(1955) 03 BOM CK 0010

Bombay High Court

Case No: Special Civil Application No. 2529 of 1954

Bapubhai Ratanchand Shah and Others		APPELLANT
	Vs	
State of Bombay and Another		RESPONDENT

Date of Decision: March 3, 1955

Acts Referred:

- Bombay Agricultural Produce Markets (Amendment) Act, 1954 - Section 26, 27, 4A, 4A(2)
- Bombay Agricultural Produce Markets Act, 1939 - Section 26, 27, 3, 4, 4(2)
- Bombay Agricultural Produce Markets Rules, 1941 - Rule 51, 65, 67
- Constitution of India, 1950 - Article 14, 19, 19(1), 19(6), 226
- General Clauses Act, 1897 - Section 14, 21

Citation: AIR 1956 Bom 21 : (1955) 57 BOMLR 892 : (1955) ILR (Bom) 870

Hon'ble Judges: Chagla, C.J; Tendolkar, J

Bench: Division Bench

Advocate: Nusserwanji Engineer, M.M. Desai and R.B. Kotwal, for the Appellant; R.L. Dalal, G.N. Joshi, S.A. Wale, G.D. Patil, G.B. Kulkarni and M.P. Amin, General, for the Respondent

Judgement

Chagla, C.J.

The two petitioners have been carrying on business for many years at Vakhar Baug at Sangli. Their business is in agricultural produce. It appears that before Sangli was merged in the State of Bombay certain facilities wore given by the State of Sangli for erecting a market for sale and purchase of agricultural produce in this Vakhar Baug area and in view of these facilities the petitioners'' case is that merchants invested a large amount in putting up buildings and giving facilities for opening of shops in these buildings so that the business of sale and. purchase of agricultural produce should be carried on.

The Government then passed an Act which is the Agricuitural Produce Markets Act, Bombay, Act XXII of 1939, and the Act was made applicable to the Sangli State after its merger. The date on which the Act was made applicable is 20-7-1948, and the result of the application of this Act was that agricultural produce could only be bought and sold under certain conditions and under certain limitations.

Various notifications were issued under the Act to which we shall presently refer, and the ultimate result was that the petitioners were prevented from doing their business in his Vakhar Baug area and a market was set up under the Act at some distance from Vakhar Baug. The petitioners, therefore, chal-lenge this Act and also the rules and bye-laws framed under the Act.

The substantial challenge is under Article 19(1)(f) and (g) on the ground that unreasonable restrictions have been placed upon the petitioners'' right to carry on business and to hold their property. A challenge is also made on the ground that the value of these properties has gone down by reason, of the market being shifted to a different place and that the petitioners have been deprived of the property under Article 31 without compensation, and a plea is also made that the Act is bad on the ground that it imposes unreasonable restrictions under Article 304(b) upon commerce within the State.

2. Now, before we look at the relevant provisions and consider the challenge made, it would be perhaps better just to state briefly what the credentials of the petitioners are and what is the ground for tin''s petition. Petitioner No. 1 is an old man and he is a big landlord in the Vakhar Baug area and he at present is not doing any business at all,'' and the case of the respondents, the State of Bombay and the Agricultural Produce Market Committee at Sangli, is that exorbitant rents have been charged to the tenants who are traders and commission agents occupying buildings in this area, and in their affidavits they have pointed out that whereas the rent that was recovered in 1940 to 1942 was Rs. 10,829, this rent went'' up to Rs. 97,368 in the years 1952 to 1954.

An explanation has been attempted to be given by the petitioners in behalf of this increase in rents and rather a lame explanation is given that the rent was increased because some of the properties were used for cinemas and such other enterprise. Petitioner No. 2 undoubtedly is doing business and he applied for a license under the provisions of the Act and carried on business pursuant to the conditions of the license.

It was realised by the Market Committee which was set up and also by a large section of the pub-lie that the Vakhar Baug area was not suitable for the purpose of a market under the provisions of the Act and therefore as far back as 25-3-1951, the Market Committee passed a resolution, for securing hind situated on the Sangli-Miraj Road admeasuring 99. acres and 30 gunthas for the establishment of a new permanent market yard in this locality.

The Market Committee approached Government and requested it to initiate acquisition proceedings for acquiring this land. The Government acceded to this request and acquired this land. The Market Committee took a loan of Rs. 1,50,000 from the Government on 29-3-1954, with a view to develop this land and to have a proper market yard.

On 16-5-1954, the Agricultural Market Committee passed a resolution requesting Government to declare the new site to be the principal market yard from 26-10-1954, which was the Diwali of that year. The Chamber of Commerce of Sangli passed a unanimous resolution on 3-6-1954, to shift the market yard from the Vakhar Baug area to the new market yard in October 1954.

The allotment of places in this new locality began in 1954. Petitioner No. 2 applied for one of the plots and was allotted one. On September 6 the Marketing Committee published a notice informing the traders and general commission agents that the trade in the new market would commence on October 26, and when all preparations were made for the opening of the new market, the petitioners Sled this petition on 10-11-1954, challenging the Act and challenging the final notification issued on 10-10-1954, and also challenging the rules and bye-laws framed under, the Act.

