through publication and the registered cover was sent back as refused, I do not find any ground to set aside the *ex parte* ejectment order."

Consequently, the application under Order IX rule 13, Code of Civil Procedure, was dismissed,—*vide* impugned order.

(3) According to the learned counsel for the petitioner, there was no occasion for passing the *ex parte* eviction order as no proper service was done, nor there was any occasion for directing the substituted service by publication.

(4) After hearing, I do not find any merit in this petition.

(5) The petitioner is a responsible Police Officer. Instead of being present in Court after service, he avoided to appear and suffered an *ex parte* order. The whole effort seems to delay the proceedings. The landlord sought the ejectment *inter alia* on the ground of his *bona fide* personal necessity. The application was filed in January, 1986, i.e., more than three years back. The Rent Controller has gone into the matter in detail and has given a firm finding that he was duly served by substituted service and had also refused the registered cover with acknowledgement due. In these circumstances, no interference is possible in revisional jurisdiction. Consequently, the petition fails and is dismissed with costs. However, the tenant is allowed one month's time to vacate the premises; provided all the arrears of rent up to date and the rent for one month in advance, are deposited with the Rent Controller within a fortnight.

P.C.G.

FULL BENCH

Before : I. S. Tiwana, A. L. Bahri and A. P. Chowdhri, JJ.

SUBHASH CHANDER KAMLESH KUMAR,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3923 of 1986

March 9, 1990.

Punjab Agricultural Produce (Markets) Act, 1961—*Ss.* 2(*q*), 6(3), 10 *and* 23—*Punjab Agricultural Produce Markets (General) Rules,* 1962—*Rls.* 18(1)(c), 24, 29(1) *and* 31(*a*)—*Punjab Agricultural Produce*

Subhash Chander Kamlesh Kumar *v.* State of Punjab and others
(A. P. Chowdhri, J.)

Markets (Amendment and Validation) Act, 1976—Levy of market fee—Licensed dealers carrying on business in Notified Market Area but outside Principal Market Yard and Sub-Market Yard—Market fee—Whether leviable on such dealers—Co-relationship of fee levied and services rendered—Test of quid-pro-quo—*Whether satisfied—Service render must be both to the payer of the fee and user of the market—Market fee and licence fee—Distinction—Retail seller—Whether outside the purview of the Act—Establishment of separate market yard for particular agricultural produce—Whether a condition precedent for levy of market fee.*

Held, that a bare reading of S. 6(3) of the Punjab Agricultural Produce (Markets) Act, 1961 shows that unless a person falls in any of the exempted categories, he can carry on the business in question anywhere in the notified market area only under a licence. Under the proviso to S. 6(3) of the Act the exemption is in favour of a producer and a person who purchases for his private use. Rule 18 read with S. 6(3) gives some more exempted categories. For the present purposes the exempted categories include petty retail shopkeepers. According to the explanation to clause (c) of sub-rule (1) of Rule 18 read with the definition of 'retail sale' given in S. 2(q), a person whose turnover of Sales and purchases of agricultural produce does not exceed one lakh rupees during a year, is treated as a petty retail shop-keeper. A further proviso to the Explanation shows that a dealer importing agricultural produce from outside the State of Punjab shall not be treated as a petty retail shop-keeper. On both the counts, namely, the limit of turnover as well as the admitted case of Gur, Sakkar and Khandsari being imported by the petitioner from the State of Uttar Pradesh and other States i.e. outside the State of Punjab, the petitioner is not a retail seller. It may be added that under the analogous provision in force in Haryana the limit for purposes of a retail dealer is Rs. 60,000 per year or Rs. 5,000 during the month. In fact, the proviso to sub-section (1) of S. 10 relating to dealer's licence reiterates that the licence is required for any person carrying on business specified in sub-section (3) of S. 6 in a notified market area. Form 'B' of the licence in question mentions the name of the notified market area and column (6) is meant for specifying the place of business. At the foot of the licence, the conditions are mentioned. Condition No. 4-A is that the licensee shall carry on his business in the principal market yard or sub-market yard or at his place of business specified in the licence. The requirement of the Rules, therefore, is that a licence is required to be issued for a specified place in the notified market area. In fact, sub-rule (5) of Rule 17 expressly requires that a separate licence shall be required by a person for more than one places being used for his business in the same notified market area.

(Para 14)

Held, that a reading of Rule 24 of the Rules is enough to show that auction sales are confined to the agricultural produce brought into the market i.e. principal market yard or sub-market yard. There is no provision which debars sales either in retail or wholesale i.e. sales other than by open auction outside the principal market yard or sub-market yard. The Rule deals with agricultural produce that is brought into the principal market yard or sub-market yard where it is sold by open auction. It is significant that there is nothing in Form 'M' which restricts the transactions of buying or selling to sale by auction only.

(Para 16)

Held, that the mandate of the legislature to a Market Committee for leving the fee on agricultural produce bought or sold by a licensee in the notified market area, at a rate not exceeding the maximum, is clearly given in the section. The said mandate is to be carried out subject to any special provision made in the Rules. It is well known that such provisions in various statutes are made to bring about a certain flexibility; so that according to exigencies of situation the Government can bring about necessary amendments in the Rules and thereby ensure a smooth working of the enactment. It is well known that the procedure of amending the Rules is far simpler and quicker compared with the amendment of the statute. There is no warrant for the proposition that the rules referred in section 23 was confined to rule 24 only. It does as well refer to rules for exempting persons from paying market fee and more importantly regarding procedure for the imposition and collection of the fees. It is, therefore, not open to the petitioners to contend that the sales within the purview of the Act are only sales taking place within the principal market yard or sub-market yard or that only by open auction.

(Para 17)

Held, that the services of the payer of the fee must, therefore, be understood as meaning services to the users of the market. The services are rendered to the users of the market i.e. the growers of the agricultural produce, livestock or products of livestock and persons engaged in the business of purchase or sale of the same. Under Rule 29(2) of the Rules for the seller to pass on the burden of the market fee to the buyer. Since the burden of the market fee is passed on to the buyer, the incidence of the market fee is borne by the consumer who ultimately buys the agricultural produce. In other words, the burden is not borne by the trader. There will be thus no warrant for focussing attention on services rendered by the Market Committee to the traders in respect of the transactions affected by them. The services rendered by the Market Committee in whole of the notified market area have to be viewed from a

broader angle of person who use the market area whether as producer or traders or consumers. Hence it is held that there is no difficulty in holding that there is no reason to construe the expression 'Payer of the fee' in narrow terms so as to confine the same to traders alone to the exclusion of other users of the market including those on whom burden of the fee ultimately rests.

(Paras 29, 30, 31)

Held, that there is no reason to substitute the words 'Principal market yard' or 'sub-market yard' for the words 'notified market area' in the context of licensed dealer in S.23 or Rule 29. The only conclusion is that market fee is leviable throughout the notified market area.

(Para 32)

Held, that if the levy has been imposed and it is found as a result of the present exercise that the levy is valid, the petitioners cannot succeed even if it is assumed that until 1985 the committee did not in fact insist upon the petitioners obtaining the licences or paying the market fee. This is, however, subject to law of limitation and in appropriate cases if the petitioners take the plea of limitation and in regard to assessment for a particular period, it would be the duty of the assessing authority to consider the question and decide the same according to law.

(Para 34)

Held, that a combined reading of S. 2(q) with Rule 18(1)(c) defining 'retail sale' for the purposes of exemption from taking a licence under S.6(3) read with S. 10 of the Act indicates by necessary implication that retail sales as such are not exempted and what is exempted is only retail sales to the extent mentioned in the said Rules.

(Para 37)

Held, that there is no provision in the Act for the establishment of a separate market yard for each item of agricultural produce brought within the purview of the Act. The establishment of a separate market yard cannot, therefore, be a condition precedent for the levy of the market fee.

(Para 37)

Held, that the correct statement of law is that the traditional view of *qidu pro quo* has undergone a transformation. The true test for a valid fee is whether the primary and essential purpose is to render specified services to the specified area or class, it being of

no consequence that the State may ultimately and indirectly benefit by it. *Quid pro quo* is not always a *sine quo non* of a valid fee and what is required to be shown is that by and large there is *quid pro quo*. The co-relationship between services expected is of a general character and a broad, reasonable and casual relationship is enough to satisfy the requirement of law. The payer of the fee represents collectively the class of persons i.e. users of the market, including growers and those engaged in business to whom the benefit is directly intended by the establishment of a regulated market and not the actual individual i.e. the trader. If there is *quid pro quo* in the sense explained above for such a class of persons, the test of valid fee is satisfied. Applying the above tests, our conclusion is that there is necessary *quid pro quo* between the imposition of market fee on the petitioners and the services envisaged under the Act. The petitions must, therefore, fail and the same are dismissed.

(Paras 43, 46)

Haryana Agricultural Development Act (VI of 1986)—Ss. 6.5 and 11—Constitution of India, 1950—Entries 28 and 66 and List II, 7th Schedule—Punjab Agricultural Produce (Markets) Act, 1961—Ss. 26 and 28—Haryana Rural Development Act—Provisions—Validity of.

Held, that Haryana Rural Development Act, 1986 expressly lays down that the amount collected as fee vests in the Board which is a distinct legal entity as compared to the State Government. It has further been provided in the impugned Act that the amount can be spent only for the purposes envisaged under the Act. It is no longer open to the State Government to spend the amount for any object which the State Government considered for the development of rural areas. There is no factual foundation for the supposition that the whole or a substantial part of the amount is being spent on items relating to the part one of S. 6(5) to the exclusion of parts two and three thereof. We have, therefore, no reason to assume that the expenditure is being incurred in rural area at the expense of rest of the market area and the regulated markets with regard to the expenditure on items under part one. We are informed that depending upon the season and arrivals of various agricultural produce for sale a large number of purchase centres are set up under the Act as sub-market yards so that the producers are not compelled to carry their produce over long distances. A large number of dealers who normally work in the principal market yard or sub-market yard or elsewhere in the notified market area shift to such purchase centres for transacting their business of purchase and sale. In other words, the dealers are not fixed to one place and the services rendered in the rural area and market area are thus for their special benefits. Any service rendered in the rural area would, therefore, be service

provided in the notified market area though outside the municipal limits. This is apart from saying that the expenditure incurred in the market area is for the general benefit of the users of the market, especially the dealers working therein. Services for the benefit of the area as well those to the class, therefore, satisfied the test of *quid pro quo.*

(Paras 61, 62)

Held, that we find that in the nature of things overlapping to some extent is unavoidable in the objects of the impugned Act and governmental functions. In a welfare State in whose Constitution the founding fathers took care to provide Directive Principles of State Policy, the line of demarcation where the purposes of the Acts in question end and the governmental functions begin is extremely thin and difficult to discern. What is crucial and determinative of whether the expenditure for a certain purpose is justified or not is to consider the primary, main or dominant purpose. If the dominant purpose is to fulfil the aims and objects of the Act, the fee will not be rendered a tax because the resultant expenditure was incidentally what could or should have been spent by the government for discharging its governmental functions.

(Para 64)

Held, that there is no question of unjust enrichment of the dealers being countenanced. The provisions of S. 11 of the Act cannot be considered violative of Article 14 for the simple reason that the presumption referred to therein is a rebuttal presumption and it is open to the dealers concerned to produce appropriate material to show to the assessing authority that in a particular transaction he had not, in fact, charged the fee in question.

(Para 66)

Held, that the Punjab Rural Development Act, 1987, is broadly analgous to the aforesaid Haryana Rural Development Act, 1986. The challenge to its vires must be repelled for reasons which have been discussed while dealing with the Haryana Act.

(Para 67)

Constitution of India, 1950—*Art.* 136—*Interpretation of statutes —Stare—decisis—Law declared by the Supreme Court explained in later decisions by smaller Benches—Later decisions bind.*

Held, that we are of the view that the later decisions even though by smaller Benches having analysed and explained the observations of the Constitution Bench, the law as explained in those later decisions are binding on the High Court. Therefore, the observations made in prior Supreme Court decisions must be read in the light of the analysis and expositions made by the later Benches of the Supreme Court itself.

