lease of a lessee is determined earlier than the expiry of the full term because of the default committed, the lease expires and comes to an end. After the termination of his lease, it cannot be said to be continuing. Thereafter, another lease in favour of somebody else may be created by the Collector, if he is so minded or he may restore the land to the landowner in case he is satisfied that he is in a position to cultivate the same. Therefore, the mere omission of the words "or its earlier termination" from section 7 does not mean that the landowner has no right to pray to the Collector for the restoration of his land before the expiry of the period of 20 years even when the lease in favour of a lessee is determined by the Collector because of the defaults committed by him. The landowners in these cases had interest in the land as owners thereof and there was no bar in their way to inform the Collector that the grounds existed for the determination of the lease and if their contention was accepted and leases determined, an order for restoration of the land in their favour may be passed. Since their contention for determination of the leases of the petitioners, even on commission of default by them, had been disallowed, they were clearly persons aggrieved who could file the appeals. The appeals filed by the landowners in these cases before the Commissioner were, therefore, competent. The cases will now be fixed for decision on merits before a learned Single Judge.

Before B. R. Tuli and P. S. Pattar, JJ.

M/S. HANUMAN DALL AND GENERAL MILLS, HISSAR,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

C.W. No. 3274 of 1974.
and
C.M. No. 9010 of 1974.

November 8, 1974.

Punjab Agricultural Produce Markets Act (*Punjab Act* 23 *of* 1961 *as amended by Punjab Amendment Acts*, 25 *of* 1969, 28 *of* 1973 *and* 30 *of* 1974, *also as amended by Haryana Amendment Acts* 18 *of* 1969, 21 *of* 1973, 10 *of* 1974 *and* 17 *of* 1974)—*Section* 23—*Constitution*

of India (1950)—*Articles* 213 *and* 254—*Act passed by the State Legislature reserved for consideration of the President of India under Article* 254(2)—*Amendment of such Act relating to the provisions thereof not enumerated in the Concurrent List—Whether also requires the assent of the President for its enforcement—Fees charged by the Marketing Committees and Marketing Board under section* 23—*Whether should have correlationship with the cost of services rendered to the payers of the fee—Fees so collected—Whether to be spent exclusively for rendering services to the payers thereof—Increase in Market fee effected by the various amendments to Punjab Agricultural Produce Markets Act in the States of Punjab and Haryana—Whether unjustified and excessive.*

Held, that from a reading of Articles 213 and 254 of the Constitution of India it is abundantly clear that if an Act, when enacted, contains any provision with respect to one of the matters enumerated in the Concurrent List, which is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of the State has to be reserved for the consideration of the President in order to enforce it. Thereafter, if any provision of that Act, which does not relate to any of the matters enumerated in the Concurrent List, is sought to be amended, it will not require the assent of the President for its enforcement.

Held, that the fees are of various kinds and it is not possible to formulate a definition that would be applicable to all cases. However, the amount of fees so charged must have a reasonable correlationship with the cost of the services rendered or to be rendered to the payers of the fees. It is impossible to have an exact correlationship and, therefore, the correlationship expected should be one of general character and not of arithmetical exactitude. Moreover, the fees so collected are not to be spent exclusively for rendering services to the payers of the fees. They can also be utilised for carrying out the purposes or objects of the Act under which they are levied. They cannot, however, be utilised for purposes which have no connection with the main purposes of the Act for which fee is levied.

Held, that the mandate of the Legislature in section 27 of Punjab Agricultural Produce Markets Act is that the Market Committee Fund has to be utilised for incurring expenditure under or for the purposes of the Act and any excess remaining thereafter is to be invested in such manner as may be prescribed. Every market committee has to contribute certain percentage of its income to the Agricultural Marketing Board to defray expenses for the office establishment of the Board and such other expenses incurred by it in the interest of the market committee generally and also has to pay to the State Government the cost of any special or additional staff employed by the State Government in consultation with the

committee for giving effect to the provisions of the Act in the notified market area. The other purposes for which the market committee funds may be expended are stated in section 28 of the Act. As the amended section 23 of the Act, as applicable to the State of Haryana only prescribes the maximum limit within which the market committees, according to their needs, can prescribe the fee to be realised from the licensed dealers, it is not possible to strike down the amendments of that section made by the various Amending Acts enhancing the amount of maximum fee in the State of Haryana. Looking to the various projects to be undertaken for the improvement of the market committees and the funds required for the repayment of loans already taken for the construction of godowns, the levy of fee at the rate of rupees two per one hundred rupees in Haryana is justified and in order. The case of the markets in the State of Punjab is however, different. They have to charge the fee prescribed in the amended section 23 of the Act by the Legislature. There is no scope for flexibility. The amount of the fee has been fixed by the Legislature and it has not been left to each market committee to levy fee according to its needs within the prescribed limit. In the State of Punjab, the Government has directed the market Committees to designate certain institutions or projects as of public importance and have directed the Market Committees and the Marketing Board to make compulsory contribution thereto. This cannot be done by the Government and it amounts to misutilisation of funds for unauthorised purposes. Hence the enhancement of fee in the State of Punjab by the various amendments to the Act cannot be justified. The enhancement is nothing but a colourable exercise of power to levy fee with a view to raise funds for extraneous purposes not intended by the Act.

CASES OVER-RULED

(1) Karnail Singh Doad etc. *vs.* The State of Pb. & others. I.L.R. (1973), Pb. & Haryana 496.

Amended petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the Haryana Ordinance No. 2 of 1974, dated 13th April, 1974 and the Haryana Act No. 17 of 1974 and proceedings taken thereunder by respondents 2 and 3 and further quashing the Haryana Act No. 10 of 1974, dated 30th January, 1974 and Haryana Act No. 23 of 1969, dated 25th March, 1969 and proceedings thereunder and declaring Rule 29 of the Rules as ultra vires.

Civil Misc. No. 9010/74.

Application under Rule 42 of Chapter 4-F of the Punjab and Haryana High Court Writ Jurisdiction Rules, praying that the affidavit of the Chairman of the Board be permitted to be placed on the record and be considered in the decision of the petition and that the application be allowed.

Bhal Singh Malik, Advocate, P. S. Jain, Advocate and R. L. Batta, Advocate, *for the Petitioners.*

C. D. Dewan, Additional Advocate-General (Haryana), *for Respondents Nos.* 1 *and* 2.

S. K. Lamba, Advocate, *for Respondent No.* 3.

JUDGMENT

TULI, J.—(1) This judgment will dispose of 211, civil writ petitions (Nos. 2583, 3268, 3270 to 3274, 3712 to 3720, 3722 to 3729, 3753 to 3757, 3768, 3790, 3913 to 3954, 4205, 4206, 4291 to 4293, 4303, 4323, 4366, 4373 to 4376, 4381, 4385 to 4387, 4395; 4396, 4402, 4403, 4405, 4409, to 4412, 4428, 4436, 4438, 4440, 4441, 4467, 4468, 4489, 4544, 4548, 4549, 4570, 4572, 4580, 4584, 4607, 4610, 4617, 4625, 4688, 4692, 4699, 4709, 4717 to 4727, 4730, 4741, 4743, 4775, 4780 to 4782, 4792, 4800, 4818, 4844, 4865, 4866, 4869, 4870; 4874 to 4885; 4892 to 4906, 4910, 4911, 4919, 4923, 4924, 4935, 4947, 4962 to 4964, 4967 to 4972, 4985, 4990, 5002 to 5004, 5007, 5008, 5028, 5029, 5035, 5052, 5053, 5059, 5081, 5084, 5100, 5105, 5109, 5113, 5117 and 5122 of 1974) as common questions of law are involved. 127 writ petitions relate to the market committees in the State of Haryana and 84 to the market committees in the State of Punjab.

(2) The Punjab Agricultural Produce Markets Act (Punjab Act 23 of 1961) hereinafter referred to as the Act), received the assent of the President of India on May 18, 1961, and was published in the Punjab Government Gazette (Extraordinary), Legislative Supplement dated May 26, 1961, and came into force at once. Section 23 of this Act read as under :—

> "*Section* 23. A committee may, subject to such rules as may be made by the State Government in this behalf, levy on *ad valorem* basis fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding fifty naye paise for every one hundred rupees ;
>
> Provided that—
>
> (a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and
>
> (b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

In accordance with the provisions of this section, the market committees levied a fee of forty naye paise per one hundred rupees and no dealer felt aggrieved.

(3) The Haryana Government substituted the words "one rupee" in place of "fifty naye paise" by the Punjab Agricultural Produced Markets (Haryana Amendment) Act (28 of 1969), which came into force on September 3, 1969, and thereafter the market committees in the State began to charge fee at the rate of one rupee per one hundred rupees in accordance with that amendment. The objects and reasons for making the increase in the rate of fee were stated as under :—

> "Fifty paise *ad valorem* fee is provided on every 100 rupees as value of the agricultural produce bought or sold in the notified markets under section 23 of the Punjab Agricultural Produce Markets Act, 1961. Market fee is an important source of income of the market committees. In order to make an increasing use of the market committee's funds for development purposes in accordance with the provisions of the Punjab Agricultural Produce Markets Act, 1961, it is necessary that the resources of the market committees should be increased. It was considered absolutely necessary to increase the minimum market fee to rupee one on the Rabi produce arriving in the mandis. In order to achieve this object, the minimum market fee was increased on the promulgation of an Ordinance. The Punjab Agricultural Produce Markets (Haryana Amendment) which is now being replaced by amending the Punjab Agricultural Produce Markets Act, 1961."

