-Produce which it has been handling and is reasonably likely to handle in the near future.

On the basis of the statements filed, the increase in the fee cannot be held unjustified.

105. Siddapur Market Committee: This Market Committee was established on 13-4-1980. The financial statements are at Ext. R-15.

The amount of Market-fee received for the years 1979-80 and 1980-81 is Rs. 4,13,387-04 and 4,26,838-37 respectively. The corresponding revenue expenditure for the years 1979-80 and 1980-81 are Rs. 1,92,439-35 and 1,63,759-54 respectively. The Market has reserve as on 1-7-1981 of Rs. 3,84,260-58. The market committee expects to be able to have a surplus in the market fee receipts over the next 8 years, after defraying the regular recurring revenue expenditure a sum of Rs. 22,54,008. The total resources over the year including the cash on hand would be Rs. 26,48,268 as against which the developmental expenditure is stated to be Rs. 70,97,300 for the next 8 years.

Sri Channabasappa, learned counsel for the petitioner contended that half of Siddapur Taluk itself is likely to be get submerged in the wake after the Aghanashini and Bedti projects are completed and that the whole programme of development requires a second look by the authorities. That apart, Sri Channabasappa questioned the relevance of certain items of capital works to the Buyer's fee. Taking the figures furnished in Ext. R-15 on its face value even if the disputed items are taken off, it cannot be said that the correlation is not established. However, as rightly pointed out by Sri Channabasappa, the estimate for development will have to be carefully scrutinised by the Market Committee and Chief Marketing Officer in the light of the factors pointed out by Shri Channabasappa. This will be taken into account when a reassessment is done in accordance with the general directions given in this behalf.

106. We are, of course, fully aware of the limitation on the powers of the Court in a controversy of this kind. In ascertaining whether the necessary correlation between the services and the fee exists or not, what is required to be examined is only a broad and general correlation and not equivalence with arithmetical accuracy and precision. The Court is neither equipped for, nor should it permit itself, the role of inspecting Auditors much less should it assume the role of technical experts and seek to sit in judgment over the wisdom of the Market-committees aided and advised as they are by technical personnel of the Marketing-Department and Public Works Department in the planning of projects necessary for an efficient regulation of marketing. Whether any item of infrastructural and developmental works should be or should not be undertaken is a decision essentially for the concerned authorities under the "Act", in their wisdom, to take. The other aspect which requires to be kept in mind is that in scrutinising the items of work and services under-taken by a Market-Committee,

in cases of this kind where the controversy is confined to the existence of correlation, the exercise is not whether the items of work should or should not be undertaken by the Market-Committees. The question is somewhat different. The Court merely examines whether the outlays on the concerned works and services qualifies as a special-service vis-a-vis the "Fee".

As observed by the Supreme Court in *Prag Ice & Oil Mills v. Union of India*, AIR 1978 SC. 1296, though in a different context of fixation of price under the Mustard Oil (Price Control) Order, 1977, to be able to find fault with a law is not to demonstrate its invalidity. It was further stated:

"It is true that sufficient material, from these points of view, was not placed before us by the Union of India". (Para-24).

"The petitioners have taken us into the minutest details of the mechanism of their trade operations: and they have attempted to demonstrate in relation thereto that a factor here or a factor there which ought to have been taken into account while fixing the price of mustard oil has been ignored". (Para 69)

The Supreme Court referred to with approval the following passage in *Metropolis Theatre Co. v. City of Chicago*, (1913) 57 Law Ed. 730 :

"It may seem unjust and oppressive, yet be free from judicial interference. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void..."

107. The upshot of the above discussion is that though we are unable to hold, on the material placed before us by the petitioners, that the levy ought to fail for want of quid-pro-quo, however, having regard to the infirmities noticed in the estimates and the financial projections of the proposed developmental works on the basis of which the enhancement is sought to be justified, we are also unable to say with any confidence and without reservations that the enhancement of fee, depending as it does on those estimates is totally justified. Some time-bound directions to which we will refer presently, for a second look at the estimates by the statutory authorities are required to be issued in this behalf.

108. Indeed, having regard to the wide range of the apparently inexplicable disproportions in the developmental projects of the various Market-Committees, both the learned Advocate-General and learned Counsel for the Market-Committees stated that there was obvious scope in our opinion an imperative need for some rationalisation of the pattern of development of Market-yards based upon and related to the relevant factors such as quantum and nature of agricultural produce handled by the Markets; potentialities of development of the Market in the reasonably near future and the like. It is neither possible nor

advisable to lay down exhaustively all the criteria that may become relevant to the task. However, the need for such an exercise to regulate the development of these Marked yards on scientific, rational and uniform basis was accepted by all the parties.

109. A time-bound schedule has to be prescribed for the Chief Marketing Officer, as the authority under the "Act" approving the budgets, to evolve and standardise broad and general norms, taking into account the observations made in the course of this order, both for infra structural and developmental works and services, on as uniform a basis as may reasonably be feasible, for the various Markets depending upon their classification to be made by the C.M.O.-on the basis of such criteria as he may deem relevant, and also to evolve corresponding cost-patterns of the projects with suitable built indicia for escalation of cost-structures, from time to time, proportional to rise in the prices of material. These norms shall operate as broad and: general guide-lines for the development of Regulated Markets and shall be kept in view by the Market-Committees in planning developmental projects. Departure from these norms and standards shall, of course, be permissible on grounds of special requirements of individual Regulated-Market depending upon their specific, individual problems and requirements. At the time of sanction of the budgets of the Market-Committees the C.M.O. should scrutinise the budgets with reference to and, applying the broad-norms and criteria evolved and adopted by him so that the programme and the projects of development for the next 8 years are need based and are, as far as may be, on a uniform and rational basis.

