

CASE NO.:  
Appeal (civil) 1495 of 1993

PETITIONER:  
Agriculture Market Committee, Rajam & Anr.

RESPONDENT:  
Rajam Jute and Oil Millers Association, Rajam

DATE OF JUDGMENT: 25/02/2003

BENCH:  
M.B. SHAH & ARUN KUMAR

JUDGMENT:

J U D G M E N T

ARUN KUMAR, J.

This appeal is directed against the judgment dated 20th February, 1992 passed by the Andhra Pradesh High Court allowing the second appeal and decreeing the suit filed by the plaintiff Association, respondent herein. Briefly, the facts are that respondent filed a suit for declaration and injunction in the court of Subordinate Judge, Rajam, District Srikakulam, Andhra Pradesh. The plaintiff sought a declaration to the effect that the defendant - Market Committee had no right to levy, demand and collect any market fee from the members of the plaintiff - Association. An injunction was also sought to restrain the defendant - Committee from collecting market fee from the members of the plaintiff - Association. The case set up by the plaintiff as per the plaint was that Rajam Sub-Taluk was under the jurisdiction of the Ponduru Agricultural Market Committee. On Rajam Sub-Taluk being upgraded as a Taluk, a separate Agricultural Market Committee was constituted for the Rajam Taluk with effect from 24th December, 1979. The Market Committee was constituted under the Andhra Pradesh Agricultural (Produce & Livestock) Markets Act, 1966 (hereinafter referred to as the 'Act'). The primary object of the Act is to establish a market within a notified area. The market committees which are constituted under the Act have to provide facilities like sheds, storage, accommodation, platforms, facilities for weighing and grading of the agricultural produce etc. The Committee has also to engage staff to supervise operations of the traders in the market area. The market committee is to ensure that transactions in the specified commodities are for the benefit of purchasers and sellers of such commodities. In the process the committees are supposed to regulate the purchase and sale of agricultural produce by providing a market place and all the facilities necessary for proper conduct of the trade in agricultural produce in the market place so as to eliminate the middleman and to ensure healthy trade practices. By eliminating the middleman the committee tries to protect the purchasers of such agricultural produce, live stock etc. from exploitation and to ensure to them a fair price for their produce.

According to the plaintiff, the Market Committee had failed to provide any facilities in the market area so much so even a market yard had not been set up, no services or amenities were being provided to the traders in the market area and therefore the Market Committee was not entitled to levy, demand and collect

the market fee or cess from the members of the plaintiffs. In the written statement filed on behalf of the market committee, it was pointed out that the market committee was in its nascent stage, it had come into existence on the declaration of Rajam as a separate Taluk only on 24th December, 1979. It had already taken possession of the site comprising 8.50 acres on 28th November, 1981 for establishment of a market yard at Rajam by incurring an expenditure of about Rs. 28,000/-. The process was on for construction of godowns, weighing sheds, platforms etc. The Market Committee had appointed corporates to attend to the work of grading of the market produce. Supervising staff had been appointed to inspect the premises of the traders to ensure proper weighment. Thirteen persons had been licensed for the weighment job. Thus, according to the market committee, it had already started various services in the market area and the process for providing further services was already on. The levy, demand and collection of market fee by the defendant was sought to be justified on this basis. The defendant also raised a plea that the plaintiff Association had filed a Writ Petition in the High Court challenging increase in the market fee. The Writ Petition had been dismissed. In view of the dismissal of the Writ Petition, an argument was raised by the learned counsel for the Market Committee that the suit was barred by the principles of res judicata. Although the issue raised in the Writ Petition was only with respect to enhancement of the market fee, yet it was submitted that the plaintiff could have agitated the question of levy of market fee in the said petition and since it failed to do so, the principle of constructive res judicata would come into play. It would be deemed that the point which was available to the plaintiff Association for being raised at that stage, was given up. The said question therefore, could not be agitated in the present suit. The learned counsel for the plaintiff did not have any convincing reply to this argument. However, while going through the record, we find that the earlier Writ Petition being W.P. No. 1184/78 was filed when Rajam was under the erstwhile Ponduru Agricultural Market Committee. It is possible that the argument regarding non-availability of facilities and amenities in the market area was not available then because Ponduru Agricultural Market Committee which had jurisdiction over Rajam Sub-Taluk, might have been in existence since long and the requisite facilities in the notified market area were possibly available. Since there is no material on record, in this connection, we are not inclined to non-suit the plaintiff on this ground. The only question left for decision in the present appeal is as to whether there has to be a quid pro quo for the levy of fee in the sense that services and facilities ought to be available in the market area before a fee can be levied and if so the extent to which such services and amenities be available. In other words, it is to be decided as to whether the fee levied by a Market Committee in pursuance of power conferred on it under the relevant statute i.e., A.P. Agricultural (Produce & Livestock) Markets Act, 1966, is to commensurate with or in proportion to the services and facilities provided by the Market Committee to the traders and purchasers in the market area. To facilitate consideration of this question, it will be appropriate to notice relevant provisions of the Act.

