

(2016) 08 GUJ CK 0060

In the Gujarat High Court

Case No : Special Civil Application No. 4438 of 2016

Vipul Manharlal Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Agricultural Produce Markets Act, 1963 — Section 28(1)

Citation : (2017) AIRCC 1177

Hon'ble Judges : Mr. R. Subhash Reddy, CJ. and Mr. Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : Mr. K.G. Vakharia, Sr. Advocate with Mr. Hemang H. Parikh and Mr. Rasesh H. Parikh Advocates, for the Petitioners; Ms. M.L. Shah, Government Pleader with Mr. Dhawan M. Jayswal, AGP, for the Respondent No. 1; Mr. B.S. Patel with Mr. Chirag B. Patel, Advoca

Final Decision : Dismissed

Judgement

Mr. R. Subhash Reddy, C.J.(Cav) - The petitioners, who are traders trading in finished agricultural products, viz. food-grains and pulses on wholesale basis, having their place of business located in the area, known as Kalupur Chokhabazar, situated at Jamalpur, have filed this writ-petition challenging the provisions under Sections 6(2), 8, 27(1), 28(1) and 28(2)(c) of the Gujarat Agricultural Produce Markets Act, 1963 and Rules 48, 56 and 57 of the Gujarat Agricultural Produce Market Rules, 1965. The petitioners have also challenged the public notice dated 6th January, 2016 and letter dated 1st March, 2016, issued by the 2nd respondent as well as the circulars dated 18.2.2016 and 29.2.2016, issued by 3rd respondent, by seeking declaration that they are ultra vires the Constitution of India.

2. The State of Gujarat has enacted Gujarat Agricultural Produce Markets Act, 1963 to consolidate and amend the law relating to regulation of buying and selling of agricultural produce and the establishment of markets for agricultural

produce in the State of Gujarat. The said Act repealed the erstwhile Bombay Agricultural Produce Markets Act, 1939 and Saurashtra Agricultural Produce Market Act, 1955. By virtue of provision under Section 64(2)(i) of the Gujarat Agricultural Produce Markets Act, 1963, it has saved market area, principal market yard, sub-market yard and market proper declared under the repealed Acts.

2.1 The area of operation of the petitioners is covered under the market area since it was in the market area of the Bombay Agricultural Produce Market Act, 1939. By virtue of saving clause in the provisions of the Gujarat Agricultural Produce Markets Act, 1963 "the Act" for short), they are doing their business having their business establishments, within the market area of the present Act. However, it is the case of the petitioners that as they are not covered under the market and no facilities or services are provided by the 2nd respondent in the area of Kalupur Chokha Bazar, as such, they cannot be subjected to take any licence nor the respondents can collect any market fee/cess from the petitioners.

2.2 After the enactment of the Gujarat Agricultural Produce Markets Act, 1963, 3rd respondent issued notification dated 24th January, 1992, whereby purchase of sale of wheat, paddy (husked and unhusked) etc. were ordered to be regulated under the provisions of the said Act.

2.3 On 24th February, 2006, 3rd respondent issued another notification, whereby the area admeasuring approximately 80000 sq.yds, comprising of block nos. 456, 457, 458, 459, 460 paiki, 468 paiki, 470, 471, 472, 475, 476, 477, 478, 479, 480 and 484 paiki situated at village Jetalpur, Taluka-Daskroi and Block Nos. 2041, 2042, 2043 and 2044 paiki situated at village Bareja, taluka: Daskroi is described as Sub-market yard.

2.4 On 7th November, 2008, 3rd respondent issued a public notice, whereby for the first time it asked all the traders carrying on business of buying and selling of food grains and pulses and all kinds of oilseeds within the jurisdiction of municipal limits of Ahmedabad and Daskroi taluka, to obtain licence from respondent no.1. The said notice also prescribed market fee of 00-50 paise per Rs. 100/- on purchase of agricultural produce.

2.5 On 18th November, 2009, the 2nd respondent issued notice, drawing attention to the public notice dated 7th November, 2008 and further informed that the petitioners have not obtained licenses, it was further stated in the said notice that the petitioners and other traders shall subscribe to license latest by 30th November, 2009, failing which appropriate action will be taken under the Act. On 15th December, 2001, a public notice was issued by the 2nd respondent, whereby the traders carrying on business of buying and selling of food grains, pulses and oilseeds were asked to take license from 2nd respondent on or before 1st January, 2012. Kalupur Anaj Vepari Mahajan challenged the said public notice issued by 2nd respondent by filing Special Civil Application No. 18832 of 2011, the same came to be dismissed by judgment and order dated 14th June, 2012

and the said order came to be confirmed in appeal by judgment and order dated 17th April, 2014.

2.6 2nd respondent issued another public notice dated 23rd April, 2015 whereby the traders trading in municipal limits of Ahmedabad city and Daskroi taluka, in food-grains, pulses and oil-seeds were directed to take license from the respondent no.2, latest by 1st May, 2015. Thereafter, 2nd respondent issued licenses to the petitioners and the same expired on 31st March, 2015 and the said licenses are not renewed. On 6th January, 2016, 2nd respondent issued another public notice, whereby the 2nd respondent notified the increase of rate of market fees. The said notice mentions that the increase in market fees is applicable to the traders trading in the area known as Kalupur Chokha Bazar, which is the area where the petitioners are having their business establishments. It is the allegation of the petitioners that after the issuance of notice dated 6th January, 2016, respondent no.2 started intercepting vehicles carrying goods bought and sold by the petitioners and also served demand notice for demanding unpaid market fees. Respondent no.2, in its Circular dated 18th February, 2016 stated that if the petitioners produce evidence in the form of Form F1 for payment of market fee of the goods purchased by them, they will be given credit for such market fee covering the amount shown in form F1. On 29th February, 2016, respondent no.3 issued another Circular dated 29th February, 2016, directing all the traders trading in the area to pay the market fee for purchase and sale of agricultural produce within the market area failing which the officers/secretary and employees of trading associations will be held personally liable for default of all the trading associations. When the respondent made it clear that even the traders within the market area are also required to take license and they are liable to pay license fees and various circulars and notices were issued, this petition is filed with the prayers as under:

"(a) Your Lordships may be pleased to admit this petition;

(b) Your Lordships be pleased to declare that section 6(2) of the Gujarat Agriculture Produce Markets Act, 1963 is void-ab-initio to the extent it provides that no place in the Market Area should be used for purchase and sale of agricultural produce except in accordance with provisions of the Act.