Thereafter, by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (21 of 1973), the words "except in the case of agricultural produce brought for processing", were added after the words "provided that". This amendment is not material for the decision of the points of law involved in these cases. The words "one rupee and fifty paise" were substituted for the words "one rupee" in section 23 of the Act by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (10 of 1974), which came into force on January 30, 1974. The objects and reasons for the increase were stated as under :—

> "At present an *ad valorem* fee of one rupee is provided on every one hundred rupees as value of the agricultural

produce bought and sold in the notified market committees under section 23 of the Punjab Agricultural Produce Markets Act, 1961. The market committees are required to play a vital role in the development of roads for transportation, setting up godowns for storage of agricultural produce, and providing other facilities to the growers in the notified market areas. It has, therefore, been decided to augment the resources of the market committees by increasing the said market fee from one rupee to rupee one and fifty paise."

In fact, no fee was increased by the market committees in pursuance of this amending Act because the increase in the rate of fee was not considered sufficient by the Agricultural Marketing Board to carry out the development projects which had been planned. A suggestion was, therefore, made to increase the rate to two rupees per one hundred rupees. This increase was effected in section 23 of the Act by the Punjab Agricultural Produce Haryana Amendment Ordinance 2 of 1974, which came into force on April 13, 1974. Thereafter, this Ordinance was replaced by the Punjab Agricultural Produce Markets (Haryana Second Amendment) Act (No. 17 of 1974), which came into force on July 23, 1974. The objects and reasons for the increase were stated as under :—

At present under section 23 of the Punjab Agricultural Produce Markets Act, 1961 an *ad valorem* fee of rupee one and fifty paise on agricultural produce worth rupees one hundred bought and sold in the notified market committee, is provided. The market committees are required to play vital role in the development of roads for transportation, setting up godowns for storage of agricultural produce and to provide other facilities to the growers in the notified market areas. It has, therefore, been decided to augment the resources of the market committees by increasing the said market fee from rupee one and fifty paise to rupees two."

The result is that the maximum rate of fee has been prescribed as two rupees for one hundred rupees in section 23 of the Act. The Marketing Board has directed every market committee to charge fee at that rate. The increase in the rate of fee from one rupee to one rupee and fifty paise and then to two rupees has been challenged in the writ petitions which pertain to the State of Haryana.

(4) Similar amendments were made by the State of Punjab in section 23 of the Act with the difference that instead of two rupees in the State of Haryana, two rupees and twenty-five paise per one hundred rupees is now the fee to be charged in the State of Punjab. The increase from fifty naya paise to one rupee was effected by the Punjab Agricultural Produce Markets (Amendment) Act (No. 25 of 1969), which amended section 23 of the Act so as to substitute the words "at the rate of one rupee" in place of the words "at a rate not exceeding fifty naya paise", with effect from May 22, 1969. The fee was further increased from one rupee to one rupee and fifty paise, with effect from April 30, 1973, by the Punjab Agricultural Produce Markets (Amendment) Act (28 of 1973), and from one rupee and fifty paise to two rupees and twenty-five paise, with effect from April 30, 1974, by the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974). That Ordinance has been replaced by the Punjab Agricultural Produce Markets (Amendment) Act (13 of 1974) which came into force on August 20, 1974. The objects and reasons for enacting the Punjab Agricultural Produce Markets (Amendment) Act (No. 28 of 1973) were stated as under :—

> "In order to facilitate the producers to bring their produce to the nearest markets for better marketing, it is necessary to provide better facilities in the villages. To meet the additional expenditure required for providing those facilities and their maintenance, it is considered expedient to enhance the rate of market fee leviable by the State Government from one rupee to one rupee and fifty paise per every hundred rupees of agricultural produce."

The objects and reasons for enacting the Punjab Agricultural Produce Markets (Amendment) Act (No. 13 of 1974) were expressed as under :—

> "—— to provide link roads, culverts and bridges in the rural areas to effectively link them to the various markets in the State to enable the producer to get competitive prices, and other various objectives as defined under section 28 of the Act, ————".

These increases in rate of fee by various amending Acts have been challenged in the writ petitions pertaining to the market committees in the State of Punjab.

(5) The first ground of attack by the petitioners is that the Act was reserved for the assent of the President when it was enacted in 1961 and every amendment in any provision of that Act can be effected only after obtaining the assent of the President under Articles 213 and 254(2) of the Constitution. Since it is admitted by the respondents that the amending Acts were not reserved for the assent of the President, they are invalid and unenforceable. Reliance in support of this submission is placed on a Single Bench judgment of this Court in *Karnail Singh Doad, etc.* v. *The State of Punjab and others* (1). That case pertained to the amendment in section 3 of the Act by the Punjab Agricultural Produce Markets (Amendment) Ordinance No. 7 of 1970, which was published in the Punjab Government Gazette (Extraordinary), dated September 11, 1970, and came into operation on that date. By that amendment, the constitution of the Marketing Board was changed. Prior thereto, by an order dated April 2, 1970, the Board then existing was abolished and the abolition of that Board was challenged by the petitioners of that writ petition. After the promulgation of the Ordinance, the State Government reconstituted the Marketing Board in accordance with the amended provisions of section 3 of the Act. One of the contentions raised before the learned Single Judge was that the Ordinance was inoperative, because no instructions were received from the President under Article 213 of the Constitution before its promulgation. It was submitted that the assent of the President was necessary because the original Act, some of the provisions of which had been amended, had been promulgated after obtaining the assent of the President. The learned Judge gave effect to this contention and held that the Ordinance, which was later on replaced by an Act, was unconstitutional and hence invalid and that the new Board, constituted after the promulgation of the Ordinance, had never come into existence in the eye of law and the Board, which had been abolished, was held to have continued to be in existence with the first petitioner Karnail Singh Doad as its Chairman. While discussing this constitutional aspect, the learned Judge relied on *Mangtulal and another* v. *Radha Shyam and another*, (2), *Sankarsana Ramanuja Das* v. *State of Orissa and another* (3), which was upheld by the Supreme Court in *Mahant Sankarshan Ramanuja Das Goswami, etc. etc.* v. *State of Orissa and another* (4). *Rameshwar Kumar and others* v. *R. P. Mishra and others* (5),

(1) I.L.R. (1973) 1 Pb. & Haryana 496.

(2) A.I.R. 1953 Patna 14.

(3) A.I.R. 1957 Orissa 96.

(4) A.I.R. 1967 S.C. 59.

(5) A.I.R. 1959 Patna 488.

and *P. Achiah Chetty and others* v. *State of Mysore and others*, (6). These cases are clearly distinguishable.

(6) *Mangtulal's case* (*supra*) was the case of an amending Act which extended the duration of the Principal Act beyond March 14, 1952, and up to March 14, 1954. The original Act, the duration of which was extended, had received the assent of the President because some of its provisions were repugnant to the provisions of the Transfer of Property Act, 1882—an existing law—with respect to the transfer of property other than agricultural land enumerated in Seventh Schedule, List III, Item 6, within the meaning of Article 254(1) of the Constitution of India. The extension of its duration without doubt required the assent of the President because the entire Act was being extended for a further period and not that any amendment in one of its provisions, not relatable to any matter enumerated in the Concurrent List, was being made.

(7) The case of *Sankarsana Ramanuja Dass* (supra), before the Orissa High Court and the Supreme Court, related to the Orissa Estates Abolition (Amendment) Act (No. 17 of 1954), which substituted the expression "inam estate" in section 2(g) of the Orissa Estates Abolition Act, 1951, by the expression "any inam". That Act related to the acquisition of property for public purposes and required the assent of the President under Article 31A of the Constitution. One of the contentions raised in that case was that the benefit of Article 31A might have been available to the original Act, as it was a law for the compulsory acquisition of property for public purposes, but not to the amending Act which was not such a law but only amended a previous law by enlarging the definition of estate. Repelling this argument, their Lordships observed in para 12 of the report :—

> "It assumes that the benefit of Article 31A is only available to those laws which by themselves provide for compulsory acquisition of property for public purposes and not to laws amending such laws, the assent of the President notwithstanding. This means that the whole of the law, original and amending, must be passed again and be reserved for the consideration of the President, and must be freshly assented to by him. This is against the legislative practice in this country. It is to be presumed that the President gave his assent to the amending Act in its relation to the

(6) A.I.R. 1962 Mysore 218.

> Act it sought to amend, and this is more so, when by the amending law the provisions of the earlier law relating to compulsory acquisition of property for public purposes were sought to be extended to new kinds of properties. In assenting to such law, the President assented to new categories of properties being brought within the operation of the existing law, and he, in effect, assented to a law for the compulsory acquisition for public purposes of these new categories of property. The assent of the President to the amending Act thus brought in the protection of Article 31A as a necessary consequence. The amending Act must be considered in relation to the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purposes."

It is thus clear that the Orissa Estates Abolition (Amendment) Act, 1954, extended the provisions of the original Act which related to compulsory acquisition of property for public purposes to new kinds of properties and, therefore, it was clearly relatable to Entry 42 in the Concurrent List and required the assent of the President before its enforcement.

(8) The case of *Rameshwar Kumar and others* (supra), before the Patna High Court, related to Land Acquisition (Bihar Amendment) Act, 1956, section 4 of which amended the provisions of section 35 of the Land Acquisition Act, 1894, by adding a proviso thereto. It is thus clear that the Bihar Amendment Act directly amended the Land Acquisition Act, 1894, which was an existing law and, therefore, required the assent of the President.