3. Now, when we turn to the Act, it is undoubtedly an Act passed to satisfy an urgent social need. Its clear object is to afford protection to the producers, protection from the exaction of the middle-man who deprived them of the legitimate return for what they had grown on the soil with the sweat of their brow. It is with this object that the Act provides that agricultural produce should only be bought and sold at a fixed place and under certain conditions which will protect the producer from not'' getting what he is entitled to.

Laws regulating marketing are not anything new And all modem States have put on the statute book similar Acts providing for the establishment of markets and also providing that certain produce should only he sold within confined limits of the market established and under, certain terms and conditions. But we regret to have to state that a simple measure of social reform has been rendered complex and cumbersome by rules and bye-laws framed under it which in many cases have been framed without any reference to the provisions of the Act or without realising what the rule making power was or what were the proper bye-laws to be framed wider the Act.

New nomenclatures have been adopted when there was no necessity to do so and the result has been what one can only describe as chaotic. Even Mr. Joshi who appears for the State of Bombay very often was not in a position to enlighten us as to why a particular rule was passed or a bye-law enacted. Therefore, whatever our views may be as to the rights of the petitioners, we feel that Government should consider carefully all the rules and bye-laws which have been passed and try to bring them within a narrow compass and make them as simple as possible.

It is not always necessary that the functioning of democracy must result in passing of laws which nobody can understand, and we did feel while this petition was being argued and we had put to Mr. Joshi that if we ourselves felt difficulty in under, standing some of the rules and bye-laws it was hardly fair to expect a trader in Sangli or an agriculturist in Sangli not only to understand the rules but to obey and respect them. The simplicity of law does not necessarily militate against its efficacy.

On the contrary the more complicated and complex the law is the more difficult it is to enforce it and the more vulnerable it is to a challenge by those who are affected by it. Therefore, we sincerely hope that Government will take prompt measures to consider what proper rules and bye-laws should be passed and if the Act requires any legislative alterations.

4. Now, the Act as it was originally passed provided by Section 4 for a notification by the Provincial Government declaring a certain area to be a market area. This notification was to be issued after considering such objections and suggestions as may be received and after holding such enquiry as may be necessary. Under Sub-section(2) of Section 4 after such a notification was issued no local authority and no other person could set up, establish, or continue or allow to be set up, established or continued any place for the purchase or sale of any agricultural produce which was notified, except under a license granted by the Provincial Government and except in accordance with the provisions of the Act, rules and bye-laws and of the conditions specified in the license.

Therefore, the simple scheme was that there was to be as it were a notified area which was described as the market area, and in this area purchase or sale of the agricultural produce which was notified could only be effected under a license granted by the Provincial Government. From the provisions of this section a producer was exempted u/s 4 (2A) when he sold agricultural product; to another for his private use or for retail sale. The intention clearly was to protect the producer when he effected a sale to a trader or a general commission agent. But where he sold for private use and there was no question of profit arising as far as the consumer was concerned or when he sold by a retail sale where profit motive was very slight one, no restriction was placed upon purchase and sale of this kind.

Then Section 5 provided for the establishment of a market committee, and Section 6 dealt with the constitution of the market committee. Section 26 conferred the power of making rules upon the Provincial Government generally-under Sub-section (1) and with regard to particular matters under Sub-section (2); and one of the matters dealt with in Sub-section (2) was Sub-clause (f) which was with regard to the issue or licences which after a subsequent amendment could be issued to traders, commission" agents, brokers, weighmen, measurers, surveyors, warehousemen, and other persons operating in the market, and the form in which and the conditions subject to which such licenses shall be issued or renewed and the fees to be charged therefor. This Act was substantially amended by Act XXXVI of 1953 and

Act XXIII of 1954, and the result of these two amendments was that although substantially the scheme under the parent Act remained the same, certain procedural changes were brought about.

As the Act now stands, u/s 3 the Government has to issue a notification to declare its intention of regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification. u/s 4 after the expiry of the period specified in the notification to be issued u/s 3 and after considering such objections and suggestions as may be received before such expiry and after holding such inquiry as may be necessary, power is given to the State Government to declare the area specified in the notification u/s 3 or any portion thereof to be a market area for the purposes of the Act and in respect of all or any of the kinds of agricultural produce specified in the said notification.

Once this notification is issued u/s 3 under Sub-section (2) of Section 4 no place in ''this area can be used for the purchase or sale of any agricultural produce specified in the notification. The proviso to Sub-section (2) gives the power to the State Government pending the establishment of a market in such area u/s 5 to grant a license to any person to use any place in the said area for the purchase or sale of any such agricultural produce; and Section 5 provides for the establishment of a market committee, and one of the duties of the market committee is to enforce the provisions of the Act, the conditions of a license granted under Sub-section (2) of Section 4 and the rules and bye-laws ''made under the Act, & also which is important, if so required by the State Government to establish a market in the market area.

Now, Sub-section (2) of Section 4 while prohibiting the use of any place in the market area for the purchase or sale of any agricultural produce makes that prohibition subject to the provisions of Section 5A, and when we turn to Section 5A we find that where a market is established u/s 5 the market committee may issue licenses in accordance with the rules to traders, commission agents, brokers, weighmen, measurers, surveyors, warehousemen and other persons to operate in the market. Therefore, reading Section 4(2) and the proviso and Section 5 and Section 5A, the scheme that really emerges is that once a market area is established, there is a prohibition against purchase or sale of the agricultural produce therein; permission may be granted by the Provincial Government to purchase or sale in this area, but this permission is to continue only so long as the market is not established and licenses are not issued by the market committee u/s 5A to operate in the, market.