Section 2(vi) defines market to be a market established under sub-section (3) of Section 4 and includes market yard and any building therein.

Sub-Section (vii) defines a Market Committee as a Committee constituted or reconstituted under the provisions of the Act. Notified market area according to sub-section (xii) of Section 2 means any area declared to be a market area by notification

under Section 4.

Section 4 of the Act contains provision for constitution of a Market Committee and for declaration of a notified market area. The Government is required to constitute by a notification a Market Committee for every notified area. The Market Committee so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property. It is the duty of the Market Committee to enforce the provisions of the Act and the rules and the bye-laws thereunder in the notified area. A Market Committee under sub-section (iii) is required to establish such number of markets as the Government may from time to time direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock. The Market Committee is required to provide such facilities in the market as may be specified by the Government from time to time by a general or special order.

Section 12 contains provision regarding levy of fee by the Market Committee. It is reproduced as under :

"12(1) : The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in notified market area [at such rate, not exceeding [two rupees] as may be specified in the bye-laws] for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration. "

Section 14 (1) provides for Market Committee Fund :

"All moneys received by a Market Committee shall be paid into a fund to be called 'The Market Committee Fund' and the said Fund shall be deposited, in a single banking account with the nearest Government treasury, or with the sanction of the Government, in a Bank. All expenditure incurred by the market committee under or for the purpose of this Act shall be defrayed out of the said Fund; and any surplus remaining after such expenditure shall be invested in such manner as may be prescribed."

Section 15 enumerates the purposes for which the Market Committee funds may be expended which are as under:

"Section 15 :

Subject to the provisions of Section 14, the Market Committee Fund shall be expended for all or any of the following purposes, namely :-

- (i) the acquisition of site for the market ;
- (ii) the establishment, maintenance and improvement of the market;
- (iii) the construction and maintenance of buildings necessary for the market and for the health, convenience and safety of the persons using the market and maintenance of buildings under the control of the market committee;

- (iv) the provision and maintenance of standard weights and measures;
- (v) the pay, pensions, leave allowances, gratuities compassionate allowances and contribution towards leave allowances, pensions or provident fund of officers and servants employed by the market committee;
- (vi) the payment of interest on loans that my raised fir purposes of the market and the provisions of a sinking fund in respect of such loans;
- (vii) the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock;
- (viii) schemes for the extension of cultural improvement of notified agricultural produce, livestock and products of livestock within the notified area, including the grant, subject to the approval of the Government, of financial aid to the schemes for such extension or improvement within such area, undertaken by other bodies or individuals;
- (ix) propaganda for the improvement of agriculture, livestock and products of livestock and thrift;
- (x) .
- (xi) The promotion of grading services;
- (xii) Measures for the preservation of foodgrains;
- (xii)-a..
- (xiii) such other purposes as may be specified by the Government by general of special order."