(Para 26)

Writ Petition under Article 226/227 of the Constitution of India praying that :—

(a) *a writ of* mandamus *or any other writ order or direction declaring Sections* 6(3) *and* 23 *of the Punjab Agricultural Produce Markets Act,* 1961, *as* ultravires *of the Constitution of India be issued;*

(b) *a writ of* mandamus *or any other writ order or direction declaring rule* 29 (1) *and rule* 31(9) *of the Punjab Agricultural Produce Markets (General) Rules,* 1962, as ultravires, *be issued;*

(c) *a writ of* mandamus *certiorari or any other writ, order or direction quashing the demand notice dated 4th July,* 1986 *as annexure P-6 and assessment order dated 2nd July,* 1986 *as annexure P-7, be issued;*

(d) *a writ of* mandamus *or any other writ, order or direction asking the respondents not to compel the petitioner to take out a licence and pay market fee, be issued;*

(e) *any other writ, order or direction as this Hon'ble Court deems fit in the peculiar circumstances of the case, may be issued;*

(f) *issuance of advance notices of motion be dispensed with;*

(g) *petitioner be exempted from filing the certified copies of annexure; and*

(h) *costs of the petition may kindly be awarded in favour of the petitioner.*

It is further prayed that during the pendency of this writ petition, operation of the impugned demand notice contained in Annexure P-6 may be stayed and the respondents may be restrained from effecting any recovery.

H. L. Sibal, Sr. Advocate and R. L. Batta, Sr. Advocate with G. C. Tangri, Advocate, *for the Petitioner.*

H. S. Bedi, A.G. Pb., *for the State.*

J. L. Gupta, Sr. Advocate with K. S. Gill, Jaswant Singh, Vikrant Sharma and Miss Nidhi Goyal, Advocate, *for Respondents No.* 2 & 3.

Subhash Chander Kamlesh Kumar v. State of Punjab and others
(A. P. Chowdhri, J.)

JUDGMENT

A. P. Chowdhri, J.

The principal question which will largely decide the fate of these writ petitions is—as to the nature and degree of *quid pro quo* (one thing in return for another) between the fee realised and the cost of services rendered. In other words, whether quite a substantial portion of the amount of fee must be shown to be actually, distinctly and primarily spent for the benefit of the payer or whether a broad and general correlationship between the fee and the services satisfied the crucial test.

(2) The question stated above is common to a number of writ petitions. For the take of convenience, nine writ petitions Nos. 3923, 3924, 3925, 3926, 5542, 5543, 5544, 3760 of 1986 and 6328 of 1987, challenging the vires of market fee levied under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the Act') are dealt with a Part I. Part II deals with CWP No. 2551 of 1988 relating to timber. Part III deals with CWP No. 121 of 1988 challenging the validity of the Haryana Rural Development Act, 1986 and CWP No. 821 of 1988 regarding the vires of the Punjab Rural Development Act, 1987.

(3) CWP No. 3923 of 1986 and some connected writ petitions came up for hearing before a Division Bench of this Court. Relying on *K. K. Puri and another* v. *State of Punjab and others* (1), it was argued on behalf of the petitioners that levy of market fee on dealers working in the notified market area but outside the principal market yard or sub-market yard was *ultra vires*, as no services were rendered to the payers of the fee. On behalf of the respondents, reliance was placed on two later decisions of the Suprme Court in *Sreenivasa General Traders and others* v. *State of A. P. and others* (2), and *M/s Amar Nath Om Parkash and others* v. *State of Punjab and others* (3), explaining the observations in *K. K. Puri's* case (supra) and laying down that a broad and general correlationship is all that is required by way of *quid pro quo*. The learned Judges of the Division Bench pointed out that while *K. K. Puri's* decision was rendered by a Constitution Bench of five Judges, the later decisions

(1) A.I.R. 1980 S.C. 1008.
(2) A.I.R. 1983 S.C. 1246.
(3) A.I.R. 1985 S.C. 218.

were smaller Benches and anything said therein did not override the dictum of the former. In any case, the learned Judges observed, that the matter involved a question of general importance having far-reaching consequences and, therefore, referred these cases to a larger Bench. This is how these writ petitions have been placed before us.

4. The facts in CWP No. 3923 of 1986 are fairly representative of the facts in the first set of writ petitions. The petitioner-firm is dealing in Gur, Shakkar and Khandsari in retail as well as wholesale. The petitioner brings the aforesaid items from the State of Uttar Pradesh and other States and sells them at a shop No. 545 in Old Grain Market at Moga. Moga is a Sub-Divisional Headquarter of district Faridkot in the State of Punjab. An area of about 15 KMs. from the outer limits of the town as well as the town itself have been declared as notified market area under the Act. The business premises of the petitioner is situated outside the principal market yard and sub-market yard but within the notified market area. The sales at the shop of the petitioner do not take place by auction. The purchasers are mostly licensed dealers. The case of the petitioner is that no services of any kind are rendered by the respondent-Market Committee to the petitioner and other dealers falling in the same category. The petitioner does not use any road constructed by the Market Committee. In fact, the roads which are used have been built and are being maintained by the Municipal Committee, Moga, or the P.W.D. Lighting arrangements on those roads have been provided by the Municipal Committee. The other civic amenities are also provided by the Municipal Committee. Whatever services are provided by the Market Committee, Moga, are available in the principal market yard or sub-market yard and not anywhere else in the rest of the notified market area. The Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976, amending the definition of 'licensee' was challenged by the petitioner as well as some others. The writ petitions were dismissed by this Court. The matter was taken to the Supreme Court in *M/s Goverdan Dass Radhey Sham* v. *State of Punjab and others* (3A). By a short order the said SLP was disposed of in view of the judgment in the case of *K. K. Puri*. The Market Committee framed best judgment assessment against the petitioner. A Division Bench set aside the assessment with a direction that the petitioner be given three weeks

(3A) S.L.P. No. 2949 of 1977 (CA 2361 of 1979) dated December 1, 1983.

to file their objections and orders be passed afresh according to law. The objections filed by the petitioners were overruled and assessment order Annexure P-7 was passed by the Administrator, Market Committee, Moga. It was held that the petitioner was liable to pay market fee amounting to Rs. 4,04,825 besides 75 per cent of the said amount as penalty. A demand notice was issued. The petitioner has challenged the aforesaid assessment, imposition of penalty and vires of various provisions of the Punjab Agricultural Produce Markets Act primarily on the ground that the petitioner was not liable either to obtain a licence under the Act or to pay market fee, as the Market Committee did not render any services at all to the petitioner and others of his class.

(5) In the return filed by the respondents, it was stated that the petitioner being a licensee in the notified market area was liable to pay market fee. It was denied that no services were being rendered to the petitioner or other dealers of his class. In fact, all services contemplated and envisaged under the Act and the Rules framed thereunder were being rendered to the licensed dealers throughout the notified market area. It was denied that the services were confined to the principal market yard and the sub-market yard. The assessment as also the imposition of penalty were said to have been made/imposed in accordance with law.

(6) In order to appreciate the various contentions advanced by learned counsel for the parties, it is necessary to notice the salient provisions of the Act and the Rules called the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the Rules).

(7) According to the Preamble, the purposes of the Act are : (a) better regulation of the purchase, sale, storage and processing of agricultural produce; and (b) establishment of markets for agricultural produce. Clause (a) of section 2 defines 'agricultural produce' to mean all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to the Act. 'Dealer' is defined in clause (f) to mean any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce notified under sub-section (1) of section 6 or purchases, sells, stores or processes such agricultural produce. 'Licensee' is defined in clause (hh) to mean a person to

whom a licence is granted under section 10 and the rules made under the Act and includes any person who buys or sells agricultural produce and to whom a licence is granted as Kacha Arhtia or commission agent or otherwise but does not include a person licensed under section 13. The expression 'market' is defined to mean a market established and regulated under the Act for the notified market area. The expression includes a market proper, a principal market yard and sub-market yard. 'Notified market area' is defined in clause (1) to mean any area notified under section 6. 'State Agricultural Marketing Board' is constituted under section 3 and the Board exercises superintendence and control over the Market Committees. The provision of declaration of notified market area is to be found in section 6(1), which empowers the State Government to declare the area notified under section 5 or any portion thereof to be notified market area for the purposes of the Act in respect of the agricultural produce notified under section 5 or any part thereof. As already pointed out, the whole of the State is divided into various market areas and was also declared as such under section 6. Under sub-section (3) of section 6, after the declaration of the notified market area, no person can establish or continue any place for the purchase, sale, storage or processing of agricultural produce except under a licence granted in accordance with the provisions of the Act, the Rules and the Bye-Laws. The sub-rule makes two exceptions, one, in favour of the producer who sells his own agricultural produce and two, those exempted under the Rules. Rule 18 of the Rules enumerates the persons exempted from taking a licence. These include confectioners and purveyors of parched, fried or cooked food, hawkers and petty retail shop-keepers who do not engage in any dealing in agricultural produce other than such hawking or retail sales. The explanation appended to the clause relating to petty retail shop-keepers lays down that a person whose turnover of sales and purchases of agricultural produce does not exceed one lakh rupees during a year shall be treated as a petty retail shop-keeper. The proviso, however, further lays down that a dealer importing agricultural produce from outside the State of Punjab shall not be treated as a hawker or a petty retail shop-keeper. With the other categories of those exempted, we are not concerned for the moment. Section 7 deals with market yards and it lays down that for each notified market area there shall be one principal market yard and one or more sub-market yards, as may be necessary. Sub-section (2) makes it clear that principal market yard and sub-market yard can be declared by a notification of the State Government in respect of any enclosure, building or locality. Section 8 prohibits the

Local Bodies, such as, Municipal Committee, District Board, Panchayat etc. as also any person from establishing or continuing any place within specified limits of the principal market yard or sub-market yard for being used for purchase, sale or storage or processing of any agricultural produce. The above bar, however, does not apply to a producer selling his own agricultural produce. Section 10 deals with licences. The annual fee for a licence is Rs. 100. A licence can be refused to a person who is an undischarged insolvent, is convicted of an offence affecting his integrity as a man of business for a period of two years of such conviction or is a *benamidar* for or is a partner with any person to whom licence has been refused. Section 11 relates to establishment of Market Committee for each notified market area. In the constitution of the Committee, it may be pointed out, amongst others, there are two members from the licencees under section 10 and one member from amongst licencees under section 13(a). Section 13 relates to duties and powers of a Committee and one of the primary duties of the Committee is to enforce the provisions of the Act, the Rules and the Bye-laws in the notified market area. Section 23 is the charging section, and in so far as relevant, reads as under :—

> "23. Levy of fees
>
> A Committee shall, subject to such rules as may be made by the State Government in this behalf, levy on *ad-valorem* basis—
>
> (i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and
>
> (ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees."

Section 25 provides for Marketing Development Fund and it lays down that all receipts of the Board shall be credited to the said fund. Similarly, there is a Market Committee Fund constituted under section 27. The purposes for which the Marketing Development Fund can be expended are detailed in section 26 and purposes for which Market Committee Fund may be expended are given in section

28 of the Act. Section 30 prohibits any trade allowance except as prescribed by the Act, the Rules and the Bye-laws framed thereunder. Section 33-A confers power of entry, inspection and seizure. What deserves to be noticed is that the said power is exercisable throughout the notified market area and is not confined to principal market yard or sub-market yard. Section 33-B confers powers of search of a vehicle going outside the notified market area.

