that the said Kehar Singh had died. Knowledge thereof could be imputed to the plaintiff from that day only, but on July 23, 1975, the plaintiff was not required to move the application as directed by the trial Court. Under the circumstances, no fault could be found with the plaintiff for not bringing the legal representatives of Kehar Singh deceased defendant on record within time. Besides, he sought the execution of the *ex parte* decree passed in his favour immediately. Since then, the matter is pending in the executing Court.

7. Taking into consideration all the facts and circumstances of the case, I am of the considered opinion that in order to do justice between the parties, they be relegated to the position as it existed on March 24, 1975, after bringing the legal representatives of Kehar Singh, deceased, on record, after setting aside the *ex parte* decree dated December 16, 1975. The parties have been directed to appear in the trial Court on May 27, 1985. It is further directed that the parties will lead their evidence at their own responsibility. However, *dasti* summons may be given to them under Order XVI rule 7-A, Code of Civil Procedure, if so desired. These revision petitions are disposed of accordingly.

N.K.S.

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

STATE OF HARYANA AND ANOTHER,—*Appellants.*

versus

SHRI OM PARKASH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 1055 *of* 1984.

May 20, 1985.

Haryana Rural Development Fund Act (XII of 1983)—Sections 3 and 4—Act imposing cess on sale proceeds of agricultural produce bought or sold or brought for processing in Notified Market Area—Such cess payable by the dealer—Cess so collected constitutes a separate development fund—Purposes for which fund is to be expended specified in section 4(5)—Such imposition—Whether a fee—Element of quid pro quo—Direct benefit or service to the payers of the cess—Whether essential.

Held, that co-relationship expected between the levy and the services rendered is one of general character and not of mathematical

exactitude. All that is necessary is that there should be reasonable relationship between levy of the fee and service rendered. This is how the theory of *quid pro quo* has lost its hallow and has been rendered a hallowed theory. Merely because others, besides those paying the fee are also benefitted does not detract from the character of the fee and the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. It is increasingly realised that the element of *quid pro quo* in the strict sense is not always a *sine qua non* for a fee and that for a fee there must necessarily be *quid pro quo* has undergone a sea change. It cannot, therefore, be concluded that some direct and special benefit has to be rendered to the payers of the fee or that it has to be in relation to the transaction of the purchase or sale of agricultural produce or that a substantial portion of the fee raised has to be expended for these two purposes.

(Para 11)

Held, that the imposer of the cess, that is, the State, is rendering innumerable services to an overwhelming majority of the dealers of the payers of the fee alongwith the other 80 per cent of the population of the State habitating the rural areas. Atleast 61 market areas out of 91 where the dealers or the payers of the fee reside or carry on their business fall within the rural areas of the State and with the development of those areas in line with the policy laid down in the Haryana Rural Development Fund Act, 1983, the entire population of those areas including the dealers is bound to benefit or enjoy the services sought to be rendered to them. With the development of the rural areas, better communications, building of the roads from fields to the markets and with the betterment of the lot of the agricultural labour residing in those areas, not only the cherished goal of 'growing more' is likely to be achieved, but it is bound to benefit the dealers dealing in the agricultural produce. Besides being thus directly served by the expending of the fund in the manner suggested in the Act, the dealers are also likely to benefit indirectly as members or a part of the general mass of the population habitating the market areas which constitute about 80 per cent of the population of the State. Anyway, it is not a case where the payers or dealers can complain that there is not even a casual relationship between the fee paid and the services rendered to them. (Para 12).

Letters Patent Appeal under Clause X of the Letters Patent against the order dated 13th October, 1984 passed by the Hon'ble Mr. Justice S. P. Goyal, in Civil Writ Petition No.1118 of 1984.

H. L. Sibal, A.G. Haryana with Nirmal Yadav, A.A.G. Haryana and B. S. Gupta, Advocate.

D. V. Sehgal, Sr. Adv. with B. S. Malik, S. K. Mittal, Gobind Goel & B. R. Mahajan, Adv., Kuldip Singh, Sr. Adv. with V. S. Gari, Advocates Intervener.

JUDGMENT

I. S. Tiwana, J.

(1) The solitary contention raised in this Letters Patent Appeal relates to the validity of the Haryana Rural Development Fund Act (No. 12 of 1983) (for short 'the Act'). It has been tested on the anvil of the hollowed theory of *quid pro quo* by a learned Single Judge of this Court, who has declared it as also the rules framed thereunder to be unconstitutional and void. Another set of 11 Civil Writ Petitions Nos. 2871, 3578 and 4213 of 1984, 960 to 963, 966, 967, 950, 907 of 1985, has also been filed assailing the Act on similar grounds and the learned counsel for the parties therein are agreed that the fate of these petitions is undisputably dependent on the result of this appeal. In order to appreciate the contentions raised by the learned counsel for the parties in this appeal, it is but necessary to have an idea of the salient features of the Act.