(9) *P. Achiah Chetty's case* (supra), before the Mysore High Court, challenged the constitutional validity of the City of Bangalore Improvement (Amendment) Act (13 of 1960) which introduced section 27-A in the parent Act — City of Bangalore Improvement Act (5 of 1945) — validating retrospectively acquisition of land under Mysore Land Acquisition Act for purposes of city improvement in contravention of sections 14, 15, 16, 17, 18 or 27 of the parent Act. It was held that the provisions of the amending Act were in respect of existing law within the meaning of Article 254(2) of the Constitution and, the Amendment Act

having not been reserved for the assent of the President in accordance with the proviso to Article 213(1), was invalid. That Act again related directly to acquisition of property — the matter enumerated in the Concurrent List.

(10) The *ratio* of these decisions, therefore, could not be applied to the case before the learned Judge which did not relate to any matter enumerated in the Concurrent List.

(11) On behalf of the respondents, reliance was placed on *Sri Durga Rice and Baba Oil Mills Co. Nidubrole* v. *State of Andhra Pradesh and others,* (7) 266 and *Koteswar Vittal Kamath* v. *K. Rangappa Baliga and Co.,* (8). Some of the observations made by the learned Judges of the Andhra Pradesh High Court in *Sri Durga Rice and Baba Oil Mills Co.'s case* (supra), are more relevant and pertinent to the kind of amendment with which the learned Judge dealt in *Karnail Singh Doad's case* and we are dealing in these cases. It was held by the learned Judges that an amending Act did not require the assent of the President merely because the parent Act had received such assent. The President does not become a limb of the State Legislature merely because he gives his assent to certain Bills reserved for his consideration and that it is not every amendment that should be submitted for the assent of the President irrespective of whether the amendment involves anything which calls for the assent of the President or not merely because the main Act was reserved for his assent. It was further observed that—

> "Often, the parent Act by a State Legislature may contain some provisions which deal with a matter coming either (sic) under List III and it is only to save a law made by such a Legislature from challenge on the plea of repugnancy between it and an existing law or a Parliamentary law that the device of obtaining the President's assent is resorted to."

In that case, the Andhra Pradesh General Sales Tax Act had been reserved for the assent of the President because there were certain provisions in it which dealt with subjects coming under the Concurrent List. The impugned Act amended items 5 and 6 of

(7) A.I.R. 1964 A.P. 266.
(8) A.I.R. 1964 Kerala 99.

Schedule III (paddy rice) to the Andhra Pradesh General Sales Tax Act, 1957, which enumerated the goods in respect of which a single point purchase tax only was leviable under section 5(3) (b) of that Act, by enhancing the sales tax payable thereon from 3 naya paise to four naya paise in the rupee. The validity of the impugned Act was challenged on three grounds, namely :—

> "(i) that it operates as a restriction on the freedom of trade contemplated by part XIII of the Constitution, especially Article 304(b) and, consequently, it falls within the protection of the proviso and that since the requirement as to the assent of the President was not satisfied, the legislation is void;
>
> (ii) that the parent Act having been assented to by the President, the amending Act could not become law unless and until the President had accorded his assent to it; and
>
> (iii) that the impugned Act was a colourable piece of legislation as in pith and substance this enactment has modified the Central Sales Tax Act, 1956."

All the pleas were decided against the petitioners and the petitions were dismissed.

(12) *In Koteswar Vittal Kamath's* case (supra), the validity of section 3 of the Tranvancore-Cochin Public Safety Measures Act (5 of 1950), was challenged on the ground that the previous sanction of the President had not been obtained under the proviso to clause (b) of Article 304 of the Constitution. With regard to that contention it was observed by the learned Judges :—

> "The condition precedent of President's previous sanction is attached only to legislation which imposes restriction on freedom of trade, commerce or intercourse. Repealing is not imposing restrictions and so the proviso to Article 304 does not affect the validity of the repeal under section 73 of the Act if the repeal is otherwise valid."

Those observations are also helpful in upholding the constitutional validity of the amendments made in section 23 of the Act from time to time enhacing the rate of fee.

(13) In *Jugraj* v. *Rajasthan State*, (9), the constitutional validity of the Rajasthan Panchayat (Amendment) Ordinance (15 of 1955) was challenged on the ground that the President's assent had not been obtained which was necessary, as it amended certain provisions of the Rajasthan Panchayat Act (21 of 1953). It was observed by the learned Judges—

> "But the provisions which have been amended by the Ordinance have nothing to do with any existing legislation of the Central Legislature covered by the Concurrent List. It was, therefore, not necessary to obtain the assent of the President to this modification."

(14) In another case, *K. N. Joshi* v. *The State of Rajasthan* (10), the constitutional validity of the Rajasthan Urban Improvement (Amendment) Ordinance (1972) was challenged on the ground that the assent of the President had not been obtained and, therefore, it could not be enforced under Article 254(2) of the Constitution. Repelling this attack, it was observed :

> "The Governor has power under Article 213 of the Constitution to promulgate Ordinance in respect of the subject covered by List II of the Seventh Schedule even if the parent law which contains provisions about acquisition of land was enacted after getting President's assent. The impugned Ordinance deals only with the constitution of the improvement Trust and. therefore, it was not necessary to get the assent of the President on such Ordinance."

(15) After giving my careful consideration to the points canvassed and in the light of the decisions referred to above, I am of the opinion, and I say so with great respect, that the learned Judge erred in holding that the amendment of any provision of the Act requires the assent of the President even if that particular provision, which is amended, does not relate to any matter enumerated in the Concurrent List.

Article 213(1) and 254 of the Constitution are in these terms :—

> "*Article* 213(1). If at any time, except when the Legislative Assembly of a State is in session, or where there is a

(9) A.I.R. 1956 Raj. 107.
(10) A.I.R. 1972 Raj. 168:

Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require :

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

Article 254(1). If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

"Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

Both these Articles used the words "provision contained in an Act" and not the entire Act. Article 254(2) also uses the words "matters enumerated in the Concurrent List". Reading these two provisions, it becomes abundantly clear that if an Act, when enacted, contains any provision with respect to one of the matters enumerated in the Concurrent List, which is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of the State has to be reserved for the consideration of the President in order to enforce it. Thereafter, if any provision of that Act, which does not relate to any of the matters enumerated in the Concurrent List, is sought to be amended, it will not require the assent of the President. Only the amendment of that provision of the Act will require the assent of the President which is with respect to one of the matters enumerated in the Concurrent List. Section 3 of the Act, as originally enacted in 1961, did not relate to any of the matters enumerated in the Concurrent List and, therefore, its amendment, in my opinion, did not require the assent of the President. The learned Judge was of the view that since the power to acquire property under the Act was to be exercised by the Marketing Board, the provision with regard to its constitution related to the acquisition of property and was, therefore, relatable to Entry 42 in the Concurrent List. With great respect, I do not find myself in agreement with the learned Judge. To reiterate, I hold that the amendment of only that provision of an Act, containing provisions in respect of one of the matters enumerated in the Concurrent List, will require the assent of the President for its enforcement, which relates to any such matter but if it relates to the amendment of any other provision with respect to a matter not enumerated in the Concurrent List, it will not require the assent of the President for its enforcement. Since the correctness of the decision of the learned Judge has been doubted on this point, I hold that that case has not been correctly decided and overrule the same.

(16) Shri P. S. Jain, appearing for some of the petitioners in these cases, submitted that the assent of the President was necessary under Article 304(b) of the Constitution as the increase in the rate of fee affects the free flow of trade and commerce in agricultural produce, which is bought and sold in the market by licensees in the

notified market area as a result of which the licensees will be at a disadvantage while competing with the traders of the other States. This plea, has not been specifically taken in the petitions and no material has been placed on the record to show as to what is the rate of the market fee being charged by the market committees in other States, with the dealers of which the petitioners intend to trade or compete. Moreover, it has been held by their Lordships of the Supreme Court in *Automobile Transport (Rajasthan) Ltd., etc.* v. *State of Rajasthan and others,* (11) that compensatory taxes for the use of trade facilities are not hit by the freedom declared by Article 301 of the Constitution. Their Lordships further observed :—

> "It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done.
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> If a statute fixes a charge for a convenience or service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired. In such a case the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought and received."

On the parity of reasoning, in view of the services rendered and facilities provided for carrying on the trade, it will be reasonable to hold that the fee levied by the market committees under section 23 of the Act is compensatory and its imposition does not hamper trade and commerce and, therefore, Article 304(b) is not attracted. There is also no violation of Article 14 of the Constitution because no material has been placed on the record to show the rate of such fees in other States. For all the reasons given above, the challenge to the constitutional validity of the amending Acts is repelled.

(17) The most important point argued in these petitions is that the Marketing Board in both the States has directed the market committees to levy the maximum fee of two rupees per one hundred

rupees in the Haryana State and two rupees and twenty-five paise for one hundred in the State of Punjab which is too excessive and exhorbitant and, therefore, infringes their Fundemental Rights guaranteed under Article 19(1)(f) and (g) of the Constitution. It is further submitted that in order to justify the imposition of fee the element of *quid pro quo,* that is, the services rendered to the payers of the fee by the market committees, has to be related to the amount of fee collected from them. In other words, if the cost of the services rendered to the payers of the fee is insignificant or the services rendered are worth much less than the amount charged from them, the fee will amount to tax and colourable exercise of power to impose tax in the garb of fee by the Legislature, the Marketing Board and the market committees. It may be stated here that section 23 of the Act in the State of Haryana only prescribes the maximum fee that can be levied and not that it must be levied. In the State of Punjab, however, fee to be charged has been fixed by the Legislature and the market committees have no option to charge less. They, of course, cannot charge more unless further amendment is made. Originally, when fifty naya paise for every one hundred rupees was prescribed as the maximum fee, the market committees were directed by the Marketing Board to charge only forty naya paise per one hundred rupees. Similarly, the Marketing Board of Haryana State can direct the market committees to charge less than the maximum amount provided in that section. The section, as amended by the Haryana State, therefore, cannot be struck down as prescribing an excessive amount of fee because it is only an enabling provision and does not provide for any compulsion. The position in the State of Punjab is, however, different as pointed out above. The Marketing Board in both the States has issued directions to the market committees to levy the maximum rate allowed by the Legislature. We have, therefore, to determine whether the imposition of fee at the enhanced rate can be justified as fee and if not, whether it is wholly unauthorised or can be saved to any extent on the basis of correlationship of the services rendered to the payers of the fee under the Act. Another question that arises in this connection is the nature of the services to be rendered by the market committees in exchange of the fee charged, that is, whether they have to be rendered to the payers of the fees exclusively and in entirety or the amount realised can also be spent for carrying out the objects mentioned in sections 26 and 28 of the Act.