Once the market is established, it is for the market committee to issue licenses and the licenses can only be to operate in the market. It would be noticed that whereas under the license granted by the Provincial Government permission could be granted to operate in any place in the market area, u/s 5A once the market is established the license to operate must be confined to operate in the market. As in

the parent Act an exemption is made in favour of the producer who himself is the seller, and who sells to the buyer for his own private use or if agricultural produce is sold to a buyer by way of retail trade.

A new section was added, Section 4A, by Act 23 of 1954, and that section introduced a slightly new idea from the one which existed in the original "Act and this new idea was that a principal market yard and sub-market yards should be established in each market area, and what these principal market yards and sub-market yards would comprise was to be declared by the State Government by a notification in the Government Gazette.

A proviso was inserted to Sub-section (2) of Section 4A and that was to the effect 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, subject to such variation as may be necessary.

This proviso was dealing with the state of affairs existing prior to the amending Act of 1954 where, as we shall presently point out, under rules and bye-laws market yards had been established. The provision with regard to the power to make rules and bye-laws under Sections 26 and 27 remained substantially the same after the amendment as it was before.

5. Now, turning to the rules that were framed, under Rule 51 power was given to the Government to declare any enclosure, building or locality in any market area to be a market yard, and also power was given to Government to declare by a "notification any area, including all land with the buildings thereon, within such distance of the market yard, as it thinks fit, to be a market proper.

Therefore, the scheme of this rule was that within the larger market area which was declared by Government u/s 4 there should be a market yard in which the business should he transacted, and contiguous to the market yard there should be a belt as it were of no-man''s land where no business should be transacted and which, should be known as the market proper. When we deal with the licenses we will point out that the object of the rules and the bye-laws was to permit business to be done in the whole of the market area except in the market proper.

This belt was set apart in order again to protect the producer who, if he came to the market area with the intention of displaying his goods in the market yard and selling them in the market yard, should not be inveigled into parting with his produce before he reached the market yard, the intention being that the producer should be allowed to sell his produce at competitive rates and he could only get competitive rates provided he sold his goods in the market yard where there would be other purchasers and other traders.

Rule 65 provided for licenses to be issued to traders and general commission agents, and Rule 67 provided for licenses to brokers, wcighmen, measurers and surveyors. The importance of issuing licenses to brokers, weighmen, measurers, and surveyors will he realised because unless the brokers were honest, unless the weighmen, measurers and surveyors were honest, the producer could be seriously prejudiced by the manner in which his business was done by the broker or the manner in which his goods were weighed, measured or surveyed, and therefore '' again in the interest of the producer control had to be kept in the manner in which the brokers, weighmen, measurers and surveyors did their business.

6. Then the bye-laws provided for three classes, of licenses "A", "B" and a retail license. ''A" license permitted a trader to carry on the business of sale and purchase of agricultural produce anywhere in the market area excluding the market proper, "B" class license traders could purchase the agricultural produce in the market area but outside the market proper, and the third was retail traders on whom there does not seem to be any restriction as to the area where they should carry on their retail trade; and the license fees fixed. The highest fee had to be paid by "A" class trader who had to pay Rs. 150, the "B" class trader had only to pay Rs. 40 because his business operations were limited and a general commission agent was to pay Rs. 100.

"A" class trader who wished also to act as a general commission agent had to pay a license fee of Rs. 200, and a retail trader had only to pay a license fee of Rs. 10. Then bye-law 35 which has been particularly challenged in the petition prevented a trader from acting as a broker, weighman, measurer or surveyor. If he obtained a license as a trader he had to act only as a trader and there was a similar restriction on a general commission agent.

7. This broadly is the scheme as devised by the Act, the rules and the bye-laws, and to sum up, although the procedure was not., restricted from selling his produce to a bona fide consumer or a retail dealer, in his own interest, when he wanted to sell to a trader or a commission agent who were middlemen he was given the protection of his produce being only purchased either in the market yard itself or in the market area outside the belt known as the market proper.

Therefore, the restriction upon- traders and commission agents was confined to business being done in the belt known as the market proper. Outside that belt, there was no restriction provided the proper license was obtained, and within the belt the only place where business could be transacted was in, the market yard because outside the market yard the whole contiguous area became as it were a prohibited zone.

8. Now, this being broadly the effect of legislation, the first challenge that is made by the petitioners is that their fundamental right to carry on their business under Article 19(1)(g) has been impaired. Article 19(1)(g) confers a very important right

upon every citizen in India and that right is to practice any profession, or to carry on any occupation, trade, or business. Undoubtedly the right is to carry on a business freely. Equally it is a right to carry on any business which is permissible in law and also to carry on business anywhere within the territories of the Union of India. But as has been often pointed out, none of the rights to freedom enumerated in Article 19 is an absolute right.

