PETITIONER:
RAMESHCHANDRA KACHARDAS PORWAL & ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS. ETC.

DATE OF JUDGMENT17/02/1981

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
PATHAK, R.S.
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 1127 1981 SCR (2) 866
1981 SCC (2) 722 1981 SCALE (1)334
CITATOR INFO :
R 1985 SC 679 (33)
RF 1986 SC 515 (76)
R 1987 SC1802 (10)

ACT:
Constitution of India 1950, Article 91(1)(g)-Maharashtra Agricultural Produce Marketing (Regulation) Act 1963, SS 5 and 6 & Maharashtra Agricultural Produce Marketing (Regulation) Rules 1963, Rule 5-Karnataka Agricultural Produce Marketing (Regulation) Act 1966, SS. 8, 10 and 11 & Bihar Agricultural Produce Marketing Act 1960 Sections 5, 15-Trading in specified agricultural produce-State Government-Setting up of new market area-Whether valid.

Notification declaring that traditional trading activity in old market area be shifted to new market-Whether permissible-Infringement of fundamental right to carry on trade-Whether arises.

Administrative law-Principles of natural justice-Market yard disestablished at one place and established at another place-Duty to invite and hear objections-Whether arises.

HEADNOTE:
The Maharashtra Agricultural Produce Marketing (Regulation) Act 1963 provides for the regulation of the marketing of agricultural produce in market areas to be established therefor in the State, Market Committees to be constituted for purposes connected with such markets, establishment of Market Fund for purposes of the Market Committees, and for purposes connected with these matters. Section 3 empowers the Government by a notification to be published in the Official Gazette, to declare its intention of regulating the marketing of such agricultural produce in such areas as may be specified and section 4 provides that the marketing of the agricultural produce shall be regulated under the Act in the area specified in the notification. Section(1) provides a principal market for every market area and one or more subsidiary markets, and section 5(2) empowers the Director to establish the principal market for the marketing of specified agricultural produce. Section 6 provides that no person shall use any place in the market

area for the marketing of the declared agricultural produce or operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce, on and after the date on which the declaration under section 4(1) is made. Section 6(2) provides that section 6(1) shall not apply to sales by retail, sales by an agriculturist who sells his own produce; and sales by a person to another for the latter's personal consumption.

The Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1963 were promulgated pursuant to the power conferred by section 60 of the Act. Rule 5 provides that no person shall market any declared agricultural produce in any place in a market area other than the principal market or subsidiary
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market established therein. The proviso to the rule enables the Director of Marketing to authorise a Market Committee to permit a trader or commission agent to market declared agricultural produce or to permit any other market functionary to operate at any place within the market area as may be mentioned by the Market Committee in the licence granted to such trader.

The petitioners who were wholesale traders in onions and potatoes in their writ petitions to the Supreme Court assailed the notices requiring them to carry on business in regulated agricultural produce in the market yard at the specified areas of the State, and at no other place, contending that: (1) the 1963 Act, did not invest the Director of Marketing or the Market Committee with any power to compel a trader to transfer this activity from a previously existing market to a principal or subsidiary market established under section 5 of the Act (2) Rule 5 was inconsistent with section 6 and therefore ultra vires. (3) The Bombay Agricultural Produce Markets Act, 1939 and the Agricultural Produce Marketing Acts of other States such as Karnataka provided or indicated by an express provision that once a market was established it was not permissible to market or trade outside the market and that the absence of such an express provision in the 1963 Act showed that no such ban was contemplated by the Act. (4) The transactions between trader and trader and transactions by which the agricultural produce was imported into the market area from outside the market areas were outside the purview of the Act and if section 5 and rule 5 were intended to cover such transactions also they were invalid. (5) The statue itself imposed and provided for stringent supervision and control, sufficient to regulate transactions between traders and traders, that it was superfluous to insist that such transactions do take place in the market only. (6) Section 6 of the Act made a distinction between (a) the use of any place in the market area for the marketing of the declared agricultural produce, and (b) the operation in the market areas or in any market therein as a trader, commission agent, broker etc. in relation to the marketing of agricultural produce and that the distinction was in reality a distinction between a sale by a producer to a trader and a subsequent sale by a trader to a trader, and consequently the ban imposed by Rule 5 applied only to a sale of the agricultural produce by a producer to a trader. (7) Section 13(1A) which declared the area comprising greater Bombay a market area for the purposes of the Act was invalid as it was wholly unreasonable to constitute such a large area into a single market area. (8) when a market yard was

disestablished at one place and established at another place it was the duty of the concerned authority to invite and hear objections and failing to do so, was a violation of the principles of natural justice and the notification establishing the market yard elsewhere was bad.

Dismissing the writ petitions and appeals:-

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HELD: 1. (i) The power conferred by S. 5 of the Act to establish a principal market or a subsidiary market carries with it the power to disestablish such market. Section 5 of the Act, read with sections 14 and 21 of the Maharashtra General Clauses Act vest enough power in the Director to close an existing market and establish it elsewhere. The repealed Act of 1939 also empowered the State Government to declare any market area to be a principal market yard for the area. The power to issue notifications, orders etc. includes

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the power to exercise in like manner to add to, amend, vary or rescind any notification, order, rule etc. Any other construction would frustrate the object of the legislation. [880 A-C, 881 C, D]

Bapubhai Ratanchand Shah v. State of Bombay LVII 1955 Bom. L.R. p. 892, 903-904, approved.

(ii) Rule 5 is not ultra vires. If for the more effective regulation of marketing it is thought that all marketing operations in respect of declared agricultural produce should be carried on only in the principal and subsidiary markets established under the Act, it cannot be said that a rule made for that purpose is beyond the competence of the rule making authority under the Act. [881G, 882C]

(iii) The submission that all regulatory measures contemplated by the Act and the Rules may be enforced equally effectively wherever business in agricultural produce is carried on in the market area outside the principal and subsidiary markets as within the principal and subsidiary markets is without force. If that is done, the regulation will very soon be reduced to a farce. The Market Committee will be forced to employ an unduly large number of officers. The producer's interest will not be properly served because a producer will not be able to deal face to face with several traders and would have little chance of obtaining the best price for his produce. This cannot happen if he is persuaded to take his produce to the place of business of an individual trader outside the principal or subsidiary market. There is a greater possibility of abuse and greater likelihood of the object of the Act being frustrated. Fair price to the agriculturist will soon be a mirage and the evil sought to be prevented will persist. [882 E-H]

Kewal Krishan Puri & Anr. v. State of Punjab & Ors. [1979] 3 S.C.R. p. 1217, 1247, referred to.