(18) The learned counsel for the petitioners have greatly relied on the definition of "fee" stated by their Lordships of the Supreme

Court in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lākshmindra Thirtha Swamiar of Sri Shirur Mutt,* (12), in the following words (para 44) :—

> "——a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay,—*vide* Lutz on 'Public Finance' P. 215. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

The difference between a tax and a fee was brought out again in *Ratilal Panachand Gandhi and others* v. *State of Bombay and others,* (13), wherein the following observations occur (para 22):—

> "Fees, on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of '*quid pro quo*' which is absent in a tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain individuals. But in order that the collections made by the Government can rank as fees, there must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services. This can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services.

Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied

(12) A.I.R. 1954 S.C. 282.
(13) A.I.R. 1954 388.

in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes."

The same observations were repeated in *Sri Jagannath Ramanuj Das and another* v. *State of Orissa and another,* (14).

The matter was exhaustively dealt with by the Supreme Court in *The Indian Mica and Micanite Industries, Ltd.* v. *The State of Bihar, and others,* (15), wherein all the case-law on the subject was considered and it was held that before any levy could be upheld as a fee, it must be shown that the levy had a reasonable correlationship with the services rendered by the Government. In other words the levy must be proved to bear a *quid pro quo* to the services rendered. But in these matters it would be impossible to have an exact correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude.

(20) One of the cases considered by their Lordships was *The Hingir-Rampur Coal Co. Ltd., and others* v. *The State of Orissa and others,* (16) wherein the following observations appear in paras 9 and 13 of the report :—

"9. It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of *quid pro quo* between the person who pays the fee and the public authority which imposes it. *If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee.*

(14) A.I.R. 1954 S.C. 400.
(15) A.I.R. 1971 S.C. 1182.
(16) A.I.R. 1961 S.C. 459.

...

Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of *quid pro quo* between the tax-payer and the public authority, there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co-relation between the fee collected and the service intended to be rendered. Cases may arise whereunder the guise of levying a fee legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power Courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, *whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be dettrmined in the circumstances of each case. The distinction* between a tax and a fee is, however, important, and it is recognised by the Constitution. Several Entries in the Three Lists empower the appropriate Legislatures to levy taxes; but apart from the power to levy taxes thus conferred each List specifically refers to the powers to levy fees in respect of any of the matters covered in the said List excluding of course the fees taken in any Court." (Emphasis supplied).

"13. It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service

rendered is distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. *In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve.* Its *primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy."* (Emphasis supplied).

In that case, the Act under consideration was the Orissa Mining Areas Development Fund Act (27 of 1952), which had been passed for the purpose of developing mining areas in the State. The basis for the operation of the Act was the constitution of a mining area and it was in regard to mining areas thus created that the provisions of the Act came into play. The provision for the constitution of an Advisory Committee for a notified mining area was made in section 4 of the Act which showed that the policy of the Act was to be carried out with the assistance of the mine owners and their workmen. A cess was levied on the mine owners and lessees of mines for development of the notified mining area. That cess was held to be a fee and not a tax with the following observations:—

"Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of *quid pro quo* in the scheme, the cess collected is constituted into a specific fund and it has not become, a part of the consolidated fund, its application is regulated by a statute and is confined to its purposes, and there is a definite correlation between the impost and the purpose of the Act which is to render service to the notified area. These

features of the Act impress upon the levy the character of a fee as distinct from a tax."

(21) In *Sudhindra Thictha Swamiar and others* v. *The Commissioner for Hindu Religious and Charitable Endowments, Mysore,* (17), the Supreme Court was called upon to consider whether the levy impugned in that case could be justified as a fee. That levy, which was an annual contribution levied under the Madras Hindu Religious Endowments Act (19 of 1951), was upheld on the ground that those contributions, when collected, went into a separate fund and not into the Consolidated Fund of the State and were specifically earmarked for defraying expenses for the services rendered. Further, they were not payable to the Government but were payable to the Commissioner and were levied not as a tax but only as a fee. The Court further observed that—

"A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service. If with a view to provide a specific service levy is imposed by law and expenses for maintaining the service are met out of the amounts collected, there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion, on which alone it can be said that it is of the nature of a tax: A fee being a levy in consideration of rendering service of a particular type, correlations and the levy must undoubtedly exist but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may."

(1) A.I.R. 1963 S.C. 966.

(22) In *The Corporation of Calcutta and another* v. *Liberty Cinema,* (18), the validity of the levy made under section 548(2) of the Calcutta Municipal Act, 1951, came up for consideration before the Supreme Court and it was held that the levy in question was not a fee in return for services as the Act did not provide for any service of a special kind being rendered resulting in benefits to the person on whom it was imposed. In that case, the licence fee was increased from Rs. 400 to Rs. 6,000 in 1958 by changing the basis of assessment and fixing it at Rs. 5 per seat. The levy was held to be a tax and not a fee. As a tax it was upheld by majority on the ground that the Corporation was an autonomous body which had to perform various statutory functions. For the performance of those functions, it needed money and its power to collect taxes was necessarily limited by the requirement to discharge those functions and it could fix such rates as may be necessary to meet its needs. That was considered to be sufficient guidance to make the exercise of Corporation's power to fix the rates valid.

(23) In para 8 of the report, the difference between 'licence fee' and 'fee' for services rendered was pointed out by reference to Articles 110(2) and 199(2) of the Constitution and it was observed that "a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered". With regard to the word "fee" it was observed that it "cannot be said to have acquired a rigid technical meaning in the English language indicating only a levy in return for services", and, therefore, the use of the word 'fee' is not conclusive of the question that it must be in return for services and that the position of a section in the Act providing for the fee cannot determine its nature; an imposition which is by its terms a tax and not a fee cannot become a fee by reason of its having been placed in a certain part of the statute.

(24) It is not necessary to consider any more cases pointing out the essential characteristics of 'fee' in contra-distinction to 'tax', as the specific question whether fee levied under the Agricultural Produce Markets Acts is 'fee' or 'tax' has been considered in some cases which are binding on this Court and a reference to them may now be made.

(18) A.I.R. 1965 SC. 1107.

(25) In *Mohammad Hussain Gulam Mohammad and another* v. *The State of Bombay and another* (19) their Lordships of the Supreme Court held that the fee charged for services rendered by the market committee in connection with the enforcement of the various provisions of the Bombay Agricultural Produce Markets Act, 1939, and the provision for various facilities in the various markets established by it was not in the nature of sales tax. The mode of charging fee on the amount of produce bought and sold was only a method of realising fees for the facilities provided by the committee. The levy was thus upheld as a fee and the argument that it was in the nature of a sales tax was repelled.

(26) The specific question whether a fee levied by a market committee under the Bihar Agricultural Produce Markets Act (16 of 1960), was a fee or a tax came up for consideration before their Lordships of the Supreme Court in *Lakhan Lal and others etc.* v. *State of Bihar and others* (20), wherein the following observations occur in para 7 :—

> "Counsel next submitted that the market committee has not established any market. According to Counsel, a market must be a well defined site with market equipment and facilities. The argument overlooks the definition of market in section 2(h). The market consists of market proper and the market yards. The market yards are well defined enclosures, buildings or localities but the market proper is under section 2(k) read with section 5(2)(ii) a larger area. For establishing a market it is sufficient to make a declaration under section 5(2) fixing the boundaries of the market proper and the market yards on the recommendation of the market committee made under Rule 59(2). Under section 18(1) the market committee must provide for such facilities in the market as the State Government may from time to time direct. It is not shown that the market committee refused to carry out any direction of the Government. The market committee may, in view of sections 28(2) and 30(i), acquire and own lands and buildings for the market, but it is not always obliged to do so. The market is established on the issue of a notification under section 5(2) declaring the market proper and the market yards. The next contention is that the fees levied by the market committee are in the nature of

(19) A.I.R. 1962 S.C. 97.
(20) A.I.R. 1968 S.C. 1408.

taxes as the committee does not render any services to the users of the market and the levy of the fees is therefore illegal. This contention is not tenable. The market committee has taken steps for the establishment of a market where buyers and sellers meet and sales and purchases of agricultural produce take place at fair prices. Unhealthy market practices are eliminated, market charges are defined and improper ones are prohibited. Correct weighment is ensured by employment of licensed weighmen and by inspection of scales, weights and measures and weighing and measuring instruments. The market committee has appointed a dispute committee for quick settlement of disputes. It has set up a market intelligence unit for collecting and publishing the daily prices and information regarding the stock, arrivals and despatches of agricultural produce. It has provided a grading unit where the technique of grading agricultural produce is taught. The contract form for purchase and sale is standardised. The provision of the Act and the Rules are enforced through inspectors and other staff appointed by the market committee. The fees charged by the market committee are correlated to the expenses incurred by it for rendering these services. The market fee of 25 naya paise per Rs. 100 worth of agricultural produce and the licence fees prescribed by rules 71 and 73 are not excessive. The fees collected by the market committee form part of the market committee fund which is set apart and earmarked for the purposes of the Act. There is sufficient *quid pro quo* for the levies and they satisfy the test of 'fee' as laid down in *Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (12).