110. The learned Advocate General and he learned counsel for the Market-Committees concede that this exercise is necessary and beneficial as indeed the matter involved an outlay of nearly 145 crores of rupees in the next 8 years on the Regulated Markets.

111. Accordingly, the C.M.O. shall within 4 months from now evolve and standardise these norms and specifications and circulate the same to the Market-Committees. Respondent-Market-Committees in categories "C", "D" and "E" in Para 80 supra will within 3 months therefrom, revise their proposals for development in accordance with these norms and specifications, departures from standard specification being permissible if the special conditions peculiar to the particular Markets so require and compel. The C.M.O. will again scrutinise these revised proposals and their cost-projections and if, upon such scrutiny, is of opinion that the present 2% Market-fee of any Market-Committee in the category "C", "D" and "E" Supra is unjustified, the C.M.O. will make appropriate orders under Section 150 of the "Act" directing the Market-Committee or Committees concerned to amend their Bye-laws to effect an appropriate downward revision in the quantum of the fee. Wherever the C.M.O. is of the opinion, after an examination of the proposals that there is no need to make a downward revision, he shall make a specific note in that behalf. These orders shall be made within a period of 8 months from now.

112. Point No. 14: The contention, briefly stated, is that once a "market-yard" in respect of a "market" is specified and declared by the C.M.O. in exercise of his power under S. 6 (2) (b) of the Act, having regard to the nature of that power, and to certain far-reaching and irreversible consequences that flow from the establishment of a "Market-yard", that power is consummated and spent and there is no further power left in the C.M.O. later to declare some other place in the "market" as the "market-yard" in lieu of the yard earlier declared. In short, the argument is that market-yard cannot be shifted.

113. The argument is in the context of the "market-yard" for the Bangalore Market and of the notification dated 13-11-1975 declaring a new "Market-yard" at Yeshwantpur. A brief advertence to the factual antecedents may be necessary. On 1-6-1959, under S. 5 of the then Mysore Agricultural Produce Marketing Act, 1939, Government of Mysore declared the whole of the Bangalore District as the "market-area". By another notification of the same date, in exercise of the power conferred by S. 4 of that Act, the City of Bangalore was declared to be the "market" in respect of the market-area. The operation of these notifications was expressly saved by the "Act". After coming into force of the Act (i.e., Act of 1366), the C.M.O. issued a notification dated 7-12-68 declaring the three places "Old Thargupet", "New Thargupet" and City Market as; together, constituting the "Market-Yard" for Bangalore. By the further notification dated 13-11-1975 purporting to be under Sub-sec. (3) of S. 6 of the Act, an extent of 38.09 guntas in Yeshwantpur was declared, as the "market-yard" in lieu of the market-yard earlier declared on 7-12-1968. This notification of 13-11-75 is challenged by the Rice dealers.

In explanation of the delay in the challenge to the legality of the notification, they would say that the "rice" as a notified agricultural produce was sought to be regulated, for the first time in the year 1979 and that therefore the cause of action to challenge the notification dated 13-11-1975 accrued in 1979.

114. The contention of Sri Srinivasan is that the declaration of a market-yard under the Act sets in motion certain far reaching consequences. A market-yard is not a mere notion or a concept. It takes a good-deal of planning; lay-out of development of infrastructure; buildings, Roads and many other amenities that go with the concept of a functional "market-yard". With the notification of 7-12-1968, by which the C.M.O. declared the Old Tharagupet, New Tharagupet and the City Market areas as the Market-yard, trade had come to be established therein, buildings built and other amenities developed. In the very nature of things, says counsel, certain irreversible consequences ensue from such a declaration of a "market-yard" Sri Srinivasan says that when once the market-yard is so established, there is, and ought to be, no further power in the C.M.O. to direct a shifting of the marketing operations to a different place to be notified later as a "market-yard" in lieu of the old yard.

115. The question is no longer resintegra. In R.K. Porwal v. State of Maharashtra, AIR 1981 SC 1127, Para 17, the Supreme Court dealt with a similar contention.

In the batch of cases disposed of by the Supreme Court there were petitioners from Karnataka who also challenged the shifting of the "market-yard" of Bangalore to Yeshwantpur. The Supreme Court considered the scope of the power of the authorities under the marketing legislation of Maharashtra to declare a new market-yard in lieu of the old one. The argument of the traders was noticed thus:

"3. It was also submitted that once a principal or subsidiary market was established at one place,, there was no provision in the Act which enabled the principal or subsidiary market to be transferred to another place. In any event it was urged that the notification was an unreasonable restriction on the right of the petitioners to carry on their trade.....". Repelling this contention, Supreme Court approved the view taken by Chagla, C.J., and Tendolkar, J. in *Bapubjai Ratanchand Shah v. State of Bombay*, (1955) 57 Bom. L.R. 892, to the effect that under S. 14 of the General Clauses Act the power conferred on the authority to declare a market could be exercised from time to time as occasion requires, and that the power to issue notification declaring a principal market-yard, sub-market yards etc., was not exhausted by its exercise once. Supreme Court, approving the view taken in *Bapubhai's* case, (1955) 57 Bom. L.R. 892, observed.

"..... Any other construction may frustrate the very object of the legislation."

"Nothing may be expected to remain static in this changing world of ours. A market which is suitably and conveniently located today may be found to be unsuitable and inconvenient tomorrow on account of the development of the area in another direction or the congestion which may have reduced the market into an impossible, squalid place or for a variety of other reasons. To so interpret the provisions of the Agricultural Produce Marketing Regulation Act as prohibiting the abolition of market once established and bar the transfer of the market to another place would, as we said, be to defeat the very object of the Act. Neither the text nor the context of the relevant provisions of the Act warrant such a prohibition and bar and there is no reason to imply any such. On the other hand sections 14 and 21 of the Maharashtra General Clauses Act warrant our reading into Section 5 a power to close a market and establish it elsewhere".