That right must be viewed and appreciated in the social context and the constitution makers appreciating the fact that as the country developed and grew more and more social needs would nave to be satisfied provided in Sub-section (6) that the State may make law imposing, in the interest of general public, reasonable restriction on this right. It is true that when a restriction is imposed upon the light of the citizen guaranteed to him under Article 19, it is for the State to justify that restriction.

But whether a restriction is reasonable or not must be judged not in abstract but in the context of the times and in, the context of social needs and social urges. A restriction which may be unreasonable at a particular juncture of time may be reasonable at a different point of time, and therefore there is no absolute yard stick by which one can test as to whether a restriction is reasonable or not.

9. Now, turning to this particular restriction about which the petitioner complains, the restriction is according to him two-fold. He cannot carry on his business in Vakhar Baug and the second is that he cannot carry on his business in the belt known as market proper. He also says that he is compelled to carry on his business in the new market yard which has been established under the notification. In our opinion it is perfectly competent to the State Legislature to prohibit business being done in a particular place and also permit a business being done under certain conditions if public interest demands that a particular business should only be carried on under restrictions and limitations.

In our opinion there cannot he the slightest doubt, looking to the condition of the agriculturists in our country, the heavy 3ebt under which they have always lived, the way they have been exploited by middlemen, that every legislation which is intended for their protection is in the larger interest of the country. Therefore, if any restriction which the petitioners complain of is a restriction in the interest of producers, that must be a reasonable restriction. If the restriction goes beyond the interest of the producers and serves no useful purpose and is merely intended to restrict the legitimate carrying of a business of the petitioners, then obviously it would not be a reasonable restriction and we would not uphold it.

But as we pointed out before, the setting up of a proper market yard, the prohibition as to different businesses within a prohibited belt are all reasonable restrictions in the interest of producers. The necessity for obtaining licenses is also justified, because unless those who do business as traders or general commission

agents, and we are only concerned with that aspect in this petition are bona fide traders or commission agents, it would be difficult to protect the producers from the exaction of people who by produce from them not for their own consumption but in order to sell it again at profit.

If the scheme laid down in the Act is to be worked out at all, it can only work provided only licensed traders and general commission agents are permitted to operate in agricultural produce. It is not suggested that licenses are not properly granted. As a matter of fact petitioner 2 himself has obtained a license and has been operating that license. Petitioner 1 has not obtained a license because he did not apply for it.

10. It is then suggested'' that the payment of license fees itself constitutes as unreasonable restriction. A suggestion made in the petition is that these license fees are not fees but are in the nature of a tax. We have not gone into this question because in our opinion it is irrelevant for the purpose of this discussion as to whether the charges made by the marketing committee are fees or taxes because the grievance made by the petitioner is not with regard to the competence of the Legislature or with regard to any question that turns Upon the difference between tax and fees, but his grievance is that the fact that he has got to pay a certain sum before he can carry on a "business is an unreasonable restriction.

Now, with regard to the license fees charged it has been pointed out in the affidavits before us and we are satisfied that for different types of business done in Sangli the fees charged for various licenses are very reasonable. It is pointed out what amount the marketing committee has to spend in the interest of the trader & commission agents and also the producers and we do not think that we can come to the conclusion that the fees charged are so enormous or so exorbitant that they constitute an unreasonable restriction.

Whether a certain sum should he charged or a little less or a little more is a question of policy with which we are not concerned. It is only in a particular case if we come to the conclusion that there is an intention to charge or to exact enormous fees with the object to prevent or prohibit the carrying on of a business that we may have to consider whether in such a case the levying of fees would constitute an unreasonable restriction, on the carrying on of the business.

But those facts do not obtain in this present petition. Far from fees being heavy, and unreasonable fees, in our opinion, looking to all the circumstances of the case, they are reasonable.

11. The challenge is also made to this legislation under Article 31 and what is urged is that these, buildings in Vakhar Baug were constructed for the purpose of being let out to shop-keepers and traders for doing business in agricultural produce. By reason of this legislation the business in this locality is prohibited. The result is that the value of these properties had gone down, and Sir Nusser-want says that one of

the incidents of ownership is that the owner can use his property for any purpose he thinks proper, and if the owner in this case is prohibited from letting out his property for the purpose of doing business in agricultural produce, there is a substantial abridgment of an incident of ownership.

We will assume for the sake of argument that there is a deprivation of property within the mean ing of Article 31. But it is well settled that before a person can complain of deprivation and can urge that the deprivation is illegal because it is without compensation, the deprivation must be direct and not an indirect or incidental consequence of legislation. It would be impossible for Parliament or the State Legislature to put on the statute book any social legislation if a complaint could be made that indirectly some property owner has been affected by that social legislation. In effect the contention of the'' petitioners conies to this that the State Legislature cannot pass this Social legislation, cannot make proper provision for producers, cannot set up proper markets, because indirectly by doing so the value of his property has gone down. No Court can countenance such an argument.

Every social legislation must inevitably result in hardship to somebody or other. No social revolution can be carried out without causing not only-hardship hut even pain and grief. To suggest that a Legislature should carry out a social revolution, without even indirectly affecting the property rights of citizens would in substance mean that the Legislature should not carry out any social revolution at all, and therefore we are not prepared to accept the contention in this case that there-is any violation of Article 31.

12. In our opinion, therefore, there is no deprivation of property within the meaning of Article 31 of the ''Constitution and therefore the complaint that there was deprivation without compensation is of no substance.