These observations clearly show that there is close affinity between the provisions of the Bihar Act and the Act, which is for consideration before us, and the above observations apply *mutatis mutandis* to its provisions. Relying on these judgments of the Supreme Court, a Division Bench of this Court held the levy under section 23 of the Act to be a 'fee' and not a 'tax' in *M/s. Ram Sarup and brothers* v. *The Punjab State and others*, (21). The relevant observations from para 8 of the report are extracted as under :—

"The market-fee is collected under section 23 and all other moneys received by the market committee are paid into

(21) I.L.R. (1969) Pb. & Hr. 756.

the market committee fund referred to in section 27 of the Act. The amount received in the market committee fund can be expended by the committee only for three purposes, viz.; (a) for payment to the Market Board as contribution such percentage of its income derived from licence fee as is specified in the Act to defray expenses of the office establishment of the Board, and other expenses of the Board incurred by it in the interest of market committees ; (b) for payment to the State Government the cost of any special or additional staff employed by it in consultation with the committee for giving effect to the provisions of the Act in the notified market area in question; and (c) for all or any of the seventeen purposes mentioned in section 28 of the Act including acquisition of sites for markets and maintenance and improvement thereof, etc. In the absence of any definite material about the income which accrues to a market committee by recovery of market-fee on the one hand and the expenses it has to incur on the items specified in sections 27 and 28 of the Act, (all of which are admitted to be related to the functions of the committee), on the other, it is impossible to record any finding as to whether there is a *quid pro quo* between the amount of the fee and the services to be rendered by the committee in question or not. On the material available before us, it is obvious that the amount of market-fee which can possibly be recovered by a committee does not in any manner appear to be disproportionate to the services which it is expected to render to the assessees of such fee, by performing the duties referred to in section 28. In our opinion, no proper foundation has in fact been laid in this case by the petitioner on which it could build the argument sought to be made out on its behalf. In any event, the petitioner has not furnished any material for substantiating the vague allegation made in Sub-paragraph (ix) of paragraph 16 of the writ petition which has already been quoted. Be that as it may, it appears to be wholly futile to go any further into this matter as the market-fee of 0.40 paisa on sale of goods worth Rs. 100 within the market area cannot be called a tax in the face of the authoritative pronouncements of the Supreme Court in *Mohammad Hussain Gulam Mohammad and another* v. *The State of Bombay and another* (22) and in a recent

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

unreported judgment in *Lakhan Lal and others* v. *State of Bihar and others*" (since reported) (23).

The levy of fee at the rate of forty paise for every one hundred rupees was held to be fully authorised and valid as it was within the maximum limit stated in section 23 of the Act.

(27) In view of these authoritative judgments, it is futile for the petitioners to urge that the fee levied under section 23 of the Act is not a 'fee' but a 'tax'. Shri Hira Lal Sibal, the learned Senior Advocate for the Agricultural Marketing Board, Punjab, has also urged that if the levy cannot be justified as a fee on the basis of correlationship with the services rendered, the levy may be considered partly as a fee and partly as a tax and should be upheld as such, in view of the judgment of the Supreme Court in *The Corporation of Calcutta and another* v. *Liberty Cinema* (supra). In that case, the so-called fee was held to be a tax and the Calcutta Municipal Corporation was held to have the power to impose the tax in order to meet its expenses for carrying out the various obligations imposed on it by the Calcutta Municipal Act. No such power has been given to the market committees by the Legislature to impose a tax to raise revenue for carrying out the objects of the Act and the ratio of the decision in *Liberty Cinema's* case does not apply. In my view, the levy permitted under section 23 of the Act is primarily a fee and can also be called compensatory fee on the parity of reasoning with regard to compensatory tax stated in the Supreme Court judgment in *Automobile Transport (Rajasthan) Ltd., etc.*, v. *State of Rajasthan and others (supra)*. The amount of the fee collected by the market committees goes to the market committee fund constituted under section 27 of the Act and that fund has to be utilised for the purposes mentioned in that section and section 28.

(28) Shri Hira Lal Sibal has advanced a very ingenious argument but which is not acceptable. According to him, the fee is leviable on the agricultural produce when it is bought or sold and, therefore, it cannot be said that the licensed dealers, who pay the fee as buyers of the agricultural produce, are entitled to any service, in exchange for the fee paid by them. The purchase or sale of the agricultural produce is only the fee levying event and not that the

(23) A.I.R. 1968 S.C. 1408.

fee is leviable on the agricultural produce. The agricultural produce does not pay the fee; it is payable by the buyer of the produce and, therefore, the buyer of the produce is the payer of the fee and is entitled to services in lieu thereof. The argument is repelled.

From the various decisions discussed above, the following propositions emerge :—

1. that the fees are of various kinds and it is not possible to formulate a definition that would be applicable to all cases. The matter shall have to be decided in each case taking into consideration the objects of the Act and the kind of service to be rendered;

2. that the collections from the fees must not be merged in the general revenue but should be kept apart and appropriated for rendering the services;

3. that the amount of the fees charged must have a reasonable correlationship with the cost of the services rendered or to be rendered to the payers of the fees. However, it is impossible to have an exact correlationship and so the correlationship expected is one of general character and not of arithmetical exactitude; and

4. that the amount of fees so collected are not to be spent exclusively for rendering services to the payers of the fees but can also be utilised for carrying out the purposes or objects of the Act under which they are levied. They cannot, however, be utilised for purposes which have no connection with the main purposes of the Act for which fee is levied, as explained by the Supreme Court in *The Secretary, Government of Madras, Home Department and another* v. *Zenith Lamps and Electricals Ltd.* (24), with respect to Court-fees. It was said therein that the Court-fees collected can be spent for the administration of justice and the maintenance of the Courts for that purpose but not for road building or building schools etc. On the parity of reasoning it can be said that the fees collected under the Act cannot be spent for carrying out the governmental functions of the State but for rendering services to the payers of the fees in accordance with the provisions of the Act.

(24) A.I.R. 1973 S.C. 724.

It is in the light of these propositions that we have to decide whether the increase in the fee effected by the various Acts stated in an earlier part of this judgment can be justified and the fee has not become so excessive or exhorbitant as to change its character from fee to tax.

(29) The mandate of the Legislature in section 27 is that the Market Committee Fund has to be utilised for incurring expenditure under or for the purposes of the Act and any excess remaining thereafter is to be invested in such manner as may be prescribed. Every market committee has to contribute certain percentage of its income to the Agricultural Marketing Board to defray expenses for the office establishment of the Board and such other expenses incurred by it in the interest of the market committees generally and also has to pay to the State Government the cost of any special or additional staff employed by the State Government in consultation with the committee for giving effect to the provisions of the Act in the notified market area. The other purposes for which the market committee funds may be expended are stated in section 28 of the Act as under :—

"28. Subject to the provisions of section 27, the market committee funds shall be expended for the following purposes—

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

(iii) construction and repair of buildings which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it;

(iv) provision and maintenance of standard weights and measures;

(v) pay, leave allowances, gratuities compassionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents while on duty, medical aid, pension or provident fund of the persons employed by the committee;

(vi) payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans;

(vii) collection and dissemination of information, regarding all matters relating to crop statistics and marketing in respect of the agrcultural produce concerned;

(viii) providing comforts and facilities, such as shelter, shade, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes ;

(ix) expenses incurred in the maintenance of the offices and in auditing accounts of the committees;

(x) propaganda in favour of agricultural improvements and thrift;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the committee;

(xiii) imparting education in marketings or agriculture ;

(xiv) payments of travelling and other allowances to the members and employees of the committee. as prescribed;

(xv) loans and advances to the employees;

(xvi) expenses of and incidental to elections; and

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the committee or the notified market area, or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

(30) In view of the allegation that the committees were possessed of enough funds to carry out their duties under the Act and that the increases in the fees from time to time were arbitrarily made in order to provide revenue to the Government for its own governmental activities, we directed the market committees as well as the Agricultural Marketing Boards of both the States to file the

statements of income and expenditure for the last five years showing in particular, the heads under which the amounts were spent. The incomes in those statements are at the rate of one rupee per one hundred rupees which was the rate prevalent in those years. That direction has been complied with in a number of cases which provide the necessary data for determining the *quid pro quo* as the pattern of expenses in almost all the committees is the same. I shall first deal with the market committees and the Agricultural Marketing Board of Haryana.