(bb) Your Lordships be pleased to declare that section 8 of the Gujarat Agriculture Produce Market Act, 1963 is void-ab initio to the extent it provides that no person shall trade in the Market area except under the license granted under the provisions of the Act.

(c) Your Lordships be pleased to declare that section 27(1) of the Gujarat Agriculture Produce Markets Act, 1963 is void-ab-initio to the extent it provides that Market Committee is empowered to issue license in whole of market area;

(d) Your Lordships be pleased to declare that section 28(1) of the Gujarat Agriculture Produce Markets Act, 1963 is void-ab-initio to the extent it provides that Market Committee is empowered to levy and collect fees from Market Area;

(e) Your Lordships be pleased to declare that proviso to section 28(2) (c) of the Gujarat Agriculture Produce Markets Act, 1963 is void-ab-initio to the extent it provides that in commercial transaction between traders in the Market Area, market fees shall be collected and paid by seller;

(f) Your Lordships be pleased to declare that Rule 48, 56 and 57 of the Gujarat Agriculture Produce Markets Rules, 1965 is void-ab-initio to the extent it provides that Market committee can issue levy and collect fees and issue license to all the traders carrying on business of buying and selling agricultural produce in market area;

(g) In alternate to relief (a) to (d) above, Your Lordships may issue writ of mandamus reading down phrase Market Area appearing in section 6(2), section 27(1), section 28(1), section 28(2)(c) of the Gujarat Agriculture Produce Markets Act, 1963 and Rule 48,56 and 57 of the Gujarat Agriculture Produce Markets Rules, 1965 in the interest of justice;

(h) Your Lordships be pleased quash and set aside that public notice dated 6.1.2016 and letter dated 1.3.2016 issued by respondent no.2.

(i) Your Lordships be pleased to quash and set aside circular dated 18.2.2016 & 29.2.2016;

(j) Pending admission hearing and till final disposal of the present petition, Your Lordships may be pleased to direct Respondent no. 2 not to insist that Petitioners have to take License for carrying on business of purchase and sale of agricultural produce and further be pleased to direct not to levy and collect fees from the Petitioners for purchase and sale of agricultural produce, in the interest of justice;

(k) Pending admission hearing and till final disposal of the present petition, Your Lordships may be pleased to stay implementation and execution of public notice dated 6.1.2016 and letter dated 1.3.2016 issued by Respondent no. 2;

(l) Pending admission hearing and till final disposal of the present petition, Your Lordships may be pleased to stay implementation and execution of circular dated 18.2.2016 and 29.2.2016 issued by Respondent no. 3;

(m) Your Lordships may be pleased to pass such other and/or further orders as may be deemed fit. just and proper in the interest of justice."

3. Affidavit in reply has been filed by the Secretary of the market committee on behalf of 2nd respondent. While denying various allegations made by the petitioners, it is stated in the affidavit in reply that the petitioners have not disclosed that they are members of Kalupur Anaj Vepari Mahajan which earlier filed Special Civil Application No.8944 of 2015 challenging the power of market committee to charge market cess. It is stated that no stay has been granted in the said writ-petition. By filing Civil Application No. 331 of 2015, the said petitioners sought to restrain respondent no.2 market committee from taking any coercive steps for recovery of market fee. It is stated that without disclosing such

facts, though the petitioners are part of the said writ-petition, the present writ-petition is filed. Further, reference is made to Special Civil Application No. 18832 of 2011 filed by Kalupur Anaj Vepari Mahajan and it is stated that the same was dismissed and the said order dismissing the said writ petition has been confirmed in Letters Patent Appeal No. 1232 of 2011 by Division Bench of this Court. It is further stated in the affidavit in reply that the respondent no.2 market committee has been established in the year 1948 and Kalupur area is within the market area of 2nd respondent and at that relevant time, pulses, oil-seeds, grains were not covered under the Schedule and only vegetables and fruits were included in the Schedule. As such, there was no occasion for respondent no.2 to regulate Kalupur market for grains, oil-seeds and for the first time in the year 1993, schedules were amended by including the grains, pulses and oils-eeds in the Schedule of the 2nd respondent market committee. Thereafter, the office bearers of respondent no.2 market committee had insisted the traders to take licence, but at that relevant time, traders in the Kalupur market requested that wherever the market committee will construct a market they would sit and take license. It is further stated in the affidavit in reply that the then office bearers of respondent no.2 market committee did not insist the traders relying upon the assurance of the traders in Kalupur market. Subsequently, land was purchased in the year 1998 and market had been constructed in the year 2007 at Jetalpur and open invitation had been given in the market, but unfortunately, few traders from Kalupur Anaj Vepari Mahajan accepted the offer and took shops/godowns at Jetalpur. It is further averred in the affidavit in reply that even the President of Kalupur Anaj Vepari Mahajan had also taken one shop in Jetalpur market yard which has been transferred to someone else and he did not carry on business there. Respondent no.2 market committee took control of the grains, oilseeds etc.. It is stated in the affidavit in reply that the merchants were charged 2% commission instead of 1% and were paid less price and that too after 15 days and some more time also. After the respondent no.2 market committee started functioning, auctions were started and commission had been regulated to 1% and payment was made immediately on delivery so that concept of open auction, correct weighment and cash payment had been started in the market area. It is further contended that Kalupur market is also interested market which is required to be regulated. It is further stated that in the year 2009, respondent no.2 market committee insisted on the traders trading in Kalupur market for taking licence. Against such action, Special Civil Application No. 18832 of 2011 was filed, which was dismissed and the said dismissal order was also confirmed by a Division Bench of this Court in the Letters Patent Appeal. When steps were being taken to collect the market fee by the respondent no.2 market committee, Special Civil Application No. 8944 of 2015 was filed and stay was also sought against recovery of market fees. Earlier, revision application was preferred before the government and ex-parte stay was granted, which was vacated subsequently. It is further pleaded that in any event, the petitioners cannot claim immunity under the Act as the petitioners are trading within the market area of 2nd respondent. With regard to the services extended by respondent no.2, in the