13. The challenge under Art. 19(1)(f) was not supported on any special ground and the position here is the same as under Article 19(1)(g).

14. Article 304(b) of the Constitution has also been invoked by the petitioners. Article 304(b) appears in Part XIII which is a self-contained Part in the Constitution dealing with trade, commerce and intercourse within the territory of India. The question as to whether an individual can assert his fundamental right to carry on business without restrictions under Art. 304(b) was canvassed before the Supreme Court in -- Saghir Ahmad Vs. The State of U.P. and Others, but the Supreme Court did not decide the question. It seems to us, looking to the language used in Part XIII "trade, commerce and intercourse within the territory of India", that that Part essentially deals with the free passage of persons and goods throughout the territory of India.

What is emphasised is the freedom of trade, and not the freedom of the individual to carry on his business. It is true that under Article 304(b) the Legislature of a State has been empowered to pass laws imposing such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be

required in the public interest, and an argument may be founded that Part XIII does not merely deal with trade and commerce which arc inter-State but also deals with trade and commerce which is not inter-State but which is intra-State.

It is obvious that if the Constitution wanted to emphasise the unity of India and to make trade and commerce free throughout the Union, provision had to be made not only with regard to freedom of trade inter-State but also with regard to freedom of trade intrar State. Conceivably the Legislature of a State may well impose restrictions on freedom of trade between one part of the State and another and to deal with such a contingency Article 304(b) provided for freedom of trade both with or within the State and this Legislation could only be introduce with the previous sanction of the President.

15. Now, what is urged by the petitioners is that this is legislation which imposes reasonable restrictions upon trade, commerce or intercourse within the State and it has been introduced and passed without the previous sanction of the President and therefore it offends against Article 301 read with Article 304(b). There are two answers to this contention. In the first place, the parent Act which really imposed the restrictions, Act 22 of 1939, was passed ''before the Constitution came into force, and Article 305 saves existing laws.

It is only with regard to future laws that the sanction of the President is necessary. It is suggested by Sir Nusserwanji that the amendments of 1953 and 1954 were passed after the Constitution came into force and they should have received the previous sauctioa of the President. In our opinion, the amendments are procedural in their character, they do not alter the essential scheme which was laid down in the parent Act, and there is no further substantial restriction upon the carrying on of business than was to be found in the original Act. The second answer to the contention is that here we are not dealing with trade, commerce or intercourse at all within, the State.

As we understand trade, commerce or intercourse, it must imply the passage of goods within the State or passage of persons within the State. There is no restriction in this Act at all with regard to passage of goods or passage of persons. The only restriction which is to be found is the right of an individual businessman to cany on his business in a particular place and without the obtaining of a license as required by the Act.

It may also be pointed out -- and that is an argument which has been noticed by the Supreme Court -- that the Australian decisions bearing on the subject are not in ''pari materia'', because the Australian Constitution does not contain any provisions corresponding to Article 19(1)(g).

Therefore, when we compare Article 19(1)(g) with the provisions of Part XIII, the scheme of the Consti-tution becomes apparent. Article 19(1) provides for -rights of individual citizens. Part XIII deals with trade and commerce as such which as has

been pointed out means the free passage of goods.

It may undoubtedly be that if an individual is prevented from sending his goods across the State or even if ho is prevented from sending his goods from one part of the State to another, he may come to Court and complain of an infringement" of Article 301 read with Article 304(b). But when the complaint is with regard to the right of an individual to carry on business unrelated to the question of passage of goods or irrespective of the question of the passage of goods, then the proper article which he can invoke is Article 19(1)(g) and not the provisions of Article 301 read with Article 304(b). As in this case there is no question of restriction of passage of goods, the challenge made under Article 301 read with Article 304(b) in our opinion is not sustainable.

16. We may point out that the Madras High Court had occasion to consider a very similar question in -- P.P. Kutti Keya and Others Vs. The State of Madras and Others, . In that case the learned Judges were considering a piece of legislation which is in ''pari materia'' with the impugned Act before us. The Act they were considering was the Madras Commercial Crops Markets Act (20 of 1933), and the scheme of that Act also was to establish notified areas and to prohibit the sale or purchase of certain commodities within that notified area except under a license properly obtained, and this Act was challenged on grounds very similar to the challenge made in the case before us, and the Madras High Court in a well considered judgment repelled most of the contentions urged by the petitioners. At p. 627 the learned Judges observed:

"It will be clear from the above survey of the marketing legislation that its object is to enable producers to get a fair price for their commodities and that it has been generally adopted in all commercial States. Such Taws have been held in America to be within the Police Power of the State as tending to promote general welfare."

And at p. 628. the learned Judges expressed a surprise that a provision that business should be done ''only at a market, if there is one, is unreasonable and they point out:

".....It is obviously in the interests of the growers; they could get the best competitive prices in an open market and they would not have to pay the middleman."

With regard to the licensing fees the learned Judges expressed the opinion that the licensing was a part of the scheme to carry out the regulation of marketing of commercial crops and there could be no valid objection to the levy of a license fee. In that case also it was contended that the licensing fee was heavy, but the Madras High Court came to the conclusion that there were no materials on which the suggestion could be supported.