(31) It is enough to refer to the income and expenditure statements of Market Committee, Hissar, during the last five years. The statement showing the income headwise from 1969-70 to 1973-74 is as under:—

Sr. No.	Name of head	1969-70	1970-71	1971-72	1972-73	1973-74
1	Licences fee u/s 13	166·80	150·80	126·35	166·00	147·90
2	Licences fee u/s 10	6,177·00	5,568·00	3,832·00	5,199·00	4,292·00
3	Market fee	6,17,723·03	9,37,126·65	10,53,163·29	9,15,375·42	16,20,936.23
4	Composition fee	6,146·67	3,458·60	1,032·85	2,732·00	1,813·50
5	Sale of forms	539·45	..	..	..	74·00
6	Security for Badges and	11·00	8·00	15·00	8·00	16·00
	Other Securities	3,335·00	1,520·00	904·00	2,284·00	81,525·00
7	Other Miscellaneous income	3,85,117·52	4,05,12,82	3,05,799·15	39,581·41	1,48,836·61
8	Interest on investment	17,269·05	34,023·22	3,16,572·30	9,986·85	5,141·34
9	Loan and Advance	..	..	..	1,65,000·00	1,23,725·00
10	Suspense a/c	..	..		19,448·15	3,600·00
11	Rent	630.00	315·00	280·00	..	32·00
12	Unclassified	1,725·00	..	..	2,752·60	954·40
	Total	10,38,841·42	13,88,592·09	13,82,724·94	11,62,533·52	19,91,090·98

The statement showing headwise expenditure for those years is as under:—

Sr. No.	Name of head	1969-70	1970-71	1971-72	1972-73	1973-74
1	Establishment	48,641·49	88,479·55	94,618.19	96,946·39	1,09,943·37
2	Provident Fund	5,076·94	2,975·00	5,847·68	3,610·11	4,642·12
3	Contingencies and amenities	95,461·79	1,32,494·61	2,69,493·71	1,52,873·50	1,58,174·83
4	Refund of securities to contractors	350·00	6,778·03	..	3,784·00	64,510·00
5	Works	4,87,947·05	6,60,178·59	6,51,626·63	6,38,131·93	11,71,577·00
6	Audit expenditure	..	..	6,791·30	..	43,462·62
7	Travelling Allowance	2,202·21	3,286·34	4,161·60	5,900·37	5,552·25
8	Medical Aid	812·62	1,095·14	1,047·21	570·26	891·82
9	Contribution u/s 27	2,33,118·76	1,72,211·34	2,88,603·75	1,89,707·96	4,15,133·4
10	Miscellaneous expenditure Refund of market fee and Provident Funds	11,570·11	..	12,513·31	..	..
11	Suspense accounts	..	..	..	17,942·12	3,777·12
12	Investment Fixed deposit with Bank and Post Office	1,05.951·15	3,94,058·95	..	..	..
	Total	9,91,132·12	14,61,557·55	13,34,703·38	11,09,566·64	19,77,664·55

The details of the amount spent on item No. 5—Works—has also been given as under:—

Sr. No.	Name of head	1969-70	1970-71	1971-72	1972-73	1973-74
1	Deposit Works Village Link Roa contribution for amount deposited with Public Works Department, Hissar ..	4,54,100 ·00	5,74,325 ·00	5,10,000 ·00	4,40,000 ·00	9,46,000 ·00
2	Construction of boundary wall at Model Mandi, Hissar, Office-cum-Rest-House Plot ..	..	..	8,205 ·81	..	..
3	Construction of Link Roads carried out by Market Committee, Hissar	26,594 ·92	143 ·19	37,459 ·22	1,13,943 ·31	18,278 ·90
4	Construction of common platform at Balsamand Mandi ..	..	..	4,166 ·53	38,500 ·00	6,592 ·73
5	Repair of Plao and Mandi Gate	41 ·61	91 ·29	..	775 ·03	..
6	Culverts and Bridges in the villages of notified market area on canal water ways ..	4,402 ·00	17,500 ·00	54,908 ·00	..	1,474 ·00
7	Purchase of cement for construction of Office-cum-Rest House and C. C. flooring in New Model Mandi	..	..	..	..	67,585 ·13

Sr. No.	Name of head	1969-70	1970-71	1971-72	1972-73	1973-74
8	Fitting of electric motor for water-supply in Kisan Rest-House ..	2,008·52	473·93	..	..	..
9	Repair of roads and platform in Mandis of principal Yard ..	..	54,225·60	..	..	1,864·06
10	Village Gorchi Gawar water-supply scheme	..	..	..	..	1,07,794·00
11	Construction of Gamlas of shady trees at New Model Mandi, Hissar	..	8,598·05	12,380·60	..	..
12	Providing electric fittings for Kisan Rest-House ..	..	..	466·14	..	..
13	Providing hand-pump for drinking water at Sabzi Mandi, Hissar ..	..	1,022·75	995·45	..	..
14	Special repair of Kisan Rest-House ..	..	3,798·78	16,685·01	4,206·45	627·00
15	Earth filling in New Model Mandi, Hissar	..	..	..	..	12,772·06
16	Earth filling in Balsamand Mandi ..	..	..	2,161·12	40,707·14	8,589·12
	Total ..	4,87,947·05	6,60,178·59	6,51,626·63	6,38,131·93	11,71,577·00

From these statements it is abundantly clear that the market fee constitutes more than eighty per cent of the income of the market committee. The amount spent on 'works' is nearly one-half of the total expenditure. The major item on which the amount has been spent under the head "works" consists of the amount deposited with

the Public Works Department, Hissar, as contribution for construction of village link roads. Strong objection has been taken by the learned counsel for the petitioners to this item of expenditure on the ground that construction of roads is a governmental function and the market fees collected from the licensed dealers cannot be utilised for this purpose. It is also clear from the statement showing the details of works that construction of some link roads was carried out by the market committee itself during all the five years. The learned counsel for the petitioners, on the basis of that item of expenditure, submit that the link roads constructed by the market committee itself fall within the meaning of 'approach roads' used in clause (viii) of section 28 of the Act and the amounts deposited with the Public Works Department, Hissar, for village link roads, do not fall within any of the objects stated in section 28 of the Act. On behalf of the respondents, it is submitted that the village link roads also fall within the description of approach roads and they are necessary to be constructed for facilitating the easy transportation of agricultural produce from the villages to the markets or market places where they are bought and sold providing the main source of income to the licensed dealers. In any case, the construction of roads within the notified market area is a work of public importance and promotes the general interest of the committee and the notified market area which is one of the purposes enumerated in clause (xvii) of section 28 of the Act.

(32) After giving my careful consideration, I am of the opinion that the expenditure on the construction of link roads for which amounts were deposited with the Public Works Department is fully justified as it is for the benefit of the growers, the licensed dealers and the general Public and promotes the interests of the notified market area. Thus, a service is rendered to the payers of the fee by the development of the market area as per the *ratio decidendi* of the Supreme Court judgment in *The Bingir-Rampur Coal Co.'s case* (*supra*). In that case too, the fee was levied for the development of the mining areas, although it was payable only by the owners or lessees of the mines and not by workmen whereas the development works consisted of construction of roads, provision of electricity, sewerage and drainage and other amenities in the mining area. It was considered that by such developmental activities service was being rendered to the payers of the fee. Since transportation is very essential for the development of a market and to enable the growers of the agricultural produce to bring the same to the market places for sale, the construction of link roads becomes an essenial purpose of

the market committees. However, the Public Works Department must render accounts of the amounts received by it for the construction of the village link roads to each market committee to enable it to determine whether any further amount is necessary to be spent under this head and whether all the roads for which money was paid have been constructed. The Government cannot utilise that amount as a part of general revenue to carry out its governmental activity of providing main roads in the State. The amount received from the market committees has to be strictly spent only on the construction of approach roads and not main roads. Since no material has been brought to our notice by the petitioners showing that no link roads had been constructed by the Public Works Department and the amounts deposited by the market committees had been misutilised or mis-spent, it cannot be held that no more amount is required by the market committees for the purpose and that the enhancement in the market fee is arbitrary or uncalled for. However, before depositing any further amounts with the Public Works Department, every market committee must obtain the account of the amounts already paid and make further contributions only if any more approach roads are necessary to be constructed. I have pointed out above that section 23 only lays down the maximum amount of fee that can be levied and each market committee can levy a lesser amount in case it does not stand in need of any more funds for any particular purpose. The amount collected as fees has, however, to be spent on the various purposes enumerated in sections 27 and 28 of the Act.

(33) Objection was also raised to the donations given by the various market committees to educational institutions imparting general education and not education in marketing or agriculture, as stated in clause (xiii) of section 28. Such donations are not within section 28 of the Act. The institutions imparting general education cannot be said to promote the general interest of the committee or the notified market area nor can they be described as promoting national or public interest. I shall dilate on this subject when I discuss the Punjab cases as this point has directly arisen there. Suffice it to say that the amounts spent by the various market committees on donations given to educational institutions not imparting education in marketing or agrculture are wholly unauthorsed and no further donations to such institutions should be made. It has also been pointed out that the Market Committee, Hissar, spent Rs. 1,07,794 on the water supply scheme for village Gorchhi Gawai which is not covered by the various purposes mentioned in section 28

of the Act. This objection is also sustained as the water supply schemes are primarily the concern of the Government or the local authorities like the Gram Panchayats, Panchayat Samitis or Zila Parishads. Water supply scheme for a village has no connection with the marketing of agriculthral produce for which the markets have been established. The primary object of the Act, broadly stated, is "to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce", as was said by a learned single judge in *Mukhtiar Chand and another* v. *Marketing Committee, Malout Mandi and others,* (25). This expenditure by the Hissar Market Committee was also unauthorised and beyond the purposes of the Act. Provision of Rs. 6 lacs for the construction of a Panchayat Bhawan made by the Market Committee, Hissar, in the current year's budget is also *ultra vires.* Construction of Rest Houses or rest places for the temporary stay of producers and traders visiting the markets will be justified but not the construction of a Panchayat Bhawan which may be constructed by the Panchayats concerned.