affidavit in reply, it is specifically pleaded that respondent no.2 market committee is providing services. In the case of unnatural death of any licensed trader, labourer, agriculturist, they are to be covered as traders holding license from the respondent no.2 market committee. Respondent no.2 has also provided services for social work, services at the time of natural calamity, towards education and other services. Respondent no.2 market committee is putting up a project worth Rs. 900 crores in the market area where 5 lakh sq.yds of land has been purchased on Sardar Patel Ring Road where three markets ie. Vegetable, Fruits and Grains are to be constructed with facilities of godown, cold storage etc. Even cleaning and packing facilities are also provided in the market area. It is further pleaded in the affidavit in reply that when the merchants of the market yard were agitating against the market fees, it was clearly pointed out to traders by respondent no.2 that in near future Ahmedabad city is to be declared as Metro city and AUDA has also framed a policy to shift the wholesale market from the city to the place outside the city and the ownership of the Kalupur market is to be of the Ahmedabad Municipal Corporation. It is pleaded that the traders working in Kalupur market shall be entitled to get a shop-cum-godown and other facilities at a reasonable price. It is averred that even now the market committee is prepared to provide facility of security in Kalupur market as well as other facilities for the traders in the area. But in any event, the market committee is collecting market cess and giving services as provided under the Act in the entire area and individual trader cannot claim a specific service from the market committee. Reference is also made in the affidavit in reply that in the earlier Special Civil Application No. 8944 of 2015 filed by the traders of Kalupur market, affidavit in reply is filed by the market committee. The said matter went up to the Hon'ble Supreme Court and the provisions of the Act challenged are held to be intra vires. While referring to various circulars issued for grant of license and collection of market fee, 2nd respondent prayed for dismissal of the petition.

4. Affidavit of rejoinder is filed on behalf of the petitioners to the affidavit in reply filed on behalf of respondent no.2. In the rejoinder affidavit, it is stated that respondent no.2, in the affidavit in reply, has not addressed the moot point involved in the present petition that is, the legislative competence of respondent no.1 which authorizes respondent no.2 to levy and collect market fee from the petitioners who are outside the market and who are not even remotely availing the benefits of the services rendered by respondent no.2. It is stated in the rejoinder that Special Civil Application No. 8944 of 2015 is entirely different from the subject-matter of the present petition and the same is not filed by the petitioners. It is stated that Special Civil Application No. 8944 of 2015 challenges the order passed by the Deputy Secretary (Appeals) in Revision Application No. 53 of 2015 and circular dated 30.4.2015, whereas the present petition challenges the legislative competence of 1st respondent authorizing the 2nd respondent to levy and collect the market fee in whole of the market area in spite of the fact that respondent no.2 is providing services in the market only. It is further stated that services provided by respondent no.2, as referred in

affidavit in reply, are available only in the market at Jamalpur and Dascroi and not in the entire market area. It is further pleaded that there is no nexus between the services provided and the fees charged. Reference is made to the judgments of the Hon"ble Supreme Court in the case of Kewal Krishan Puri and Another v. State of Punjab and another, reported in 1980 (1) SCC 416 and the judgment in the case of M/s. Gujarat Ambuja Exports Ltd and another v. State of Uttarakhand and others, reported in AIR 2016 SCW 394.

5. Before we proceed further, it will be pertinent to note relevant provisions which are under challenge. Provisions of the Gujarat Agricultural Produce Markets Act, 1963 and the Gujarat Agricultural Produce Market Rules, 1965 which are the subject-matter of challenge in the present petition and other relevant provisions which are necessary for adjudication of issue in question read as under:

"Sec. 2(i) "agricultural produce" means all produce, whether processed or not, of agriculture and horticulture specified in the Schedule;"

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"Sec. 2(xii-a) "market" means a market established and regulated under this Act for the notified market area and also includes a market proper, principal market yard, sub-market yard, private market, e-market and such other markets as may be declared under this Act;"

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"Sec. 2(xiii) "market area" means any area declared or deemed to be declared to be a market area under this Act;"

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"Sec. 2(xxiii) "trader" means any person, who carries on the business of buying or selling of agricultural produce or of processing of agricultural produce for sale and includes a cooperative society, joint family or an association of persons, whether incorporated or not, which carries on such business;"

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"Sec. 6.2 Notwithstanding anything contained in any law for the time being in force, from the date on which any area is declared to be a market area under sub-section (1), no place in the said area shall be used for the purchase or sale of any agricultural produce specified in the notification in accordance with the provisions of the Act:

Provided that pending the establishment of a market in such area the Director may grant a licence to any person to use any place in the said area for the purchase or sale of any such agricultural produce and a licence so granted shall, unless, it is cancelled or otherwise ceases to be in force, continue in force until the establishment of a market in the said area and for such period thereafter as may be prescribed."

"Sec. 8.Operation in market under Licence.-

No person shall operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under this Act."

Sec. 27.

"27. Licences, their issue, renewal, suspension or cancellation etc. and appeals against refusal, suspension etc. of licence.-

(1) On the establishment of a market Committee may, subject to rules, made in that behalf, grant or renew a general licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker, weighman, surveyor, ware-houseman or any person to operate in the market area or part thereof or after recording its reasons therefor, refuse to grant or renew any such licence.

(2) Licenses may be granted under sub-section (2) in such forms, for such periods, on such terms and conditions and restrictions (including any provision for prohibiting brokers and commission agents from acting in any transaction both as buyer and seller, or on behalf of both the buyer and seller, and provision for regulating advances, if any, to be made to agriculturists by brokers, commission agents or traders and any provision for prescribing the manner in which and the places at which auctions of agricultural produce shall be conducted and the bids made and accepted and places at which weighment and delivery of agricultural produce shall be made in any market area) as may be prescribed or determined by the byelaws and on payment of fees determined by the market committee within such maxima as may be prescribed.

(3) A market committee may, for reasons to be recorded in writing suspend or cancel a licence,--

(i) if the licence has been obtained through wilful misrepresentation or fraud, or

(ii) if the holder thereof or his servant or any person acting on his behalf with his express or implied permission, commits a breach of any of the terms, conditions, or restrictions imposed by the licence, or

(iii) if the holder of the licence has been adjudged an insolvent and has not obtained his discharge, or

(iv) if the holder of the licence is convicted of any offence under this Act:

Provided that no licence shall be suspended or cancelled unless the holder thereof has been given a reasonable opportunity to show cause against such suspension or cancellation.

(4) If in respect of any holder of a licence, it appears to the Director that on any ground specified in sub-section (3) an action under that sub-section by the

market committee was necessary but that the market committee has not taken any such action, the Director may, on any such ground and for reason to be recorded in writing and after giving a reasonable opportunity to the holder of the licence to be heard, by order suspend or cancel any licence granted or renewed under this section.