2. There can be no question of any inconsistency between section 6 and rule 5. Section 6 is applicable to both the situations before and after the establishment of markets, and is expressly declared to be subject to the rules providing for regulating the marketing of agricultural produce in the market area by stipulating that the marketing shall be carried on in the market established in the market area. [883F, D-E]

3. The rule prescribing that no marketing operation in any declared agricultural produce shall be carried on outside the principal or subsidiary markets is consistent and in consonance with the scheme of the Act and is within

the competence of the rule making authority and is reasonable. Absence of an express provision in the Act to the effect that once a market is established it was not permissible to market or trade in agricultural produce outside the market itself merely means that greater latitude is given to the rule making authority to introduce regulation of marketing by stages and to ban all marketing activity outside the market. This cannot lead to the inference that the rule making authority has no power to make a rule banning marketing activity
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outside the market once the market is established even when such a ban is found to be necessary. [884 B, 883 H-884 A]

4. (i) The assumption that the Act was conceived in the interest of the agriculturists only and intended for their sole benefit is not well founded. One of the principal objects sought to be achieved by the Act is the securing of a fair price to the agriculturist for his produce by the elimination of middlemen and other detracting factors. But that is not the only object. The Act is intended to regulate marketing of agricultural and certain other produce. The marketing of agricultural produce is not confined to the first transaction of sale by the producer to the trader but must necessarily include all subsequent transactions in the course of the movement of the commodity into the ultimate hands of the consumer so long, of course, as the commodity retains its original character as agricultural produce. While middlemen are sought to be eliminated, it is wrong to view the Act as one aimed at legitimate and genuine traders.[884D-F]

(ii) Promotion of grading, standardisation of agricultural produce, weighment, the provision for settlement of disputes arising out of transactions connected with the marketing of agricultural produce and ancillary matters are as much to the benefit of the producer as the consumer. Clearly therefore the regulation of marketing contemplated by the Act involves benefits to the traders too in a large way. Regulation of marketing of agricultural produce, if confined to the sales by producers within the marketing area to traders, will very soon lead to circumvention in the guise of sales by traders to traders or import of agricultural produce from outside the market area to within the market area. [884G-885B]

5. (i) It is not correct to say that the statute itself imposed and provided for such stringent supervision, and control sufficient and more, to regulate transactions between traders and traders, that it was superfluous to insist that such transactions do take place in the market only. The other supervisory measures in the Act cannot be said to be sufficient to make it unnecessary for the traders to move their places of business into the market. No amount of supervision may be as effective as when all the transactions take place within the market. Nor is effective supervision at all possible if traders are dispersed all over the market area. The rendering of services to the traders also will be far easier. Therefore, localising marketing is helpful and necessary for regulation and control and for providing facilities. [887E-888A]

(ii) The requirement that the locus of transactions of sale and purchase of agricultural produce, including those between trade and trader, should be in the market cannot be said to be harsh or an excessive restriction on the Fundamental Right to carry on trade. [888B]

6. The proviso to rule 5 speaks of operating at any place within the market area by a trader, commission agent

or other market functionary after obtaining a licence while the main provision refers to the marketing of declared agricultural produce at any place in the market area. It cannot be contended that the proviso is unrelated to the main provision. According
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to ordinary canons of construction the proper function of a proviso is to accept and deal with a case which would otherwise fall within the general language of the main enactment. [888F-G]

7. There was nothing unreal and unreasonable in establishing a single market for a large area. It had become imperative in the public interest that the markets should be shifted from their former place to the new area. The present village was chosen because it was free from congestion, conveniently located near another trunk road. A railway line linking with both the Western Railway and the Central Railway and so on. There is, therefore, nothing unreasonable in the statutory declaration of Greater Bombay and Turbhe Village as a market area; nor in the establishment of a single market in Turbhe Village for the entire market area. [889B-E]

8. Where a market yard was disestablished at one place and established at another place, no exercise of a judicial or quasi-judicial function is involved. All that is involved is the declaration by a notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration in this context is an act legislative in character and does not obligate the observance of the rules of natural justice. [891C-F]

Baits v. Lord Hailsham (1972) 1 WLR 1373 & Tulsipur Sugar Co. v. Notified Area Committee [1980] 2 SCR 1111 referred to.

9. The seeming confusion in the large number of notifications issued by the Government from time to time was not the result of any arbitrary or erratic action on the part of the Government but was the result of a desire to accommodate the traders as much as possible. The old markets had existed from ancient days and it had become necessary to establish modern market yards with conveniences and facilities. When this was sought to be done there were representations by the traders and the Government thought that it was advisable to give the traders sufficient time to enable them to prepare themselves to move into the new market yards. The notifications establishing new market yards were therefore, cancelled and the old markets were allowed to function for sometime. Later when the time was thought to be ripe, notifications establishing new market yards were once again issued. [893 F, D-E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 692,937-1063, 1111-1115, 1558/80, 5441-62, 6217/80 and 6529-6551/80.

(Under Article 32 of the Constitution.)

AND

Civil Appeal Nos. 3297 & 2689 of 1979.

Appeals by special leave from the Judgment and Orders dated 25-5-1979 & 22-1-1979 of the Karnataka High Court in Regular Second Appeal No. 551/77 & W.P. Nos. 551/77 and 6555/78.

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WITH

Civil Appeal No. 1895 of 1979.

Appeal by special leave from the Judgment and Order dated 22-1-1979 of the Karnataka High Court in W.P. No. 35/76.

AND

Civil Appeal No. 1507 of 1980.

Appeal by Special Leave from the Judgment and Order dated 2-5-1980 of the Patna High Court in Civil Writ Jurisdiction Case No. 394 of 1980.

AND

Civil Appeal No. 1715-1716 of 1980.

Appeals by special from the Judgements and Orders dated 30-8-1979 and 2-5-1980 of the Patna High Court in C.W.J.C. Nos. 5136/78 & 840/80.

S. V. Gupte, V. M. Tarkunde, Soli J. Sorabjee, K. K. Venugopal, K. N. Bhatt and T. S. Sundrajan for the Petitioners in WP Nos. 692, 937-1063 and 1111-1115/80.

Dr. Y. S. Chitale, R. P. Bhatt and A. K. Goel for the Petitioner in W. P. No. 1558/80.

S. G. Sundraswamy, Ravindran, Vijay Kumar Verma and K. N. Bhat for the Appellant in CA Nos. 1895/79 & 2689/79.

V. M. Tarkunde, K. R. Nagaraja, P. K. Rao and Aloke Bhattacharya for the Appellant in CA No. 3297/79.

Soli J. Sorabjee, B. P. Maheshwari, Suresh Sethi and Miss Asha Jain for the Appellant in CA No. 1507/80.

Lal Narain Sinha, attorney General, O. P. Rana and M. N. Shroff for Respondent No. 1 in WP Nos. 692, 937-1063 and 1111-1115/80.

A. K. Goyal for the Petitioner in WP 5441-62 of 1980.

K. K. Singhvi, A. K. Gupta, Brij Bhushan and N. P. Mahindru for RR-3 in WP 692, 937-1063, 1111-1115/80 and RR in WP No. 1558/80.

Lal Narain Sinha, Attorney General and N. Nettar for RR-1 in CA 1895 and 2689/79.

