PETITIONER:
OM PARKASH AGARWAL ETC.ETC.

Vs.

RESPONDENT:
GIRI RAJ KISHORI & ORS. ETC.ETC.

DATE OF JUDGMENT28/01/1986

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
REDDY, O. CHINNAPPA (J)

CITATION:
1986 AIR 726 1986 SCR (1) 149
1986 SCC (1) 722 1986 SCALE (1)110
CITATOR INFO :
F 1986 SC1930 (17)
RF 1989 SC 100 (14,17,18)
RF 1989 SC 317 (34)
RF 1990 SC1927 (71)

ACT:
Constitution of India, Art. 265, 266 and List II, of Seventh Schedule - State Legislature - Tax not to be imposed under guise of 'fee' - Jurisdiction of Court to scrutinise scheme of levy to determine real character.
Haryana Rural Development Fund Act, 1983, s.3- Levy of 'Cess' under the Act - Not 'fee' but 'tax' - State Legislature - Whether competent to enact the Act.

HEADNOTE:
The Haryana Rural Development Fund Act, 1983 by section 3 provides that there shall be levied on the dealer for the purposes of the Act, a cess, on ad valorem basis, at the rate of one per centum of the sale proceeds of agricultural produce bought or sold or brought for processing in the notified market area. The dealer is, in his turn, entitled to pass on the burden of the cess paid by him to the next purchaser of the agricultural produce from him. Section 4(1) of the Act provides for the creation of a fund called the Haryana Rural Development Fund (hereinafter referred to as 'the fund') which is vested in the State Government. Sub-section (3) of section 4 of the Act provides that the amount of cess shall be credited to the Fund within such period as may be prescribed. Sub-section (5) of section 4 of the Act states that the Fund shall be applied by the State Government to meet the expenditure incurred in the rural areas, in connection with the development of roads, hospitals, means of communication, water-supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of the rural areas. The expression 'rural areas' has been defined in section 2(h) of the Act as an area the population of which does not exceed 20,000 persons.
The appellants, who are dealers in agricultural produce carrying on business in certain notified market areas, questioned the validity of the Act before the High Court of
150

Punjab & Haryana. The learned single judge found that the Act was unconstitutional and struck it down. Aggrieved by the decision of the learned single judge, the State of Haryana filed a Letters Patent Appeal before the Division Bench of the High Court. The Division Bench allowed the appeal, set aside the judgment of the learned single judge and upheld the constitutional validity of the Act, on the ground that it was in the nature of a fee and, therefore, it could be levied as a fee imposed on dealers carrying on business within market area for services rendered to them by the State Government. Hence these appeals by Special Leave.

It was contended on behalf of the appellants that the cess levied under the Act was in the nature of a tax and it did not fall under any of the Entries in List II of the Seventh Schedule to the Constitution under which the State Legislature could levy a tax. On the other hand, counsel for the respondent-State argued (i) that it was in the nature of a fee and it was not necessary that there should be a direct correlation between the levy and the services to be rendered and that such correlation could be of "general character and not of mathematical exactitude"; (ii) that there was a reciprocal relationship between the levy of the fee and the services that were being rendered and (iii) that the impugned legislation had been enacted to fulfill the objectives contained in Articles 46,47,48 and 48A of the Constitution and the majority of dealers were directly benefited by the objects on which the amount collected as cess was spent.

Allowing the appeals,

^

HELD: l.(i) The Haryana Rural Development Fund Act, 1983 is unconstitutional, since the State Legislature was not competent to enact it. The judgment of the Division Bench of the High Court is set aside and the Act is declared void. [163 D-E]

1(ii) It is constitutionally impermissible for any State Government to collect any amount which is not strictly of the nature of a fee in the guise of a fee. If in the guise of a fee the legislation imposes a tax it is for the court on a scrutiny of the scheme of the levy to determine its real character. If on a true analysis of the provisions levying the amount, the court comes to the conclusion that it is, in fact, in the nature of a tax and not a fee, its validity can be justified only by bringing it under any one of the Entries

151

in List II of the Seventh Schedule to the Constitution under which the State can levy a tax. [163 B-C]