(5) Any person aggrieved by an order refusing to grant or renew a licence or suspending or cancelling any licence may, appeal within thirty days from the date of the communication of the order to him--

(i) to the Director, if such order has been made by a market Committee, and

(ii) to the State Government, if such order has been made by the Director.

(6) The Director or as the case may be, the State Government after giving the appellant a reasonable opportunity of being heard, shall on such appeal make such order as is deemed just and proper."

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"28(2)(c) The market fee shall be payable by the buyer of the agricultural produce and shall not be deducted from the price payable to the agriculturist seller:

Provided that where the buyer of an agricultural produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area:

Provided further that in case of commercial transactions between traders in the market area, the market fee shall be collected and paid by the seller.

"Rules 48, 56 and 57 of the Gujarat Agricultural Produce Market Rules, 1965:

"48. Market fees.-

(1) The market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such areas as may be specified in the bye-laws subject to the following minima and maxima, viz.

(1) rates when levied advalorem shall not be less than [30] paise and shall not exceed [Rs.2] per hundred rupees.

(2) rates when levied in respect of cattle, sheep or goat shall not be less than [25] paise per animal and shall not exceed Rs. [4] per animal.

Explanation.- For the purposes of this rule a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale; notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area.

(2) No fees shall be levied on agricultural produce brought from outside the

market area into the market area for use therein by the industrial concerns situated in the market area or for export and in respect of which declaration has been made and a certificate has been obtained in Form V:

Provided that if such agricultural produce brought into the market area for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the bye-laws subject to the maxima and minima specified in sub-rule (1):

Provided that no fee shall be payable on a sale or purchase to which sub-section (3) of section 6 applies."

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Rule 56.

"56. Licensed traders and general commission agents.-

(1) Any person desiring to obtain a licence to do business as a trader or a general commission agent in agricultural produce in any market area or part thereof shall make a written application in such form as the market committee may determine to the market committee and shall pay such fees as may be determined by the market committee subject to a maximum of Rs. 200:

Provided that a person residing outside the market area and desiring to operate in a market area or any part thereof only for a specific transaction or transactions which may not exceed four in a year may be granted a special licence on payment of such fee as may be determined by the market committee subject to a maximum of Rs. 20.

(2) On receipt of such application together with the proper amount of the fee, the market committee may, after making such inquiries, as may be considered necessary and on the applicant agreeing to abide by the provisions of the Act; rules and bye-laws and such other conditions as may be laid down by the market committee for holding such licence grant to him the licence applied for.

(3) Notwithstanding anything contained in sub-rule (2) the market committee may refuse to grant or renew a licence to any person who in its opinion is not solvent or whose operations in the market area are not likely to further efficient working of the market or are likely to impede the smooth working of the market under the control of the market committee.

(4) The licence shall be granted for a period of one year after which it may be renewed on a written application in such form as may be determined by the market committee, and after such inquiries as are referred to in sub-rule (2) as may be considered necessary and on payment of full fees as payable for fresh licence:

Provided that all licences shall remain in force from the date of issue till 31st March following unless suspended or cancelled earlier.

(6) No person shall be entitled to do business other than that for which he holds a licence."

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Rule 57.

"57. Business in market area prohibited except under licence,-

(1) Any person desiring to hold licence as a broker, weigh-man, measurer, warehouseman, hamal, carting agent, clearing agent, or surveyor or desiring to operate in any other matter in any market area or part thereof shall make a written application in such form as the market committee may determine for licence to the market committee and shall pay such fees as may be determined by the market committee subject to the following maxima namely:-

Rs.

Maximum Fee for Licence as a Broker

50.00

Maximum Fee for Licence as a Weighman

10.00

Maximum Fee for Licence as a Measurer

10.00

Maximum Fee for Licence as a Hamal

5.00

Maximum Fee for Licence as a Surveyor

10.00

Maximum Fee for Licence as a Warehouseman

10.00

Maximum Fee for Licence as a Carting Agent

100.00

Maximum Fee for Licence as a Clearing Agent

20.00

(2) No person who is in the service of another person shall be eligible to hold a licence as a broker, weighman, measurer, hamal, surveyor, ware-houseman, carting agent or clearing agent. If any licensed broker, weighman, measurer,

hamal, surveyor, ware-houseman, carting agent or clearing agent enters service or does business other than for which he holds a licence or licences, his licence or licences shall be deemed to have been cancelled.

(3) Subject to the provisions of sub-rule (2), the provisions of sub-rule (2) to (6) of rule 56 shall mutatis mutandis apply to the grant and grantees of licences under this rule."

6. Heard Shri K.G. Vakharia, learned Sr. Advocate, assisted by Shri Hemang H. Parikh with Mr. Rasesh H. Parikh, learned counsel for the petitioners, Ms. M.L.Shah, learned Government Pleader with Shri Dhawan M. Jayswal, Assistant Government Pleader and Shri B.S. Patel with Mr. Chirag B. Patel, learned counsel appearing for respondent no.2.

7. Shri Vakharia, learned Sr. Advocate, appearing with Mr. Hemang Parikh for the petitioners contends that 2nd respondent-Agricultural Produce Market Committee provides service within the principal market yard and the sub-market yard only, in spite of the same, as per the provisions of the said Act, respondent no.2 is empowered to levy and collect fees from the traders buying and selling agricultural produce within the entire market area. It is submitted that market area is much wider and large area within which it encompasses market, whereas market covers principal market yard, sub-market yard and market proper only. As the Market Committee discharges services within the market only, jurisdiction to levy and collect the market fee should necessarily be restricted to market only. The provision of the said Act allowing levying and collecting fee from the traders who are trading beyond the market area is unreasonable, arbitrary and violative of Article 19(1)(i)(g) of the Constitution of India. Further contention of the learned Senior Advocate is that power is conferred on the Agriculture Produce Market Committee ("APMC" for short) to levy and collect market fee for transactions of purchase and sale of agricultural produce in the market and there will not be any place in the market area for purchase and sale of agricultural produce, therefore, the same is unreasonable and arbitrary. As there is no element of quid pro quo, which is elementary principle for charging fees, in the absence of any services by the Corporation in the market area, no fee can be collected.

7.1 It is the submission of the learned Sr. Advocate that in the public notice dated 6th January, 2016 issued by 2nd respondent, only traders carrying on business in the area known as Kalupur Chokha Bazar are subjected to levy and collection of fees and there are several traders carrying on trading in the market area of 2nd respondent, in spite of the same, no steps have been taken against them. Such action on the part of 2nd respondent is discriminatory and violative of fundamental right guaranteed under Article 14 of the Constitution of India.