17. There is one further Constitutional ''challenge to which reference might be made, and that is the challenge to by law 35 on the ground that it infringes the provisions of Article 14. As we have already pointed out, that by law prevents a

trader from obtaining a license of a broker, weighman, surveyor, etc., and similarly prevents a general commission agent from obtaining a license to operate as a broker, weighman or surveyor.

It is difficult to understand how Article 14 has any application to any question that can arise under this bye-law. It is not suggested that there is any discrimination as between one trader and another or between one general commission agent and another. In the interests of producers and in order to carry out the scheme underlying the Act, a trader or a general commission agent is not permitted to operate as a broker, weighman or surveyor.

It may be at best suggested that this is an unreasonable restriction on the right of a trader or a general commission agent, but the challenge to this bye-law under Article 14 is difficult to understand. There are many occupations and professions where limitations are put upon the right of a person occupying a particular post or a person practising a particular profession from at the same time occupying another post or practising another profession or doing business.

If in the interest of the occupation or in the interest of the profession such a restriction can be justified then equally in this case in the interest of the producers whose produce after all is the subject matter of all trade and business as far as this Act is concerned, a provision restricting a trader or a commission agent from performing other operations cannot be considered to be unreasonable.

18. That leaves us with the challenge to the setting up of another market on an entirely different ground unconnected with the Constitution, and in order to understand this challenge it is necessary to consider the various notifications that have been issued by Government from time to time under the amending Act. The first notification u/s 3 with regard to the intention of Government of regulating the purchase and sale of agricultural produce in a particular area was issued on 16-3-1950, and the notification u/s 4 declaring the market area was issued on 7-9-1950, and the market area that was declared was a very large area comprising the whole of the Miraj taluka. Then on 31-5-1951, a notification was issued under Rule 51 to which reference has been made, declaring that with effect from 25-6-1951, there will be a market yard in the Miraj taluka and that market yard was the Vakhar Bang in respect of which this petition has been preferred, and this notification also declared certain areas to be temporary market proper.

Then a notification was issued on 8-10-1954, and that purported to be issued under the proviso to Section 4A (2) and that declared the Vakhar Bang to be the principal market yard. Finally, a notification was issued on 13-10-1954, which was to come into effect from 25-10-1954, declaring the new market yard which was being constructed, as already pointed out, as the principal market yard.

Therefore, the effect of the notification of 13-10-1954, was to revoke the notification of 8-10-1954, and by reason of this revocation the Vakhar Baug ceased to be the

principal market yard and a different principal market yard was substituted in its place, and what is urged by Sir Nusserwanji is that this, notification of 13-10-1954, is ultra vires of the Act.

19. Now, Section 4A(2) confers upon the Government the power to declare any enclosure, building or locality in any market area to he a principal market yard for the area and other enclosures, buildings or localities to be one or more sub-market yards for the area. It is clear'' that by reason of Section 14, General Clauses Act any power that is conferred on Government can be exercised from time to time as ocsasion 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 u/s 21 of the General Clauses Act that when a power to issue notifications, orders, rules or by-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 by-laws so issued.

What is urged by Sir Nusserwanji with considerable force is that the power conferred upon the State Government to issue a notification was conditioned by the proviso. There was a limitation upon the power and that limitation was that in declaring a principal market yard if there were any market yards in existence before the commencement of the Amending Act of 1954, then one of those market yards had to be declared to be the principal market yard and the others, if any, had to be declared sub-market yards.

Sir Nusserwanji says that inasmuch as admittedly Vakhar Baug was a market yard in existence before the commencement of the Amending Act of 1954, Government had to declare it either a principal market yard or a sub-market yard. As there was no other sub-market yard in existence it had to be declared the principal market yard, and it is pointed out that consistently with this proviso and in conformity with the law Government did issue the earlier notification of 8-10-1954, and Sir Nusserwanji says that that notification was a proper notification which gave effect to the proviso to Section 4A (2).

It is further urged by Sir Nusserwanji that once having issued the notification of 8-10-1954, it was not competent to the Government to rescind that notification by substituting another principal market yard for the Vakhar Baug, The new principal market yard that has been substituted is not a market yard which was in existence prior to the Amending Act, and Sir Nusserwanji says that in issuing the notification of 13-10-1954, the Government has contravened the mandatory provisions of the proviso to Section 4A (2).

It is urged that even if the Government wanted to exercise its power again of issuing a notification u/s 4A (2), that power could only be exercised in the like manner and

subject to the same condition as the exercise of the original power. It is said that the proviso cannot be restricted to the first declaration issued by the State Government on 8-10-1954, and that the proviso must be a limitation upon the power of the Government to issue a notification whenever and however that power might be exercised.

We must admit that looking to the language used by the Legislature in Section 4A (2) and the way the proviso is worded, the argument advanced by Sir Nusserwanji and the submission made by him do get considerable assistance. But in construing a section or a proviso we must take into consideration the object of the Act and even in certain cases the circumstances which led to the passing of a particular legislation.

20. Now, it is important to note that the Vakhar Baug had been declared a market yard under Rule 51 and that was as far back as 31-5-1951. It is common ground that ever since 1951 preparations were being made for setting up a market yard different from Vakhar Baug. All responsible authorities had taken the decision rightiy or wrongly that Vakhar Baug was not suitable, as a market yard and that the market yard should be another locality some distance from Vakhar Baug. As we have pointed out, land was acquired, land was taken, plots were assigned, and every preparation was made to bring into existence a new market yard.