116. But Shri Srinivasan sought to distinguish this pronouncement on the ground that the observations were based on the scheme of the Maharashtra Act which, according to him, was different from that of the Karnataka Act. He says that S. 6(3) which is peculiar to the "Act", by necessary implication, manifests a contrary intention. According to Shri Srinivasan, S. 6(3) by envisaging the only manner in which a market-yard or a sub-market yard or a market sub-yard could be altered and this by mere additions to or deletions from the existing markets or yards-excludes, by necessary implication the idea of shifting of the entire Market-yard, market-sub-yard or sub-market yard as the case may be, as a whole. In other words, Shri Srinivasan contends that by virtue of S. 6(3) of the Act, the application of Section 14 of the General Clauses Act is excluded.

We do not agree. Ss. 5(1) and 5(2) of the Maharashtra Act, broadly correspond to S. 6(1) and 6(2) of the "Act". Under the Maharashtra legislation there is a two tier system, the "market" therein, corresponding to the "market-yard" under the Act. S. 6(3) of the "Act" merely provides that the C.M.O. may include or exclude any "area" from any "market," or "sub-market" or include or exclude any "place" from any "market-yard", "market-sub-yard" or "sub-market-yard". S. 6(3) also enables the C.M.O. to direct that marketing of any notified agricultural produce in any "market-yard" or "market-sub-yard" and "sub-market-yard" shall cease or that any notified agricultural produce shall be included in the regulation of marketing in any such yard or sub-yard. 117. As is clear from the provisions of S. 6(3) they deal with the limited aspect of additions to or deletions from the extant territorial extent of the markets, sub-markets, market-yards, market-sub-yards and sub-market-yards. The provision does not operate in or occupy an area in which S. 14 of the General Clauses Act operates. S. 14 of the Karnataka General Clauses Act provides that any power conferred on any authority under a statute can be exercised from time to time as occasion requires, and S. 21 of the Karnataka General Clauses Act provides that when a power to issue notifications, orders, rules or bye-laws is conferred, that power includes the power to add to, amend, vary or rescind the notification, order, rules or bye-laws so issued earlier. Such a power to add to, amend, vary or rescind is also implied in S. 6(2) (a) and (b) of the Act and is not in any way affected by S. 6(3). Section 6(3) on the one hand and Sections 14 and 21 on the other, operate in different areas. It must, therefore, be held that the power under Section 6(2) (a) and (b) to specify markets and market-yards is to be read along with Sections 14 and 21 of the Karnataka General Clauses Act, and so read, enable the making of and support the notification dated 13-11-1975.

(118) However, there is one another good reason why such challenge to the notification dated 13-11-75 should not be permitted at the instance of the present petitioners. It would appear that during the pendency of these petitions, most of these petitioners availed themselves, pursuant to interlocutory directions from this Court, the benefit of allotment of sites etc., in the new market-yard at Yeshwantpur and agreed to shift. We think that in view of these circumstances they should not be, permitted to urge this challenge at this stage. Though we have dealt with the contention on merits, it is necessary to point out that even otherwise, petitioners should, not be permitted to raise this controversy. Dr. Bigelow says: Dr. Bigelow on Estoppel 6th edn. 783.

"If parties in a court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of courts of justice would in most cases be paralysed; the coercive process of the law available only between those who consented to its exercise, could be set at naught by all. But the rights of all men, honest and dishonest, are in the keeping of the courts, and consistency of proceeding is therefore required of all those who came or are brought before them"

The same principle was stated by the Supreme Court in *Mamleshwar Prasad v. Kanahaiya Lal*, AIR 1975 SC 907, thus:

"5. A litigant cannot play fast and loose with the Court. His word to the Court is as good as his bond and the Court must without more ado, negative the present shift in stand by an astute discovery of a plea that the earlier judgment was rendered *per-incuriam*".

119. In view of the foregoing, we have no hesitation in holding point No. 14 against the petitioners.

120. Point No. 15: This point relates to the addition of rice as one of the notified agricultural produce to be regulated under the Act and the consequential need to issue notifications afresh by the chief Marketing Officer declaring "Market" and "Market-yard" under S. 6(2) (a) and (b). This contention of the petitioners, who are traders in the City of Bangalore, is that after the notifications dated 11.6.79 including rice as one of the notified agricultural produce was issued, there ought to have been fresh notification by the Chief Marketing Officer declaring a "Market" and the "Market-yard" and in the absence of such notifications, the provisions of the Act cannot be enforced. This point is concluded against the petitioners by a judgment of this Court in *Secretary, Agricultural Produce Market Committee v. Appayya Shanbogue & Co.*, 1975(2) Kar.L.J. 132. Therein, it was observed that:

"As the expression "notified agricultural produce" occurring in Cl. (b) of S. 6(2), has been defined in S. 2(28) of the Act as to mean not only agricultural produce which the State Government has declared as such by a notification under Sec. 4, but also agricultural produce so declared by a notification under S. 5, there is no reason why a market once declared under Section 6 (2) (a) and the market yard once declared under Section 6 (2) (b) should not be applicable to new items of agricultural produce added from time to time to the existing items of notified agricultural produce, by means of notifications issued under S. 5 of the Act."