B. Keshava Iyengar, Advocate General and N. Nettar for State of Karnataka in CA 1895 & 2689/79.

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H. B. Datar, Miss Madhu Moolchandani and R. B. Datar for RR-2 in CA 1895 & 2689/79.

K. K. Singhvi, N. P. Mahindru and A. K. Gupta for RR No. 3 in WP Nos. 5441-62/80.

S. S. Javali, B. P. Singh, Ranjit Kumar and Ravi Prakash for Intervener in CA Nos. 1895/79.

Lal Narain Sinha, Attorney General, R. B. Mehto, B. P. Sinha and Naresh K. Sharma for the Intervener in WP No. 692/80.

Lal Narain Sinha, Attorney General, R. B. Mehto, B. P. Singh Ravi Prakash, Ranjit Kumar and Naresh K. Sharma for RR 3-5 in CA 1507/80.

K. G. Bhagat and D. Goburdhan for State of Bihar in CA 1507/80.

S. S. Ray and M. P. Jha for the Appellant in CA 1715-1716/80.

Lal Narain Sinha, Attorney General, R. B. Mehto, B. P. Singh. Ravi Prakash, Ranjit Kumar, Naresh K. Sharma and J. S. Rathore for RR 3-5 in CA Nos. 1715-1716/80.

V. M. Tarkunde, K. R. Nagaraja, P. K. Rao and Aloke Bhattacharya for Petitioner in WP 6217/80, 6529-6551/80.

H. B. Datar, Miss Madhu Moolchandani and R. B. Dattar for the Respondent (Market Committee).

H. B. Datar and N. Nettar for RR (State of Karnataka).

K. G. Bhagat and D. Goburdhan for the State of Bihar in CA 1715-1716/80.

V. M. Tarkunde, P. K. Rao, Aloke Bhattacharya and K. R. Nagaraja for the Petitioner in WP 6529-51/80.

N. Nettar for the Respondent in WP No. 6529-51/80.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. Reluctant traders, unwilling to move their places of business into the markets or market yards, as they are differently called in the States of Maharashtra, Bihar and Karnataka, set up by respective Market Committees under various State Agricultural Produce Marketing Acts, offer their resistance through these Writ Petitions and Civil Appeals. We will first recite the facts in one of the cases (Writ Petition No. 692 of 1980) and thereafter consider the questions raised in that as well as the other cases. The Petitioner in Writ Peti-
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tion No. 692 of 1980 is a trader presently carrying on business in 'Gur' and other commodities at 1221 Bhavani Peth, Pune. In exercise of the powers conferred by Sec. 4A(2) of the Bombay Agricultural Produce Markets Act, 1939, by a notification dated July 6, 1961, the locality known as Bhavanipeth and Nanapeth of the Pune City was declared as one of the principal market yards for the market area consisting of Pune City and Haveli Talukas. The market area had been so declared by a notification dated May 1, 1957, pursuant to a declaration that it was intended to regulate the purchase and sale of 'gur' in the market area. The Bombay Agricultural Produce Markets Act, 1939, was repealed and replaced by the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. By Sec. 64 of the Act the notifications previously issued etc. under the provisions of the repealed Act were kept alive for the purposes of the new Act. On March 23, 1971, the present Market Committee known as Krishi Utpanna Bazar Samiti, Pune, was constituted under Sec. 4(1) of the 1963 Act. On April 21, 1971, the Director of Agricultural Marketing published a notification declaring his intention to regulate marketing of a large number of commodities in the market area of Haveli and Pune City Taluks. On October 4, 1975, the Director of Agricultural Marketing, Maharashtra State, exercising his powers under Sec. 5(2) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, declared the locality known as Market Yard Gultekadi as the principal market for the market area for the marketing of various commodities specified in the notification. Thereafter on October 8, 1975, a Circular was issued to all Adatis, merchants, and licence holders, particularly wholesale dealers dealing in Gur, Halad, Dhania, etc. in the vicinity of Bhavanipeth-Nanapeth informing them that Bhavanipeth-Nanapeth will cease to be a market from the midnight of October 13, 1975 and that the market yard Gultekadi had been declared as the principal market for the market area. The circular went on to say that anyone carrying on business anywhere except Gultekadi was liable to be prosecuted. The result of the notification dated October 4, 1975, and the Circular dated October 8, 1975 was that it was not permissible for anyone to carry on trade in any of the notified agricultural commodities outside the Gultekadi market yard on and after October 14, 1975. It meant that traders like the petitioner who had for generations been carrying on business in these commodities in Bhavanipeth-Nanapeth had perforce to move into Gultekadi market yard if they wanted to stay in the business. Consequent upon representations made by the Pune Merchants Chamber and the interim order in a Writ petition filed in the Bombay High Court by the Chamber the date notified for the commencement of the functioning of the Principal Market

in Gulekadi
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was postponed from time to time, Finally, by a public notice dated March 6, 1980, all wholesale traders, commission agents and others dealing in agricultural produce in Bhavanipeth-Nanapeth and surrounding areas were informed that with effect form March 17, 1980, wholesale trade in the regulated agricultural produce could be carried on in the Gultekadi market yard only. The petitioner seeks to resist the situation thus sought to be forced upon him and challenges the notification dated October 4, 1975, and the consequential notices requiring him to carry on business in regulated agricultural produce in the Gultekadi market yard and at no other place. Similarly, in Writ Petition Nos. 937 to 1063 of 1980 and Writ Petition Nos. 1111 to 1115 of 1980, 132 other traders who are presently carrying on business in the existing market of Bhavanipeth-Nanapeth question the notification and the notices following the notification.

In Writ Petition Nos. 1558 of 1980 and 5441 to 5462 of 1980 the petitioners are wholesale traders in onions and potatoes who carry on their business in the Maulana Azad Road Market in Bombay. They complain against a notification dated December 5, 1978 by which it was declared that after January 26, 1979, marketing of potatoes and onions shall be carried on at the Principal Market at Turbhe and at no other place. It appears that initially, for the market area comprising Greater Bombay and Turbhe Village in Thana Taluka, the newly established market at Turbhe was declared as the Principal Market and the existing markets at Maulana Azad Road and Mahatma Phule Mandai were declared subsidiary markets. This was by a notification dated January 15, 1977. Later by the impugned notification dated December 5, 1978, the subsidiary markets were abolished and the market at Turbhe alone was declared as the Principal Market for the area comprising Greater Bombay and Turbhe village.