(34) The statements furnished by the other market commitees of Haryana are on similar lines and need not be discussed separately as Market Committee, Hissar, serves as an exampler. However, it has been pointed out that the Market Committee, Sirsa, spent some amounts on the construction of Gandhi Park and making donations to Maternity Hospital and Arya Kanya Pathshala. If the Gandhi Park is within the market, its construction may be justified but donations to Maternity Hospital and Arya Kanya Pathshala are unauthorised and outside the purposes of the Act. No donations and contributions should be made for such purposes.

(35) The Haryana Marketing Board has also filed the statements of its income and expenditure during the last five years from which it is clear that godowns for the storage of foodgrains were constructed at fourteen centres at a cost of Rs. 1,40,94,637-00 and in order to carry out those constructions the Board took a loan of Rs. 91 lacs from A.R.C. in 1972-73 and Rs. 25 lacs in 1973-74: A list of the works proposed to be undertaken to improve the various market committees in the State of Haryana to make them modern has also been filed as under:—

"1. Water supply schemes.

2. Water cooler rooms for drinking water for the growers.

(25) 1964 P.L.R. 836.

3. Water trough for the cattle.
4. Public toilets with all arrangements of bath and cloth washing for the growers.
5. Public urinals.
6. Gates, check-post and first-aid post.
7. Cement concrete/red stone pavement on common platforms.
8. Cattle sheds.
9. Parking places for carts and other vehicles.
10. Metalled roads.
11. Earth work, surface dressing, filling of earth and levelling, etc., in mandis.
12. Special repairs, additions and alternations in existing buildings.
13. Pucca *tharas* in front of shops.
14. Street lighting in mandis.
15. Weigh bridges.
16 Large godowns.
17. Office buildings.
18. Kisan Rest Houses.
19. Staff quarters for (a) Secretary (b) other officials.
20. Planting of trees and parks.
21. Rate exhibiting tower.
22. Fire fighting station.
23. Canteen.
24. Library.
25. Grading laboratory.
26. Accommodation for Bank and Post and Telegraph Office.
27. Agro-Industries Yard for repairs of agriculture machinery and vehicles.
28. Recreational facilities.
29. Processing units.
30. Sewerage and drainage.

The learned counsel for the petitioners have only objected to item No. 26 on the list. Accommodation for Bank and Post and Telegraph

Office". In my view, the objection is meaningless as the provision for a bank and a Post and Telegraph Office is necessary to afford a necessary facility to the dealers as well as other persons coming to the markets. The water supply schemes mentioned above are understood to be for the markets and not for the villages situate in the notified market area of each market committee. No expenditure can be incurred by a market committee on the water supply schemes for villages.

(36) In order to provide more income to the Agricultural Marketing Board, so that further loans may not have to be taken, the Haryana Legislature has amended section 27 of the Act so as to increase the percentage of contribution by the market committees to the Board, by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (21 of 1973). The comparative figures are as under:—

———	Before amendment	After amendment
"(i) if the annual income of committee does not exceed Rs. 10,000	10 per centum	20 per centum
(ii) if the annual income of a committee exceeds Rs. 10,000 on the first Rs. 10,000	10 per centum	20 per centum
on the next Rs. 5,000 or part thereof	15 per centum	25 per centum
on the remaining income	20 per centum	30 per centum"

Since section 23 of the Act, as applicable to the State of Haryana, only prescribes the maximum limit within which the market committees, according to their needs, can prescribe the fee to be realised from the licensed dealers, it is not possible to strike down the amendments of that section made by the various Acts enhancing the amount of maximum fee. Looking to the various projects to be undertaken for the improvement of the market committees and the funds required for the repayment of loans already taken for the

construction of godowns, the levy of fee at the rate of rupees two per one hundred rupees is considered to be justified and in order. No interference seems to be called for at this time.

(37) The case of the market committees in the State of Punjab is, however, different. As I have pointed out above, they have to charge the fee prescribed in section 23 of the Act by the Legislature. There is no scope for flexibility. The amount of the fee has been fixed by the Legislature and it has not been left to each market committee to levy fee according to its needs within the prescribed limit. It has, therefore, to be seen whether the enhancement in the fee made by the Punjab Government is justified. In the various petitions relating to the State of Punjab it has been stated that the market committees were collecting lacs of rupees every month and the agricultural Marketing Board was collecting crores of rupees and are thus possessed of large sums of money which have not been spent on rendering services to the payers of the fee or for the development of the notified market areas, but these amounts have been mis-utilised, for giving a donation of rupees one crore to the Guru Gobind Singh Medical College which has recently been established at Faridkot. As I have pointed out above, the fee was fixed as rupee one per one hundred rupees with effect from May 22, 1969, and thereafter the amount of fee was increased to one rupee and fifty paise per one hundred rupees with effect from April 30, 1973, and two rupees and twenty-five paise with effect from April 30, 1974. In these cases also some of the market committees and the Agricultural Marketing Board have filed statements of income and expenditure during the last five years. The Punjab Government has also filed its return in the shape of an affidavit of Mrs. Shant Bhupinder Singh, Under Secretary to Government, Punjab, Development Department. In her affidavit it has been stated that—

> "The Finance Minister, Punjab, in his Budget speech in Vidhan Sabha on 27th February, 1974, had revealed that Government proposed to raise the rate of market fee by 50 per cent and to utilise the additional funds so collected for the construction of link roads and bridges to provide better facilities for bringing the produce from far off villages."

Since the Vidhan Sabha adjourned without passing the Amendment Act, the necessity for promulgating the Ordinance arose and that Ordinance has since been replaced by an Act.

(38) With regard to the contribution to Shri Guru Gobind Singh Education Trust for setting up the Guru Gobind Singh Medical College at Faridkot, it has been stated by the Agricultural Marketing Board that—

> "About a crore of rupees have not yet been given to the Medical College, Faridkot, although the Chairman of the Board received the sanction in respect of the amounts to be contributed by the Board and the various market committees to Shri Guru Gobind Singh Educational Trust."

Along with his affidavit, the Secretary of the Punjab State Agricultural Marketing Board has filed a copy of the letter issued by the Government to the Chairman of the Board which is dated October 22, 1973, on the subject of "Contribution towards the Guru Gobind Singh Educational Trust for setting up the Guru Gobind Singh Medical College at Faridkot". It is necessary to set out the contents of this letter in detail. It reads as under :—

> "The Governor of Punjab, in exercise of the powers vested in him under section 28(xvii) and 26(xvii) of the Punjab Agricultural Produce Markets Act, 1961, is pleased to declare the contributions, made at the rates prescribed below, by the Market Committees and the Punjab State Agricultural Marketing Board to the Guru Gobind Singh Educational Trust, as a fit and valid charge on their respective funds :—
>
> (i) Punjab State Agricultural Marketing Board Rs. 30,00,000;
>
> (ii) 15 committees with income exceeding Rs. 15 lacs as detailed in annexure 'A' at Rs. 2,31,000 per committee;
>
> (iii) 9 committees with income between Rs. 10 to 15 lacs as detailed in annexure 'B' at Rs. 1,35,000 per committee;
>
> (iv) 34 committees with income between 5 to 10 lacs as detailed in annexure 'C' at Rs. 54,000 per committee;
>
> (v) 34 committees with income below Rs. 5 lacs as detailed in annexure 'D' at Rs. 14,500 per committee.

In case the finances of the Marketing Board/Market Committees do not permit the entire contributions at the rate prescribed above during the year 1973-74, they may make the payment in 2 instalments, the first instalment being not less than 50 per cent to be paid immediately and the next instalment in the beginning of the next financial year, provided that the Marketing Board, if the state of its finances so require, may make the payment in 3 annual instalments, the first instalment to be paid immediately.

3. This sanction is being issued as a very special case in the public interest and is not to be treated as a precedent for other contributions."

From this letter it is quite clear that the market committees in the State and the State Agricultural Marketing Board have been directed by the State Government by a peremptory order to make contributions to Shri Guru Gobind Singh Educational Trust for setting up the Guru Gobind Singh Medical College at Faridkot. There is no averment in the affidavit of the Secretary of the Marketing Board or the market committees that they applied for sanction of their contribution to that Trust. The language of the letter shows that the Government itself prescribed the amounts of contribution to be made by each market committee and the Agricultural Marketing Board, whether its finances permitted or not. The order was issued under clause (xvii) of sections 26 and 28 as being in the public interest. It has now to be decided whether the Government has any such power to direct peremptorily the market committees and the Marketing Board to make any such contribution to any institution whatsoever. Clause (xvii) is almost the same in sections 26 and 28. The former section deals with the purposes for which the marketing development fund is to be utilised while section 28 enumerates the purposes for which the market committee funds may be expended. The marketing development fund is the fund maintained by the Agricultural Marketing Board while the market committee funds are maintained by the market committees. Clause (xvii) of section 26, before it was amended by Punjab Act 23 of 1962, read as under :—

"26(xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the committees."

The words "or the national or public interest" were added by the said amending Act. Clause (xvii) of section 28, before the amendment read as under :—

> "28(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the committee or the notified market area".

and the amending Act added the following words thereto:—

> "or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

The necessity for amending these clauses, as stated in the statement of objects and reasons, was as under :—

> "Sections 26 and 28 enumerate the purposes for which the marketing development fund and a market committee fund can be expended by the State Agricultural Marketing Board and a market committee respectively. There is no provision in these sections authorising the State Marketing Board or a market committee to make contribution for the relief of distress caused by any natural calamity like flood or to make contribution towards the fund raised in connection with a National Emergency."