121. Following the said ruling, we hold and answer point No. 15 against the petitioners.

122. Point No. 16: This contention is based on and turns upon an interpretation of S. 6 (2) (b) of the Act. That provision reads:

6 (2) (b): The Chief Marketing Officer shall by a notification under clause (a) also declare a specified place in the market to be a market yard for the Regulated marketing of the noticed agricultural produce specified in the notification. He may also by the same notification or notifications declare any other specified place or places as the case may be, in the Market to be a market sub-yard or sub-yards for the regulated marketing of the notified agricultural produce specified in the notification. (Underlining ours).

Sri Srinivasan contends that even though a notification under S. 4 declaring a market-area and declaring, further that the marketing of the specified kinds of

the agricultural produce specified in the notification is issued by Government, it is necessary for and incumbent upon the C.M.O. in the course of the notification issued by him declaring the "market-yard" contemplated under Sec. 6(2) (a) and (b) once again to specify the agricultural produce whose marketing is to be regulated in the "market-yard". According to Sri Srinivasan, notification dated 13.11.75 does not so specify the agricultural produce and therefore, is not in conformity with section 6 (2) (b) and requires to be struck down.

The emphasis of this argument is on the words "for the regulated marketing of the notified agricultural produce specified in the notification" occurring on section 6 (2) (b). It has been held by this court that the "notification" referred to in the above clause is not the "notification" issued under S. 4 but a "notification" under S. 6 (2) (a). The interpretation of S. 6 (2) (b) suggested by Shri Srinivasan at the first blush, seemed plausible, but on a careful consideration of the statutory scheme for regulation of marketing of notified agricultural produce, the need to specify once again by the C.M.O. of the notified agricultural produce under S. 6 (2) (b) has, as we shall presently point out, a limited role to play and assumed relevance in an altogether different context.

123. In the Act, the power to specify the "Market-area" and specify the kinds of agricultural produce respecting which regulatory measures under the Act shall be enforced vests in the Government. Under Section 5 it is the government alone that can make alterations of the "market-area" and in the list of items of regulated agricultural produce earlier notified by it under section 4. The power of the C.M.O. in S. 6 is to effectuate this regulation by specifying "markets", "sub-markets" "market-yards" and market sub-yards. Quite obvious the C.M.O. cannot undo what the Government has done under Sections 4 and 5. A construction which will lead to that position should be avoided, if it could reasonably be done. The construction of and purpose sought to be achieved by Sections 4 and 5 on the one hand and section 6 (2) (b) on the other, suggested by Shri Srinivasan, if accepted, would lead to an apparent conflict between the two sets of provisions. For instance if government specifies 10 items of agricultural produce for regulation under Section 4, the C.M.O. would be at liberty to regulate, say 4 to 5 of them undoing the effect of the notifications under sections 4 or 5, as the case may be, so far as the rest of the items are concerned.

An indication of and the basis for a harmonious construction is in S. 6 (2) (b) itself. An analysis of S. 6 (2) (b) would show that it enables the C.M.O. to:

(i) declare a specified place in the market to be a market-yard for the regulated marketing of the notified agricultural produce specified in notification, (ii) declare, by the same notification any other specified place to be "market sub-yard" or sub-market yards for the regulated marketing of the notified agricultural produce specified in the notification.

What follows is that the requirement to specify the agricultural produce over-again in the notification issued by the C.M.O. is clearly in the context of

apportionment of the terms of agricultural produce to be regulated; as between a main "market-yard" and "sub-market yard". In our opinion the requirement to notify once again the agricultural produce by the C.M.O. under Sec. 6 (2) (a) and (b) is necessary only where he apportions the notified produce, for regulation as between "market-yard" and "sub-market yards". It is open to the C.M.O. to say that certain items of the agricultural produce notified under section 4 shall be dealt with in the "market-yard" and some other items in the "sub-market yard". This power should be read with and as a corollary of the power in S. 6(3) which inter-alia enables the C.M.O. to:

".. direct that the regulated marketing of any notified agricultural produce in any market-yard, or market sub-yard, or sub-market yard shall cease or that any notified agricultural produce shall be included in the regulation of marketing in any such yard or sub-yard".

If no mention is made of any notified agricultural produce in the notification under S. 6 (2) (a) and (b) issued by the C.M.O. it would mean that all the notified produce specified by the Government under S. 4 shall be regulated in both the market-yard and the sub-market-yard or yards.

124. We, accordingly, hold and answer point No. 16 against the petitioners.

125. Point No. 17: This contention is based on certain observations of a Bench of this Court in *Venkateswara Traders v. Administrator Agricultural Produce Market Committee, Chickaballapur, 1972 (1) Mys.L.J. 35*, where it was held that when alteration of a "Market-area" is made under S. 5 of the Act, it is obligatory for the Chief Marketing Officer to specify afresh, any area in the "Market-area," to be a "Market" and further to specify any place in the Market to be a "Market-yard", and that the "Market" and; "Market-yard" notified for the original "Market-area" as it stood before the alteration cannot be regarded as a "Market" or "Market-yard" for the altered "Market-area".

Prior to 6-6-1969, the Bangalore District was the "Market-area". "Bangalore-City" had been declared as the corresponding "Market"; and the "Old Tharagupet, New Tharagupet and City Market" had been specified to constitute the corresponding "Market-yard". It is not disputed that prior to 6-6-1969 the "Market-area", the "Market" and the "Market-yard" were all duly notified. The contention is that whenever Market-area is changed, the "Market" and the "Market-yard" must be notified afresh.

On 6-6-1969 the "Market-area" of Bangalore was altered by the deletion of the Taluks Chennapattana, Karnakapura, Magadi, Ramanagara and Doddaballapur.