It is the case of the plaintiff that the Market Committee had failed to establish a market yard within the notified market area. The Committee had also to provide facilities like weighing of market produce/commodities, laying roads, providing storage space, platforms for grading and displaying of the products. In spite of passage of considerable time after its constitution, the defendant Committee had not made provision for these facilities and amenities in the market area. On account of these failures, the Market Committee was not entitled to levy any fee or cess on the members of the plaintiff Association. A fee or cess has an element of quid pro quo which was missing in the present case. Therefore, the levy of fee was illegal according to the plaintiff. The immediate provocation for filing of the suit was the two notices dated 25th May, 1982 and 8th December, 1982 issued by the Market Committee to the members of the plaintiff Association demanding market fee from the members. As already noted, the trial court accepted the case set up by the plaintiff. However, on appeal the learned District Judge, Srikakulam allowed the appeal and dismissed the suit filed by the plaintiff Association vide his judgment dated 9th October, 1990. The plaintiff preferred a Second Appeal against the judgment of the District Judge. The High Court vide its impugned judgment dated 20th February, 1992 accepted the appeal and decreed the suit of the plaintiff upholding the allegation of the plaintiff that the Market Committee had failed to provide necessary services and amenities in the notified market area and therefore it was not entitled to levy and collect the market fee.

So far as the factual aspect of availability of facilities and amenities in the market is concerned, the plaintiff did not lead any evidence at all. We are left with only the averments in the plaint

about the absence of facilities and amenities in the notified market area. There is nothing on record to support the plaint averments. On the other hand, apart from controverting the plea of the plaintiff regarding absence of facilities and amenities in the market area in the written statement and stating the necessary facts therein, the defendant led oral evidence on the point by examining a witness who was an employee of the Market Committee. The witness stated that after formation of the Market Committee, Government notified the market area as per Section 4(4) of the Act. He produced a copy of the notification as Exh. B.2. According to the witness, the members of the plaintiff Association made applications regarding business in their premises. The Committee issued licenses to all the traders to carry on business in their respective produce. All the traders were sending monthly statements of the business carried on by them from their respective premises. The traders had to pay a market fee at the rate of 1% on the basis of their turnover in the market. The market Committee had taken possession of a site comprising an area of 8.50 acres on 28th November, 1981 for establishment of regulated market yard at Rajam. Tenders had been called for construction of the market yard. The godowns, grain platforms, weighing sheds, grading platforms were in operation. Wide publicity was being given about the benefit of grading. The Market Committee also appointed supervisory staff to inspect the premises and to ensure that there was proper weighing of the commodities being traded in the market. The supervisors were, besides ensuring proper weights, verifying the proper payment to the ryots by the traders in respect of the goods sold by the ryots to the traders. The Market Committee was exhibiting price list in respect of notified agricultural produce on the notice board. He stated in the cross-examination that the market yard was already under construction. The witness was cross-examined at length but nothing could emerge to show that his statement about the services provided in the market was not correct.

Though according to the trial court and the High Court, the above facilities or amenities available in the notified market area were not sufficient so as to hold that facilities and amenities had been made available by the Market Committee in the notified market area, the learned District Judge, who ordered dismissal of the suit, accepted that such facilities had been made available in the notified market area and this entitled the committee to levy market fee in terms of Section 12 of the Act. The learned District Judge noted from the evidence of DW 1 that no suggestion had been put to him in the cross-examination that by 1982 the market yard was not having all the basic amenities. According to the learned District Judge, it was clear from the evidence of the said witness that amenities were being provided in the notified market area and the construction of building was in progress. Another fact which emerged from the evidence of DW 1 was that Market Committee was giving loans to the growers or ryots by way of cash, loans or by way of supply of manures on credit. Thus the Market Committee was discharging its functions.

The question is whether the market Committee was not entitled to levy, demand and collect market fee till all the facilities and amenities are fully and completely in place. The facilities already provided for in the notified market area in the present case have been enumerated hereinbefore. What remains to be considered is the extent to which services, facilities and amenities ought to be available in the market area before the market fee can be levied.

The validity of notifications declaring the market area and

establishing the market for notified agricultural produce and the legality of the levy of market fee came up for consideration before a Constitution bench of this Court in Lakhan Lal and others etc. vs. State of Bihar and others etc. [ (1968) 3 SCR 534 ]. This was a case under the Bihar Agricultural Produce Markets Act, 1960. On the question of levy and collection of the market fee, this court observed that the fee collected by the Market Committee was not excessive and it formed part of the Market Committee fund which was set apart and earmarked for the purposes of the Act such as elimination of unhealthy market practices, ensuring the correct weight and grading, dissemination of information regarding prices of agricultural produce etc. It was observed that there was sufficient quid pro quo for the levy.