It was argued on behalf of the petitioners that the Maharashtra Agricultural Produce Marketing (Regulation) Act 1963 did not invest the Director of Marketing or the Market Committee with any power to compel a trader to transfer his activity from a previously existing market to a principal or subsidiary market established under Sec. 5 of the Act. There was no provision in the Act by which a trader could be compelled to market declared agricultural produce in the principal or subsidiary market established under Sec. 5 and in no other place. This was a feature which distinguished it from the Bombay Act of 1939 and the Agricultural Produce Marketing Acts of some other States. Rule 5 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967, which purported to provide that no person shall market any declared agricultural produce
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in any place in a market area other than the Principal Market or subsidiary market established therein was ultra vires. It was also submitted that once a principal or subsidiary market was established at one place there was no provision in the Act which enabled the principal or subsidiary market to be transferred to another place. In any event it was urged that the notification was an unreasonable restriction on the right of the petitioners to carry on their trade. It was also submitted. and this appeared to be the main thrust of the argument of most of the counsel for the various petitioners that the Act did not cover transactions between trader and trader and transactions by which the agricultural produce was imported into the market area from outside the market area. Secs. 5 and 6 and Rules 5

and 6 had to be so read-the language permitted such a construction-as to make a distinction between a sale of agricultural produce by a producer to a trader which had to be within a market and a subsequent sale by a trader to a trader which could be anywhere in the market area. It was submitted that if Sections 5 and 6 and Rules 5 and 6 were to be construed as compelling transactions between trader and trader also to take place within a market they were invalid. In the petitions of the Bombay merchants it was further urged that Sec. 13(1A) which was a special provision declaring Greater Bombay and Turbhe village a Market Area was unreasonable and invalid.

For a proper appreciation of the submissions made, it is necessary to refer to some of the relevant provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act 1963 and the Maharashtra Agricultural Produce Marketing (Regulation) Rules 1967. The long title of the Act is "An Act to regulate the marketing of agricultural and certain other produce in market areas and markets to be established therefor in the State; to confer powers upon Market Committees to be constituted in connection with or acting for purposes connected with such markets; to establish Market Fund for purposes of the Market Committees and to provide for purposes connected with the matters aforesaid". Sec. 2(1)(h) defines "market" as meaning "any principal market established for the purposes of this Act and also a subsidiary market". Sec. 2(1)(i) defines "market area" as meaning "an area specified in a declaration made under Sec. 4". Sec. 2(1)(o) defines "retail sale" as meaning "in relation to any agricultural produce, sale of that produce not exceeding such quantity as a Market Committee may by bye-laws determine to be a retail sale". Sec. 2(1)(t) defines "trader" as meaning "a person who buys or sells agricultural produce, as a principal or as duly authorised agent of one or more persons". Sec. 3 empowers the Government to declare its intention of regulating the marketing of such agricultural produce, in such area as may be
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specified in a notification to be published in the official Gazette. Objections or suggestions which may be received by the State Government within a specified period are to be considered by the State Government. Thereafter, Sec. 4 provides, the State Government may declare, by another notification that the marketing of the agricultural produce specified in the notification. The area specified shall be the market area. Sec. 5(1) provides that there shall be a principal market for every market area and there may also be one of more subsidiary markets. Sec 5(2) empowers the Director, by notification, to establish any place in any market area to be the principal market for the marking of agricultural produce specified in the notification. Subsidiary markets may also be established likewise. Sec. 5 is important and it may, therefore, be extracted here:

> "5(1) For every market area, there shall be established a principal market, and there may be established one or more subsidiary markets.
>
> (2) The Director shall, as soon as possible after the issue of a notification under sub-section (1) of section 4, by a notification in the Official Gazette establish any place (including any structure, enclosure, open place or locality) in any market area to be the principal market for the marketing of the agricultural produce specified in that notification; and may by the same notification, or by like

notification, establish in any other like places in the market area, subsidiary markets for the marketing of such agricultural produce".

Sec. 6 provides that, no person shall use any place in the market area for the marketing of the declared agricultural produce or operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce, on and after the date on which the declaration under Sec. 4(1) is made, except in conformity with the terms and conditions of a licence granted by the Market Committee or by the Director when a Market Committee has not yet started functioning. It is important to mention here that Sec. 6(1) is expressly made subject to the rules providing for regulating the marketing of agricultural produce in any place in the market area. Sec. 6(2) also provides that Sec. 6(1) shall not apply to sales by retail; sales by an agriculturist who sells his own produce; and sales

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by a person to another for the latter's personal consumption. Sec. 6 also may be extracted here:

"(6) (1) Subject to the provisions of this section and of the rules providing for regulating the marketing of agricultural produce in any place in the market area, no person shall, on and after the date on which the declaration is made under sub-section (1) of section 4, without, or otherwise than in conformity with the terms and conditions of, a licence (granted by the Director when a Market Committee has not yet started functioning; and in any other case, by the Market Committee) in this behalf,-

(a) use any place in the market area for the marketing of the declared agricultural produce, or

(b) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce.

(2) Nothing in sub-section (1) shall apply to sales by retail; sales by an agriculturist who sells his own produce; nor to sales by a person where he himself, sells to another who buys for his personal consumption or the consumption of any member of his family."

Sec. 7 empowers the Market Committee, subject to rules made in that behalf and after making such enquiry as it thinks fit to grant or renew a licence for the use of any place in the market area for marketing of the agricultural produce or for operating therein as a trader etc. The Market Committee may refuse to grant or renew any licence for reasons to be recorded in writing. Sec. 8 enables the Market Committee to suspend or cancel any licence. Sec. 10 makes provision for the constitution of a Board by the Market Committee for the settlement of disputes between buyers and sellers or their agents inclusive of disputes relating to quality, weight, payment etc. Sec. 11 provides for the establishment of a Market Committee by the State Government. Sections 12 and 13 deal with the incorporation and constitution of Market Committees. Sec. 13(1A) makes special provision for Greater Bombay and Turbhe village. The area comprising Greater Bombay and Turbhe village is deemed to be a market area for the purposes of the Act and a Market Committee is constituted with a different composition from other Market

Committees.
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Sec. 29 enumerates the powers and duties of Market Committees. It is the duty of a Market Committee to implement the provisions of the Act, the rules and bye-laws made thereunder in the market area, to provide such facilities for marketing of agricultural produce therein as the Director may from time to time direct and to do such other acts as may be required in relation to the superintendence, direction and control of markets or for regulating marketing of agricultural produce in any place in the market area. The Market Committee is also empowered to maintain and manage the market, including admissions to, and conditions for use of, markets; to regulate marketing of agricultural produce in the market area of the market; to establish centres for the collection of such agricultural produce in the market area as the State Government may notify from time to time; to collect, maintain, disseminate and supply information in respect of production, sale, storage, processing, prices and movement of agricultural produce (including information relating to crops, statistics and marketing intelligence); to take all possible steps to prevent adulteration; to promote grading and standardization of agricultural produce; and, to enforce the provisions of the Act, rules and bye-laws and conditions of licences. Sec. 10A enables the Market Committee to open Collection Centres for marketing of notified produce. Any person wishing to sell any notified produce in a market area may tender such produce at the collection centre. Sec. 31 makes it competent to a Market Committee to levy and collect fees from every purchaser of agricultural produce marketed in the market area. Sec. 35 enables a Market Committee to employ a Secretary and such other officers and servants as may be necessary for the management of the market, for the collection, maintenance, dissemination and supply of information relating to crops, statistics and marketing intelligence and for carrying out its duties under the Act. Sec. 36 provides for the creation of Market Fund and Sec. 37 enumerates the purposes for which the Market Fund may be expended. Among those purposes are the acquisition of a site or sites for the market, maintenance, development and improvement of the market, construction of, and repairs to buildings necessary for the purposes of such market and the health, convenience and safety of persons using it, maintenance of standard weights and measures, collection and dissemination of information, propaganda for agricultural improvement and orderly marketing etc. etc. Section 60 makes a contravention of the provisions of Section 6(1) punishable. Section 60 empowers the State Government to make rules for carrying into effect the purposes of the Act.