The argument of Sri Srinivasan is that after the alteration of the "Market-area" brought about by the notification dated 6-6-1969 there ought to have been a fresh notification by the Chief Marketing Officer specifying the "Market" and the "Market-yard." Admittedly, no fresh notification declaring a "Market" was issued, though, however, on 13-11-1975, the Chief Marketing Officer had specified a

fresh "Market-yard" at Yeshwantpur. The argument is that as the "Market-area" stood altered, the notification declaring the "Market-yard" made by the Chief Marketing Officer on 13-11-1975 would not be of effect as there is no fresh declaration of the "Market" at all.

126. It should, however, be pointed out that obviously with a view to getting over this difficulty arising out of the decision in Venkateswara Trader's case, 1972 (1) Mys.L.J. 35. S. 6 of the Act was amended by the Karnataka Agricultural Produce Marketing (Regulation) Amendment Ordinance 20 of 1981, introducing *inter-alia*, a new S. 6(4) in to the Act. Section 2 of the Amending Act reads thus:

"2. Amendment of Section 6.-In Section 6 of the Karnataka Agricultural produce Marketing (Regulation) Act, 1966 (Karnataka Act 27 of 1966) (hereinafter referred to as the principal Act), after sub-section (3), the following sub-section shall be and shall be deemed always to have been inserted namely;

"4. For the removal of doubts it is hereby declared that after the alteration of a market area or of the items of regulated agricultural produce, if any, under section 5 it shall not be necessary for the Chief Marketing Officer to make any declaration under this section unless he is of the opinion that it is necessary to declare any area other than the existing market, sub-market, market yard, market-sub-yard or sub-market-yard as market, sub-market, market-yard, market sub-yard or sub-market yard as the case may be."

The clear intendment and effect of the amendment is to continue the "market" and the "market-yard" declared for a "market-area" notwithstanding the alteration of the market-area. Such continuance is, however, made subject to the opinion of the Chief Marketing Officer, in that, if he decides to change the "Market" or "Market-yard", he could do so. In view of this amendment, the edge of the argument, of the petitioners against the validity of notification dt. 13-11-75 on the ground that no Market had been declared afresh gets greatly blunted. The declaration of the "Market" earlier made before the alteration must be deemed to have continued as such even in respect of the altered "Market-area". The argument of Shri Srinivasan that the provisions of S. 6(4) are available only where the Chief Marketing Officer does not intend to change the "Market" or the "Market-yard" and whenever he desires to change them, operation of S. 6(4) is excluded cannot be accepted as it proceeds on a wholly impermissible construction of S. 6(4). That clause relied upon by Shri Srinivasan, on the contrary, merely saves the power of the Chief Marketing Officer to alter the "Market" or "Market-yard".

127. We accordingly hold and answer point No. 17 also against the petitioners.

128. Point No. 18: In view of the conclusion we have proposed under Point No. 17, this point becomes really academic.

However, it is very clear that the retrospective effect sought to be given to the notification dated 18.10.75 and 31.10.80 are clearly untenable. When the parent

Act does not authorise such retrospective subordinate legislation, none can be exercised. (See: India Sugars & Refineries v. State (AIR 1960 Mys. 326)). Accordingly, we hold that notification dated 18.10.75 and 31.10.80 cannot operate retrospectively.

129. The point is held and answered in favour of the petitioner.

130. Points No. 19 and 20: These relate to the question whether the market-yard at Yeshwantpur has the requisite facilities, for Trade. The matter, in our opinion, is concluded by the pronouncement of the Supreme Court in Porwal's case. Indeed, in W.P. Nos. 4784 to 4813 of 1981 before the Supreme Court of India several of the Rice traders of Bangalore challenged the shifting the, "Market-yards" to Yeshwantpur Market on the ground principally that Market-yard was not established and facilities for trade were not available. Sri Datar, learned counsel for the APMC, Bangalore, stated that in those cases, Supreme Court appointed an Advocate Commissioner to examine the question of availability of facilities in the new market yard of Yeshwantapur and after compliance by the Bangalore Market-Committee with certain time-bound directions issued by the Supreme Court in regard to the providing of facilities at the "Market-yard", ultimately dismissed the petitions.

However, Sri Srinivasan stated that though Supreme Court has observed that necessary roads, underground drainage, street lights, drinking water supply are available in the market-yard at Yeshwantpur, the question of other facilities such as buildings, ware-houses necessary for the, establishment of a functional market are not there and that traders in rice would be put to serious jeopardy if they are compelled to shift their trading activities to the new market-yard.

It was also contended by Shri Srinivasan that apart altogether from the question whether the market-yard must be deemed to have been established, and whether facilities for trading in rice had been provided therein, there are certain circumstances subjective to the petitioners and the nature of their trade, that makes the time available to them to shift so unreasonable as to amount to an unreasonable restriction on their rights under Article 19(1) (g). Sri Srinivasan pointed out that Supreme Court granted 1-1/2 years" time to the traders to shift and that that time was granted after 6 years had already elapsed after the market was established. Sri Srinivasan referred to the following observations at para-13, at page 1020 of the judgment in Ramakrishna Hari Hegde v. Market Committee, Sirsi, AIR 1981 SC 1127, Para 17:

"13. While the Government has the power to issue a Notification in public interest and to declare the area specified in the impugned Notification as, the Principal Market area, without necessarily declaring other areas simultaneously as sub market area in our view sufficient time should have been given for the Appellants, Respondent 3 and other persons doing business in the area of the 3 Gallis to shift their business. As long as the Notification prohibited them from doing business in those Gallis they had a right to challenge the validity of that

Notification..... The learned Advocate for the Market Committee, however, consistent, with the stand taken by the Market committee in its counter before the High Court that it had requested; the Government to allow the business in the Gallis to be carried on for one or two years time for the Appellants and Respondents to enable them to shift during this period, to the Principal Market Yard declared under the impugned Notification and till then permit them to continue their business in the 3 Gallia. The period agreed to in our view is a reasonable period within which the Appellant and Respondent 3 can shift their business to the new Market Area and till then they should not be prohibited from doing business in the Market Area of the 3 Gallis as heretofore. In view of this agreement except to give the above direction there is no need to strike down the Notification".