7.2 Section 26 of the Act provides that it is the duty of the market committee to provide facilities in the market. Even though Market Committee is required to provide facilities only in the market, Rules 48, 56 and 57 of the Rules framed

under the Gujarat Agricultural Produce Market Act, 1963 allow the market committee to levy and collect fees apart from issuing licence. Thus, levy and collection of fee by the market committee beyond the market, is unjust enrichment, which is not tenable.

7.3 As per Entry 28 read with Entry 66 of List II of the Seventh Schedule to the Constitution of India, the State legislature can only empower the market committee to levy fee in the market area only and cannot authorize the market committee to levy tax in the market area. Provision contained in Section 28(1) of the Act providing for levy and collection of market fee upon the agricultural produce bought and sold in the market area will amount to levying tax and not fee which is unconstitutional and ultra vires the provision of Entry 28 read with Entry 66 of List II of the Seventh Schedule to the Constitution.

7.4 Section 28(2)(a) of the said Act provides that market fee specified in sub-section (1) thereof shall not be levied for the second time in any market area from the buyer who is a processor, grader, packer, value addition centre or exporter of any agriculture produce and the market fees has already been paid on the agricultural produce in any market; in spite of the same, market fee is being collected contrary to the said provision.

7.5 It is the contention of learned Senior Advocate that though under Article 301 of the Constitution, trade and commerce is free throughout the territory of India, levy and collection of market fee by the market committee on selective basis is restricted under Article 304 of the Constitution of India. In spite of the same, by travelling beyond the said guarantees, market fee is being collected illegally and arbitrarily. It is further submitted that by further amendment amending Section 28 of the Act, w.e.f. 1.5.2007, market fee is collected even for the commercial transactions between the traders which is beyond the object and scheme of the Act. It is stated that such levy is nothing but is colourable exercise of power.

7.6 In support of his arguments, the learned Sr. Advocate has placed reliance on the following judgments:

- (1) M/s. Gujarat Ambuja Exports Ltd and another v. State of Uttarakhand and others, reported in AIR 2016 SC 394
- (2) State of T.N. And Anr v. TVL, South Indian Sugar Mills Assn and Ors, reported in AIR 2015 SC 2417
- (3) Dharam Dutt and others v. Union of India and others, reported in (2004) 1 SCC 712
- (4) Kewal Krishan Puri and Another v. State of Punjab and Another, reported in 1980 (1) SCC 416
- (5) Southern Petrochemical Industries Co. Ltd v. Electricity Inspector & ETIO and others, reported in (2007) 5 SCC 447
- (6) State of Rajasthan v. Ganeshi Lal, reported in (2008) 2 SCC 533

(7) Jan Mohammad Noor Mohammad Bagban v. State of Gujarat and Another, reported in 1966 (1) SCR 505

(8) Kunwar Ram Nath and others v. Municipal Board, Pilibhit, reported in (1983) 3 SCC 357

8. With the pleas averred in the affidavit in reply filed on behalf of respondent no.2, Mr. B.S. Patel appearing with Mr. Chirag Patel, learned counsel appearing on behalf of respondent no.2 contended that though there are quietus to the litigation and the subject-matter up to the Hon"ble Supreme Court, at the same time, petitions are filed questioning various provisions of the said Act. It is submitted that as much as the market is covered in Entry 28 read with Entry 66 of List II of the Seventh Schedule to the Constitution of India, the 1st respondent is competent to legislate on the subject relating to markets and market areas. As much as the services are provided by the market committee for the entire area covered by the notification, the petitioners are obligated to take licence and pay market fee on the transactions. It is contended that all the services which are being rendered by the respondent no.2 market committee are narrated in detail in the affidavit in reply, as such, no case is made out for interference either for challenge to the vires of the provisions of the Act or circulars of the respondents under challenge. As the petitioners are questioning the vires of the provisions of the legislation of the State, it is submitted that unless it is proved that such legislation is contrary to fundamental rights guaranteed under Chapter-III of the Constitution and other constitutional provisions, no interference is called for in the present petition. Learned counsel, in support of his arguments, placed reliance on the following judgments:-

(1) M.C.V.S. Arunachala Nadar and others v. State of Madras and others, reported in AIR 1959 SC 300

(2) Mohammad Hussain Gulam Mohammad and another v. The State of Bombay and another, reported in AIR 1962 SC 97

(3) Muhammadbhai Khudabux Chhipa and another etc. v. The State of Gujarat and another etc., reported in AIR 1962 SC 1517(1)

(4) Jan Mohammad Noor Mohammad Bagban v. State of Gujarat and another, reported in AIR 1966 SC 385

(5) Delhi Cloth and General Mills Ltd v. Shambhu Nath Mukherji and others, reported in (1997) 4 SCC 415

(6) Krishi Upaj Mandi Samiti and others v. Orient Paper & Industries Ltd, reported in (1995) 1 SCC 655

(7) The Belsund Sugar Co. Ltd, Riga and another v. The State of Bihar and others, reported in AIR 1977 Patna 136

(8) AIR 1979 Karnataka 195

(9) Chhaganlal Mansukhlal v. The Agricultural Produce Market Committee, Dohar, reported in 1975 GLR 916

9. Ms. M.L. Shah, learned Government Pleader appearing with Mr. Dhawan M. Jayswal, learned AGP submits that the petitioners are dealing in the notified products as notified under the provisions of the Gujarat Agricultural Produce Markets Act and they are required to take licence under the Act and to pay market fee. It is submitted that the Act is within the purview of the State legislature having regard to Entry 28 read with Entry 66 in List II of the Seventh Schedule of the Constitution, as such, it cannot be said that the State is not competent to legislate on the subject. Market area, principal market yard and sub-market yard, are within the subject of market as entered in Entry 28 of List II to the Seventh Schedule to the Constitution, as such, it cannot be said that there is no power to legislate on the subject. In support of her arguments, learned Government Pleader placed reliance upon the following judgments:

(1) Rajbala and others v. State of Haryana and others, reported in (2016)2 SCC 445

(2) State of A.P. and others v. McDowell & Co and others, reported in (1996) 3 SCC 709

(3) Jan Mohammad Noor Mohammad Bagban v. State of Gujarat and another, reported in AIR 1996 SC 385

(4) B.S.E. Brokers' Forum, Bombay and others v. Securities and Exchange Board of India and others, reported in (2001) 3 SCC 482