Another Constitution bench judgment of this court in Kewal Krishan Puri and another vs. State of Punjab and others [ (1980) 1 SCC 416 ] while dealing with provisions of the Punjab Agricultural Produce Markets Act, 1961, held that element of quid pro quo must exist for the payer of the fee for the special services rendered. The bench noted the well recognized distinction between tax and fee. A fee is a charge for special service rendered to individuals by the governmental agency and therefore for levy of fee an element of quid pro quo for the services rendered was necessary. Service rendered did not mean any personal or domestic service. It meant service in relation to the transaction, property or the institution in respect of which the fee is paid. The court noted the literal meaning of the phrase quid pro quo as "one for the other" meaning thereby "you charge fee for the service." A significant observation contained in the said judgment which is relevant for our purposes is: "the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and evenly it must be established, with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realized is spent for the special benefit of its payers. Each case has to be judged from a reasonable and practical point of view for finding an element of quid pro quo".

In Rameshchandra Kachardas Porwal and others vs. State of Maharashtra and others [ (1981) 2 SCC 722 ], this court observed that a place ought not be notified as a market unless it is ready for use as a market with all reasonable facilities and conveniences. A view was expressed that a notification may be quashed if nothing had been done beyond publishing a notification. In cases where some facilities and conveniences have been provided for while some other remain to be provided, the court may instead of quashing the notification give appropriate time bound directions for providing necessary facilities and conveniences. The present is not a case of total absence of facilities and amenities in the market area. It has come in evidence that steps are being taken to improve and extend the services and the work was actually in progress in that behalf. In fact there is an admission on the part of the plaintiffs- association that after all the facilities were provided in the market they had started paying the market fee as levied by the Market Committee. This is an admission of the fact that the steps for providing all the requisite facilities which were on when the suit was filed, came to be completed during the pendency of the suit. Therefore, so far as the present case is concerned, the challenge to levy and collection of market fee does not appear to be having any force.

In Sreenivasa General Traders and others vs. State of Andhra Pradesh and others [ (1983) 4 SCC 353 ], the challenge was to the constitutional validity of the increase in the rate of

market fee levied by the market committees in the State of Andhra Pradesh under sub-section (1) of Section 12 of the Act. There was no challenge to levy of market fee, only the increase in rate of the fee was under challenge. The challenge was based on the argument that there was no quid pro quo for the increase in rate. We must note here that levy of market fee under Section 12(1) is correlated to the purposes mentioned in Section 15 for which the proceeds of the Market Committee Fund are to be expended. All the purposes are beneficial to the growers and the traders. There was no material to show that the market committees were rendering no service or were incurring unauthorized expenditure. The court also referred to earlier decisions and discussed the same.

Regarding Kewal Krishan Puri's case (Supra), it was observed that the case did not lay down any legal principle of general applicability. The fact was that the Market Committees in Punjab were making money by way of collection of market fee and had huge surplus funds. The surplus funds were being diverted by the State Government to purposes other than those under the statute. Though the funds were being utilized for laudable public purposes, yet the utilization was outside the purpose spelled out in the statute. It was observed :

"The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is of payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered (sic or) expected is of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered."

While dealing with the question of difference between a tax and a fee, the Court observed :

"There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. 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 service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realized that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case was not drawn to Article 226 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not the consolidated fund. It is also increasingly realized that the element of quid pro quo in the strict sense is not always a sine qua non for a fee."

On the question of increase in market fee, the Court had to say :

"In the present case, there is no allegation anywhere by any of the petitioners, nor was any contention advanced that there was any unauthorized expenditure by any of the market committees for purposes not authorized by the Act. There is only a bare assertion on their part that there are surplus funds available with the market committees and therefore the increase in the rate of market fee from 50 paise per hundred rupees to rupee one was without lawful justification. From the material on record it is quite apparent that the income from the market fee derived by some of the market committees is not sufficient to meet the expenditure incurred by them. That apart, when the petitioners concede that they do not challenge the levy of market fee at 50 paise per hundred rupees in the year 1972, there can be no basis for challenging the increase in the rate of market fee from 50 paise to rupee one in 1978. Surely the cost of rendering services has correspondingly increased with the fall in the value of rupees. In the economic sense, 50 paise of 1972 is certainly equivalent to at least rupee one of today, if not more."