(2) The Act imposes cess on *ad valorem* basis at the rate of one per cent of the sale-proceeds of agricultural produce bought or sold or brought for processing in the Notified Market Area. It is payable by the dealer as defined in Section 2(c) of the Act and means any person who within the Notified Market Area sets up, establishes or continues to allows to be continued at any place for the purchase, sale, storage or processing of agricultural produce or in the Notified Market Area purchases, sells, stores, or process such agricultural produce. As per Section 3(3) the dealer is entitled to pass on the burden of the cess paid by him to the next purchaser of the agreultural produce from him and may, therefore, add the same in the cost of the agricultural produce or the goods processed, manufactured out of it. The cess so collected is to constitute a fund to be called the Haryana Rural Development Fund, which is at the disposal of the State Government. The purposes for which this fund is to be expended are specified in Section 4(5) of the Act, which entitles the State Government to spend it in the rural areas in connection with the development of roads, hospitals, means of communication, water supply, sanitation and other schemes for the welfare of the agricultural labourers or for any other such scheme approved by the State Government for the development of the rural areas. The cost of administering it of course is also be met from this fund. The State Government is obliged to publish annually in the Gazette the report of the activities financed from the fund together with the estimates of receipts and expenditure of the fund and a

statement of accounts. The market and the notified market area as mentioned in the Act have to have the same meaning as specified in the Punjab Agricultural Produce Market Act, 1961. It is the accepted position that the entire State of Haryana has been notified into different market areas and no part of it remains outside the market areas.

(3) In exercise of the powers conferred by Section 6 of the Act, the State Government has framed rules, known as the Haryana Rural Development Fund Rules, 1984. According to Rule 3(1), the cess is levied on the dealer and as per sub-rule (2) the responsibility for the payment of the same is on the dealer, who is the buyer, and if he is not a licensee under the Punjab Agricultural Produce Markets Act, 1961, then the buyer is the seller. The cess is leviable as soon as the agrultural produce is bought or sold. Rule 4(1) requires the dealer to submit his return in Form 'A' to the Assessing Authority showing his purchases and sales on the very next day, but not in any case later than four days of the date of the transaction. Sub-rule (2) of this rule enjoins on the dealer to deposit in cash the cess that has become due from him on the basis of his return.

(4) The petitioner-respondents who are licensees under the Punjab Agricultural Produce and Markets Act, and dealers for purposes of the Act impugned the Act on the twin ground, that is, if the cess imposed by the Act is a tax on the sale or purchase of the agricultural produce, it offends Section 15 of the Central Sales Tax Act, and in the alternative, if it is a fee, then there is no *quid pro quo* so far as the dealers are concerned. As already indicated, it is the later mentioned contention which has been accepted by the learned Single Judge in the light of the observations made by their Lordships of the Supreme Court in *Kewal Krishan Puri* v. *State of Punjab*, (1) while rejecting the first one.

(5) The case of the State, as pleaded, is that the cess in question is not a tax, but a fee. To sustain its imposition, a three pronged plea is taken, that is, (i) it has been imposed to fulfill the objectives stated in Articles 46 to 48-A of the Constitution of India, (ii) the dealer is only a collecting agent, and the burden of the tax, as a matter of fact, is on the next purchaser, and 80 per cent of such purchasers from the population of the rural areas of the State; and (iii) out of the total 91 Notified Areas, 61 are located in the rural areas, and as such an overwhelming majority of the dealers being

(1) A.I.R. 1980 S.C. 1008.

the residents, or the businessmen of those areas, are directly benefited by the utilisation of the fund for the purposes specified in the Act. None of these pleas has, however, been accepted by the learned Single Judge,—*vide* the impugned judgment. While rejecting the first plea on the ground that there is no challenge on behalf of the petitioners that the cess had been imposed for unauthorised purposes, the said plea was totally irrelevant for the decision of the case; the second has been discarded on the ground that a similar argument had been turned down in *K. K. Puri's case* (supra). Qua the third plea, what has been held is as follows:

> "Consequently, even though 61 per cent of the dealers and 80 per cent of the population may be living in the rural areas, as defined in the Act, yet the purpose as enumerated in the Act for which the Development Fund is to be utilised has no *quid pro quo* so far as the dealers and the transaction on which the fee is levied as defined in the Act are Concerned."