(5) Krishi Upaj Mandi Samiti and others v. Orient Paper and Industries Ltd, reported in (1995) 1 SCC 655

(6) Noormohmed Ismailbhai Vohra and Ors v. Agriculture Produce Market Committee and Ors, reported in (2006) 3 GLH 1

(7) Sreenivasa General Traders and others v. State of Andhra Pradesh and others, reported in (1983) 4 SCC 353

(8) Fulabhai Govindbhai v. Kaira District Tobacco Market committee, reported in 1971 GLR 71

(9) Mahaluxmi Rice Mills and others v. State of U.P. And others, reported in (1998) 6 SCC 590

10. Having heard the learned counsel appearing for the parties and perusing the material on record, it is clear that the case of the petitioners is mainly on the ground that Section 28 of the Gujarat Agricultural Produce Markets Act, 1963 which authorizes the market committees to collect market fee on the agricultural produce bought and sold in the market area, is ultra vires because there is no competence for the State to enact such law for collection of market fee from the market area. It is contended by Mr. Vakharia, learned Senior Advocate that in

view of Entry 28 read with Entry 66 of List II of the Seventh Schedule to the Constitution, the State legislature can only empower the market committee to levy fee in the market only and cannot authorize the market committee to levy any tax or collect fees from the traders who are doing their transactions within the market area only. It is precisely submitted that such collection of fee from the traders in the market area will amount to levying tax which is not authorised by virtue of Entry 28 read with Entry 66 in List II of Seventh Schedule to the Constitution. Expression "market" is used in Entry 28 of List II of the Seventh Schedule. Learned counsel by reading the said entry 28 along with entry 66 submitted that it authorised only collection of fee from the market alone but not market areas. Thus, it is submitted that levy and collection of fee by the market committee beyond the market is nothing but levying of tax without any authority of law. It is submitted that as it is the case of the petitioners that provision of Section 28 of the Act is ultra vires as there is no legislative competence for the State legislature to authorize such collection from the market area, it is fit to be declared as illegal. In this regard, the learned Senior Advocate relied on the judgment of the Hon"ble Supreme Court in the case of Gujarat Ambuja Exports v. State of Gujarat, reported in AIR 2016 SC 394 and submitted that such judgment supports the case of the petitioners. On the other hand, it is the case of Ms. ML Shah, learned Government Pleader appearing for respondent no.1- State and Shri B.S. Patel, learned counsel appearing on behalf of respondent no.2 market committee that provision under Section 28 of the Act empowers the market committee to levy and collect the fee on the agricultural produce bought and sold in the market area. It is submitted that the market area is a notified area as per the provisions of the said Act. It is submitted that all those transactions of buying and selling in the area are liable to payment of market fee. It is the case of the respondents that it is well within the legislative competence of the State legislature to have such provision in the statute empowering the market committee to collect market fees in view of Entry 28 read with Entry 66 of List II of the Seventh Schedule to the Constitution.

11. Entry 28 and Entry 66 of List II which is a State List of Seventh

Schedule to the Constitution read as under:

"28. Markets and fairs."

"66. Fees in respect of any of the matters in this List, but not including fees taken in any court."

12. It is not in dispute that by virtue of provision under Article 246(3) of the Constitution, the legislature of the State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II (State) in the Seventh Schedule of the Constitution. Further from reading of List II of Seventh Schedule, it is clear that the State is empowered to legislate laws on the subject of markets and even as per Entry 28 to collect fees in respect of any of the matters in List II, by virtue of Entry 66 of the List. In that view of

the matter, the core question which requires to be considered in this case is whether the word "market" used in Entry 28 will interpret the market area or not. If we take dictionary meaning of market as per Black's Law Dictionary, 9th Edition, the word "market" includes place of commercial activity in which goods or services are bought and sold (2), geographical area or demographic segment considered as a place for demand for particular goods or services. Similarly, if we read the word "market" defined in Oxford Dictionary, it is defined as a regular gathering of people for purchase and sale of provisions, livestock, and an open space or covered building where vendors convene to sell their goods; the area or arena in which commercial dealings are conducted. Looking to the meaning as referred above, we are of the considered view that market necessarily means only principal market or a sub-market. But it is always open for the respondents to notify the area for the purpose of implementation of the provisions of the Act. If transactions are within the boundaries of geographical area as per the notification and if the transactions are made for buying or selling by the traders like petitioners who are undisputedly within such area, it is to be treated as market only. Restrictive meaning of market confining to places therein to principal market or sub-market will run contrary to the objectives of the Act.

13. Learned Senior Advocate placed reliance on the judgment of the Hon'ble Supreme Court in the case of M/s Gujarat Ambuja Exports Ltd and another v. State of Uttarakhand and others, reported in AIR 2016 SC 394. In the aforesaid judgment, the provision under Section 27(c)(iii) of Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act was the subject-matter of challenge. The Hon'ble Supreme Court in para-24 of the said judgment held as under:-

" 24. The primary object, thus, of any market legislation is to ensure that the producer of the agricultural produce gets a fair return. It is also essentially meant to govern the "buyerseller" relationship.

In this context, an examination of Section 27(c)(iii) would show that it is against the scheme of the Act, as it seeks to levy market fee and development cess even on those units which merely bring agricultural produce from outside the State into the market area for carrying out manufacturing, in that there is no sale or purchase of the product within the market area per se."

14. The Hon'ble Supreme Court, by considering the provision under Section 27(c) (iii) of Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, which was the subject-matter of challenge therein, observed that agricultural produce was brought from outside the State into the market area for carrying out manufacturing. As a fact, it was found that as there was no sale or purchase of the agricultural product within the market area per se. The Hon'ble Supreme Court has struck down the said provision on the ground that it runs contrary to the objects of the Act. Impugned provision of Section 28 of the Act itself makes it very clear that it prescribes levy and collection of fee on the agricultural produce bought and sold in the market area. In that view of the

matter, we are of the considered view that such judgment will not support the case of the petitioners having regard to the facts and circumstances of the present case. Thus, we reject the plea of the petitioners that the State legislature had no competence to enact law, particularly under Section 28 of the Act which empowers levy and collection of fee within the market only.