(8) Reference may now be made to the material Rules. Rule 2(9) defines "Kacha Arhtia' to mean a dealer who, in consideration of commission, offers his services to sell agricultural produce. Rule 13 relates to appointment of a disputes sub-committee to resolve disputes between buyers and sellers regarding quality, weight, rate, allowances in wrappings, dirt or impurities or deductions for any cost. A panel of arbitrators is required to be maintained for each market yard. The parties to the dispute can choose any arbitrator. The decision of the Arbitrator is subject to appeal to the disputes sub-committee. Rule 17 deals with licences to dealers. A person desirous of obtaining a licence under section 10 is required to specify in the application the area in which he wishes to carry on his business. Sub-rule (5) of the Rule lays down that a separate licence is required by a person for each place of business in the same notified area. Licence is granted in Form 'B'. A perusal of Form 'B' appended with the Rules shows that the licence specifies the place of business in para 6. Condition No. 4-A which has been inserted by notification No. 18(25)/M-1/81/5246 dated March 14, 1988, makes explicit what was earlier implicit in the conditions of licence. The condition, as now inserted, lays down that the licencee shall carry on his business in the principal market yard or sub-market yard or at his place of business specified in the licence. Rule 23 lays down that no person shall be bound to employ a broker or to pay for a broker employed by any other party to the transaction or to pay when no broker has been employed. The Commission Agent is also debarred from engaging any broker without written authority from the principal. Rule 24 is material in that it has been heavily relied upon by the learned counsel for the petitioner. Sub-rule (1) of Rule 24 lays down that all agricultural produce brought into the market for sale shall be sold by open auction in the principal or sub-market yard. Sub-rule (2) lays down that nothing in sub-rule (1) shall apply to a retail sale as may be specified in the Bye-laws of the Committee. Under sub-rule (3) the Board is empowered to fix timings for the starting and closing of the auction. Sub-rule (4) prohibits settlement of price

by secret signs or secret bid and also any deduction from the agreed price being made. Sub-rule (5) prohibits auction by a person other than one engaged by the Committee. Sub-rule (6) lays down that the highest bidder acceptable to the seller shall determine the sale price. Sub-rule (7) lays down that the buyer shall be considered to have thoroughly inspected the produce for which he has made a bid and shall have no right to retrace it. Sub-rule (8) lays down the filling in of particulars in Form 'H' which is required to be secured by the buyer as well as the seller. Register 'HH' is required to be maintained for entering the produce which remains unsold during the course of auction. Sub-rule (9) makes the buyer responsible to get the agricultural produce weighed once the auction is concluded. Sub-rule (10) debars a person engaged by a producer to sell agricultural produce on his behalf from acting as a buyer either for himself or on behalf of another person without the prior consent of the producer. Sub-rule (11) lays down that the Kacha Arhtiya shall make payment to the seller immediately after the weighment is over Sub-rule (12) requires the *Kacha Arhtiya* to execute a memorandum in Form 'I' and deliver the same to the buyer on the same day. Sub-rule (14) lays down that the agricultural produce sold shall be delivered after the Kacha Arhtiya or where none has been employed the buyer gives to the seller a sale voucher in Form 'J'. Rule 24-B makes agricultural produce trilled without a valid licence liable to confiscation. Rule 25 makes a provision with regard to weighment. It declares that all transactions in the market shall be deemed to have been entered into in accordance with the standards fixed under the various sub-rules. It makes a provision for test weighment as also for having the weights checked for their correctness. Rule 26 deals with weighing instruments, weights and measures, and inspection and seizure in order to enforce the rules made in this behalf. Rules 27 and 28 relate to weigh bridges and measuring yards, certificates of weighment or measurement and places at which agricultural produce shall be weighed or measured. Rule 29, which has been impugned, substantially reproduces section 23 of the Act, and proceeds to note that wheat imported from foreign countries and certain other agricultural produce shall not be liable for payment of fee. Sub-rule (2) is important and reads as under

> "(2) The responsibility of paying the fees prescribed under sub-rule (1) shall be of the buyer and if he is not a licensee then the seller who may realise the same from the

buyer. Such fees shall be leviable as soon as an agricultural produce is bought or sold by a licensee."

Sub-rule (3) lays down that the fee shall be paid to the Committee within four days of the transaction. Sub-rules (7) and (8) are also important and read as under :—

"(7) For the purpose of this rule agricultural produce shall be deemed to have been bought or sold in a notified market area —

(a) If the agreement of sale or purchase thereof is entered into in the said area; or

(b) If in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or

(c) If in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser;

(d) If the agricultural produce sold or bought otherwise than in pursuance of an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

(8) If in the case of any transaction any or more of the acts mentioned in sub-rule (7) have been performed within the boundaries of two or more notified market areas the market fee shall be payable to the Committee within whose jurisdiction the agricultural produce has been weighed in pursuance of the agreement of sale or, if no such weighment has taken place to the Committee, within whose jurisdiction the agricultural produce is delivered."

Rule 30 relates to exemption from payment of market fee. Sub-rule (1) lays down that no market fee shall be levied where such fee has already been paid in the same notified market area or in another notified market area within the State. Rule 31 deals with account of transactions and fees to be maintained by the licensed dealer. Sub-rule (1) requires a return in Form 'M' showing all sales and purchases of each transaction within four days to the Committee.

Rule 34 makes a provision for the prevention of adulteration of agricultural produce. Rule 37 relates to publication of marketing information.

(9) The history of marketing legislation was traced in *P. P. Kutti Keya and others* v. *The State of Madras and others* (4), *M. C. V. S. Annachala Nadar* v. *State of Madras and others* (5), and *M/s Amar Nath Om Parkash's* case (supra). The salient features of the history are that marketing legislation has been a well recognised feature of all commercial countries since the early part of this century. The object of enactment of marketing laws was to protect the producers of commercial crops from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce. In India, the beginning was made with cotton which was in great demand in England. Markets were established in Central Provinces and Berar through legislation. In 1919 the Indian Cotton Committee recommended that such markets be established in every cotton growing area. The Royal Commission on Agriculture in India submitted its report in 1928. This was followed by several Expert Committees. The findings of these Committees were that the village producer seldom obtained a proper price because of various reasons. He was chronically indebted to the middlemen. The bargains were seldom fair to the sellers. The producer had no holding power. In early thirties, marketing legislation covering principal commercial crops, such as cotton, groundnuts and tobacco, was undertaken In course of time, such legislation has been enacted throughout the country and covers a fairly large number of agricultural produce. The present Act replaced an earlier Act with the same title which was enacted in 1939 in so far as Punjab is concerned, and in 2004 B.K. in so far as the erstwhile Pepsu is concerned. The Punjab Act of 1939 like similar enactments in the field of marketing legislation, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated markets by eliminating middlemen and bringing face to face the producer and the buyer, so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings.

(10) Although there is no generic difference between 'tax' and 'fee', the two have vital distinction in their connotation and legal

(4) A.I.R. 1954 Madras 621.
(5) A.I.R. 1959 S.C. 30.

incidence. The definition of 'tax' and 'fee' given in *The Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (6), which is considered leading authority on the subject, has often been referred to and relied upon in subsequent cases. The admitted case on both sides is that market fee is a fee as distinct from a tax. Fee itself may be of various kinds. K. K. Puri's case mentions about three types of fee,—(*vide* para 15); (i) fee for licences prescribed as a regulatory measure on payment of a small amount e.g. the licence fee under sections 10 and 13 of the Act; (ii) fee in the nature of grant of exclusive privilege of the State e.g. the excise licences; and (iii) those in which element of *quid pro quo* is necessary, Admittedly, the present cases fall in the third category and imposition of market fee can be sustained only if it is shown that there is *quid pro quo* by way of services to the payer of the fee. The petitioners have obtained licences as dealers and they do not dispute taking of such licences as a regulatory measure in the public interest. In fact, in *K. K. Puri's* case such licences were held justified. What the petitioners dispute is that only because they have obtained licences is no reason why market fee should be levied on them. The real challenge of the petitioners, therfore, is to the levy of market fee as distinguished from licence fee.

(11) From the side of the petitioners, the main arguments were addressed by Shri H. L. Sibal, Sr. Advocate, representing the petitioners in one set of writ petitions. These were adopted by the other learned counsel with very little addition.

(12) It will be convenient to summarise the contentions of Shri Sibal as follows :—

(i) Under the Act and the Rules a dealer's licence is required only for carrying on business in the principal market yard or sub-market yard and not outside in the rest of the notified market area for these reasons :

(a) The whole of the notified market area is too big an area for any effective control and supervision by a particular Market Committee;

(b) Section 6(3) read with section 10 of the Act requires a licence by a dealer for doing business in the principal market yard or sub-market yard;

(6) A.I.R. 1954 S.C. 282.

(c) Only sale or purchase of agricultural produce by way of auction taking place in the principal market yard or sub-market yard are within the purview of the Rules for purposes of market fee. Transactions of sale or purchase effected without resorting to auction i.e. by retail or wholesale is, therefore, not sought to be covered by the Act and the Rules;

(d) The various Forms prescribed indicated that market fee was leviable only in case of sale by open auction.

(ii) Since fee is regarded as a sort of return or consideration for service rendered, it is necessary that the levy of fee should, on the face of the legislative provision, be co-related to the expenses incurred by the levying agency in rendering the services.

(iii) Broadly speaking, it must be shown that quite a substantial portion of the amount of fee realised is spent for the specific benefit of the payer thereof.

(iv) The payer of the fee is not the person on whom the burden of fee ultimately falls, but the licencee who is primarily responsible for accounting and payment of market fee.

(v) Almost the entire area of the States of Punjab and Haryana is covered by different notified market areas and large, as it is, a notified market area can in no sense be equated with or considered to be principal market yard or sub-market yard, nor has it been so declared.

(vi) The Act and the Rules framed thereunder envisage services only in the principal market yard or sub-market yard and not in the entire notified market area. No services contemplated under the Act can be or are being rendered to the licencees working in the notified market area but outside the principal market yard and sub-market yard. In other words, the Committee is primarily concerned with providing facilities in the regulated market,—*vide* section 13(1) (a) of the Act.

(vii) Expenditure on ordinary municipal services or governmental functions could not be considered as being for the special benefit of the payer of the fee.

(viii) Rule 31(9) of the Rules regarding imposition of penalty is *ultra vires* the provisions of the Act, in that, the said Rule has not been framed under any power given under the Act. In any case, Rule 31(9) suffers from excessive delegation as no guidelines have been laid down therein for determining the extent of penalty which can be imposed by the Market Committee.

(ix) Sections 6(3) and 23 of the Act and Rules 29(1) and 31(9) of the Rules are *ultra vires*.

(13) The contention mentioned as point No. (i) above is, if we may say so, based on a misreading of the provisions of the Act and the Rules.

(14) A bare reading of section 6(3) of the Act shows that unless a person falls in any of the exempted categories, he can carry on the business in question anywhere in the notified market area only under a licence. Under the proviso to section 6(3) *ibid* the exemption is in favour of a producer and a person who purchases for his private use. Rule 18 read with section 6(3) gives some more exempted categories. For the present purposes the exempted categories include petty retail shopkeepers. According to the Explanation to clause (c) of sub-rule (1) of Rule 18 read with the definition of 'retail sale' given in section 2(q), a person whose turnover of sale and purchases of agricultural produce does not exceed one lakh rupees during a year, is treated as a petty retail shop-keeper. A further proviso to the Explanation shows that a dealer importing agricultural produce from outside the State of Punjab shall not be treated as a petty retail shop-keeper. On both the counts, namely, the limit of turnover as well as the admitted case of Gur, Sakkar and Khandsari being imported by the petitioner from the State of Uttar Pradesh and other States i.e. outside the State of Punjab, the petitioner is not a retail seller. It may be added that under the analogous provision in force in Haryana the limit for purposes of a retail dealer is Rs. 60,000 per year or Rs. 5,000 during any month. In fact, the proviso to sub-section (1) of section 10 relating to dealer's licence reiterates that the licence is required for any person carrying on business specified in sub-section (3) of section 6 in a

notified market area. Form 'B' of the licence in question mentions the name of the notified market area and column (6) is meant for specifying the place of business. At the foot of the licence, the conditions are mentioned. Condition No. 4-A is that the licencee shall carry on his business in the principal market yard or sub-market yard or at his place of business specified in the licence. The requirement of the Rules, therefore, is that a licence is required to be issued for a specified place in the notified market area. In fact, sub-rule (5) of Rule 17 expressly requires that a separate licence shall be required by a person for more than one places being used for his business in the same notified market area. Unless a place is specified in the licence, there can be no effective supervision by the Market Committee. It is in the sense explained above that the following observations occurring in paragraph 25 of *K. K. Puri's* case (supra) and relied upon by the learned counsel, were made and are to be understood :—

> "...There will be no sense in specifying the place of business in the licence if the licencee is to be permitted to establish his place of business anywhere in a notified market area which is too big and extensive for the control and supervision of a particular market committee. .... After all the whole object of the Act is the supervision and control of the transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. The supervision and control can be effective only in specified localities and places and not throughout the extensive market area."

These observations thus referred to a specified place or places in the notified market area and not to a place in the principal market yard or sub-market yard.