Pursuant to the power conferred by Sec. 60 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, rules have
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been made. Rule 5 prescribes that no person shall market any declared agricultural produce in any place in a market area other than principal market or subsidiary market established therein. The proviso to Rule 5 enables the Direct of Marketing to authorise a Market Committee to permit a trader or Commission Agent to market declared agricultural produce or to permit any other market functionary to operate at any place within the market area as may be mentioned by the Market Committee in the licence granted to such trader. This is obviously, a reserve power vested in the Market Committee to be exercised but in exceptional cases, and, on an express

authorisation from the Director, subject to the terms and conditions imposed by him. Rule 6 prescribes the procedure by which any person desiring to use any place in a market area for marketing of any declared agricultural produce or for operating therein as a trader, commission agent or broker may obtain a licence. He is required to make an application in the prescribed form and submit with the application a solvency certificate, cash security or bank guarantee and a character certificate. The Director or the Market Committee as the case may be, may grant or renew a licence, after satisfying himself or itself about the solvency certificate, cash security or bank guarantee, the capacity of the applicant for providing adequate equipment for smooth conduct of the business and the conduct of the applicant. If the licence is refused, reasons are required to be recorded in writing. Rule 7 deals with the grant of licences to warehousemen, measurers, surveyors, processors, weighmen, etc. Rule 8(2) bans the employment of a broker in relation to marketing of any declared agricultural produce except in relation to marketing of such produce by a trader with another trader. Rule 12 stipulates that every declared agricultural produce shall be sold by public auction. Rule 15 requires every declared agricultural produce to be weighed by licensed weighmen or measurer. Rule 16, 17 and 18 deal with the preparation of records in connection with the transactions of purchase of declared agricultural produce. Rule 20 obliges every purchaser of declared agricultural produce to make payment to the seller or his commission agent immediately after the sale on the same day. Rule 21 prohibits the adulteration of declared agricultural produce in the market area or market. Rule 22 provides for grading and standardization of agricultural produce. Rule 25 provides for inspection of weights and measures. Rule 27 requires the Market Committee to publish a daily list of prices of the different varieties and grades of declared agricultural produce marketed in the market area. There are several other rules providing for the constitution of Market Committees, preparation of their budgets, discharge of their other duties etc., but for our purpose it may not be necessary to refer to them.

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We have seen that Sec. 5 authorises the establishment of a principal market and one or more subsidiary markets. Quite obviously the power to establish a principal market or a subsidiary market carries with it the power to disestablish (if such an expression may be used) such market. Quite obviously again, the power given by Sec. 5 to establish a principal or subsidiary market may be exercised from time to time. These follow from Sections 14 and 21 of the Maharashtra General Clauses Act. So, Sec. 5 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, read with Sections 14 and 21 of the Maharashtra General Clauses Act vest enough power in the Director to close an existing market and establish it elsewhere. Sec. 4A(2) of the Bombay Agricultural Produce Markets Act, 1939, (the Act which preceded the Maharashtra Agricultural Produce Marketing Regulation) Act, empowered the State Government to declare any enclosure, building or locality in any market area to be a principal market yard for the area and other enclosures, buildings or localities to be one or more sub-market yards for the area. There was a proviso to Sec. 4A(2) which provided that out of the enclosures, buildings or localities declared to be market yards before the commencement of the Bombay Agricultural Produce Markets (Amendment) Act 1954, one shall be declared to be the

principal market yard for the market area and others, if any, to be one or more sub-market yards for the area Before the 1954 amendment Act Vakhar Bagh was the market yard for a certain market area. In October 1954, (after the 1954 amendment came into force) Vakhar Bagh was declared as the principal market yard for the market area under the proviso to S. 4A(2) of the Act. A few days later another notification was issued declaring some other place as the principal market yard for the market area. Vakhar Bagh was not even declared as a sub-market yard. The effect was that Vakhar Bagh Market Yard ceased to be a market yard. This was questioned in Bapubhai Ratanchand Shah v. The State of Bombay. The argument was that Vakhar Bagh had necessarily to be declared as a Principal Market Yard since there was no sub-market yard under the proviso to Sec. 4A(2) and that once having been so declared another market yard could not be substituted in its place. This argument was repelled by Chagla, C. J. and Tendolkar, J. It was observed (at p. 903, 904):

> "Now, s. 4A(2) confers upon the Government the power to declare any enclosure, building or locality in any market area to be a principal market yard for the area and other enclosures, buildings or localities to be one or more sub-
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> market yards for the area. It is clear that by reason of s. 14 of the General Clauses Act any power that is conferred on Government can be exercised from time to time as occasion requires. Therefore, it would be clearly competent to the State Government to declare from time to time which should be the principal market yard and which should be sub-market yards. It is also clear under s. 21 of the General Clauses Act that when a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power to exercise in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued"..... "under s. 4A(2) Government can by issuing notifications from time to time after the principal market yards which have been set up and which did not exist before the passing of the Amending Act".

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

The submission that Rule 5 of the Maharashtra Agricultural Produce Marketing Regulation Rules 1967 which provides that no person shall market any declared agricultural produce in any place in a market area other

than the principal market or subsidiary market established therein is ultra vires, is, in our opinion, equally without force. Sec. 60 of the Act empowers the State Government to make rules for carrying into effect the purposes of the Act. It cannot but be said that the establishment of a principal and subsidiary markets for the marketing of declared agricultural produce and the bar against marketing operations being carried on elsewhere than in the markets so
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established is only to further and to give effect to the purposes of the Act. The scheme of the Act shows that the agricultural produce whose marketing is proposed to be regulated should first be notified, a market area has to be declared in respect of the notified agricultural produce, a Market Committee has to be constituted for the market area, a principal market and one or more subsidiary markets have to be established for every market area, traders etc. have to be licensed and the Market Committee is required to provide facilities for marketing of agricultural produce, to superintend, direct and control the markets and regulate marketing of agricultural produce. Regulation of marketing of notified agricultural produce and the establishment of principal and subsidiary markets are among the prime objects of the Act. If for the more effective regulation of marketing it is thought that all marketing operations in respect of declared agricultural produce should be carried on only in the principal and subsidiary markets established under the Act, we do not see how it can possibly be said that a rule made for that purpose is beyond the competence of the rule making authority under the Act. It is not difficult to visualise the impossibility of effective regulation if marketing operations are allowed to be carried on outside the principal and subsidiary markets, anywhere in the market area. The submission was that all the regulatory measures contemplated by the Act and the rules may be enforced equally effectively wherever business in agricultural produce is carried on in the market area outside the principal and subsidiary markets as within the principal and subsidiary markets. On the face of it, it is difficult to accept this submission. The regulation will become impossible and will soon be reduced to a farce if traders are allowed to carry on marketing operations in every nook and corner of the market area. The Market Committee will be forced to employ an unduly large number of officers who will have to run hither and thither, all over the market area. The regulation and control will soon become unmanageable. Nor will the producers' interests be properly served. Where a producer brings his produce to the market, he will deal face to face not with one but with several traders, with a greater chance of getting the best price for his produce. This cannot happen if he is persuaded to take his produce to the place of business of an individual trader outside the principal or subsidiary market. There is a greater possibility of abuse and greater likelihood of the object of the Act being frustrated. Fair price to the agriculturist will soon be a mirage and the evil sought to be prevented will persist. In Kewal Krishan Puri & Anr. v. State of Punjab & Ors.(1) this Court had occasion to observe:
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> "No body can be allowed to establish a purchasing centre of his own at any place he likes in the market area without there being such a permission or authority from the Market Committee. After all the whole object of the Act is the supervision and control of the

transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. The supervision and control can be effective only in specified localities and places and not throughout the extensive market area."

One of the submissions of the learned Counsel was that Section 6 of the Act contemplated the use of any place in the market area for the marketing of the declared agricultural produce on obtaining a licence from the Market Committee and, therefore, Rule 5 which banned marketing at any place outside the principal and subsidiary markets though such place was within the market area was inconsistent with Section 6 and hence ultra vires. The submission ignores the circumstance that Section 6 is applicable to both the situations before and after the establishments of markets. Where a market area is specified under Sec. 4 of the Act but no markets are yet established, marketing is regulated by licensing the traders etc. under Sec. 6. After markets are established also, traders have to be licensed under Sec. 6. But Sec. 6 is expressly declared to be subject to the rules providing for regulating the marketing of agricultural produce in any place in the market area. Rule 5 is a rule providing for regulating the marketing of agricultural produce in the market area by stipulating that the marketing shall be carried in the market established in the market area.

Section 6 is, therefore, subject to Rule 5. There can be no question of any inconsistency between Section 6 and Rule 5.

Yet another submission of the learned counsel was that the Bombay Agricultural Produce Markets Act 1939 and the Agricultural Produce Marketing Acts of other States such as Karnataka provided or indicated by express provision that once a market was established it was not permissible to market or trade in agricultural produce outside the market, and that the absence of such an express provision in the Maharashtra Act showed that no such ban was contemplated by the Act. We are unable to agree with the submission. Absence of an express provision in the Act itself merely means that greater latitude is given to the rule making authority to introduce regulation of marketing by stages and to ban all marketing activity outside the market. The latitude given to the rule making authority cannot lead to the
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inference that the rule making authority has no power to make a rule banning marketing activities outside the market once the market is established, even when such a ban is found to be necessary.

We therefore, hold that the rule prescribing that no marketing operation in any declared agricultural produce shall be carried on outside the principal or subsidiary markets is consistent and in consonance with the scheme of the Act and is within the competence of the rule making authority and that it is reasonable. Next we pass on to the main submission made on behalf of the petitioners that the transactions between trader and trader and transactions by which the agricultural produce was imported into the market area from outside the market area were outside the purview of the Act and that if Sec. 5 and Rule 5 were intended to cover such transactions also they were invalid. The basic assumption of the submission was that the Maharashtra Agricultural Produce Marketing Regulation Act was conceived in the interests of the agriculturists only and intended for their sole benefit. This basic assumption is not well founded. It is true that one of the principal objects sought

to be achieved by the Act is the securing of a fair price to the agriculturist. As the long title of the Act itself says, the Act is intended to regulate the marketing of agricultural and certain other produce. The marketing of agricultural produce is not confined to the first transaction of sale by the producer to the trader but must necessarily include all subsequent transactions in the course of the movement of the commodity into the ultimate hands of the consumer, so long, of course, as the commodity retains its original character as agricultural produce. While middlemen are sought to be eliminated, it is wrong to view the Act as one aimed at legitimate and genuine traders. Far from it. The regulation and control is as much for their benefit as it is for the benefit of the producer and the ultimate consumer. The elimination of middlemen is as much in the interest of the trader as it is in the interest of the producer. Promotion of grading and standardization of agricultural produce is as much to his benefit as to the benefit of the producer or consumer. So also proper weighment. The provision for settlement of disputes arising out of transactions connected with the marketing of agricultural produce and ancillary matters is also for the benefit of the trader. It is because of these and various other services performed by the Market Committee for the benefit of the trader that the trader is required to pay a fee. It is, therefore, clear

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that the regulation of marketing contemplated by the Act involves benefits to traders too in a large way. It is also clear to our mind that the regulation of marketing of agricultural produce, if confined to the sales by producers within the market area to traders, will very soon lead to its circumvention in the guise of sales by traders to traders or import of agricultural produce from outside the market area to within the market area. The Shirname Committee which was appointed by the Maharashtra Government to review the working of the Bombay Agricultural Produce Marketing Act, 1939 considered the matter and reported as follows: (para 86):

> "They (the traders) have argued that imported produce has nothing to do with the legislation meant to confer benefits on the agriculturist. We are afraid that this view is untenable. In our opinion, the benefits sought to be conferred by the Act are not compartmental inasmuch as a regulated market seeks to benefit the agriculturist within its area only. The problem of regulation is to be viewed in the wider context. This was well emphasised by the Royal Commission on Agriculture which stated that 'the establishment of properly regulated markets can act as a powerful agent in bringing about a reform which is much needed, primarily in the interest of the cultivator, and secondly, in that of all engaged in trade and commerce in India'. It is in this larger perspective that an answer to the question is to be found. Moreover, no agricultural produce goes by a particular brand with the result that the produce brought from a particular source cannot be distinguished from the one secured from the other. If the produce imported from outside the market area were to be exempted from the scope of the market regulation, it would only provide an additional opportunity for the traders to circumvent the provisions of the Act and Rules even in respect of the agricultural commodities produced within the market area. We, therefore,

recommend that once a commodity is regulated in a market, it should be subjected to regulation irrespective of its source or final destination."

Again they said in paragraph 95 as follows:

"We wish to record here that there appears to be a doubt among the traders as well as the Market Committees about the precise position of sales of commodities after they are brought from agriculturists by traders vis-a-vis the provisions of the Act and the Rules. It has been the belief of

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the traders that the law is for the benefit of agriculturists and on this ground they have pleaded that its scope should be restricted only to the dealings with them. We are afraid that this plea is not tenable. The benefit of a regulated market will no doubt primarily accrue to the agriculturists but traders also will be profited by it. Furthermore, no market can be regulated effectively unless and until the regulation covers all the stages of marketing within a particular area. Above all, it is not possible to distinguish between the agricultural produce subjected to resale or changing hands between the traders themselves and the one sold by the agriculturists through the commission agents to the traders. We, therefore, recommend that all transactions including the resales between the traders and traders in respect of the agricultural commodities, which are regulated should be covered by the Act and the Rules. Thus in a regulated market, trading in agricultural commodities irrespective of the fact as to whether they are produced in the market area or sold by the agriculturists or not, will be brought within the scope of the legislation."