It was in these circumstances that the Amending Act 23 of 1954 was passed. Now, before a principal market yard could be declared u/s 4A of the Act which was a new provision in the Act, there had to be a sort of an interregnum. Certain market yards had been set up under Rule 51, new principal yards had to be set up u/s 4A, and the Legislature had to provide for this interregnum. It is true that Section 4A was not intended only to apply to Satara; it was to have general application. But the position that arose in Satara is a pointer to what the object of the Legislature was and what was attempted to be achieved both by Section 4A (2) and the proviso.

There being already a market yard, the position with regard to that market yard had to he legalized before Government gave effect to its final decision as to which one should he the principal market yard. In this case the decision was already taken, but it was not possible immediately to give effect to that decision and some transitory provisional arrangement had to be made, and in our opinion the proviso really deals with the situation that would arise 011 the passing of the amending Act of 1954 and it only deals with that situation and not with the situation that may arise from time to lime.

Therefore, when the amending Act was passed it was obligatory upon Government to legalize the position of market yards which had already come into existence under Rule 51, and in order to avoid any difficulties the Legislature provided that for the interim period the market yards which had already existed should be declared to be the principal market yard and the sub-market yards. But the, proviso does not

seem to be intended to deal with situations that may arise in future or after the temporary situation arisir g from the Amending Act had been dealt with, and therefore as the State Government itself says in its affidavit that it wanted to legalize the position of the Vakhar Bang market yard and therefore it issued a notification under the proviso to Section 4A (2).

Having legalized that it then proceeded to give effect to the decision which had already been arrived at as far back as 1951 and effectively to declare the new market yard as the principal market yard. It is, therefore, urged that when it issued the second notification the power of the Government was not restricted by the limitation contained in the proviso. We must confess that we have come to this conclusion with some hesitation and with some difficulty.

But the contrary result which would flow from our giving to the proviso the construction that Sir Nusserwanji contends for will be so anomalous and so inconsistent with the object of the statute that it would not be proper for us to accept that interpretation unless we were compelled to do so.

21. Now, admittedly, u/s 4A (2) Government can by issuing notifications from time to time alter the principal market yards which have been set up and which did not exist before the passing of the Amending Act. There is no rational basis for the suggestion that only those market yards which were in existence prior to the amending Act should receive from the Legislature the security of, as it were, a permanent tenure.

If it is conceded that the State Government has the power to alter the principal market yard'' and sub-market yards in cases where the proviso does not apply, there seems to be no reason for coming to the conclusion that a different view was taken by the Legislature with regard to those market yards which were in existence prior to the passing of the amending Act. It may be said that if the market yards were in existence prior to the amending Act, there would he vested interests and the Legislature wanted to protect vested. interests.

But equally there would be vested interests if a now market yard was established, and why was it that the Legislature did not wish to protect those vested interests, as much as the vested interest brought into existence by the creation of a market yard prior to the amending Act. It is difficult to take the view that in passing this social legislation the Legslature was contemplating perpetuation of vested interests. The intention clearly wan to leave it to the State Government to establish principal market yards and sub-market yards which were suitable and which were in the interests of ail the producers and also the traders.

The interpretation suggested by Sir Nusserwanji would negative this intention of the Legislature by putting upon the State Government a limitation with regard to a largo number of market yards which may have been in existence prior to the passing of the amending Act. In the case of these market yards Government would be helpless

and would not be able to make any change if change was thought necessary. We admit that Section 4A is extremely badly drafted, and that the object of legislation could have been achieved by using simpler and better language.

But it is out duty, if it is possible, to give a construction which is more in conformity both with the object which the Legislature had in mind and also with reason and commonsense rather than a construction which is likely to defeat the object of the Legislature'' and which is likely to result in difficulties and anomalies. Therefore, we have come to the conclusion that the notification challenged was not ultra vires of the Act and the State Government was acting in exercise of its power conferred upon it by Section 4A (2).

22. Sir Nusserwanji then wanted to challenge certain other provisions of the Act which did not "affect the fundamental rights of the petitioners and Sir Nusserwanji contended that he had a right to do so. Now, the ordinary accepted principle is that a party must he aggrieved by some legislation before he can challenge it. If he challenges a legislation on the ground of contravention of Part III of the Constitution, then he must satisfy the Court that some fundamental right to which he can lay claim has been impaired or has been threatened by the legislation.

It is not open ordinarily to a party to challenge legislation on the ground that it impairs the funda-mefital rights of other citizens although it does not in any way constitute a threat to his own. There is one exception to this principle.

It may be that a successful challenge to any part of a statute may result in the Court holding that the whole statute is ultra vires of the Act and therefore if a petitioner comes to this Court contending that his fundamental right has been violated, he can challenge other parts of the statute which do not directly affect him if by that challenge he can bring about a position whereby the Court would hold that the whole legislation was void because in getting the whole Act set aside he is saving a threat to himself.