(15) With regard to point noted at (i) (c) above, a reading of Rule 24 of the Rules is enough to show that auction sales are confined to the agricultural produce brought into the market i.e. principal market yard or sub-market yard. There is no provision which debars sales either in retail or wholesale i.e. sales other than by open auction outside the principal market yard or sub-market yard. This very question arose in *M/s Prem Chand Ram Lal* v. *The Punjab State and others* (7). Dismissing the LPA against the judgment of a

(7) 1970 P.L.J. 432.

learned Single Judge, a Division Bench of this Court observed that Rule 24 has no application to the sale transactions within the market area. The Rule deals with agricultural produce that is brought into the principal market yard or sub-market yard where it is sold by open auction. It was further observed that Rule 29 deals with all other buyings and sellings than those covered by open auction in Rule 24,—(*vide* paragraph 6 at page 437). We are in respectful agreement with the above observations.

(16) Forms H, HH, I and J have expressly been made with regard to sale by auction under Rule 24. The material Form for the present purposes is Form 'M' i.e. Return of daily purchases and sales which, *inter alia*, all licensed dealers in the notified market area are required to submit to the Market Committee. It is significant that there is nothing in Form 'M' which may restrict the transactions of buying or selling to sale by auction only.

(17) Mr. Sibal contended that the charging section 23 of the Act itself laid down that the levy of market fee was subject to the rules made by the State Government. According to the learned counsel, a reading together of section 23 and rule 24 indicated that what was intended to be covered was sale/purchase by open auction. We find no merit in this contention. The mandate of the legislature to a Market Committee for levying the fee on agricultural produce bought or sold by a licencee in the notified market area, at a rate not exceeding the maximum, is clearly given in the section. The said mandate is to be carried out subject to any special provision made in the Rules. It is well known that such provisions in various statutes are made to bring about a certain flexibility, so that according to exigencies of situation the Government can bring about necessary amendments in the Rules and thereby ensure a smooth working of the enactment. It is well known that the procedure of amending the Rules is far simpler and quicker compared with amendment of a statute. There is no warrant for the proposition that the 'rules' referred in section 23 was confined to rule 24 only. It does as well refer to rules for exempting persons from paying market fee and more importantly regarding procedure for the imposition and collection of the fee. Rule 29(7) which was the concerned rule in *British India Corporation Limited* v. *Market Committee, Dhariwal* (8), defines what is 'bought or sold' within the meaning of Rule 29 as also section 23 of the Act. This

(8) A.I.R. 1983 S.C. 162.

is apart from saying that Rule 24 itself deals with and is confined to agricultural produce brought into the principal market yard or sub-market yard and does not apply to buying or selling etc. outside thereof in the remaining notified market area. It is, therefore, not open to the petitioners to contend that the sales within the purview of the Act are only sales taking place within the principal market yard or sub-market yard or that only by open auction.

(18) Contentions at points (ii) to (vii) and (ix) are based on various observations in *K. K. Puri's* case which is the sheet-anchor of Shri H. L. Sibal's arguments. Learned counsel also submitted that the decision in K. K. Puri was rendered by a Constitution Bench of five Hon'ble Judges and it was reiterated in two later Constitution Benches. These decisions are *Ram Chander Kailash Kumar* v. *State of Uttar Pradesh* (9), in which *K. K. Puri's* case was described as a 'settler' and *Shri Swamiji of Shri Admar Mutt etc.* v. *The Commissioner Hindu Religious and Charitable Endowments Department and others* (10). The law laid down in K. K. Puri's case, according to the learned counsel, held the field. Learned counsel argued that the respondents had not even attempted to establish any correlationship between the market fee realised from the petitioner and other licensed dealers of his class and the services rendered for their special benefit in the market area in respect of the transactions of sale or purchase of agricultural produce. The levy of market fee could not, therefore, be sustained and the provisions for levying of market fee were thus without the authority of law and the demand raised by the Market Committee was illegal.

(19) Shri Sibal contended that the decision in *K. K. Puri's* case (supra) was binding on this Court in preference to the later smaller Bench decisions. For this contention, he relied on *The State of U.P.* v. *Ram Chandra Trivedi* (11). In paragraph 22 it was laid down as under :

> "... Where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in *Union of India* v. *K. S. Subramanian* (Civil Appeal No. 212 of 1975 decided on July 30, 1976) to which one of us was a party,

(9) A.I.R. 1980 S.C. 1124.
(10) A.I.R. 1980 S.C. I.
(11) A.I.R. 1976 S.C. 2547.

is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice hardened as it has into a rule of law is followed by this Court itself."

Reference is also made to *Ganapati Sitaram Balvalkar and another* v. *Waman Shripad Mage* (12), and *State of Orissa and others* v. *Titaghur Paper Mills Company Limited and another* (13). It will be seen that none of the cases relied upon by the learned counsel for the petitioners dealt with a case where the latter Benches may have analysed and explained the earlier judgment of the larger Bench of the Supreme Court. The abstract proposition that where there is a conflict between the law declared by a larger Bench and a smaller Bench, the former will prevail, does not help in resolving the present problem. In the present case, the smaller Benches analysed and explained the earlier judgment of the Constitution Bench. This very question was examined by a Full Bench of our Court in *M/s Daulat Ram Trilok Nath and others* v. *The State of Punjab and others* (14). It was held that construction which the Supreme Court itself places on an earlier precedent is obviously binding and authoritative. To the same effect is another decision of a Full Bench of this Court in *The State of Punjab* v. *Teja Singh* (15). It was observed :

"... when an earlier judgment of the Supreme Court is analysed and considered by a later Bench of that Court then the view taken by the latter as to the true ratio of the earlier case is authoritative. In any case, that view is binding on the High Courts."

A Full Bench of the Gujrat High Court in *Nizamuddin Suleman* v. *The New Shorrock Spg. & Mfg. Mills Co. Ltd, Nadiad and another* (16), after quoting from *Union of India* v. *K. S. Subramaniam* (17), concluded the legal position in the following words :

"Of course, if the views expressed earlier by a larger bench of the Supreme Court have been explained even by a

(12) A.I.R. 1981 S.C. 1956.
(13) 1985 (Supp) S.C.C. 280.
(14) A.I.R. 1976 P&H 304.
(15) 1976 Crl. L.J. 1643.
(16) 1979 Gujrat Law Reporter 290.
(17) A.I.R. S.C. 2433.

smaller Bench in a subsequent decision, the explanation by the smaller bench of the Supreme Court would be required to be followed by High Courts before whom the earlier decision of the larger bench and the subsequent explanation of the same judgment by the smaller bench are cited. Otherwise, as indicated by Beg, J. in *Union of India* v. *K. S. Subramanian* (supra) the High Court is bound to follow the decision of the larger Bench of the Supreme Court."

Having considered the matter carefully, we are of the view that the later decisions, even though by smaller Benches, have analysed and explained the observations of the Constitution Bench in *K. K. Puri's* case (supra) and the law as explained in those later decisions is binding on us.

(20) This brings us to a consideration of those later decisions.

(21) In *Sreenivasa General Traders' Case* (supra) *inter alia*, the challenge was to the levy of market fee on transactions taking place in the notified market area but outside the principal market yard or sub-market yard under a similar enactment known as Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. Reliance was placed on certain observations in *K. K. Puri*. The Court said that the observations relied upon were not to be read as Euclid's theorems, nor as provisions of a statute. It was emphasized that the observations must be read in the context in which they appeared. With regard to the binding effect of the observations in K. K. Puri's case it was observed that the said decision did not lay down any legal principal of general applicability. It was further observed that the decision in K. K. Puri was distinguishable on facts. In that case there was sufficient material showing that the income from the market fee in the State of Punjab had become a source of revenue and, therefore, the increase in the rate of market fee from Rs. 2 per 100 rupees to Rs. 3 was quashed. The other material facts which were undisputed in the case of K. K. Puri were set out in some detail to show that the case was distinguishable on facts (*vide* para 28 of the report). The Court said that every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found there were not intended to be

expositions of the whole law but governed or clarified by the particular facts of the case in which such expressions were to be found. It was pointed out that there were certain observations to be found in the judgment in *K. K. Puri's* case, which were really not necessary for purposes of the decision and were beyond the occasion and, therefore, they had no binding authority though they might have merely persuasive value. The Court proceeded to observe that the traditional view that there must be actual *quid pro quo* for a fee had undergone a sea change in the subsequent decisions. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefitted by it. The power of any Legislature to levy a fee is conditioned by the fact that there must be "by and large" a *quid pro quo* for the services rendered. The co-relationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of the fee and the services rendered. It was clarified that the expression "payer of the fee" used in various authorities, including *K. K. Puri's* case, represented collectively the class of persons to whom the benefit was directly intended by the establishment of a regulated market in notified agricultural produce, livestock or products of livestock and not the actual individual who belonged to that class i.e. the trader. It was further observed that though the traders initially paid the market fee but there was passing on of liability by them to the consumer as part of the price. It was, therefore, held that observation in *K. K. Puri's* case (supra) as to the service to the payer of fee must be understood as meaning service to the user of the market. The services are rendered to the users of the market i.e. the growers of agricultural produce, livestock or products of livestock and persons engaged in the business of purchase and sale of the same. The argument that since the services are rendered by the Market Committee within the market proper, there is no liability to pay market fee on purchase or sale taking place in the notified market one but outside the market, was rejected as fallacious. It was said that the contention did not take note of the fact that establishment of a regulated market for the purchase or sale of notified agricultural produce etc. was itself a service rendered to persons engaged in the business of purchase or sale of such commodities. The levy of market fee on traders operating in the notified market area but outside the principal market yard or sub-market yard, was upheld.

(22) Learned counsel for the petitioner tried to distinguish the above authority by pointing out that under section 7(6) of the Andhra Pradesh Act, there was a ban on carrying on of the business of purchase or sale of notified agricultural produce etc. in the notified market area outside the principal market yard or sub-market yard. There is no such ban in the Punjab Act as applicable in the State of Punjab or the State of Haryana. In our view, this is a distinction without a difference because notwithstanding the said ban it was recognised as a fact in paragraph 22-A of the report that several traders who challenged the levy of market fee were, in fact, carrying on their business in the notified market area outside the regulated markets.

(23) In *Southern Pharmaceuticals and Chemicals, Trichur and others* v. *State of Kerala and others* (18), the petitioner placed reliance on certain observations in *K. K. Puri's* case (supra) with regard to the nature and extent of service to be rendered by way of *quid pro quo* for levying of fee. The Supreme Court observed that what was required was a broad correlationship between the fee collected and the cost of services rendered. In paragraph 25 of the report, it was observed :

> "... It is also increasingly realised that the element of *quid pro quo* strict senso is not always a *sine qua non* of a fee."

In *Municipal Corporation of Delhi and others* v. *Mohd Yasin* (19), their Lordship said that words and phrases have not only a meaning but also a content, a living content which breathes, and so, expands and contracts. The philosophy and language of law, it was observed, were no exceptions. The concept under reference was of *quid pro quo*. Regarding observations in *K. K. Puri's* case, a number of authorities were reviewed and the conclusion was stated in para 9 in the following words :

> "Though a fee must have relation to the services rendered, or the advantages conferred, *such relation need not be direct, a mere casual relation may be enough.* Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee.

(18) A.I.R. 1981 S.C. 1963.
(19) A.I.R. 1983 S.C. 617.

In fact *the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest.* Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. *A broad correlationship is all that is necessary,* Quid pro quo *in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax.*" (Emphasis added)

(24) Again in *Amar Nath Om Parkash* v. *State of Punjab etc.* (20), their Lordships said with regard to observations in *K. K. Puri's* case that the Court did not purport to lay down any new principles and could not have intended to depart from the series of earlier cases of the Supreme Court. It was pointed out that the general observations made in *K. K. Puri's* case had been so misunderstood and misinterpreted as to lead to some confusion and public mischief. Their Lordship explained the observations made in *K. K. Puri's* case and heavily relied on the analysis and exposition undertaken by the Court in the earlier decision in *Sreemvasa General Traders'* case (supra) dealt with above. It was reiterated that a broad and general correlationship is all that is necessary. *Quid pro quo* in the strict sense is not the one and only true index of fee whereas it is not necessarily absent in a tax.