(6) Having heard the learned counsel for the parties, we feel persuaded to differ with the learned Single Judge.

(7) As indicated earlier, the striking down the Act as unconstitutional and void, the learned Judge has heavily relied on certain observations made by their Lordships of the Supreme Court in *K. K. Puri's* case (supra). The conclusion he derived from those observations is noted in the following words:

> "According to the rule laid down by the Supreme Court in *Kewal Krishan Puri's case* (supra) the amount if realised must be earmarked for rendering service to the dealers in the notified market area and quite a substantial portion of it must be shown to be expended for this purpose. Secondly, the services rendered to the dealers must be in relation to the transaction of purchase or sale of agricultural produce. Thirdly, some special benefits must be conferred on the dealers which have direct reasonable co-relation between them and the transaction though it may not be necessary to confer whole of the benefit on the dealers. None of these tests is satisfied in the present case. The amount spent on 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 do not confer any benefits on the dealers in the market area at all nor this purpose has any co-relation with the sale or purchase on which fee is levied."

(8) Though while recording the above-noted conclusion, the learned Judge also noticed the later decision of the Supreme Court in *Sreenivasa General Traders and others etc.* v. *State of Andhra Pradesh and others etc.*, (1) wherein the observations made by their Lordships in *K. K. Puri's case* (Supra) were considered and commented upon, yet came to the conclusion that this later decision made no departure from the principles enunciated in that case. The obesrvations in *K. K. Puri's* case (supra) as relied upon by the learned Single Judge have been summarised in *Sreenivasa General Traders'* case (supra) in the following manner:—

"1. It must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realized is spent for the special benefit of its payers.

2. A fee is levied essentially for services rendered and as such there is an element of *quid pro quo* between the person who pays the fee and the public authority which imposes it.

3. Services means service in relation to the transaction, property or the institution in respect of which he is made to pay the fee."

Having done that, their Lordships observed:

"With utmost respect, these observations of the learned Judge are not to be read as Euclid's theorems, nor as provisions of a statute. These observations must be read in the context in which they appear."

They further commented:

"There was quite some discussion at the Bar as to the binding effect of the aforesaid observations made by this Court in *Kewal Krishan Puri's* case supra. With greatest respect, the decision in Kewal Krishan Puri's case does not lay down any legal principle of general applicability."

(2) A.I.R. 1983 S.C. 1246.

(9) It is thus evident that the observations in *K. K. Puri's case* (supra) on which the judgment under appeal is firmly based, have been opined by the Supreme Court itself to be no principles of general applicability. It has been stated in no uncertain terms that "these observations must be read in the context they appear." Anyway, we do not feel the necessity of referring to these judgments, that is, in *K. K. Puri's case* and *Sreenivasa General Traders' case* (supra) in any great detail as we find in still two later judgments in *M/s. Amar Nath Om Parkash and others* v. *State of Punjab and others,* (3) and The *City Corporation of Calicut* v. *Thachambalath Sadasivan & ors.,* (4) the Supreme Court, after considering these very judgments, has laid down the principles which, to our mind, completely govern the fate of this case. As a matter of fact, the learned single Judge did not have the advantage of referring to these judgments as these were pronounced later than the judgment under appeal. We, however, find ourselves obliged to follow the ratio of these judgments, more particularly, when the very two judgments, referred to and discussed by the learned Single Judge, have been discussed and explained by their Lordships themselves.

(10) In the first one of these judgments, their Lordships after opining that certain general observations made in *K. K. Puri's case* (Supra) "have been so misunderstood and misinterpreted as to lead to some confusion and public mischief" have again held that this judgment laid down "no new principles". We again do not feel the necessity of referring to the different parts of this judgment, dealing with and explaining the various observations made in *K. K. Puri's case* (supra) in the light of the following observations made by their Lordships in this very judgment:

> "Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret words of statutes: their words are not to be interpreted as statutes."

They further opined that the following observation of Untwalia, J. in *K. K. Puri's case*, "but generally and broadly speaking, it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount

(3) A.I.R. 1985 S.C. 218.
(4) 1985(1) SCALE 294.

of the fee realized is spent for the special benefit of its payers" is not to be torn out of context and should not be read in isolation. Rather, it must be read in the context of the facts of the case and more particularly the very sentence preceding the above-noted quote which reads:

> "It may be so intimately connected or interwoven with the services rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payers of the fee and what proportion went to others."