Nor are we without any guidance from this Court itself in answering the question posed. In Mohammadbhai Khudabux Chhippa & Anr. v. The State of Gujarat & Anr., it was pointed out while dealing with the provisions of the Bombay Agricultural Produce Markets Act, 1939, as follows (at p. 899):

"Next it is urged that the provisions in the Act also affect transaction between traders and traders, and also affect produce not grown within the market area if it is sold in the market area. That is undoubtedly so. But if control has to be effective in the interest of the agricultural producer such incidental control of produce grown outside the market area and brought into the market yard for sale is necessary as otherwise the provisions of the Act would be evaded by alleging that the particular produce sold in the market yard was not grown in the market area. For the same reasons transactions between traders and traders have to be controlled, if the control in the interest of agricultural producers and the general public has to be effective. We are therefore of opinion that the Act and the Rules and Bye-laws thereunder cannot be struck down

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on this ground. The contention under this head therefore must fail".

Again in Ram Chandra Kailash Kumar & Co. & Ors. v. State of U.P. & Anr.,(1) dealing with the contention that fee could be charged only on those transactions in which the seller was the producer and not on any other transaction this Court disapproved the view taken by the Mysore High Court and

approved the view taken by the Patna High Court that fee could be levied on a transaction of buying and selling between a dealer and a dealer. Dealing with the contention that the agricultural produce not produced in the market area was outside the purview of the Act, it was observed (at p. 1134):

> "It is also not correct to say that the agricultural produce must have been produced in the market area in which the first levy is made. It might have been produced in another market area or even outside the State of Uttar Pradesh but if a transaction of sale and purchase takes place of an agricultural produce as defined in the Act and covered by the notification within a particular market area then fee can be charged in relation to the said transaction".

One of the submissions strenuously pressed before us was that the statute itself imposed and provided for such stringent supervision, and control, sufficient and more, to regulate transactions between traders and traders, that it was superfluous to insist that such transactions do take place in the market only. We do not agree. Human ingenuity is such that vents and escapes will always be found in any system of controls. We are unable to say that the other supervisory measures for which there is provision in the Act are sufficient to make it unnecessary for the traders to move their places of business into the market. No amount of supervision may be as effective as when all the transactions take place within the market. Nor is effective supervision at all possible if traders are dispersed all over the market area. Every Market Committee will then require a large contingent of officers for the purpose of supervision only. The rendering of services to the traders also will be far easier and, in the ultimate analysis, it will be in the interests of the traders themselves, at any rate in the interests of the vast majority of the traders, that transactions between traders and traders also are carried on in the market only. There cannot be any doubt

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that localising marketing is helpful and necessary for regulation and control and for providing facilities. If all transactions are carried on in the market under the watchful and at the same time, helpful vigil of the Market Committee and its officers, there is surely a greater chance of the success of the objectives of the statute. We are therefore, not prepared to hold that the requirement that the locus of all transactions of sale and purchase of agricultural produce, including those between trader and trader, should be in the market is harsh and an excessive restriction on the Fundamental Right to carry on trade.

It was the submission of the learned counsel that Sec. 6 of the Maharashtra Act made a distinction between (a) the use of any place in the market area for the marketing of the declared agricultural produce and (b) the operation in the market area or in any market therein as a trader, commission agent, broker, etc. in relation to the marketing of agricultural produce and that the distinction was in reality a distinction between a sale by a producer to a trader and a subsequent sale by a trader to a trader. The argument was that Rule 5 which banned marketing of any declared market agricultural produce in any place in a market area other than the principal market or subsidiary market established therein applied only to a sale of the agricultural produce by a producer to trade. We do not see any warrant for the submission of the learned counsel in the language employed in Sec. 6 or Rule 5. If the legislature or the rule making

authority wanted to make a distinction between a sale of agricultural produce by a producer to a trader and a subsequent sale by a trader to a trader, nothing would have been simpler than to say so instead of adopting the circumlocutous way in which the learned counsel claims it has been said. The proviso to Rule 5 speaks of operating at any place within the market area by a trader, commission agent, or other market functionary after obtaining a licence while the main provision refers to the marketing of declared agricultural produce at any place in the market area. Surely it cannot be contended that the proviso is unrelated to the main provision. According to ordinary cannons of construction the proper function of a proviso is to except and deal with a case which would otherwise full within the general language of the main enactment. It, therefore, shows that no such distinction as suggested by the learned counsel for the petitioners was in the mind of the legislature or the rule making authority.

The onion and potato merchants of Bombay advanced a special plea that Sec. 13(1A) which declared the area comprising Greater

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Bombay and Turbhe village a market area for the purposes of the Act was invalid as it was wholly unreasonable to constitute such a large area into a single market area. The validity of the notification establishing a market at Turbhe was attacked as unreasonable. It was said that it was unreal and unreasonable to establish a single market for so large an area and that, at such an inconvenient place as Turbhe village. It has been explained in the counter affidavit filed on behalf of the respondent that the existing markets in Maulana Azad Road and Mahatma Phule Mandal were highly congested and located in areas which were over-crowded with the result that it took several hours to even unload onions and potatoes from the trucks which carried them. It has become imperative in the public interest that the markets should be shifted from Maulana Azad Road and Mahatma Phule Mandai. Turbhe village was chosen as an area free from congestion and conveniently located as it was on the main trunk road from Pune. It was also very near the other trunk Road going towards the East. A Railway linking the area with both the Western Railway and the Central Railway net works was fast coming up. It was also pointed out that 60% of the population of Greater Bombay resided in the Northern suburbs and the new market was much nearer to the majority of the residents and traders of Greater Bombay. We are unable to see anything unreasonable in the statutory declaration of Greater Bombay and Turbhe village as a market area; nor, are we able to see anything unreasonable, in view of the circumstances mentioned by the respondents, in the establishment of a single market in Turbhe village for the entire market area.