In the instant case, the State Government has failed to do so. The levy is not a fee as claimed by the State but it is a tax not leviable by it. The levy of the cess under section 3 is, therefore, liable to be quashed. Section 3 being the charging section and the rest of the sections of the Act being just machinery or incidental provisions, the whole Act is liable to be quashed. [163 C-D]

l(iii) The fact that the Act is claimed to have been enacted pursuant to the Directive Principles of State Policy contained in Articles 46,47,48 and 48A of the Constitution and that the dealers are permitted by the Act to pass on the cess to the purchasers of the Agricultural produce from them have no bearing on the question involved here. [158 A-B]

2. The distinction between a tax and a fee is recognised by the constitution. In determining a levy as 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 being of no consequence that the State may ultimately and indirectly be benefited by it Entry 66 empowers the State to levy fees in respect of any of the matters in List II. It is no doubt true that under Entry 66 of the List II it is permissible for the State to levy any amount by way of fees in respect of any of the matters in that List. The relevant Entry in the present case is entry 28 dealing with Markets and Fairs' but the amount so levied should be truly a fee and not a tax with the mask of a fee. The primary meaning of taxation is raising money for purposes of Government by means of contributions from individual persons, a compulsory exaction of money by a public authority for public purposes enforceable at law and not a payment for services rendered. [158 C; 158 D-H]

Matthews v. Chicory Marketing Board, 60 C.L.R 263,276 and The Commissioner, Hindu Religious Endowments, Madras v. Sri Lskshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] S.C.R. 1005 relied upon.

Sreenivasa General Traders & Ors. etc. v. State of Andhra Pradesh & Ors. etc., [1983] 3 S.C.R. 843, Municipal Corporation of Delhi and Ors. v. Mohd. Yasin etc., [1983] 2 S.C.R. 999 and Southern Pharmaceuticals & Chemicals Trichur Ors. etc. v. State of Kerala & Ors. etc., [1982] 1 S.C.R. 519 distinguished.

152

Sreenivasa General Traders & Ors. etc. v. State of Andhra Pradesh & Ors., [1983] 3 S.C.R. 843 referred to.

In the instant case, the Fund, vests in the State Government and not in the municipality or a marketing committee or any other local authority having limited function specified in the enactment under which it is constituted. The definition of the expression 'rural areas' in section 2(h) of the Act is as vague as it can be. It means an area the population of which does not exceed 20,000 persons. It need not necessarily be a local area as it is ordinary understood. Ordinarily a local area means a Municipal Corporation, a Town Municipality, a Panchayat, a Notified Area, a Sanitary Board etc.... Any geographical area the population of which does not exceed 20,000 persons can be conveniently brought within the scope of section 2(h) of the Act. If it is understood that way even urban areas can be divided into areas with population not exceeding 20,000 and labelled as rural areas. Even if a town or a city having a population exceeding 20,000 persons, is excluded from the scope of the expression 'rural areas', the area in which the amount credited to the Fund can be spent is almost 90 per cent of the total area of the State of Haryana. There is no specification in the Act that the amount or a substantial part of the amount collected by way of cess under section 3 of the Act will be spent on any public purpose with in the market area where the dealer is carrying on his business. The purposes over which the Fund can be spent are the same purposes on which any amount collected by way of tax is spent by any State and there is nothing which is done specially to benefit the dealer. When any amount is spent from the fund the interest of the dealers is not at all kept in view even generally. There is no other restriction imposed on the manner in which the Fund can be spent. The cess, therefore, partakes of the character of a part of the common burden which has to be levied and collected only as a tax. A dealer who pays the cess under the Act may as one of the members of the general public derive some benefit from the expenditure of the fund incurred by the State Government. The benefit so derived by him is merely incidental to the fact that he happens to be a

person residing in the State of Haryana. It is not the same as the benefit which a dealer in a market area would derive by the expenditure of its funds by a marketing committee or as the benefit which a person living in a town or a city would derive by the expenditure incurred by the municipality concerned. [161 A; 162 A-B]
153

3. There is practically no difference between the Consolidated Fund which vests in the State and the Fund which also vests in the State. Amounts credited to the Consolidated Fund and the amounts credited to the Fund can both be spent practically on any public purpose almost throughout the State. In such a situation it is difficult to hold that there exists any correlation between the amount paid by way of cess under the Act and the services rendered to the person from whom it is collected. The impost in these cases lacks the essential qualification of a fee namely 'that it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering services'. In fact, there is no correlation at all. [162 C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2808 of 1985 etc.

From the Judgment and Order dated 20.5.1985 of the Punjab and Haryana High Court in L.P.A. No. 1055 of 1984.