(11) In the second judgment, that is, in *The City Corporation of Calicut's* case (supra) which is still later in point of time, their Lordships after noticing the opinion in *Sreenivasa General Traders'* case (supra) ruled thus:

> "It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of *quid pro quo* is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantage conferred, *such relation need not be direct, a mere casual relation may be enough.* It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. *It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.* (emphasis added.)

On facts, it was a case where the licence fee levied by the City Corporation of Calicut for use of land and premises for soaking of coconut husks was challenged on the ground that no service was rendered or special advantage or favour was conferred by the Corporation on the respondents, who admittedly carried on the business of soaking coconut husks. The Supreme Court while repelling the contention in the light of the above-noted two decisions, held:

> "Applying the ratio of these decisions it is incontrovertible that the appellant-Corporation is rendering numerous services to the persons within its areas of operation and that

therefore the levy of the licence fee as fee is fully justified. Soaking coconut husks emit foul odour and contaminates environment. The Corporation by rendering scavanging services, carrying on operations for cleanliness of city, to make habitation tolerable is rendering general service of which among other appellants are beneficiaries. Levy as a fee is thus justified."

As already pointed out in this judgment, the ratio of the two cases, that is *Sreenivasa General Traders'* case and *M/s. Amarnath Om Parkash's* case (supra) was accepted as the correct enunciation of law. As indicated earlier, in those two later mentioned judgments, the observations made in *K. K. Puri's case* (supra) on which firm reliance has been placed by the learned Single Judge, were duly explained. What has further been highlighted in this judgment is, "that others besides those paying the fee are also benefited does not detract from the character of the fee" and "the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest". It is also pointed out that "It is increasingly realised that the element of *quid pro quo* in the strict sense is not always a *sine qua non* for a fee and that for a fee there must necessarily be *quid pro quo* has undergone a sea change." It is descernible from these judgments that co-relationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be reasonable relationship between levy of the fee and the services rendered. This is how this theory of *quid pro quo* has lost its hallow and has been rendered a hollowed theory as is mentioned in the opening part of this judgment. We thus find that the conclusions of the learned Single Judge that (i) some direct and special benefit has to be rendered to the payers of the fee, (ii) it has to be in relation to the transaction of the purchase or sale of agricultural produce, and (iii) a substantial portion of the fee raised has to be expended for the above noted two purposes, are not in line with the principles laid down in this judgment.

(12) Applying the ratio of this Supreme Court judgment to the facts of this case, we find that the imposer of the cess, that is, the State, is rendering innumerable services to an overwhelming majority of the dealers or the payers of the fee along with the other 80 per cent of the population of the State habitating the rural areas. As already pointed out, at least 61 market areas out of 91 where the dealers or the payers of the fee reside, or carry on their business, fall within the rural areas of the State, and with the development of those

areas in line with the policy laid down in the Act, the entire population of those areas including the dealers, is bound to benefit or enjoy the services sought to be rendered to them. With the development of the rural areas, better communications, building of the roads from fields to the markets and with the betterment of the lot of the agricultural labour residing in those areas, not only the cherished goal of 'growing more' is likely to be achieved, but it is bound to benefit the dealers dealing in the agricultural produce, that is, the petitioners directly. Besides being thus directly served by the expending of the fund in the manner suggested in the Act, the dealers are also likely to benefit indirectly as members or a part of the general mass of the population habitating the market areas which as already pointed out above, constitute about 80 per cent of the population of the State. Anyway, we find it is not a case where the payers or dealers can complain that there is not even a casual relationship as opined by the Supereme Court in *The City Corporation of Calicut's* case (supra) between the fee paid and the services rendered to them. We thus reverse the conclusion of the learned Single Judge, as recorded in the impugned judgment.

(13) In order to put the records straight we may also mention here that at one stage, Mr Sibal, learned Advocate General for the State of Haryana, sought to sustain the vires of the Act or the imposition of the cess even as a tax in the light of Entry No. 52 in List II of the VII Schedule to the Constitution of India, but soon realising the futility of the argument he gave up. We thus do not feel called upon to examine that aspect of the matter; more so, in the light of the conclusions recorded by us above.

(14) For the reasons recorded, while allowing this appeal, we set aside the judgment of the learned Single Judge and dismiss the petition as also the other connected petitions, but with no order as to costs.

N.K.S.

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

BHAGU AND OTHERS,—*Appellants.*

versus

RAM SARUP AND ANOTHER,—*Respondent.*

Regular Second Appeal No. 2282 *of* 1980.

April 17, 1985.

Code of Civil Procedure (V of 1908)—*Section* 9—*Punjab Village Common Land (Regulations) Act (XVIII of* 1961) *as amended by*