There is no material placed on record by the petitioners to show that the market committees are rendering no service. Under the scheme of the Act, there are certain obligatory duties of a market committee. Sub-section (3) of Section 4 provides that every market committee shall establish in the notified area such number of markets as the Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide, such facilities in the market as may be specified by the Government from time to time by a general or special order. Chapter V provides for various regulatory measures in Rules 54 to 73 for the control of a market in that correct weighments

would be secured, storage facilities provided and equal powers of bargaining assured so that the growers may bring their agricultural produce, livestock and products of livestock to the market and sell them at a reasonable price. There was not a whisper during the course of the arguments that the market committees were not providing the services as enjoined by Rules 54 to 73."

Another important aspect dealt with in this case is about when the services are to be completed. The following observations are pertinent :

"It will be noticed that these facilities are to be provided by the market committees in course of time 'as and when funds permit'. It is needless to stress that the question of providing these facilities would depend on the financial capacity of each market committee. That would depend on whether there are sufficient funds available at its disposal in the market committee fund."

The observations noted above in Sreenivasa's case have simplified our task to a great extent. It follows that while quid pro quo between levy of fee and facilities provided in the notified market area is necessary, exactitude in such matters is neither required nor possible. The traditional view about actual quid pro quo has undergone a sea change. The extent of service/amenities cannot have correlation with the fee levied. Secondly, the market committees can continue their efforts for providing the amenities depending on availability of funds with them. It is not that all the required services must be in place before a fee can be levied.

It was in the case of Kewal Krishan Puri (Supra) that this Court said that for a valid levy of market fee on the agricultural produce bought or sold by the licensees in a notified market area, the amount of fee realized must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose. However, gradually the concept of expending a good and substantial portion of the market fee collected by the market committee has been toned down. Most of the relevant statutes have provision for creation of Market Committee Funds. All market fee which is collected goes into the Fund. The statutes also contain provisions as to how the Fund is to be utilized. The powers of market committees to utilize the Funds are thus circumscribed by the statutes. The Funds are utilized only for the facilities in the markets and for the benefit of the members, producers, growers and traders. When the Funds are in any case to be utilized for specified purposes, the observation in Puri's case to the effect that a good and substantial portion of it must be shown to be expended, does not have much significance. In Sreenivasa Traders and other later cases, it has been accepted that the market committees may keep on extending the services and facilities in the notified market area as per availability of funds with them.

In the case in hand, the levy of market fee by the market Committee was challenged only on the ground that no basic amenities or services were provided in the notified market area

and therefore the Market Committee had no right to levy, demand and collect the market fee. We have noted from the evidence on record that the market Committee had made provision for certain services and facilities in the notified market area and efforts were being made for extending the services. The market committee had recently come into existence and completion of all the intended services and facilities takes time. It has clearly emerged from the evidence of DW 1 that steps were being taken for extending the services and facilities in the market area. The plaintiff has led no evidence to contradict the defendant's evidence. Whether particular services and amenities are available at a given place and the extent thereof are questions of fact which require to be proved or demolished on basis of evidence to be led by the parties concerned. Since the plaintiff has not led any evidence whether oral or documentary in support of its case, the Court is left with no option but to accept the evidence of defendant which shows that some services and facilities in the notified market area were already available while arrangements were being made for various other facilities and services. The foundation for the case set up by the plaintiff is not available on record. The law is well settled that though quid pro quo is required in relation to a fee which is charged and collected by a market committee, the quid pro quo cannot be in exact proportion to the fee levied. Mathematical proportions are not possible in such matters. We have accepted that some services and amenities were already provided for in the notified market area which fully justified the levy of market fee. We are thus unable to agree with the finding of the High Court that the market committee had failed to provide any services or amenities in the notified market area. The findings of the High Court are accordingly set aside. The appeal is allowed. As a result of this, the suit filed by the plaintiff, respondent herein, shall stand dismissed. There will be no order as to costs.