V.M. Tarkunde, Shankar Ghosh, P.N. Puri, S.C. Khunger, O.P. Gill, S.K. Mittal, Bhal Singh Malik, Vishal Malik, G.K. Bansal, B.S. Gupta, S.D. Sharma, P.C. Kapur, K.G. Bhagat, Sunil Kr. Jain, A.K. Goel, Ajit Pudissery, K.B. Rohtagi, L.K.Pandey, Sarv Mitter, R.P. Gupta, P.N. Puri, R.A. Gupta, K.K. Mohan and D.N. Mishra for the appearing Appellants.

Kapil Sibbal, H.L. Sibbal Advocate General for State of Haryana, J.K. Sibbal, I.S. Goel, S.V. Singh and C.V. & Subba Rao for the appearing Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellants in the above appeals are dealers in agricultural produce carrying on business in certain notified market areas set up under the Punjab Agricultural Produce Markets Act, 1961 in the State of Haryana. They have questioned in these appeals the constitutional validity of the Haryana Rural Development Fund Act, 1983 (Haryana Act No. 12 of 1983) (hereinafter referred to as 'the Act').

The Act received the assent of the Governor of Haryana on the 28th September, 1983 and was published in the State Gazette under the Notification dated September 30, 1983. The
154
Act came into force on its publication. Section 3 of the Act provides that with effect from such date as the State Government may by notification appoint in that behalf, there shall be levied on the dealer for the purposes of the Act, a cess, on ad valorem basis at the rate of one per centum of the sale proceeds of agricultural produce bought or sold or brought for processing in the notified market area. It, however provides that except in case of agricultural produce brought for processing, no cess shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made. The cess is payable by the dealer in such manner as may be prescribed to such officer or person as may be appointed or designated by

the State Government in that behalf. The dealer is, in his turn, entitled to pass on the burden of the cess paid by him to the next purchaser of the agricultural produce from him. He may, therefore, add the same in the cost of the agricultural produce or the goods processed or manufactured out of it. me arrears of cess are recoverable as arrears of land revenue. The expression 'dealer' is defined by section 2(c) of the Act. 'Dealer' means any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce, or in the notified area purchases, sells, stores or processes such agricultural produce. A 'notified market area' means any area notified under section 6 of the Punjab Agricultural Produce Markets Act, 1961 to be a notified market area. 'Agricultural produce' means all produce whether processed or not, of agriculture, horticulture, animal husbandry or forest as may be prescribed. These definitions are found in section 2 of the Act. Section 4(1) of the Act provides for the creation of a fund called the Haryana Rural Development Fund (hereinafter referred to as 'the Fund') which is vested in the State Government. The Fund is to be administered by such officer or officers of the State Government as may be appointed by it in that behalf. Sub-section (3) of section 4 of the Act provides that the amount of cess paid to the concerned officer by virtue of section 3 of the Act shall be credited to the Fund within such period as may be prescribed. Sub-section (4) of section 4 of the Act provides that any grants made by the State Government and local authorities shall also be credited to the Fund. Sub-section (5) of section 4 of the Act states that the Fund shall be applied by the State Government to meet the
155
expenditure incurred in the rural areas, in connection with the development of roads, hospitals, means of communication, water-supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of the rural areas. The Fund can also be utilised to meet the cost of administering the Fund. Section 5 of the Act provides that any person who contravenes the provisions of the Act or the rules framed thereunder shall be punishable with fine which may extend to five hundred rupees or upto the amount of cess which the dealer is liable to pay, whichever is more. By section 6 of the Act the State Government is empowered to make rules to carry into effect the purposes of this Act. Section 7 of the Act grants protection to State Government or any officer of the State Government or the Haryana State Agricultural Marketing Board or a local authority functioning under the Act against any action that may be taken against it or him in respect of any action taken in good faith under the Act. Section 8 of the Act empowers the State Government to remove any difficulty which may arise in giving effect to the provisions of the Act.

A reading of the Act shows that it imposes a cess on ad valorem basis at the rate of one per centum of the sale proceeds of the agricultural produce bought or sold or brought for processing in the notified market area on the dealer carrying on business within the notified market area. m e cess is in the nature of a compulsory exaction. The arrears of cess if any, can be recovered as arrears of land revenue, and any person who contravenes the provisions of the Act is liable to be prosecuted for an offence punishable under section 5 of the Act. The Act, however, provides that the cess collected under it shall be credited to the Fund

for being spent as provided in sub-section (5) of section 4 of the Act in the rural areas in connection with the development of roads, hospitals, means of communication, water-supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of rural areas. The expression 'rural area' has been defined in section 2(h) of the Act as an area the population of which does not exceed 20,000 persons. These are the principal features of the Act.