131. Indeed, adverting to a similar situation, Supreme Court in *Porwal's*, AIR 1971 SC 1017 at 1020, case observed:

"15. ... While a notification may be quashed if nothing has been done beyond publishing the notification, in cases where some facilities and conveniences have been provided but not some others which are necessary the Court may instead of quashing the notification give appropriate time-bound directions for providing necessary facilities and conveniences. On the facts of the present case, we are satisfied that all reasonable facilities and convergences are now provided. We are also satisfied that the traders have, been making one desperate attempt after another to avoid moving into the new markets and they have been successful in stalling the notifications from becoming effective for quite a number of years".

We think, in view of the findings of the Supreme Court in W.Ps. 4784 to 4813 of 1981, we ought not to entertain a plea that the market at Yeshwantpur is not established. The finding by the Supreme Court ought to be conclusive. We should act in aid of that finding. Accordingly, we decline to grant any further time for the traders to shift their trading activities to the new market yard. They shall do so immediately. Sri Srinivasan and Sri Sundaraswamy, however, stated that the sale of rice in Bangalore, as set out in the statement filed by the traders in the course of these petitions, is in the order of about 8 to 10 thousand quintals per day, and that it is usual for the traders to keep in stock at least 3 to 10 days supplies. On thar. basis, Sri Sundaraswamy stated that provision is necessary for the storage and ware-housing of about 80 thousand quintals of rice at the Market-yard if the yard should become really a functional market for rice.

132. Shri Datar, learned counsel for the Market-Committees, stated that the Market-Committee is alive to and sensible of the possible inconvenience to the Rice-trade though, however he stated that extent of storage facilities claimed by the trade is somewhat exaggerated. Shri Datar staged that every effort would be made by the Market-Committee of Bangalore to secure for the traders reasonable stop-gap accomodation pending permanent arrangements to be made by the Rice-traders. The Market-Committee would also make available the accommodation in its possession and control on a temporary basis to the traders

and would also use its good offices with the other licensed traders to make available their unused accommodation to petitioners.

133. We have given our anxious consideration to this plea as to the practical difficulties and problems put forward by the Rice-traders. The Market-fee from Rice-trade is very substantial and is now almost a crore of rupees per year. It is undoubtedly in the larger interests of an effective over-seeing of all the transactions in rice and bring the whole volume of rice trade under control of the Market-Committee that proper facilities should be provided to marketing of rice in the yard. Sri Datar on behalf of the Market-Committee of Bangalore promised that all effort-would be made to provide the necessary facilities.

The vexed problem of shifting of the whole of the Rice trade has become banal by reason of the long drawn out ding-dong battle between the Rice-traders and the Market-Committee. We have declined to grant any time to the petitioners to shift to the new Market-yard. However, we consider it necessary to prescribe a time-bound schedule for the Market Committee to provide within reasonable limits of its capacity, transitional accommodation and other facilities for the rice traders to shift to and function at the Market-yard at Yeshwantpur. It is no doubt true that this being a transitional phase some amount of inconvenience and dislocation is inevitable and the traders have to put up with it. We would, therefore, while declining to give any further time to the traders to shift to the Market-yard, at the same time direct the Market-Committee to give them all such reasonable help and assistance in rehabilitating themselves in the new Market-yard.

134. We, accordingly, direct the Bangalore Market-Committee to submit a report to this Court at the end of 6 weeks from today about the efforts made by the Market-Committee in the matter of providing of temporary accommodation and facilities for trading and storage of rice in the new market-yard. These cases of Rice-dealers of Bangalore shall be posted before the Court immediately after the expiry of six weeks.

135. Subject to the above directions Points Nos. 19 and 20 are held and answered against the petitioners.

136. We may now refer to some subsidiary contentions and consequential matters. Shri B.V. Katgeri, at the fag-end of the arguments, urged the contention that Rice being "declared goods" under S. 14 of the Central Sales Tax Act, the levy under the State Sales Tax Act cannot exceed the rate, now fixed at 4% by the Central Act. The rate now being levied under the Karnataka Sales Tax Act of 1957 is already Re. 1% and the "Market Fee" of 2% would take the rate beyond the permissible maximum. Reliance was placed on a decision of this Court in *Kasturi Seshagiri Pai & Co. v. The Deputy Commissioner, South Kanara*, (1961) 12 STC. 629. The argument proceeds on the premise that the Market-fee is in the nature of sales tax.

The impost concerned in *Kasturi Seshagiri Pai's* case was a market-cess under S.

11 of the Madras Commercial Crops Markets Act. In that case it was not disputed before the Court that the impost was in the nature of sales tax. The levy of Market-fee in the present case is, however, not a tax on the sale of goods falling under Entry 54 of List-II. There is thus no substance in the contention of Sri Katgeri.