(25) It is significant to note that CWP No. 1421 of 1980 (*M/s Borakia Dal Mills and others* v. *State of Haryana and others* and a number of connected writ petitions, which were directed against the vires of the Punjab Agricultural Produce Market (Haryana Second Amendment and Validation) Act, 1980, were dismissed by a Constitution Bench of the Supreme Court by order dated December 3, 1985. In doing so, their Lordships observed that the challenge to an analogous Act, namely, the Punjab Agricultural Produce Markets (Punjab Amendment) Act, 1980, had been negatived in *M/s Amar Nath Om Parkash's case* (supra). Their Lordships expressed agreement with what had been decided in *M/s Amar Nath Om Parkash's* case. The point of significance is that the law laid down by their Lordship in *M/s Amar Nath Om Parkash's* case was expressly approved by the Constitution Bench. What is, therefore,

(20) A.I.R. 1985 S.C. 218.

laid down in *M/s Amar Nath Om Parkash case*, dealt with in the preceding paragraph above, stands approved by a Constitution Bench and, therefore, for various reasons which have been discussed above or are to be discussed hereinafter, the Court has to choose between the pronouncement of two Constitution Benches of the Supreme Court. We have undertaken this exercise and we are of the view that the observations in *K. K. Puri's* case must be read in the light of the analysis and exposition made by the later Benches of the Supreme Court itself. The next authority to be referred is *The City Corporation of Calicut* v. *Thachambalcih Sadaswan and others*, (21), after reviewing a number of authorities the conclusion was stated in paragraph 7 in the following words :

> "7. It is thus well settled by numerous recent decisions of this Court that the traditional concept in a fee of *quid pro quo* is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

(26) In a recent decision in *P. M. Ashwathanarayana Setty and others* v. *State of Karnataka and others* (22), their Lordships of the Supreme Court considered it unnecessary to review the earlier pronouncements of the Court on the conceptual distinction between fee and tax. However, the legal position was stated in these words:—

> ".....the essential character of the impost is that some special service is intended or envisaged as a *quid pro quo* to the class of citizens which is intended in be benefited by the service and there is a *broad and general correlation between the amount so raised and the expenses involved in providing the services,* the impost would partake the

(21) A.I.R. 1985 S.C. 756.
(22) A.I.R. 1989 S.C. 100.

character of a 'fee' notwithstanding the circumstance that the identity of the amount so raised is not always kept distinguished but is merged in the general revenues of the State and notwithstanding the fact that such special services, for which the amount is raised, are, as they very often do, incidentally or indirectly benefit the general public also. The test is the primary object of the levy and the essential purpose it is intended to achieve. The correlationship between the amount raised through the 'fee' and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate arithmetical equivalence or precision in the corelation; but *it would be sufficient that there is a broad and general correlation.* ... ..."

(27) In *Ram Chandra Kailash Kumar & Co. and others* v. *State of U.P. and another* (23), the contentions raised were listed as points Nos. 1 to 24. Point No. 1 formulated was :

"(1) Big areas consisting of towns and villages have been notified as Market Areas without rendering any service. This is contrary to the whole object of the Act and the concept of fee."

Points Nos. 1 to 4 were dealt with together and the contention relating to point. No. 1 was repelled. The judgment of the Constitution Bench was delivered by Untwalia, J. (as his Lordship then was), who spoke for the Constitution Bench in *K. K. Puri's* case (supra).

(28) Quite some discussion took place at the Bar as to the precise connotation of the expression "payer of the fee'. Shri Sibal referred to para 8 of the decision in *K. K. Puri's* case, where the argument raised on behalf of the Haryana Marketing Board was that the services rendered were to be correlated to those on whom the ultimate burden of the fee falls. It was pointed out by Shri Sibal that the above contention was expressly rejected, as 'neither logical nor sound' and it was held that, in fact, the licensed trader was "payer of the fee". This acquires significance in the context of services being provided to the 'payer of the fee' by way of *quid pro quo*. It was pointed out in *Sreenivasa General Traders'* case

(23) A.I.R. 1980 S.C. 1124.

(supra) that in the later decision in *Ram Chander Kailash Kumar's* case (supra) Untwalia, J. (as his Lordship then was) speaking for the Court, had considerably narrowed down his observation in *K. K. Puri's* case at page 1129 of the report saying :

> "The fee realised from the payer of the fee has, by and large, to be spent for a special benefit and *for the benefit of other persons connected with the transactions of purchase and sale in the various Mandis,—(vide* para 32 of the report (Emphasis added)

(29) The conclusion reached in *Sreenivasa General Traders'* case (supra) was that the expression "payer of the fee" used by the Supreme Court in various authorities represented collectively the class of persons to whom the benefit is directly intended by the establishment of a regulated market in the notified agricultural produce, livestock or products of livestock and not the actual individual who belongs to that class i.e. the trader. More importantly, it was further observed that no doubt the petitioners, who were traders in that case, initially paid the market fee, there was passing on of liability by them to the consumer as part of the price. It was, therefore, pointed out that the observation in *K. K. Puri's* case regarding services to the payer of the fee must, therefore, he understood as meaning services to the users of the market. The services are rendered to the users of the market i.e. the growers of agricultural produce, livestock or products of livestock and persons engaged in the business of purchase or sale of the same. (*Vide* para 37 of the report).

(30) Apart from the usual economic tendency to pass on the burden to the next person, there is an express provision in Rule 29(2) of the Rules for the seller to pass on the burden of the market fee to the buyer. Since the burden of the market fee is passed on to the buyer, the incidence of the market fee is borne by the consumer, who ultimately buys the agricultural produce. In other words, the burden is not borne by the trader. There will be thus no warrant for focussing attention on services rendered by the Market Committee to the traders in respect of the transactions effected by them. The services rendered by the Market Committee in the whole of the notified market area have to be viewed from a broader angle of persons who use the market area whether as producer or traders or consumers. The observations in *K. K. Puri's* case have to be understood accordingly as explained in *Sreenivasa General Traders'* case.

(31) Shri Anand Swaroop, Sr. Advocate, arguing for the Marketing Board, Haryana, put forward yet another reason for preferring the view as to the connotation of payer of the fee as laid down in *Sreenivasa General Traders' case* (supra). He referred to four decisions of Constitution Bench of the Supreme Court, in which a distinction had been made between the payer of the fee and the machinery for its collection. It was laid down that the real character of the impost was determined by the actual payer of the tax and not the instrumentality devised by the government for collection of the tax. The authorities cited in this behalf are:

(1) *State of Bombay* v. *R.M.D. Chamarbaudwala and another* (24), (Para 23);

(2) *R. C. Jall Parsi* v. *The Amalgamated Coalfields Ltd.* (25), (para 7 and 8);

(3) *Rai Ramkrishna and others* v. *State of Bihar* (26), (Para 13);

(4) *Khyerbari Tea Co. Ltd. and another* v. *State of Assam and others* (27), (Paras 20 to 23).

Shri Sibal did not, as in fact he could not, dispute the principle laid down in the aforesaid cases. We have, therefore, no difficulty in holding that there is no reason to construe the expression "payer of the fee" in narrow terms so as to confine the same to traders alone to the exclusion of other users of the market including those on whom burden of the fee ultimately rests. It follows that there is no substance in the contentions mentioned at points (iii) and (iv) formulated above.

(32) Even though this may amount to some sort of repetition, it deserves to be highlighted that eventually the levy of market fee at the rate of Rs. 2 per 100 rupees under the Act was expressly upheld in *K. K. Puri's case* in the following words:—

> "But taking a reasonable and practical view of the matter and on appreciation of the true picture of justifiable and legal expenditure in relation to the market fee income, even though it had to be done on the basis of some reasonable

(24) A.I.R. 1957 S.C. 699.
(25) A.I.R. 1962 S.C. 1281.
(26) A.I.R. 1963 S.C. 1667.
(27) A.I.R. 1964 S.C. 925.

guess work, we are not inclined to disturb the raising of an imposition of the rate of market fee upto Rs. 2 per hundred rupees by the various Market Committees and the Boards both in the State of Punjab and Haryana. After all, considerable development work seems to have been done by many Market Committees in their respective markets. The charging of fee at the rate of Rs. 2, therefore, is justified and fit to be sustained. We accordingly do it."

(*Vide* para 54 of the report)

In other words, what was upheld was the charging section 23 of the Act. The said section expressly empowers the Market Committee to levy market fee on the agricultural produce bought or sold by a licencee in the notified market area. To the same effect is the provision in rule 29 of the Rules. There is no reason to substitute the words 'principal market yard' or 'sub-market yard' for the words 'notified market area' in the context of licensed dealers in section 23 or rule 29. The only conclusion is that market fee is leviable throughout the notified market area.

(33) Precisely the same contention i.e. services to the traders in the notified market area outside the principal market yard or sub-market yard was considered and rejected by a Full Bench of this Court in *M/s. Harnam Dass Lakhi Ram* v. *The State of Punjab and others* (28), (*vide para 31 of the report*). (*Harnam Dass Lakhi Ram* v. *State of Punjab and others* (29), was dismissed by the Supreme Court by a short order to the effect that the SLP and the writ petitions listed therewith were dismissed in view of the order passed in *K. K. Puri's case* (supra). The petitioners thereafter moved an application for review, which was subsequently dismissed as withdrawn. In other words, the aforesaid Full Bench decision was not set aside by their Lordships of the Supreme Court on the point of licensed traders in the notified market area outside the principal market yard or sub-market yard being liable to pay the market-fee under the Act.

(34) Shri Sibal pointed out that no licences under section 10 were insisted upon, nor any market fee levied on dealers working in the notified market area outside the principal market-yard or

(28) A.I.R. 1978 Pb. and Hy. 53.

(29) C.A. 2361 of 1979 decided on December 1, 1983.

sub-market yard during the period 1978 to 1985. It was only thereafter that the Market Committee had spread its net wide enough to include the petitioners and other dealers falling in that class. This was disputed by learned counsel appearing for the opposite side. We were shown a number of cash memos, and vouchers relating to the year 1980 showing various dealers outside the principal market yard or the sub-market yard to have charged market fee on transactions relating to agricultural produce. The contention of Shri Sibal cannot be accepted; firstly for the reason that no such clear-cut case was pleaded in the petition and the petitioners must be held bound by their pleadings, and, secondly, there can be no estoppel against the statute. If the levy has been imposed and if it is found as a result of the present exercise that the levy is valid, the petitioners cannot succeed even if it is assumed that until 1985 the Committee did not in fact insist upon the petitioners obtaining the licences or paying the market fee. This is, however, subject to law of limitation and in appropriate cases if the petitioners take the plea of limitation in regard to assessment for a particular period, it would be the duty of the assessing authority to consider the question and decide the same according to law.

(35) Under section 13(1)(a) of the Act, relating to duties and powers of the Market Committees, the duties include the enforcement of the provisions of the Act and the Rules and Bye-laws made thereunder in the notified market area. In other words, the enforcement of the provisions is not confined to the principal market yard and sub-market yard. In *Immedisetti Ramakrishnaiah and Sons, Anakapalli* v. *State of Andhra Pradesh* (30), it was contended that the facilities provided were confined to the market proper and did not extend throughout the notified area. Repelling the contention, a Division Bench of the Andhra Pradesh High Court observed :

> "The establishment, maintenance and improvement of the market is one of the purposes for which the market committee fund might be expended under section 15 of the Act. The other services such as the provisions and maintenance of standard weights and measures, the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock, schemes for the extension or cultural

((30) A.I.R. 1976 A.P. 193.

improvement of notified agricultural produce including the grant of financial aid to schemes for such extension or improvement within such area undertaken by other bodies or individuals, propaganda for the improvement of agricultural produce, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the foodgrains, etc., are not services which are confined to the market area only. They are services which are required to be performed by the market commitee and which may be rendered throughout the notified market area without being confined to the market."

The same conclusion was reached by another Division Bench of Andhra Pradesh High Court in *Sri Vijaya Cotton Traders* v. *State of Andhra Pradesh* (31). The Punjab Act is substantially similar to the Andhra Pradesh Act and a reading of the various provisions of the Act under consideration and the Rules and Bye-laws made thereunder, *inter alia,* reveals the rendering of the following services :

(1) A common place is provided for seller and buyer to meet and facilities are offered by way of space, buildings and storage accommodation.

(2) Market practices are regularised and market charges clearly defined and unwarranted ones prohibited.

(3) Correct weighment is ensured by licensed weighmen and all weights are checked and stamped.

(4) Payment on hand is ensured.