15. It is also the case of the petitioners that in view of provision under Section 28(2)(a) of the Act, no market fee can be levied for the second time. From the reading of the very provision, the said provision makes it clear that such levy cannot be made if such fee is already collected as market fee and further proof is filed for payment of such fee. It is the case of the respondents that when proof is produced to show that the goods purchased by the petitioners have already suffered market fee, to such extent, it is deductible and the same cannot be levied. In view of such stand of the respondents in the affidavit in reply coupled with the submission of learned counsel for the respondents that it cannot be said that 2nd respondent market committee is collecting market fee for second time contrary to the provision under Section 28(2)(a) of the Act, the contention of the petitioners deserves rejection.

16. It is also contended by the learned Senior Advocate for the petitioners that there is no service at all by 2nd respondent in the market area, as such, the respondents cannot collect any fee. Learned counsel, distinguishing the mode of collection of tax and fee and levies under various statutes, submitted that fee is to be collected as quid pro quo for service to be rendered by an authority or agency. It is contended by the learned Senior Advocate that there is no service at all by 2nd respondent market committee and such services are confined only to principal market and sub-market, in the absence of any service in the market area, no fee can be collected. Such contention of the petitioners is dealt with in the affidavit in reply denying the allegation of the petitioners that there is no service in the market area. It is also stated that there are proposed plans for construction of markets outside the municipal limits and space is also taken by the authorities by acquiring the land to large extent and further services are being rendered by the respondents.

17. Judgment of the Hon'ble Supreme Court in the case of State of Tamil Nadu and Another v. TVL, South Indian Sugar Mills Assn and Ors, reported in AIR 2015 SC (Supp) 2417, is relied on by the learned counsel for the petitioners in support of the submission that unless there is quid pro quo, no levy can be made. But in the said judgment, as regards the word "service" in the context of fee, the Hon'ble Supreme Court has held as under:

"34. The word "service" in the context of a fee could, therefore, include, a levy for a compulsory measure undertaken vis-a-vis the payer in the interest of the public. This "coercive" measure has been subsequently judicially clarified to mean a "regulatory measure". But in the case of both kinds of services, whether compulsorily imposed or voluntarily accepted, there would have to be a correlation between the levy imposed and the "counter payment or quid pro

quo". However, correlation-ship between the levy and the services rendered is one of the general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable "relationship" between levy of the fee and the service rendered. Contrariwise when there is no such correlation, the levy, despite its nomenclature is in fact a tax. In *Corpn. of Calcutta v. Liberty Cinema* (AIR 1965 SC 1107) the licence fee charged under Section 548 of the Calcutta Municipal Act, 1951 had been challenged on the ground that no service was rendered commensurate with the tax."

18. In the judgment in the case of *Keval Krishan Puri and Another v. State of Punjab and Another*, reported in (1980) 1 SCC 416, while considering the scope of fee under the Punjab Agricultural Produce Markets Act, 1961, the Hon"ble Supreme Court deduced certain principles for satisfying the test for valid levy of market fee. Relevant is para-23, which reads as under:

"23. From a conspectus of the various authorities of this Court we deduce the following principles for satisfying the tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area:

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

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

(3) That while rendering services in the market area for the purposes 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 licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately 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 fees.

(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."

From the above principles laid down by the Hon"ble Supreme Court, it is clear that while rendering services in the market area for the purpose of facilitating transactions of purchase and sale with a view to achieve the objects of the legislation, it is not necessary to confer the whole of the benefit under the licence but at the same time, close and reasonable correlation between the licensees and the transactions is sufficient. It is also clear that element of quid pro quo may not be possible, or is not necessarily to be established with arithmetical exactitude. In this regard, it is necessary to refer to the judgment of the Hon"ble Supreme Court relied on by the learned counsel for respondents in the case of *Krishi Upaj Mandi Samiti and others v. Orient Paper & Industries Ltd.*, reported in (1995) 1 SCC 655. In the aforesaid judgment, the very question of quid pro quo and issue that though the transaction was within the market area was not in the market proper or market yard area, fell for consideration before the Hon"ble Supreme Court. In the aforesaid judgment, the Hon"ble Supreme Court has stated the principles which are to be kept in mind while distinguishing the tax and fee. Para 21 and 31 of the said judgment read as under:

"21. Thus what emerges from the conspectus of the aforesaid decisions is as follows:

(1) Though levying of fee is only a particular form of the exercise of the taxing power of the State, our Constitution has placed fee under a separate category for purposes of legislation. At the end of each one of the three Legislative Lists, it has given power to the particular Legislature to legislate on the imposition of fee in respect of every one of the items dealt with in the list itself, except fees taken in Court.

(2) The tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. There is no quid pro quo between the tax-payer and the public authority. It is a part of the common burden and the quantum of imposition upon the tax-payer depends generally upon his capacity to pay.

(3) Fee is a charge for a special service rendered to individuals or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are various kinds of fees and it is not possible to formulate a definition that would be applicable to all cases.

(4) The element of compulsion or coerciveness is present in all kinds of impositions though in different degrees and it is not totally absent in fees. Hence

it cannot be the sole or even a material criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable by law against an individual in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees.

(5) The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions but in a fee it is some special benefit which is conferred and accruing which is the reason for imposition of the levy. In the case of a tax, the particular advantage if it exists at all, is an incidental result of State action. A fee is a sort of return or consideration for services,-rendered and hence it is primarily necessary that the levy of fee should on the face of the legislative provision be co-related to the expenses incurred by Government in rendering the services. As indicated in Article 110 [2] of the Constitution, ordinarily there are two classes of cases where Government imposes fees upon persons. The first is of grant of permission or privilege and the second for services rendered. In the first class of cases, the cost incurred by the Government for granting of permission or privilege may be very small and the amount of imposition levied is based not necessarily upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, the tax element is predominant. If the money paid by privilegeholders goes entirely for the expenses of matters of general public utility, the fee cannot but be regarded as a tax. In the other class of cases, the Government does some positive work for the benefit of persons, and the money is taken as the return for the work done or services rendered.

(6) There is really no generic difference between tax and fee and the taxing power of the State may manifest itself in three different forms, viz., special assessments, fees and taxes. Whether a cess is tax or fee, would depend upon the facts of each case. If in the guise of fee, the Legislature imposes a tax it is for the Court on a scrutiny of the scheme of the levy, to determine its real character. In determining whether the levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specific area or classes. It is of no consequence that the State may ultimately and indirectly be benefited by it. The amount of the levy must depend upon the extent of the services sought to be rendered and if they are proportionate, it would be unreasonable to say that since the impost is high it must be a tax. Nor can the method prescribed by the legislature for recovering the levy by itself alter its character. The method is a matter of convenience and though relevant, has to be tested in the light of other relevant circumstances.