137. The next point to be considered is the prayer of the petitioners in the cardamom cases for a direction for refund of the Market-fee paid by them. There are some features about this claim for refund which require special notice. The impost is not a tax but a fee which envisages special services by way of quid-pro-quo. Cardamom traders who are petitioners did not challenge the Act earlier and they challenged the provision of the Act only after the rate of Market-fee on buyers was increased to 2%. Counsel for the market-committees stated that though the Cardamom Act is on the Statute Book, no effective steps to implement and effectuate its provisions have yet been fully taken by the Cardamom Board. The Cardamom dealers have been availing themselves of the services provided by the Market Committees in the Market-area and in the market-yard. After they filed their writ petitions, there has been a stay order operating so far as levy in excess of 1% is concerned. In the concerned Market-yards cardamom has been the main and predominant agricultural produce dealt with and the petitioners have for long acquiesced in the regulation of the marketing of cardamom by the Market Committees. They have paid the fees to and have received services from the Market Committees.

We have perused the financial statements as to Market-fee receipts and recurring expenditure filed by the concerned Market Committees. The recurring expenditure gives an indication of the actual expenses incurred by the Market Committees annually. We must also add the money value of the benefit of the user of the capital assets at the Market-yard. Taking all these circumstances into consideration, we thought and put it to the counsel for both parties that sums equivalent to 60 paise percent should be allowed to be retained by the Market-Committees for the services rendered by way of an equitable arrangement and the excess out of the market-fee actually paid by petitioners for the period subsequent to the filing of the writ petitions, should alone be ordered to be refunded to them and a refund of Market-fee paid prior to the filing of the writ petitions is not justified. Though initially learned counsel for the petitioners asked us to direct refund of the entire fee collected and the counsel for the Market-Committees contended that there should be no order for refund, all of them agreed that our proposal was reasonable. Accordingly, in the writ petitions pertaining to the Cardamom traders, we direct the concerned respondent-Market Committees to refund to the petitioners who have actually paid the market-fee as buyers under S. 65 (2), such sum as were paid by them for the period subsequent to the filing of the writ petitions, after deducting therefrom sums calculated at 60 paise per cent. In other words if 1% ad-valorem fee has been paid by any petitioner as buyer, he shall be entitled to a refund of 40 paise percent and the Market Committees shall in lieu of and towards the services

rendered, be entitled to retain 60 paise per cent. If, however, Rs. 2 per cent has been paid as fee, Rs. 1-40 per cent shall be refunded. A proper written claim shall be made by the petitioners before the Market-Committees for such refund setting out the particulars of the payments made by them and the amount liable to be refunded in accordance with these directions. Market-Committees, after making the necessary verifications about the correctness of the particulars of the claim, shall make the refunds within a reasonable time.

138. Shri Srinivasan submitted that should the enhanced levy of Market-fee on buyers at 2% be upheld, petitioners who have had the benefit of interlocutory orders of stay during the pendency of these petitions, should be granted some reasonable time to pay the balance of 1%, the collection of which has been so stayed. He suggested 10 monthly instalments. It appears to us that if such of the petitioners who have had the benefit of stay and have some difficulties in making good the arrears lumpsum immediately may apply to the Market Committees for grant of instalments. It would be proper for the Market-Committees to grant reasonable instalments-say 10 monthly instalments-unless, of course, in the opinion of the Market Committee there are some exceptional or compelling reasons to be recorded by the Market-Committees, that grant of instalments in any particular case is not justified. These observations should be sufficient and it is not necessary for us to give any general directions for instalments in all cases.

139. This takes us to the consideration of the writ petitions in which petitioners have principally, or along with other reliefs, sought the issue of writ of mandamus for the refund of the seller's market-fee paid under S. 65 (1) of the Act. These writ petitions can be classed into and dealt with under three categories:

(1) In the first category, could be included W.P. 12688/79, and similar petitions where petitioners had approached this Court along with the petitions in Rajasekharaiah's case and had the benefit of a mandamus for refund of market-fee paid under S. 65 (1) issued by this Court. The mandamus, however, was not complied with by the Respondents in view of the provisions of the Amending Act 17 of 1980. Petitioner in W.P. 12688/79 had a mandamus issued for refund in the earlier W.P. 2916/75.

(2) In the second category of petitions are included petitions by producer-sellers or Trader-sellers who had not approached this Court earlier, but did so after the Amending Act 17 of 1980 came into force. They have challenged the substituted S. 65 (1) and have sought refund of the sellers' fee paid under S. 65 (1) of the Act.

(3) In the third category of petitions are included WPs. 16212 to 16242 of 1981 and WP. 12689 of 1979 and similar petitions where the petitioners are not either "producer-sellers" or "Trader-sellers" who have paid the sellers' fee on their own account as sellers but are only "Commission-agents" who have collected the sellers' fee from the respective sellers and passed on the same to the Market-

Committees, The question in their cases is: Are such Commission Agents entitled to seek the refund at all?

140. So far as the first category is concerned the question presents no difficulty. All such petitioners in the present batch of cases as had approached this Court earlier and had the benefit of the issuance of writs of mandamus for refund of seller's market-fee actually paid under S. 65 (1) and in whose cases the mandamus so issued had not been complied with by the respondents in view of the validating provision of the Amending Act 17 of 1980 are clearly entitled to the refund in terms of the earlier writ of mandamus now that we have held the validating provision unconstitutional. We, accordingly, direct the respondent-Market Committees and the State Government to make the refund. The petitioners in all such cases shall file their claims in writing before the concerned market-committees setting out the details and particulars of the transactions respecting which claims for refund arise and the concerned market committees shall, after due verification, send up the claim to the State Government which shall make the refund with the least possible delay.

141. So far as the second category is concerned, though the petitioners claim to be sellers who have actually paid market-fee under S. 65 (1) as such sellers, they, had not approached the court earlier. Their case appears to be that they could have, after this Court declared S. 65 (1) as it then stood unconstitutional in Rajasekhariah's case, 1979 (1) Kar.L.J. 43, filed suits for refund; but in view of the purported validation made shortly after the said judgment they could not do so without challenging the constitutionality of S. 65 (1) as substituted by the Amending Act 17 of 1980.