The appellants who became liable to pay the cess on the coming into force of the Act questioned its validity before the High Court of Punjab & Haryana. The petitions filed by them were first heard in the High Court by a single Judge. The
156
learned single Judge found that the Act was unconstitutional and struck it down. Aggrieved by the decision of the learned single Judge the State of Haryana filed a Letters Patent Appeal for the Division Bench of the High Court. The Division Bench allowed the appeal, set aside the judgment of the learned single Judge and upheld the constitutional validity of the Act. The writ petitions which had been filed by the appellants were dismissed. These appeals by special leave are filed against the judgment of the Division Bench of the High Court.

It is convenient to reproduce here the relevant parts of sections 3 & 4 and section 2(h) of the Act.

> "3. (1)- With effect from such date, as the State Government may by notification appoint in this behalf, there shall be levied on the dealer for the purposes of this Act, a cess on ad valorem basis, at the rate of one per centum of the sale-proceeds of agricultural produce bought or sold or brought for proccessing in the notified market area 4. (1)- There shall be constituted a fund called the Haryana Rural Development Fund and it shall vest in the State Government
> (3) The amount of cess paid to the officer or the person shall be credited to the Haryana Rural Development Fund within such period as may be prescribed.
> (4) To the credit of the Fund shall be placed -
> (a) all collections of cess under section 3, and
> (b) grants from the State Government and local authorities.
> (5) The Fund shall be applied by the State Government to meet the expenditure incurred, in the rural areas, in connection with the development of roads, hospitals, means of communication, water-supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of rural areas. The Fund may also be utilised to meet the cost of administering the Fund.
> 157
> 2. (h)'rural area' means an area the population of which does not exceed twenty thousand persons."

The principal contention urged by the appellants before us is that the cess levied under the Act is in the nature of a tax and it does not fall under any of the Entries in List II of the Seventh Schedule to the Constitution under which the State Legislature can levy a tax. Although when the proceedings were pending in the High Court an attempt was made on the part of the State to sustain the cess as a tax

leviable under Entry 52 of the List II of the Seventh Schedule to the Constitution which authorises a State Legislature to levy "taxes on the entry of goods into a local area for consumption, use or sale therein", neither the learned single Judge nor the Division Bench accepted the said contention. In these appeals the said contention is not pressed before us. The ground on which the Division Bench upheld the constitutional validity of the cess was that it was in the nature of a fee and, therefore, it could be levied as a fee imposed on dealers carrying on business within market area for services rendered to them by the State Government. The very same contention is urged before us in these appeals on behalf of the State Government. In support of its contention the State Government has relied upon the decisions of this Court in Sreenivasa General Traders & Ors. etc. v. State of Andhra Pradesh & Ors. etc., [1983] 3 S.C.R. 843., Municipal Corporation of Delhi and Ors. v. Mohd. Yasin etc., [1983] 2 S.C.R. 999., and Southern Pharmaceuticals & Chemicals Trichur & Ors. etc. v. State of Kerala & Ors. etc., [1982] 1 S.C.R. 519 and it is argued that it is not necessary that there should be a direct correlation between the levy and the services to be rendered and that such correlation could be of "general character and not of mathematical exactitude". It is argued that in the instant cases there is a reciprocal relationship between the levy of the fee and the services that are being rendered. It is submitted on behalf of the State Government that the impugned legislation had been enacted to fulfil the objectives contained in Articles 46, 47, 48 and 48A of the Constitution, that the dealer from whom the cess is collected is only a collecting agent and the burden of the cess is passed on the next purchaser and that since out of 91 notified areas in the State of Haryana 61 are located in the rural areas, the majority of dealers were directly benefited by the objects on which the amount collected as cess is spent.