(5) Provision is made for settlement of disputes.

(6) Daily prevailing prices are made available to the grower and reliable market information provided regarding arrivals, stocks, prices, etc.

(7) Quality standards are fixed when necessary and contract forms standardized for purchase and sale.

(31) A.I.R. 1981 A.P. 203.

(36) The amount realised as market fee under section 23 of the Act is credited to the Market Committee Fund constituted under section 27 of the Act. A percentage of the amount realised is required to be given by the Committee to the Marketing Board to be credited to the Marketing Development Fund established under section 25 of the Act. These amounts can be spent only for purposes detailed in sections 28 and 26 respectively. These purposes came in for a close scrutiny in *K. K. Puri's case* (supra). Some of the purposes were not approved by their Lordships. We were informed at the hearing of the present petitions that no amount was being spent for purposes which were not approved by their Lordships in *K. K. Puri's* case since the date of that decision. In other words, the amount is spent only for purposes laid down in the Act and approved by the apex Court and for no other purpose. Thus, the amount of market fee is ear-marked only for approved purposes which is to render services throughout the notified market area. That amount is not available nor in fact is being spent for any governmental functions.

(37) Arguing for some of the petitioners, Mr. B. S. Malik sought to add two points to what Shri Sibal had argued. These are :

(1) Retail sales are outside the purview of the Act; and

(2) Unless a separate market yard is established for timber, no market fee can be charged in regard to sale or purchase of timber.

In support of point No. (1), learned counsel relies on *Jan Mohd.* v. *State of Gujrat* (32). This was a case under the Gujrat Agricultural Produce Markets Act, 1964. On the basis of the provisions of the Gujrat Act and the Rules framed thereunder, it was conceded by the Solicitor General appearing for the State of Gujrat that the Act read with the Rules did not purport to place any restriction upon the retail transactions in agricultural produce (towards the end of paragraph 12 at page 392 of the report). Apart from the concession, we find that the provisions of the Gujrat Act were materially different from the provisions of the Punjab Act, under consideration. "Retail seller" is determined under the Act by reading section 2(q) with rule 18(1)(c). Reference to these provisions has already been made and there is no need to repeat them here. There is no other

(32) A.I.R. 1966 S.C. 385.

provision which would justify the conclusion that retail sales are outside the purview of the Act for purposes of levy of market fee. In fact, the existence of rule 18(1)(c) defining "retail sale" for the purposes of exemption from taking a licence under section 6(3) read with Section 10 of the Act indicates by necessary implication that retail sales as such are not exempted and what is exempted is only retail sales to the extent mentioned in the said rule. With regard to the other submission, there are two aspects of the question. The first aspect is whether it is a condition precedent as a matter of law for the levy of market fee that there should be a separate market yard for a particular agricultural produce. The second aspect is whether in fact separate market yard has been established or is being established. Section 7 of the Act lays down in no uncertain terms that there shall be one principal market yard and one or more sub-market yards as may be necessary for each notified market area. Undisputedly there is one principal market yard established in the notified area of the Committees concerned and several sub-market yards as have been considered necessary by the authorities administring the Act. There is no provision in the Act for the establishment of a separate market yard for each item of agricultural produce brought within the purview of the Act. The establishment of a separate market yard cannot, therefore, be a condition precedent for the levy of the market fee.

(38) However, on a point of fact, detailed plans were produced before us, showing that an area of 2.87 acres had been ear-marked in the market for the purposes of timber in the area relating to Market Committee Sangrur. Ear-marking had also been done in case of Market Committee Ludhiana.

CIVIL WRIT PETITION NO. 6328 OF 1987.

(39) With regard to CWP No. 6328 of 1987 relating to some dealers of Kaithal in the State of Haryana, it may first be pointed out that the categorical stand of the Market Committee was that all the petitioners were carrying on their business under a licence obtained under the Act in a sub-market yard declared under the Act. There case is, therefore, distinguishable from those of the Punjab dealer referred to in the foregoing part of this judgment.

(40) The additional ground of challenge raised by the petitioners in the above noted writ petition is that section 38 of the Act was *ultra vires* as it contained no guidelines for the State Government

for amending the Schedule to the Act. By notification Annexure P-1 dated September 1, 1987, the State Government amended the Schedule in respect of items Nos. 8 to 11 relating to various pulses by making it clear that the pulses referred to therein would include the whole as well as their split or what is called Dal. Items 16, 22 and 38 were also amended and items 100 and 105 were added. Mere addition to the Schedule under section 38 does not empower the Market Committee to levy market fee. In order to attract the provisions relating to levy of market fee, it is further necessary for the Government to issue a notification under section 5, consider the objections or suggestions received within the time specified in this behalf and declare under section 6 notified market area for the purposes of the Act in respect of the agricultural produce notified under section 5. At the time of hearing, learned counsel sought to argue that the requisite notification under sections 5 and 6(1) of the Act had not been issued. We were shown the notifications issued under section 5 as well as section 6(1) of the Act. This is apart from the fact that no such plea of absence of notification under section 5 and 6(1) had been taken in the petition. The relevant ground assailing the vires of section 38 is mentioned in paragraph 9 and ground No. (xiv) of the petition. In brief, the plea is that under section 38 the State Government could add to the Schedule an item which was not even remotely connected with agricultural produce. To say the least. this is a funny plea. It is not the case of the petitioners that any produce added as a result of notification Annexure P-1 is, in fact, not an agricultural produce. It is idle to say that under section 38 it was open to the State Government to add to the Schedule some produce which was not an agricultural produce. The expression 'agricultural produce' has been defined in clause (a) of section 2 of the Act to mean all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to the Act. Nothing is thus left vague as to what is produce of agriculture. Section 38 of the Act has also been assailed on the ground that it suffers from excessive delegation. The contention is that in the absence of any guidelines, it was open to the State Government to add any agricultural produce or to omit any agricultural produce already mentioned in the Schedule at its sweet-will and pleasure and the provision thus suffered from excessive delegation. Reliance was placed by the learned counsel on *Mohd. Hussain* v. *State of Bombay* (33). This was a case under the Bombay Agricultural Produce Act, 1939, and the vires of the section challenged

(33) A.I.R. 1962 S.C. 97.

was section 29, which was analogous to section 38 of the Act. The Supreme Court, on a consideration of the legislative policy discernible from the various provisions of the Act, held that necessary guidance was writ large in the various provisions of the Act itself and, therefore, the challenge to section 29 was ill-founded. The authority relied on by the learned counsel does not, therefore, support him. Section 38 is not to be read in isolation. It is to be read along with sections 5 and 6 of the Act. Mere addition to the Schedule by a notification under section 38 does not effectively bring the item of agricultural produce within the purview of the Act. The process is completed by the State Government issuing a notification under section 5, declaring its intention of exercising control over the purchase, sales storage and processing of such agricultural produce and in such area as may be specified in the notification. The section further requires the State Government to consider any objection or suggestion received within a period of not less than 30 days, to be specified in such notification, and it is only as a result of such consideration that a final notification is required to be made under section 6(1) of the Act. It is only thereafter that such item of agricultural produce stands duly added so as to attract the provisions regarding levy of market fee etc. In *Jan Mohd's case* (supra), in which a similar provision under the Gujrat Agricultural Produce Markets Act was under challenge, the Supreme Court referred to the provisions for inviting objections or suggestions of persons interested before notifying any agricultural produce for the purposes of the said Act. It was held in paragraph 10 of the report that the provision was valid and did not suffer from the vice of excessive delegation. The reason given was that according to the machinery provided in the Act, the Director had to satisfy himself that inclusion of a particular agricultural produce was in the interest of the producer and the general public. It is settled law that where the Legislature has declared the legislative policy, it is permissible for it to empower the administrative authority to add to or modify or cancel any of the items in the Schedule to the Act, so as to carry out the policy of the Act and to apply it to different objects having regard to local conditions, or the like. The two Supreme Court decisions, referred to above, on this point support the above proposition. The additional point sought to be raised need not, therefore, detain us any further.

(41) Imposition of penalty has been challenged on the ground that there was no provision of the Act under which the rule relating

to imposition of penalty, namely, rule 31(9) of the Rules could have been framed. The said rule, according to the learned counsel for the petitioners, was thus *ultra vires* the provisions of section 43, which confers rule making power on the State Government. This very question arose in *Ram Sarup and Bro* v. *Punjab State and* others (34). The question was examined in necessary detail and the learned Judges of the Division Bench held that rule 31(9) was not *ultra vires* section 43. The main reasons given by the learned Judges of the Division Bench were that the words used in section 43, namely, rules for carrying out the purposes of the Act could not be construed narrowly and a provision for the imposition of penalty as a mode of recovery was necessary for carrying out the purposes of the Act. Reliance was also placed by the learned Judges on a Division Bench decision of the Calcutta High Court in *Abdul Rouff* v. *The State* (35), where it was observed that it was one of the canons of interpretation of statutes that an Act which authorises the making of bye-laws impliedly authorised the annexation of reasonable pecuniary penalty for their infringement recoverable by action or distress. Nothing was argued before us against the view expressed in the above decision of this Court. With regard to the extent of penalty, all that was said was that in the event of the petitioners being relegated to their remedy by way of statutory appeal, they would try to seek necessary relief.

(42) It bears repetition that the charging section 23 of the Act imposes market-fee subject to the rules. Rule 29(7), which was the relevant rule, in *British India Corporation Ltd's* case (supra) defines what is bought or sold of agricultural produce within the notified market area for purposes of levy of market fee. It cannot be disputed that Gur, Shakkar, Khandsari etc. brought by the petitioners from Uttar Pradesh and other States falls in one or the other clauses of sub-rule (7) of rule 29. The contention of the learned counsel has thus no merit.

(43) For the foregoing reasons, we may state on the authority of the Supreme Court itself that the observations in *K. K. Puri's* case have to be read in the context in which they were made and not as words of a statute. The said observations are distinguishable on the facts of that case. The correct statement of law is that

(34) (1969)1 I.L.R. P&H 756.

(35) A.I.R. 1960 Calcutta 436.

the traditional view of *quid pro quo* has undergone a transformation. The true test for a valid fee is whether the primary and essential purpose is to render specific services to a specified *area* or class, it being of no consequence that the State may ultimately and indirectly benefit by it. *Quid pro quo* is not always a *sine qua non* of a valid fee and what is required to be shown is that by and large there is *quid pro quo*. The correlationship between services expected is of a general character and a broad, reasonable and casual relationship is enough to satisfy the requirement of law. The payer of the fee represents collectively the class of persons i.e. users of the market, including growers and those engaged in business to whom the benefit is directly intended by the establishment of a regulated market and not the actual individual i.e. the trader. If there is *quid pro quo* in the sense explained above for such a class of persons, the test of valid fee is satisfied.

(44) It may be mentioned that during arguments it was urged on behalf of the respondents that the petitioners can transact business of sale and purchase of agricultural produce at their place of business in the market area, principal market yard or sub-market yard established in the market area of the Market Committee. The licensed dealer can utilise all the facilities provided in the principal market yard, sub-market yard and the market area by the Market Committee. At our instance, the affidavit of Shri Ramesh Inder Singh, IAS, Secretary to the Punjab State Agricultural Marketing Board, Chandigarh, dated January 4, 1989, was produced. To this affidavit, no counter affidavit was filed by the petitioners. Therefore all the services available in the principal market yard or sub-market yard and market area are also available to the petitioners.

(45) A half-hearted attempt was made to contend that Gur, Shakkar, Khandsari etc., in which most of the petitioners dealt, was brought by them from outside the State of Punjab and such agricultural produce was outside the purview of the Act. It may be pointed out at once that this very question was raised in *M/s Prem Chand Ram Lal* v. *State of Punjab* (36), and it was held by a Division Bench of this Court that agricultural produce bought or sold by licensee in notified market area was liable to the levy of market-fee irrespective of the fact where it was produced and who produced it.

(36) 1970 P.L.J. 432.

(46) Applying the above tests, our conclusion is that there is necessary *quid pro quo* between the imposition of market-fee on the petitioners and the services envisaged under the Act. The petitions must, therefore, fail and the same are dismissed with costs.