After a consideration of the matter, we think that in the second category of cases, petitioners be denied relief of refund. However, refund should be confined only to the Market-fee, if any, actually paid by the petitioners as sellers" under S. 65(1) within a period of 3 years immediately preceding the presentation of their writ petitions. A mandamus shall accordingly issue to the State Government and the Market-Committees for refund in the above terms. The same procedure for refund as indicated in para 140 supra shall be followed in these cases also.

142. The claim for refund by petitioners in the third category of cases presents some difficulties. The claimants, admittedly, were not either producer-sellers or trader-sellers and have not paid any fee on their own account. Their claim is that they as agents had collected the Market-fee from the sellers out of the sale price payable to them towards sales of their merchandise and had passed on the fee to the market-committees. It is their further case that, now that the provision authorising the impost and its validation are struck-down, they are entitled to a refund.

143. The principal question that arises is as to whether these petitioners collected sellers' fee in their capacity as agents of the sellers or under authorisation from the market-committees. The source of authority on the part of

these writ-petitioners to collect from the sellers the market-fee and pass the same on to the market-committees is traceable to S. 82 of the Act. That provision reads:

"82. Assistance by the market functionaries: Every market functionary shall render such assistance in the collection and the prevention of the evasion of payment of fees or other amounts due under this Act, the rules and the bye-laws, and in the prevention of the breach of the provisions of this Act, the rules and the bye-laws, as may be required by the market-committee".

It is clear that these petitioners who are Commission Agents are market functionaries as defined under the Act. If they collected market-fee as such market functionaries, the authority to do so is an incident of the entrustment of that function to them by the market-committees under the "Act" and the Bye-laws. This, in turn, means that these commission-agents acted on behalf of the market-Committees. Their position would, thus, be no better than that of mere bill-collectors acting for and on behalf of the market-committees. In view of these circumstances, we find it difficult to countenance the claim for refund at the instance of these writ petitioners.

144. We accordingly, decline to issue the mandamus sought for by the Commission Agents.

145. In the result, these writ petitions are allowed in part to the extent indicated herein below:

(a) That the provisions of S. 65(1) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, (as substituted by the Karnataka Act 17 of 1980) and S. 42 of the Karnataka Act 17 of 1980 in so far as and to the extent they seek to validate the levy of market-fee on sellers for the period between 19-5-1975 and 28-9-1978 are declared unconstitutional and void:

(b) The provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, in so far as they provide for the regulation of marketing of cardamom is concerned, are held to be repugnant to the provisions of the Cardamom Act, 1965:

(c) The provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, in so far as they seek to regulate the marketing of sugarcane is concerned, are held to be repugnant to the provisions of the Sugarcane (Control) Order, 1956, a statutory order made under S. 3 of the Essential Commodities Act, 1955;

(d) The C.M.O. shall, within 4 months from to-day, evolve and standardise specifications and norms in regard to the infrastructural and Developmental requirements for the market-yards and sub-market yards and communicate the same to the market-committees in terms of Para 109 supra, and the Market-Committees in Categories "C", "D" and "E" set out in para 80, shall within the time prescribed in that behalf in para 109 of this Order, prepare revised

estimates for the developmental works and cost projections thereof and submit the same to the CMO. for scrutiny and approval. If, upon such scrutiny, the market-fee under S. 65(2) now being levied at 2% is found, in respect of any market committee, to be excessive and without quid-pro-quo, then the CMO shall make orders under S. 150 directing a suitable reduction in the quantum of the market-fee of the market-committees concerned;

(e) So far as the prayer for issue of mandamus directing refund of sellers' market-fee paid under S. 65(1) sought by producer-sellers and trader-sellers who had earlier approached this Court and had the benefit of a writ of mandamus for refund is concerned, mandamus shall issue in terms of para 140 supra.

(f) So far as other petitioners who are "producer-sellers" or Trader-sellers" who had paid sellers fee under S. 65(1) of the "Act", a mandamus to the State Government and to the concerned Market-Committees shall issue in terms of para 141 supra. However, prayer for refund made by the Commission-agents is rejected.

(g) In the writ petition in which petitioners are dealers in Cardamom there shall issue a writ of mandamus for the refund of market-fee in terms of para 137 supra; and

(h) The petitions of the Rice-traders of Bangalore Regulated Market Committee shall be posted after 6 weeks to consider the report to be filed by the market-committees in terms of para 134 of this Order.

(i) In all other respects the writ petitions are dismissed.

146. In the circumstances parties are directed to bear and pay their respective costs.

After the pronouncement of the order, learned counsel for the petitioners and Sri Bramharayappa learned High Court Government Advocate, made oral applications under Art. 134A of the Constitution for grant of certificate of fitness to appeal to the Supreme Court from the above order.

* * *

(4) We are of the view that these cases do not involve any substantial question or questions of law of general importance needing to be decided by the Supreme Court, inasmuch as on most of the aspects who have relied upon and followed the pronouncements of the Supreme Court laying down the law on the matter.

(5) We, accordingly, refuse the certificates prayed for by both the parties.

ORDER OF BEING SPOKEN TO:

* * *

(2) Accordingly, we make a further order directing the inclusion of the following

Market-Committees in Group "D" of para-80, so that the budget estimates of these Market-Committees will also be revised in terms of the directions given at clause (d) of para 145 of order:

1) Arsikere, 2) Badami, 3) Bagalkot, 4) Hosadurga, 5) Kollegal, 6) Mysore, 7) Nippani, 8) Ranebennur, 9) Sakleshpur, 10) Sirsi and 11) Shimoga.