It is well-settled that the statement of objects and reasons for the enactment cannot be a direct aid to the construction but it can be used for a limited purpose for finding out the purpose of the enactment by furnishing valuable historical material. To understand the historical background it may be mentioned that in October, 1962, China invaded India and a state of emergency arose. There were also frequent droughts and floods in various parts of the country and the amendment in clause (xvii) of sections 26 and 28 was made with a view to enable the market committees and the State Marketing Board to make some contributions for alleviating distress caused by droughts and floods and to help the nation in the event of a National Emergency. The setting-up of a Medical College does not come within the purview of clause (xvii) of sections 26 and 28 of the Act. The way the letter dated October 22, 1973, was issued by

the Punjab Government clearly shows that the Punjab Government adopted the baby of the Guru Gobind Singh Educational Trust and became its foster father but instead of making contributions from its own revenues, it called upon the market committees and the Marketing Board to make such contributions. The education for which the market committee fund and the marketing development fund can be spent by the market committees and the agricultural Marketing Board should be pertaining to marketing or agriculture and not any other kind of education. The issuance of the letter was, therefore, wholly unauthorised and the Punjab Government forced the market committees and the Agricultural Marketing Board to make the contributions which were wholly outside the purposes of the Act and, therefore, unauthorised and *ultra vires*. The market committees and the Agricultural Marketing Board cannot make any contributions to Shri Guru Gobind Singh Educational Trust for setting-up of the Guru Gobind Singh Medical College in pursuance of that letter which is quashed. I am further of the opinion that it is not open to the State Government to designate a certain institution or project as of public importance and direct the market committees and the Marketing Board to make compulsory contributions thereto. The State Government shall be well advised to compensate the Agricultural Marketing Board and the market committees for misutilisation of their funds for this unauthorised purpose.

(39) In this background, the enhancement of the fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees attains importance. The market committees and the Agricultural Marketing Board were directed to make these payments in October, 1973, and the proposal for enhancing the fee came in February, 1974, during the Budget Session of the Vidhan Sabha. The link is, therefore, established that it was to provide the market committees with more money in order to carry out the purposes of the Act, after depleting their funds by forcing them to make contributions for the setting-up of Guru Gobind Singh Medical College at Faridkot, that the enhancement was necessitated. On April 1, 1973, the opening balance in the hands of the Agricultural Marketing Board was Rs. 20,13,921.00 and the income during the year 1973-74 was Rs. 1,75,84,151.00, Thus the amount available to the Agricultural Marketing Board during the year 1973-74 was Rs. 1,95,98,074-00. The expenditure during the year, including the donation of Rs. 10 lacs to Shri Guru Gobind Singh Educational Trust, amounted to Rs. 1,13,39,468-00 leaving a surplus of more than

Rs. 82 lacs with the Board. The Board has not prepared any plan of constructing further development works for the market committees on which the amount has to be spent necessitating the increase in the fee, as has been done by the Haryana Marketing Board.

(40) The statements furnished by the Market Committee, Barnala, with regard to its income and expenditure during the years 1969-70 to 1973-74, which may be taken as an exemplar reveal that the total income of the market committee during these five years was Rs. 54,55,740.91 while the expenditure amounted to Rs. 44,45,485-84, leaving a surplus of nearly Rs. 10 lacs. Out of the expenditure, the contributions made to the Marketing Board amounted Rs. 11,95,209-03. The amount spent on the link roads was Rs. 28,47,552-54. Thus the main expenditure was on the contribution to the Marketing Board and construction of link roads. This committee also made donations of Rs. 58,000-00 to three colleges in 1970-71, Rs. 50,000-00 to a college in 1971-72 and Rs. 1,70,000-00 to colleges in 1973-74 and so it appears that it was a regular feature with this market committee to give donations to educational institutions imparting general education. To the Guru Gobind Singh Medical College, Faridkot, the donation of Rs. 1,35,000-00, as directed by the State Government in its letter dated October 22, 1973, was made. These donations to the educational institutions are wholly unauthorised. Shri Guru Gobind Singh Educational Trust became a beneficiary of one crore rupees from the Agricultural Marketing Board and the market committees under the directions of the State Government necessitating greater burden being placed on the payers of the fee for making possible these contributions. I am, therefore, of the view that the enhancement of fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees by the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974), which was later on replaced by the Punjab Agricultural Produce Markets (Amendment) Act (13 of 1974), cannot be justified, as the amounts collected in the form of fee cannot be utilised for any purpose other than the one sanctioned by the Act, as has been held by their Lordships of the Supreme Court in *The Secretary, Government of Madras* v. *Zanith Lamps and Electricals Ltd.* (supra). That case related to the matter of court-fees and it was pointed out that—

> "the fees taken in courts and the fees mentioned in Entry 66 List I are of the same kind. They may differ from

each other only because they relate to different subject matters and the subject matter may dictate what kind of fees can be levied conveniently, but the overall limitation is that fees cannot be levied for the increase of general revenue. For instance, if a State were to double court fees with the object of providing money for road building or building schools, the enactment would be held to be void."

In the historical background, set out above, I am convinced that the enhancement in the amount of fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees was not genuine and it was made with a view to enable the market committees and the Agricultural Marketing Board to reimburse themselves for the amounts which they were directed to contribute to Guru Gobind Singh Medical College at Faridkot. The market committees were having enough income and could meet their legitimate requirements from the amounts of fees which were being realised prior to the enhancement. The new projects to be undertaken by the market committees or the Agricultural Marketing Board have not been stated and, therefore, the enhancement in the fee from one rupee fifty paise to two rupees and twenty-five paise cannot be justified. This enhancement is nothing but a colourable exercise of power to levy fee with a view to raise funds for extraneous purposes not intended by the Act and the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974) and (Amendment) Act (13 of 1974) have to be struck down. The enhancement of fee from one rupee to one rupee and fifty paise by Punjab Act 28 of 1972 is considered to be justified for carrying out the various purposes mentioned in section 26 and 28 of the Act and is upheld. However, with regard to the amounts deposited with the Punjab Public Works Department for construction of link roads, the market committees should ask for the accounts before depositing any further amounts for the purpose, as has been said above while dealing with such expenditure in the case of the market committees of Haryana.

(41) The petitioners in all the petitions pertaining to the State of Haryana have also challenged the validity of rule 29(1) of the Punjab Agricultural Produce Markets (General) Rules, 1962, which reads as under:—

"29(1) Under section 23 a committee shall levy fees on the agricultural produce bought or sold by licencees in the

notified market area at the rates fixed by the Board from time to time :

Provided that no such fees shall be levied on the same agricultural produce more than once in the same notified market area. A list of such fees shall be exhibited in some conspicuous place at the office of the committee concerned."

On the ground that the State Government has delegated its own delegated legislative functions to a subordinate authority, that is, the Agricultural Marketing Board, which goes against the well-known legal principle that there cannot be a delegation of delegated power. It is further submitted that neither the language of section 23 of the Act nor the rule-making power conferred on the State Government under section 43 of the Act permit the grant of authority to the Board to fix the market fee chargeable by the market committees. According to the petitioners, section 43(2)(vii) prescribes the framing of rules by the State Government with regard to the maximum fee which may be levied by a committee in respect of the agricultural produce bought or sold by licensees in the notified market area and the manner and the basis thereof and does not provide for any such power being given to the Board to determine the amount of the fee that each market committee should levy. In reply, it has been submitted on behalf of the respondents that it is not a case of excessive delegation of legislative functions by the State Government or second delegation to the Agricultural Marketing Board but rule 29 only enables the Board to prescribe a uniform rate of fee within the maximum prescribed under section 23 of the Act for all the market committees in the State to levy in order to carry out the purposes of the Act. In the absence of such a power, every committee shall be at liberty to prescribe the amount of the fee for itself which may result in unhealthy competition in the neighbouring markets and adversely affect the interests of the producers and buyers. I find considerable force in this submission of the respondents. The Marketing Board has the power of supervision over all the market committees in the State and, for the proper functioning of the committees, it may be necessary to prescribe a uniform rate of fee to be charged by all the committees instead of leaving it to the discretion or sweet will of each committee. The levy of uniform fee will help the committee in carrying out the various purposes of the Act with the amount becoming

available to them. The challenge to the validity of this rule, therefore, fails.

(42) As regards the State of Punjab, the question of fixing the rate of fee by the Agricultural Marketing Board for all the committees in the State does not arise as the Legislature itself has fixed the rate to be charged.

(43) No other point has been argued.

(44) As a result of the above discussion, 127 writ petitions concerning the market committees of Haryana are dismissed but the parties are left to bear their own costs. 84 writ petitions with regard to the market committees of Punjab are accepted only to the extent that the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974), replaced by the Punjab Agricultural Produce Markets (Amendment) Act (13 of 1974), are struck down. In all other respects, the petitions are dismissed with no order as to costs.

K. S. K.

Before B. R. Tuli and A. S. Bains JJ.

SHRI HARI RAM,—*Petitioner.*

versus

ASSISTANT CONTROLLER OF ESTATE DUTY-CUM-INCOME-TAX CIRCLE AND OTHERS,—*Respondents.*

C. W. No. 4633 of 1973.

November 21, 1974.

Constitution of India (1950)—*Article* 14—*Estate Duty Act* (*XXXIV of* 1953)—*Section* 34 (1)(c)—*Whether discriminatory and* ultra vires *Article* 14 *of the Constitution.*

Held, that the provisions of section 34(1)(c) of the Estate Duty Act, 1953 are not in any way discriminatory. A coparcener dying without lineal descendants and a co-parcener leaving lineal descendants are not equals nor is a coparcener dying leaving lineal descendants equal to other persons whose estate is liable to estate duty. They form different classes of persons and it is for the