PART II :

(47) In Civil Writ Petition No. 2551 of 1988 the petitioner seeks a writ of mandamus against the respondents directing them not to levy market fee on the retail sales of timber and fuel wood sold from his saw mill which, according to the petitioner, is situate outside the principal market yard and the sub-market yard at Sangrur in the State of Punjab. According to the petitioner, he imports wood by purchasing the same from the Punjab Forest Corporation from its various depots situated outside the notified market area of the Market Committee and other places outside the jurisdiction of the notified market area. He makes them into planks and the remaining is disposed of as firewood which is sold to the customer on retail basis by private negotiations. According to him, Market Committee, Sangrur, no where comes into the picture and renders him no service. The Market Committee, according to the petitioner, does not exercise any supervision control on purchases and sale made by him nor had the Market Committee established any market-yard or sub-market yard for the sale of timber and firewood. By notification Annexure P1, dated 8th March, 1988, the Marketing Board imposed market fee at the rate of Rupee one for every hundred rupees of sale. The petitioner has challenged the said imposition broadly on the same grounds as taken by the petitioners dealt with in Part I of this judgment.

In the return filed by Shri Ramesh Inder Singh, Secretary, Punjab Mandi Board, Chandigarh, respondent No. 2, it was stated that forestation has been recognised as a national necessity. In the State of Punjab gradual effort has been made to increase the area under the forests during the last few decades. It rose from 1872 Square K.Ms. in 1965-66 to 2823 Square K.Ms. in 1985-86. The increase was serveral times higher. One of the principal reasons why Punjab could not match the national average was that the farmer was not able to get a remunerative price for his effort. Various Kisan Organisations represented to the government as also to the Board from time to time against the prevalent mal-practices in the wood trade. To identify the mal-practices the Board conducted a survey. This survey revealed that the traders were resorting to mal-practices in weighment and payment to farmer/producers. The farmer had

absolutely no say in the settlement of rate. In particular the malpractices revealed were the following :—

(i) *Cash discount.*—The traders were resorting to arbitrary cash discount. After settlement of sale price, traders impose a cut on the payments, ranging from 1 to 2 per cent. In some cities farmer were not paid the amount exceeding a round figure. Thus if the value of the commodity came to Rs. 120 the farmer was paid only Rs. 100.

(ii) *Discounted weighment.*—The survey revealed a system of discounted weighment, varying from 5 per cent to 10 per cent. Thus, if a lot of wood weighed 100 Kgs., the producer was paid for only 95 Kgs. or 90 Kgs. In the trade parlance this system is known as 'Batala' (40 Kgs. for 42 Kgs), 'Tartaia' (40 Kgs. for 44 Kgs.)

(iii) *Rate of Commission.*—The rate of commission charged by the traders varied from 3 to 6¼ per cent on the value of the sale price. At Patiala, Amritsar, Jalandhar and Bhatinda the rate of commission is 5 per cent, at Khanna 3 per cent, at Ludhiana 4 per cent and at Gurdaspur 6¼ per cent. In addition, at some places, the traders charged commission up to 3 per cent from buyers. Thus, both the producer and the purchaser were subject to payment of commission.

(iv) *Brokerage.*—In some markets brokerage charges varying from Rs. 10 to Rs. 15 per cart or trolley were deducted from the seller.

(v) *Weighment charges.*—Weighment charges of Rs. 2 to 8 per cent per cart or tractor-trolley were paid by seller.

(vi) *Transportation and unloading charges.*—The traders subject the farmers to varying rates according to their will. The charges for unloading range from Rs. 20 to Rs. 50 per truck/trolley load in addition, the farmers are expected to carry wood to the premises of the purchaser, after finalisation of saw transactions in the market.

The survey made out a strong case for regulating the marketing of wood in general and eucaplyptus in particular to check the exploitation of growers.

(48) The Board also conducted a seminar on marketing of wood in which producers, traders, forest department officers, Forest Development Corporation and experts from the Punjab Agricultural University participated. The participants were unanimous regarding the need for regulating the trade in wood. It will be recalled that the expression 'agricultural produce' defined in clause (a) of section 2 of the Act expressly includes produce of forests as specified in the Schedule to the Act. The State Government issued notification dated September 16, 1987 including timber and fire wood in the Schedule of the Act. This was followed by another notification under section 5 of the Act dated September 28, 1987 inviting objections/suggestions. After considering the objections, notification dated February 29, 1988 Annexure R-2/2, under section 6(1) was issued. It was categorically asserted that the saw mill of the petitioner was situated within the market area of Sangrur Market Committee. Various services provided by the Market Committee were spelled out in paragraph II of the return. These are : services provided in the principal market yard and the sub-market yard and other facilities like provision of roads, water, electricity, staff to implement the Act and the rules framed thereunder; separate area for wood marketing had been earmarked in the principal market yard, Sangrur.

(49) On the same lines is the return filed by the Market Committee, Sangrur and the State Government. During arguments, a question was raised whether some facilities are available in the market yards for timber trade. Affidavit dated 10th January, 1989 of Shri Ramesh Inder Singh, Secretary, Marketing Board has been produced. In this affidavit, it is stated that timber and firewood are sold in the vehicles as such, without being unloaded, except at Patiala and partly at Amritsar. After auction was held, the vehicles go to the premises of the purchasers for unloading and the weighment is generaly done on the weigh-bridge. It is also specifically mentioned that infrastructure required for sale of timber and firewood has been provided in the market yards or sub-market yards for placing or parking of vehicles, weigh-bridges for weighment, space for staying of sellers or buyers and to keep timber or firewood which remains unsold, etc. This space for wood and timber has been specified and exclusively earmarked in the markets for trading in wood. Three maps, one relating to Ludhiana, the second relating to Sangrur and the third relating to Ferozepur city have been produced along with the affidavit. We have looked into these maps. We find that the averments made in the affidavit are supported by

these three maps, showing a particular space earmarked for wood marketing, apart from other facilities available in the market yard. In the facts and circumstances of this case, the conclusions arrived at in Part I aptly apply and we do not find any merit in this writ petition. It is accordingly dismissed with costs.

(50) 167 licensed dealers in the State of Haryana have challenged the vires of the Haryana Rural Development Act, 1986 (Haryana Act No. 6 of 1986) (hereinafter referred to as '1986 Act').

(51) It will be recalled that earlier the Haryana Legislature enacted the Haryana Rural Development Fund Act, 1983 (Haryana Act No. 12 of 1983). A large number of traders including some of the present petitioners challenged the said Act of 1983. Their writ petitions were allowed by a learned Single Judge of this Court on 13th October, 1984. The judgment is reported as *Om Parkash and others* v. *Giri Raj Kishore and others* (37). Letters Patent Appeal against the judgment was allowed by a Division Bench. The decision of the appellate Bench is reported as *State of Haryana and another* v. *Om Parkash and another* (38). A further appeal to the Supreme Court by Special Leave was again allowed and the aforesaid Act of 1983 was struck down by the Supreme Court. The decision is reported as *Om Parkash Aggarwal etc.* v. *Giri Raj Kishore and others* (39).

(52) The Haryana Legislature reenacted the Act purporting to remove the infirmities found in the earlier Act by the Supreme Court. 1986 Act and the Haryana Rural Development Rules, 1987 framed thereunder have been challenged through the present writ petition broadly on the ground that the Legislature was not competent to reenact the law so as to overrule the decision of the Supreme Court in *Om Parkash Aggarwal's* case (supra). Further case of the petitioners is that the 1986 Act suffers from the same infirmities as the previous Act in that (a) the so called fee is, in fact, a tax and the State Legislature was incompetent to impose the same; (b) the impost cannot be justified as a fee for want of *quid pro quo* with respect to the dealers. In particular, section 11 of the Act relating to power of the State Government to retain the

(37) A.I.R. 1985 Punjab and Haryana 52.
(38) A.I.R. 1985 Punjab and Haryana 317.
(39) A.I.R. 1986 S.C. 726.

cesslevied under the previous Act was challenged as unconstitutional being (i) without legislative competence; (ii) violative of Article 14 for treating those who had passed on the burden to others at par with those who had not done so; and (iii) the Act continues to suffer from the same defects. If the impost was not valid under the present Act, it could not be valid retrospectively. The imposition of fee was also assailed on the ground that it had been levied for carrying out purely governmental functions which was against the concept of fee and, therefore, invalid. It was also stated that the objects of the Act were substantially the same as the objects under the Punjab Agricultural Produce Markets Act, 1961, and the Supreme Court had struck down the increase in the market fee from Rs. 2 per hundred rupees to Rs. 3 in *K. K. Puri's* case (supra). According to the petitioners, the same result could not be achieved by enacting the present Act under different nomenclature. What cannot be done directly, cannot be done indirectly.

(53) It may be mentioned at this stage that an Act similar to the 1986 Act was enacted by the Legislature of the State of Punjab, called the Punjab Rural Development Act, 1987. Some dealers in the State of Punjab filed Civil Writ Petition Nos. 6364 and 7572 of 1987 in this Court, challenging the vires of the said Punjab Act. A Division Bench of this Court dismissed the writ petitions *in limine* by relying on the decision in *Shiv Dayal Singh* v. *The State of Haryana* (40), in which challenge to the vires of the Haryana Rural Development Act, 1986, had been repelled by the learned Judges of the Division Bench. The writ-petitioners filed SLP (Civil Appeal Nos. 12231-32 of 1987), which were dismissed by their Lordships of the Supreme Court on November 3, 1987, by order Annexure R-1 filed with the return of respondent No. 1. Their Lordships observed that they were not impressed by the submissions of the learned counsel for the petitioners assailing the view taken by the High Court on the grounds raised before it in the writ petitions out of which the Special Leave Petitions arose. Learned counsel for the petitioners prayed for permission to withdraw the petitions. The Special Leave Petitions were thus dismissed as withdrawn. In other words, the view taken in *Shiv Dayal Singh's* case (supra) was approved by the Supreme Court. Necessary facts in this petition were pleaded in the preliminary objection in the written statement. With regard to the impugned impost, the stand of the respondents was

(40) A.I.R. 1989 Punjab and Haryana 8.

that in fact it was a fee for services rendered to the persons paying the same, the services being rendered directly as well as indirectly. It was highlighted that the dealers did not bear the burden of paying the fee and they were under a statutory obligation to add the amount of the fee in the purchase price recoverable from the next purchaser of the agriculture produce of the goods processed or manufactured out of it. The various infirmities found by the Supreme Court in the previous Act of 1983 in *Om Parkash Aggarwal's* case (supra) had been removed and the Legislature was competent to reenact the same and validate the levy of fee levied and collected under the previous Act. The mere fact that some of the objects of the impugned Act and the Punjab Agricultural Produce Markets Act were overlapping was no reason to render the later Act to be *ultra vires*. The Haryana Rural Development Fund Administration Board had been created as a body corporate and the amount of the fee vested in the said Board as distinguished from the government. The provisions of section 11 empowering the government to retain the fee collected under the previous Act was sought to be justified on the analogy of section 23-A inserted by amendment of the Punjab Agricultural Produce Markets Act, 1961, to retain market fee already collected prior to the amendment.

(54) Learned counsel for the petitioners assailed the view taken in *Shiv Dayal Singh's* case (supra) before a D.B. of this Court. The learned Judges doubted the correctness of that decision and further observed that the services envisaged under the impugned Act were already provided for under the Punjab Agricultural Produce Markets Act, 1961, and expressed its doubt if under a separate Act a fee could again be imposed when funds with the Market Committees were more than enough to render the services specified in the earlier Act of 1961. On these two counts, therefore, the learned Judges referred the case for decision by a large Bench. This is how the writ petition has been placed before us.

(55) Under our Constitution, the Legislature is competent to pass a validating Act with regard to a law which has been held to be *ultra vires* by the Court .Such a validating Act can be given retrospective effect. This question was examined in *Rai Ramkrishna and others* v. *State of Bihar* (41), by a Constitution Bench, and it

(41) A.I.R. 1963 S.C. 1667.

was held that the legislative power conferred on the Legislature includes the subsidiary or the auxillary power to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed.

(56) The validity of a validating Act is to be judged by examining whether the Legislature enacting the validating Act had competence over the matter and whether by validation the Legislature had removed the defects which the Court had found in the previous law. The stand of the petitioners is that in fact what was described as 'cess' under section 3 of the 1983 Act and was held to be a tax continue to be a tax despite its changed nomenclature of 'fee' in the 1986 Act. The stand of the respondents, on the other hand, is that what has been imposed in the 1986 Act is a fee and the reasons for which the Supreme Court held the impost to be a tax under the 1983 Act did not hold good in the 1986 Act and the said Act was, therefore, *intra vires and* valid.