But where a provision which does not affect him is sevcrable and a successful challenge to that provision will not result in the whole Act being held void, it is not open to the petitioner to make a grievance of a violation of a fundamental fight which does not affect him. In this case Sir Nusserwanji rather ironically has attempted to take up cudgels on behalf of the producers and he says that fundamental rights of the producers have been affected by this Act.

It is pointed out that u/s 4A (2) the Legislature has not made clear what the private use is which would entitle a purchaser to buy from the producer without a license or without any restriction, nor is the quantity specified which will constitute a sale a retail sale. With regard to the latter, Mr. Joshi has pointed out that a by-law has been framed stating sale of what quantities would constitute a retail sale. In our opinion, even assuming there is any substance in this contention, no producer has come before us telling us that he has been aggrieved by this sub-section.

No producer makes a complaint of the fact that he does not know when a person wants his produce for private use, nor does he know when a sale becomes a retail sale, and even assuming that this provision was bad, it is clearly severable and it would he open to us in proper proceedings to hold that the particular restriction on the right of the purchaser to sell his produce was an unreasonable restriction on his right. Therefore, in our opinion, it is not open to Sir Nusserwanji to challenge this part of the Act.

23. Sir Nusseiwariji also wanted to contend that the Market Committee had no authority to issue licenses. Now, a very curious situation was disclosed to us by Mr. Joshi. No market has been established u/s 5 of the Act and therefore Section 5A has not come into operation. The result is that the Market Committee cannot issue licenses u/s 5A to traders commission agents, etc. to operate in the market. In the absence of a market being established u/s 5 and in the absence of licenses being issued u/s 5A, licenses can only be issued by the State Government under the proviso to Section 4A (2).

But this rules show that licenses have been issued by the Market Committee and not by the State Government. It is difficult to understand how either the Government or the Market Committee came to the conclusion that the Market Committee.'' was authorised to issue licences without Section 5 and Section 5A being brought into force. Mr. Joshi suggests that the Market Committee acts as a delegate of the State Government and the authority to issue licenses has been delegated by the State Government. It is rather difficult to accept that contention.

But in our opinion it is not open to the petitioners to challenge the validity of the licenses issued. There is no such challenge in the petition itself and petitioner 2 has applied for a license, has obtained a license, has been operating that license, and has never made any grievance about that license. Therefore, whether the challenge can be sustained or not, it is not open to the petitioners in this petition to make that challenge.

24. There is one further point that Sir Nusserwanji wanted to urge which we have not permitted him to do, and therefore in fairness to him we must point out what his contention was to be. With regard to the notification of 13-10-1954, to which reference has been made. Sir Nusserwanji wanted to argue that that notification was in fraud of the proviso to Section 4A (2). The argument was that the first notification which purported to give effect to the proviso was merely a camouflage, the intention all along was not to carry out the mandatory provisions of the proviso and to declare a principal market yard different from the principal market yard which had to be declared under the proviso.

Now, it is a serious allegation to make that a Government has acted in fraud of a legislation and we cannot countenance an argument based on such an allegation unless there is a clear plea in the petition. Now, there is no plea to the effect that the

State Government has acted in fraud of the legislation or that the notification issued by it is in fraud of the legislation. The only contention put forward is that the State Government has arbi-tharily and capriciously issued the second notification within a short time of the first notification.

In our opinion, a contention that a Government acts arbitrarily and capriciously is very different from the contention that, the Government acts in fraud of a law on the statute book. It is also difficult to understand the plea of the State Government''s action being arbitrary or capricious when we are not dealing with the question, of exercise of discretion but the exercise of a power.

If absolute power is conferred upon Government, then that power can be exercised and the Government is not bound to give reasons and explain motives why the power was exercised. If the power is not absolute and is conditional, then the power can only be exercised provided the conditions are satisfied. ''''

But in either case a plea that the power was exercised arbitrarily or capriciously seems to be a little out of place. It is true that the Court will hold that there was no exercise of power conferred by a statute if that exercise was a fraud upon the law, and therefore short of a plea of fraud the exercise of the power conferred by statute cannot be objected to on vague grounds like the one put forward in the petition by the petitioners.

We may point out that whatever else may be said of the action of the State Government, it cannot'' he said that they have acted arbitrarily or capriciously. We have pointed out that from 1951 it had the clear intention of what was to be done in the Sangli area. Not only it had the clear intention but everybody concerned also had a clear intention, and therefore it is not as if having decided upon Vakhar Bang as the principal market yard it arbitrarily or capriciously changed its mind and fixed upon some other place to be the principal market yard

Whether the Government had the power to change the principal market yard is another question and that question we have already dealt with. But if it had the power--and we have held that it did have the power--to alter the principal market yard from Vakhar Baug to the new market yard, then on the facts clearly established and on the affidavits in this case it cannot be said that the action of the State Government was arbitrary or capricious.

25. The result is that the petition fails and must be dismissed with costs.

26. Sir Nusserwanji says that he proposes to apply to us for leave to appeal to the Supreme Court and that pending that application an interim injunction should be given in his favour. We will grant an injunction limited to this that petitioner No. 2 will be permitted to carry on his business of buying and selling agricultural produce in the Vakhar Baug area for a fortnight from today.

27. The costs which we have awarded to the respondent, are quantified at Rs. 1,000 out of which the State will receive Rs. 944, and respondent 2. will receive Rs. 56.

28. Petition dismissed.