158

The fact that the Act is claimed to have been enacted pursuant to the Directive Principles of State Policy contained in Articles 46, 47, 48 and 48A of the Constitution and that the dealers are permitted by the Act to pass on the cess to the purchaser of the agricultural produce from him have no bearing on the question involved here. In these appeals we are relieved of the necessity of finding out whether the cess in question is a tax leviable by the State, since such a claim is not made before us. The only question which remains to be considered is whether the cess levied under the Act is of the nature of fee levied or leviable on a dealer in a market area. The distinction between a tax and a fee is recognised by the Constitution which while empowering Parliament and the State Legislature to levy taxes under the relevant Entries in List I and List II respectively also refers to the power of the appropriate legislature to levy fees in respect of matters specified in the said Lists and also in the Concurrent List and tests have been laid down by this Court for determining the true character of a levy. In determining a levy as 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 being of no consequence that the State may ultimately and indirectly be benefited by it. As observed in M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh & Anr., [1958] S.C.R. 1422., in List II of the Seventh Schedule to the Constitution Entries 1 to 44 form one group mentioning the subjects on which the States can legislate and Entries

45 to 63 in that List form another group dealing with taxes that may be levied by States. Entry 64 refers to offences against laws with respect to any of the matters in List II and Entry 65 refers to jurisdiction of courts. Entry 66 empowers the State to levy fees in respect of any of the matters in List II. Unless the cess in question can be brought under any of the Entries from 45 to 63 it cannot be levied as a tax at all. It is no doubt true that under Entry 66 of List II it is permissible for the State to levy any amount by way of fees in respect of any of the matters in that List. The relevant Entry in the present case is Entry 28 dealing with 'Markets and Fairs' but the amount so levied should be truly a fee and not a tax with the mask of a fee. The primary meaning of taxation is raising money for purposes of Government by means of contributions from individual persons, a compulsory exaction of money by a public authority for public purposes enforceable at law and not a payment for services rendered. "A tax is a
159
compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered" is a famous statement of Latham C.J. in Matthews v. Chicory Marketing Board., 60 C.L.R. 263, 276. The above statement truly brings out the essential characteristics of a tax. This statement has been quoted with approval by our Court in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., [1954] S.C.R. 1005. Mukherjea, J. who delivered the opinion of the Constitution Bench in the above case observed at pages 1040-41 thus:

> "A neat definition of what 'tax' means has been given by Latham C.J. Of the High Court of Australia in Matthews v. Chicory Marketing Board. 'A tax', according to the learned Chief Justice, 'is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered'. This definition brings out in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law. The second characteristic of tax is that it is imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said no element of quid pro quo between the tax-payer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay."

The three principal characteristics of a tax noticed by Mukherjea, J. in the above passage are: (i) that it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law; (ii) that it is an imposition made for public purposes without reference to any special benefit to be conferred on the payer of the tax;

and (iii) that it is
160
apart of the common burden, the quantum of imposition upon the tax-payer depending generally upon the capacity of the tax payer to pay. As regards fees Mukherjea, J. Observed in the above decision thus:

> "Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.
>
> x x x x x x x x x x x x x
>
> If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by government in rendering the services."

In Sreenivasa General Traders & Ors. (supra) the fee which was collected was payable to the marketing committee and it was to be spent by the marketing committee on purposes for which it was established. In Municipal Corporation of Delhi & Ors. v. Mohd. Yasin etc. (supra) the amount collected by the Municipal Corporation was spent on the limited purposes for which it had been established. In Southern Pharmaceuticals & Chemicals Trichur & Ors. (supra) it was held that there was a broad correlation between the fee collected and the cost of the establishment needed for the enforcement of the Abkari Act which came up for consideration in that case insofar as the licences were concerned. In none of these three cases it has been stated that a fee may be validly imposed when no services either directly or indirectly are rendered to the person from whom it is collected. These cases are indeed distinguishable from the present case. In each of these cases it was held that the levy satisfied the tests of a fee.
161

As mentioned earlier a cess collected under section 3 of the Act is no doubt required to be credited to the Fund constituted under section 4(1) of the Act. The Fund, however, vests in the State Government and not in the municipality or a marketing committee or any other local authority having limited functions specified in the enactment under which it is constituted. The State Government is entitled under subsection (5) of section 4 of the Act to spend the cess, credited to the Fund, in the rural areas, in connection with the development of roads, hospitals, means of communication, water-supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of the rural areas. This sub-section authorises the State Government to spend the money credited to the Fund virtually on any object which the State Government considers to be the development of rural areas. The definition of the expression 'rural area' in section 2(h) of the Act which is extracted above is as vague as it can be. It means an area the population of which does not exceed 20,000 person. It