(57) The Haryana Rural Development Act, 1986, was enacted to provide for the establishment of the Haryana Rural Development Fund Administration Board and for augmenting agricultural production and improving its marketing and sale. The expressions "agricultural produce" and "dealer" as also the other words and expressions used in the 1986 Act had the same meaning as under the Agriculture Produce Markets Act, 1961. "Rural area" was defined to mean an area other than the area of a municipality administered under the Haryana Municipal Act, 1973. Under section 3, a Board called the Haryana Rural Development Fund Administration Board was constituted. It was to be a body corporate. Necessary provisions for its membership, functioning and powers and duties were made. Section 4 related to officers and servants of the Board. Under section 5 it was laid down that with effect from a date appointed by the State Government by a notification, a fee shall be levied on the dealers on *ad valorem* basis at the rate of 1 *per centum* of the sale proceeds of agricultural produce bought or sold or brought for processing in the notified market area. A fee was leviable in respect of only such transactions in which the actual delivery of agricultural produce had been made. The dealer was under a statutory obligation to add the amount of the fee in the

purchase price recoverable by him. Arrears of fee were made recoverable as arrears of land revenue. Section 6 created the Haryana Rural Development Fund, which vested in the Board. To the said Fund was to be credited all collection of fees under section 5 and grants from the State Government and local authorities, Sub-section (5) of section 5 laid down the purposes for which the amount could be spent from the said Fund. Section 11 provided for retention of cess/fee levied and collected under the provisions of the previous Act, namely, the Haryana Rural Development Fund Act, 1983, during the period September 30, 1983 to the date of the notification under section 5(1) of the 1986 Act.

(58) Even at the risk of repetition, it is necessary to juxtapose the material provisions of the 1983 Act and the 1986 Act to bring out the salient points of difference :—

1983 ACT	1986 ACT
Preamble	*Preamble*
1. An Act to provide for the establishment of the Haryana Rural Development Fund	1. An Act to provide for the establishment of the Haryana Rural Development Fund Administration Board for augmenting agricultural production and improving its marketing and sale.
2. 2(h) "rural area" means an area the population of which does not exceed twenty thousand persons.	2. 2(e) "rural area" means area other than the area of a municipality administered under the Haryana Municipal Act, 1973;
3. 3(3) The dealer in turn shall be entitled to pass on the burden of the cess paid by him to the next purchaser of the agricultural produce from him and *may*, therefore, add the same in the cost of agricultural produce or the goods processed or manufactured out of it.	5. (3) Since the burden of fee imposed by sub-section (1) is not intended to be put on the dealer, the dealer shall be *under a statutory obligation to* add the amount of fee in the purchase price recoverable by him from the next purchaser of agriculture produce or the good processed or manufactured out of it.

4. 4. Constitution of fund	4. 6. Constitution of Fund—
(1) There will be constituted a fund called the Haryana Rural Development Fund and it shall *vest in the State Government.*	(1) There shall be constituted a fund called the Haryana Rural Development Fund which shall *vest in the Board*
xxx xxx xxx xxx	xxx xxx xxx xxx
5. (5) The Fund shall be applied by the State Government to meet the expenditure incurred, in the rural areas, in connection with the development of roads, hospitals, means of communication, water supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of rural areas. The fund may also be utilised to meet the cost of administering the Fund.	6. (5) The fund shall be applied by the Board to meet the expenditure incurred in the rural areas in connection with the development of roads, establishment of dispensaries, making arrangements for water supply, sanitation and other public facilities, welfare of agricultural labour, conversion of the notified areas by utilising technical know-how thereto and bringing about other necessary improvements therein, construction of godowns and other places of storage, for the agricultural produce brought in the market area for sale/purchase and the construction of rest houses equipped with all modern amenities, to make the stay of visitors (*both sellers and purchasers*) *in the market area* comfortable and for any other purpose which may be considered by the Board to be *in the interest of and for the benefit of the person paying the fee.* The Fund may also be utilised by the Board to meet the cost of administering it.

Section 3 relating to establishment of the Board, section 4 regarding officers and servants of the Board, and section 11 regarding retention of cess/fee were new provisions made under this Act.

(emphasis supplied)

(59) It will be convenient to analyse *Om Parkash Aggarwal's case* (supra) at this stage. To recapitulate, a number of dealers of Haryana challenged the constitutional validity of the Haryana Rural Development Fund Act, 1983, mainly on the ground that in fact the so-called 'cess' was a 'tax' ; that the State Legislature was not competent to levy a tax of the present type, and that the impost could not be justified as a fee as there was no *quid pro quo*. The Supreme Court held :

(1) The cess in question could not be brought under any of the Entries 45 to 63 of List-II, which are the only provisions under which the State Legislature could impose a tax.

(2) The State Legislature was competent to impose a fee on any of the matters specified in the State List read with Entry 66 thereof. The Legislature was competent to impose the impugned fee under Entry 28 (markets and fairs) read with Entry 66, provided the other conditions with regard to valid levy of fee were fulfilled.

(3) The only question which remained was whether the impost was a fee or a tax as those terms are understood as a result of series of decisions of the apex Court.

(4) The three cases, namely, *Sreenivasa General Traders, Mohd. Yasin* and *Southern Pharmaceuticals* and Chemicals' (supra) were distinguished as the levy under examination in those cases satisfied the tests of a fee.

(5) No servce, directly or indirectly, was required to be rendered to the persons from whom the cess was collected.

(6) The Fund vested in the State Government and could be spent virtually on any object which the State Government considered to be development of rural areas.

(7) The definition of the expression "rural area" was vague.

(8) There was no specification in the Act that the amount or substantial part thereof will be spent on any public purpose within the market area or where the dealer was carrying on business.

(9) The purposes were those on which collection of tax could be spent. There was nothing especially for the benefit of the dealer.

regard to the expenditure on items under part One. We are informed by the learned counsel for the respondents that depending upon the season and arrivals of various agricultural produce for sale a large number of purchase centres are set up under the Act as sub-market yards so that the producers are not compelled to carry their produce over long distances. A large number of dealers who normally work in the principal market yard or sub-market yard or elsewhere in the notified market area shift to such purchase centres for transacting their business of purchase and sale. In other words, the dealers are not fixed to one place and the services rendered in the rural area and market area are thus for thei special benefit It

(61) Regarding 'points No. 1 and 2' it cannot be disputed that the State Legislature is competent to impose fee of the present type under entry 28 read with entry 66 of List II of Seventh Schedule of the Constitution. With regard to points 3, 4 and 5, we find that the fee levied under the 1986 Act satisfies the tests laid down by the Apex Court with regard to a valid fee. This aspect of the case has already been dealt with in necessary detail in Part I of this judgment. With regard to point No. 6, the 1986 Act expressly lays down that the amount collected as fee vests in the Board which is a distinct legal entity as compared to the State Government. It has further been provided in the impugned Act that the amount can be spent only for the purposes envisaged under the Act. It is no longer open to the State Government to spend the amount for 'any object which the State Government considered for the development of rural areas'. Sub-section (5) of Section 6 of the Act consists of three main parts : One, development works and facilities in *rural areas.* Two, facilities of stay of visitors and storage of produce etc. in the *market area.* Three, for services for the benefit of persons paying the fee. Shri Sibal, learned counsel for the petitioners, laid great emphasis on the fact that while a large majority of the dealers paying the fee were located in the areas covered by the municipalities, the amount of fee collected was to be spent in 'rural area' which as defined meant area outside the municipal limits. According to the learned counsel, therefore, there was no question of any correlation between the fee collected from and the services rendered to those who paid the fee. We have given our earnest consideration to the above argument and we are clearly of the view that there is no merit in the same. There is no factual foundation for the supposition that the whole or a substantial part of the amount is being spent on items relating to the part one of Section 6(5) to the exclusion of Parts two and three thereof. We have, therefore, no reason to assume that the expenditure is being incurred in rural area at the expense of rest of the market area and the regulated markets with

regard to the expenditure on items under part One. We are informed by the learned counsel for the respondents that depending upon the season and arrivals of various agricultural produce for sale a large number of purchase centres are set up under the Act as sub-market yards so that the producers are not compelled to carry their produce over long distances. A large number of dealers who normally work in the principal market yard or sub-market yard or elsewhere in the notified market area shift to such purchase centres for transacting their business of purchase and sale. In other words, the dealers are not fixed to one place and the services rendered in the rural area and market area are thus for their special benefit. It is not disputed that the whole of the State of Haryana is divided into various market areas. The market area would, therefore, necessarily include the rural area except the areas within municipal limits. Any service rendered in the rural area would, therefore, be service provided in the notified market area though outside the municipal limits. This is apart from saying that the expenditure incurred in the market area is for the general benefit of the users of the market, especially the dealers working therein. Services for the benefit of the *area* as well those to the *class,* therefore, satisfies the test of *quid pro quo.*

(62) It was next contended that the Act made a provision for services which had already been envisaged under section 26 and 28 of the Punjab Agricultural Product Markets Act, 1961. To that extent there was duplicity and overlapping. It cannot be denied that there is a certain amount of overlapping in the objects sought to be achieved under the two Acts except that under the Punjab Agricultural Produce Markets Act the area of operation of services is the notified market area, under the impugned Act it is additionally and more particularly the rural area. Such an overlapping is unavoidable as both the Acts have for their object better regulations of sale, purchase etc. of agricultural produce. Merely because there is overlapping, in our view, is no reason to hold the latter Act to be *ultra vires.*

(63) With utmost respect to the learned Judges of the referring Bench, we are unable to share the view that the purposes under the Punjab Agricultural Produce Markets Act, 1961, had been achieved, the market committees were suffering from over affluence and excess of money and there was no need to do anything further in the field of better marketing conditions. The stark reality is that India continues to be amongst the poorest countries in the world. The conditions in our markets, especially those situated in semi urban or rural areas continue to be primitive and woefully inadequate. The level of development in the area of marketing leaves much to be desired. Coupled with this is an ever rising trend in cost of services, may be the salary bill of the employees or the cost of acquiring land or construction of buildings or roads.

(64) Similarly, we find that in the nature of things overlapping to some extent is unavoidable in the objects of the impugned Act and governmental functions. In a welfare State in whose Constitution the founding fathers took care to provide Directive Principles of State Policy, the line of demarcation where the purposes of the Acts in question end and the governmental functions begin is extremely thin and difficult to discern. What is crucial and determinative of whether the expenditure for a certain purpose is justified or not is to consider the primary, main or dominant purpose. If the dominant purpose is to fulfil the aims and objects of the Act, the fee will not be rendered a tax becauce the resultant expenditure was incidentally what could or should have been spent by the government for discharging its governmental functions.

(65) The learned Judge of the Division Bench in *Shiv Dayal Singh's case* (supra) reached the same conclusion though it was said in much fewer words. We find overselves in agreement with the reasoning as well as the conclusion in *Shiv Dayal Singh's case* (supra).

(66) With regard to the vires of section 11 of the impugned Act, we may point out that the question was gone into in detail in *Shiv*

Dayal Singh's case (supra). It cannot be disputed that broadly the circumstances leading to the enactment of section 23-A in the Act and the enactment of section 11 of the impugned Act were identical. Section 23-A of the Act was upheld in *M/s Amar Nath Om Parkash's case* (supra). As pointed out earlier, the fee, in question, has, by and large, been in fact charged. There is no question of unjust enrichment of the dealers being countenanced. The provisions of section 11 of the impugned Act cannot be considered violative of Article 14 for the simple reason that the presumption referred to therein is a rebuttal presumption and it is open to the dealers concerned to produce appropriate material to show to the assessing authority that in a particular transaction he had not, in fact, charged the fee in question.

(67) The Punjab Rural Development Act, 1987, is broadly analogous to the aforesaid Haryana Rural Development Act, 1986. The challenge to its vires must be repelled for reasons which have been discussed while dealing with the Haryana Act.

(68) For the foregoing reasons, both the above writ petitions are dismissed with costs.

(69) Each set of the petitioners i.e. petitioners in each writ petition in Parts I to III will pay Rs. 5,000 as costs.

R.N.R.

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