(7) it is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with

close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable correlation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general co-relationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

(8) Absence of uniformity is not a criterion on which alone it can be said that the levy is of the nature of a tax. The legislature has power to enact appropriate retrospective legislation declaring levies as fees by denuding them of the characteristics of tax.

(9) It is not necessary that the amount of fees collected by the Government should be kept separately. In view of the provisions of Article 266 all amounts received by the Governments have to be credited to the Consolidated Funds and to the public accounts of the respective Governments."

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"31. We are afraid that on both these counts, the High Court has committed errors. As regards the first ground on which the High Court has set aside the market fee, viz., that the transaction of sale and purchase of the bamboos at the forest depots is not a transaction in the market proper or market yard and hence it is not prohibited by the Act, the High Court has failed to notice the relevant provisions of Section 6[b] of the Act to which a reference has already been made earlier. The provision in terms states that no person shall, except in accordance with the provisions of the Act and the rules and the bye-laws made thereunder, use any place in the market area for the marketing of the notified agricultural produce or operate in the market area as a market functionary. The exceptions to this provision are mentioned in Section 6[b] itself and the sale of the bamboos at the forest depots which are admittedly in the market areas of one or the other committee, are not covered by any of the exceptions. The prohibition for sale or purchase of the agricultural produce is not only in the market proper or market yard area but in the market area as a whole. So also Section 31, as already

pointed out, further provides that no person shall, in respect of any notified agricultural produce, operate in the market area as commission agent, trader, broker, weigh-man, hammad, surveyor, ware houseman, owner or occupier of processing or pressing factories or such other market functionary except in accordance with the provisions of the Act and the rules and bye-laws made thereunder. Section 37 requires that every person who buys notified agricultural produce in the market-area, shall execute an agreement in favour of the seller in triplicate in such forms as may be prescribed. One copy of such agreement is to be kept in the record of the market committee."

From the aforesaid judgment, it is clear that concept of quid pro quo need not be established with arithmetical exactitude and it is enough if there is a broad, reasonable and general correlation between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is further held that it is immaterial that general public may also be benefited from some of the services if the primary service intended is for the payers of the fees. It is clearly held in the aforesaid judgment that such fee is leviable not only for transactions within the market or market proper but also extendable for transactions within the market areas notified under the Act. Thus, we are of the view that having regard to the stand of the 2nd respondent in the affidavit in reply, it cannot be said that there were no services at all in the market area. It is clearly mentioned in the affidavit in reply filed by 2nd respondent about the plans and spending for fee for the benefit of the traders and the public at large, which is to be considered as service within the meaning of the provisions of the Act. We are fortified in our view by the above judgment. Thus, it cannot be said that there is no service by 2nd respondent in the market area and that the petitioners cannot be obligated to either obtain licence or to pay market fees.

19. It is also the case of the petitioners that by the restriction by virtue of the provisions of the Act, the rights conferred on the petitioners of free trade guaranteed under Article 301 of the Constitution are violated. In the case of *Jan Mohammad Noor Mohammad Bagban v. State of Gujarat and Another*, reported in (1966) 1 SCR 505 : AIR 1966 SC 385 with reference to the provision of Gujarat Agricultural Produce Market Act 20 of 1964 alone such pleas were raised before the Hon''ble Supreme Court and all such contentions were rejected by the Hon''ble Supreme Court. In that view of the matter, we need not deal with such ground in detail in view of the above judgment.

20. Further in the case of *Mohammad Hussain Gulam Mohammad and another v. The State of Bombay and another*, reported in AIR 1962 SC 97, the similar provisions under Sections 4, 4A, 5, 5A and 5AA of the Bombay Agricultural Produce Markets Act, 1939 were under challenge. In the aforesaid judgment, upholding the validity of the said provision, the Hon''ble Supreme Court held that such provisions are intra vires and do not impose unreasonable restriction on the right to carry on trade in the agricultural produce. Further, Division Bench of this

Court in the case of Chhaganlal Mansukhlal v. The Agricultural Produce Market Committee, Dohad, reported in 1975 GLR 916, while considering the scope of the provisions under Section 28 and Rule 98 and 54 of the Rules framed under the said Act, held that rules are only regulatory and do not prohibit trade in all types of agricultural produce and such Rules 48 and 54 of the Rules are not violative of the provisions of Articles 19 and 31 of the Constitution of India.

21. Further judgment relied on by the learned Government Pleader in the case of State of Rajbala and others v. State of Haryana and others, reported in (2016) 2 SCC 445 also supports the case of the respondents. In the aforesaid judgment, the Hon'ble Supreme Court has held that statute cannot be declared unconstitutional only on the ground of it being arbitrary and therefore, violative of Article 14 of the Constitution, since such exercise implies a value judgment and the courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. Similarly, in the judgment in the case of State of A.P. and others v. Mcdowell & Co. and others, reported in (1996) 3 SCC 709, the Hon'ble Supreme Court has held that law made by Parliament or State Legislature can be struck down by courts on two grounds and two grounds alone, viz. (i) lack of legislative competence, and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision and there is no third ground. It is categorically held that an enactment cannot be struck down on the ground that court thinks it unjustified. It is further held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

22. Equally, the allegation of the petitioners that public notice dated 6th January, 2016 issued by 2nd respondent is discriminatory as much as the same is issued only to the traders of Kalupur Chokha Bazar. It is further submitted that as much as no such notice is issued to other traders in the entire market area, the action of the 2nd respondent is discriminatory. Such plea also cannot be accepted for the reason that as the traders in Kalupur Chokha Bazar were not paying market fee, such notice is issued to the traders of Kalupur Chokha Bazar. In the absence of any such material to show that for other areas where the traders are trading in notified items, no steps were taken to recover fees from such traders, the authorities may take steps area-wise. That itself cannot make the action of the 2nd respondent discriminatory. The notice issued insisting for taking licence and payment of market fee in the market area from the traders who are transacting business in the market area is in accordance with rules.

23. Having regard to the aforesaid findings recorded by us, we do not find any merit in this writ-petition so as to declare the provisions of Sections 6(2), 8, 27(1), 28(1) and 28(2)(c) of the Gujarat Agricultural Produce Markets Act, 1963 and Rules 48, 56 and 57 of the Gujarat Agricultural Produce Markets Rules, 1965, and to quash the circulars in question, as prayed for. The petition is, therefore,

dismissed.

24. No order as to costs.