need not necessarily be a local area as it is ordinary understood. Ordinarily a local area means a Municipal Corporation, a Town Municipality, a Panchayat, a Notified Area, a Sanitary Board etc. Any geographical area the population of which does not exceed 20,000 persons can be conveniently brought within the scope of section 2(h) of the Act. If it is understood that way even urban areas can be divided into areas with population not exceeding 20,000 and labelled as rural areas. Even if we exclude from the scope of the expression 'rural area', a town or a city having a population exceeding 20,000 persons, the area in which the amount credited to the Fund can be spent is almost 90 per cent of the total area of the State of Haryana. The amount may be spent on any purpose which the State Government considers to be purpose intended for the development of the rural areas. There is no specification in the Act that the amount or a substantial part of the amount collected by way of cess under section 3 of the Act will be spent on any public purpose within the market area where the dealer is carrying on his business. The purposes over which the Fund can be spent are the same purposes on which any amount collected by way of tax is spent by any State and there is nothing which is done specially to benefit the dealer. When any amount is spent from the Fund the interest of the dealers is not at all kept in view even generally. There is no other restriction imposed on the manner in which the Fund can be spent. The cess, therefore, partakes of the
162
character of a part of the common burden which has to be levied and collected only as a tax. A dealer who pays the cess under the Act may as one of the members of the general public derive some benefit from the expenditure of the Fund incurred by the State Government. The benefit so derived by him is merely incidental to the fact that he happens to be person residing in the State of Haryana. It is not the same as the benefit which a dealer in a market area would derive by the expenditure of its funds by a marketing committee or as the benefit which a person living in a town or a city would derive by the expenditure incurred by the municipality concerned. The fact that the Fund is created under the Act is a mere cloak to cover the true character of the levy in question. There is practically no difference between the Consolidated Fund which vests in the State and Fund which also vests in the State. Amounts credited tc the Consolidated Fund and the amounts credited to the Fund can both be spent practically on any public purpose almost throughout the State. In such a situation it is difficult to hold that there exists any correlation between the amount paid by way of cess under the Act and the services rendered to the person from whom it is collected. The impost in these cases lacks the essential qualification of a fee namely 'that it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering services' (See Sri Shirur Mutt's case (supra)). In fact there is no correlation at all.

Reliance is, however, placed on behalf of the State Government on the decision of this Court in The Hingir-Rampur Coal Co. Ltd. & Ors. v. The State of Orissa & Ors., in which the validity of the Orissa Mining Areas Development Fund Act, 1952 was upheld. In that case the question was whether the cess levied thereunder was a fee or a duty of excise on coal within Entry 84 of List I of the Seventh Schedule to the Constitution. This Court case to the conclusion that it was an amount levied essentially for

services rendered in the areas which were declared as mining areas in the State of Orissa. In that case the mining area involved was about 3341.79 acres, i.e. about 5.5. sq. miles. me cess collected in that Act could be spent on improving the communication, by constructing good roads, supply of water and education to the labour force in order to attract workmen to the mining area in question. The case before us is entirely different from the above said case. As mentioned earlier, the amount collected by way of cess under the Act can be spent by the State Government at its
163
will on any purpose which it considers to be the development of almost the entire rural area of the State of Haryana.

It is constitutionally impermissible for any State Government to collect any amount which is not strictly of the nature of a fee-in the guise of a fee. If in the guise of a fee the legislation imposes a tax it is for the Court on scrutiny of the scheme of the levy to determine its real character. If on a true analysis of the provisions levying the amount, the Court comes to the conclusion that it is, in fact, in the nature of a tax and not a fee, its validity can be justified only by bringing it under any one of the Entries in List II of the Seventh Schedule to the Constitution under which the State can levy a tax. The State Government has failed in this case to do so. The levy according to us not a fee as claimed by the State but it is a tax not leviable by it. The levy of the cess under section 3 is, therefore, liable to be quashed. Section 3 being the charging section and the rest of the sections of the Act being just machinery or incidential provisions, the whole Act is liable to be quashed. We, therefore, declare the entire Act, i.e. the Haryana Rural Development Fund Act, 1983 as unconstitutional on the ground that the State Legislature was not competent to enact it.

These appeals, therefore, succeed. The judgment of the Division Bench of the High Court is set aside and the Act is declared void. A writ shall issue to the State Government in these appeals directing the State Government notto enforce the Act against the appellants. There shall, however, be no order as to costs.

M.L.A. Appeals allowed.
164