It was also said that neither the Gultekdi market nor the Turbhe market had any convenience or facility or was ready for use on the date on which it was notified as the Principal Market for the concerned market area. On the material placed before us we are satisfied that all reasonable conveniences and facilities are now available in both the markets, whatever night have been the situation on the respective dates of notification. We refrain for embarking into an enquiry as to the situation obtaining on the dates of notification. We do say that a place ought not to be notified as a market unless it is ready for use as a market with all reasonable facilities and conveniences but we do not conceive it to be our duty to pursue the matter to

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

In the Writ Petitions and Civil Appeals from Karnataka State, similar questions have been raised. Though the broad scheme of the Karnataka Act is the same as the Maharashtra Act, there are some differences which however are not basic. Instead of a two tier scheme, Market Area and Markets, as under the Maharashtra Act, the Karnataka Act has a three-tier scheme, Market Area, Market and sub-market and market-yard, sub-market yard and sub-yard. Market Area is a larger area within which smaller areas are declared as a Market and sub-markets. Within a market are located a market yard and market sub-yards and within a sub-market is located a sub market yard. The 'market yard' in the Karnataka Act is what corresponds to a 'market' in the Maharashtra Act. Unlike the Maharashtra Act, the Karnatka Act itself [S. 8(2)] expressly provides that no place in the Market or the sub-market, except the market-yard, sub-yard or the sub-market yard as the case may be, shall be used for the purchase or sale of notified agricultural produce. Originally, after the words "purchase or sale of notified agricultural words" occurred the words "belonging to a producer" in Section 8(2). The words "belonging to a producer" were omitted by a 1976 amendment and this makes the provisions of S. 8(2) applicable to transactions between trader and trader too. The shifting of market yard from one place to another and the application of the Act to transactions between traders and traders are what were principally questioned in the Karnataka cases. Substantially the same submissions as in the Maharashtra cases were made and we have already dealt with them.

We my now turn to the Bihar cases. The Bihar Agricultural Produce Markets Act, 1960, follows roughly the same pattern as the other Acts. A market area has to be first declared within which the marketing of specified agricultural produce is proposed to be regulated. For every market area there is to be a principal market yard and one or more sub market yards. In between the market area and the market yard there is to be a market but market does not seem to play any part in the scheme of the Act as it now stands after the 1974 amendments. However it should be mentioned here that Rule 80
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which is still on the Statute Book, provides that a market shall be established for a market area and that after the establishment of a market, a notification under Sec. 5 (declaring market yards) shall be issued. Sec. 15 of the Act provides that no specified agricultural produce shall be bought or sold at any place within the market area other than the principal market yard or sub-market yard established therein except such quantity as may be

prescribed for retail sale or personal consumption. The arguments advanced in the Maharashtra and Karnataka cases were advanced in the Bihar cases also. For the reasons already mentioned we reject the submission. In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the principles of natural justice and the notification disestablishing the market yard at one place and establishing it elsewhere was therefore, bad. It was said that even as there was express provision for inviting and hearing objections before a "market area" was declared under the Act, so should objections be invited and heard before a 'market yard' was established at any particular place. The principles of nature justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice. In Bates v. Lord Hailsham, Megarry J., pointed out that the rules of natural justice do not run in the sphere of legislation, primary or delegated, and in Tulsipur Sugar Co. v. Notified Area Committee, our brothers Desai and Venkataramaiah JJ approved what was said by Megarry J., and applied it to the field of conditional legislation too. In Paul Jackson's Natural Justice (Second Edn.), it has been pointed out (at p.169):

> "There is no doubt that a Minister, or any other body, in making legislation, for example, by statutory instrument
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> or by-law, is not subject to the rules of natural justice- Bates v. Lord Hailsham of St. Mayleborne (1972) 1 W.L.R. 1373-any more than is Parliament itself; Edinburgh and Dalkeith Ry. v. Wauchope (1842) 8 Cl. & F. 710, 720 per Lord Brougham; British Railways Board v. Pickin (1974) A.C. 765".

Prof. H. W. R. Wade has similarly pointed in his Administrative Law (4th Edn.): "There is no right to be heard before the making of legislation, whether primary or delegated, unless it is provided by statutes". There is, therefore, no substance in the invocation of the rules of natural justice.

One of the submissions in the Bihar cases was that the declaration of places as market yards was made in such an erratic fashion that the exercise of the power could only be termed as an arbitrary misuse of power. The facts in Civil Appeal No. 1507 of 1980 were that on September 16, 1964, a certain area was declared as a principal market yard and Amgola, Chandwara, Sarai Said Ali and Brahmpura were declared as Sub market yards. On February 23, 1978 instead of the principal market yard declared by the notification of September 16, 1964, Muradpur Dulla was declared as principal market yard. The sub-market yards were abolished. By another

notification dated April 9, 1979, all the market yards notified on September 16, 1964 were allowed to continue as before, but it was also simultaneously made known that such market yards would be closed on specified dates and merchants were advised to move their business into the Muradpur Dulla principal market yard as early as possible. Finally by a notification dated July 3, 1979, the previous notification dated April 9, 1979 was cancelled and Muradpur Dulla market yard was alone notified as the principal market yard. The facts in the other two appeals were that on September 19, 1963, Gaya town was declared as a market area. On April 6, 1964, Chandauti was declared as the market proper under Sec.5(2)(ii) of the Bihar Act. By a notification dated April 7, 1964, Mohalla Purani Godown was declared as principal market yard and Kedarnath Market was declared as the sub-market yard for the market area. On October 19, 1973, Mohalla Purani Godown was once again declared as the Principal Market Yard. Subsequently on February 28, 1978, Chandauti was declared as the Principal Market Yard. This meant that Mohalla Purani Godown ceased to be a market yard and Kedarnath Market ceased to be a sub-market yard. But, again on April 9, 1979, another notification was issued, to the effect that Mohalla Purani Godown would continue as the market yard as before. Finally on June 27, 1979, Chandauti was
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declared as the Principal Market yard once more. This was questioned in Writ Petitions filed in the Patna High Court. The Patna High Court rejected all but one of the contentions raised. The only contention which was accepted was that the procedure prescribed by Rule 80 was not followed before Chandauti was declared as the principal market yard by the notification dated February 28, 1978. Rule 80, as already mentioned by us provides that a market shall be established for a market area and that after the establishment of a market a notification declaring the market yard shall be issued. The contention which was accepted was that a market had not been established before a market yard was declared. Against the judgment of the High Court the merchants have filed Civil Appeal No. 1715 of 1980 and the State of Bihar has filed Civil Appeal No. 36 of 1980. Not-withstanding the filing of the appeal, the State of Bihar chose to issue a fresh notification after observing the procedure prescribed by Rule 80. This was again questioned in the High Court. The High Court upheld the notification. The merchants have preferred Civil Appeal No. 1716 of 1980 against the judgment of the High Court. From the history of events it may appear as if declarations regarding market yards have been made in a most erratic fashion but as pointed out by the learned Attorney General who appeared for the State of Bihar it was not madness. There was a method. The old markets had existed from ancient days and it had become necessary to establish modern market yards with conveniences and facilities. When this was sought to be done there were representations by the traders and the Government appears to have thought that it was advisable to give the traders sufficient time to enable them to prepare themselves to move into the new market yards. The notifications establishing new market yards were therefore, cancelled and the old markets were allowed to function for some time. Later when the time was thought to be ripe, notifications establishing new market yards were once again issued. It is, therefore seen that the seeming confusion was not the result of any arbitrary or erratic action on the part of the Government but was the result of a desire to accommodate the traders as much as possible. We,

therefore, see no force in any of the submissions made on behalf of the petitioners. All the Writ Petitions and Civil Appeals are therefore, dismissed with costs.

N.V.K. Petitions and Appeals dismissed.

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