Belsund Sugar Co.Ltd vs State Of Bihar & Ors. Etc on 10 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3125, 1999 AIR SCW 3074, 1999 (3) BLJR 2191, (1999) 3 EASTCRIC 414, (1999) 3 BLJ 118, 1999 (9) SCC 620, 1999 (4) ARBI LR 502, 1999 (4) SCALE 516, 1999 (7) ADSC 253, 1999 BRLJ 299, (1999) 5 JT 422 (SC), (2000) 1 EFR 418, (1999) 4 ARBILR 502, (1999) 4 SCALE 516, (2000) 1 BLJ 295, (1999) 7 SUPREME 1, (1999) 3 PAT LJR 93

Author: S.B.Majmudar

Bench: S.B.Majmudar, Sujata V.Manohar, K.Venkataswami, V.N.Khare

CASE NO.:
Appeal (civil) 398 of 1977

PETITIONER:
BELSUND SUGAR CO.LTD.

RESPONDENT:
STATE OF BIHAR & ORS. ETC.

DATE OF JUDGMENT: 10/08/1999

BENCH:
A.S.ANAND CJI & S.B.MAJMUDAR & SUJATA V.MANOHAR & K.VENKATASWAMI & V.N.KHARE

JUDGMENT:

JUDGMENT DELIVERED BY:

S.B.MAJMUDAR, J.

S.B. Majmudar, J Leave granted in the Special Leave Petitions.

These appeals and writ petitions mainly raise the question regarding the legality of the levy of market fee under the provisions of Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the Market Act for short). The grievance made by the appellants/writ petitioners pertained to the following commodities with which the respective proceedings are concerned. 1.

Sugarcane, Sugar and molasses (briefly referred to as Sugar matters) matters)

2. Wheat products Atta, Maida, Suzi, Bran etc.; 3. Vegetable Oil; 4. Rice milling; 5. Milk and milk

products; 6. Tea.

It will, therefore, be appropriate to deal seriatim the grievances centering round the levy of market fee on transactions concerning the aforesaid commodities.

GRIEVANCES IN CONNECTION WITH MARKET FEE CONCERNING SUGAR MATTERS So far as this group of matters is concerned, first two Civil Appeal Nos. 398 & 399 of 1977 arise out of certificates of fitness granted by the High Court of Judicature at Patna under Articles 132(1) and 133(1) of the Constitution of India. The said certificates pertain to a common judgment of the High Court rendered in two writ petitions of two sugar mills located in the State of Bihar. By the common judgment dated 20th April, 1976 the High Court dismissed both the writ petitions. The said judgment of the High Court is reported in The Belsund Sugar Co. Ltd., Riga and another vs. The State of Bihar and others, (AIR 1977 Patna 136). By the impugned common judgment, the imposition of market fee under the Market Act on the transactions of purchase of sugarcane by the sugar mills concerned and also on their transactions covering sale of sugar and molasses manufactured by utilising the purchased sugarcane was upheld by the High Court. In view of the fact that the certificates of fitness were granted by the High Court as aforesaid this group of matters was directed to be placed before a Constitution Bench of this Court as per Article 145 of the Constitution of India. Though initially they were directed to be placed before a Bench of seven Judges, subsequently by a latter order dated 9th December, 1998, these appeals were directed to be placed before a five Judge Bench and that is how these appeals and other cognate matters were placed before this Bench for final hearing. Though the certificates of fitness granted by the High Court were on the basis that the cases involved a substantial question of law as to the interpretation of Article 254(1) of the Constitution of India, at the time when these appeals and the cognate matters reached final hearing before us, learned senior counsel Shri Shanti Bhushan and Shri Gupta appearing for the appel lants, raised mainly two contentions for our consideration :

> 1. Whether the Market Act can apply to the transactions of purchase of sugarcane and sale of sugar and molasses by the appellant sugar mills in view of the fact that regulation of these transactions is already effected by Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (for short Sugarcane Act) as well as and Sugar both issued under Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Essential Commodities Act) and also under the provisions of Bihar Molasses (Control) Act, 1947.
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> 2. In the alternative, whether imposition of market fee under the Market Act by the respective market committees is justified in the absence of any service rendered to the appellant sugar mills under the provisions of the Market Act and consequently the levy of market fee can be said to be not supported by any quid pro quo.

RIVAL CONTENTIONS :

> Learned senior counsel for the appellants vehemently submitted in support of the aforesaid twin contentions that the Market Act which was enacted by the Bihar

> legislature under Entries 26 and 27 of the State List read with Entry 28 therein had to be read subject to Entry 33 of the Concurrent List and as the Bihar Legislature itself had enacted the Sugar Act in exercise of its legislative powers under Entry 33 of the Concurrent List, there was no occasion left for the State of Bihar to get satisfied about the need to regulate the production and sale of sugarcane as well as manufactured items therefrom as per the Market Act. In short, the invocation of Section 3 read with Section 4 of the Market Act was totally misconceived and uncalled for.

It was further contended that once the State of Bihar in exercise of its power of exemption under Section 42 of the Market Act had exempted the appellant sugar factories from applicability of Section 18 of the Market Act, the entire machinery under the Market Act became inapplicable to regulate the sale and purchase of transactions concerning sugarcane, sugar and molasses as entered into by the appellant sugar factories. Consequently, there remained no occasion for the authorities functioning under the Market Act for demanding any market fee from the appellants under Section 27 of the Market Act. It was also contended in further support of this submission that the Sugarcane Control Order, 1966 as well as the Sugar (Control) Order of the same year issued under Section 3 of the Essential Commodities Act, 1955 and also the provisions of the Bihar Molasses (Control) Act, 1947 fully occupied the field of regulation of sale and purchase of sugarcane, sugar and molasses and on that ground also the provisions of the Market Act could not be pressed in service against the appellant sugar factories undertaking the purchase and sale of the concerned transactions. In the alternative, it was contended that once Section 15 of the Market Act is out of picture and once it remains an admitted position that the appellant sugar factories have to purchase sugarcane from purchase centres, there remains no occasion for the market committees to give any services under the Market Act to the appellant sugar factories. Hence the market committees were not entitled to recover any market fee from the appellants as there was no return benefit or quid pro quo made available to the appellants by the market committees and hence the impugned market fee in substance became a tax which could not be recovered under the Market Act by the market committees.

Replying to these contentions, learned senior counsel for the State of Bihar and learned senior counsel appearing for the market committees submitted that the appellant sugar factories have no locus standi to maintain these proceedings for the simple reason that so far as their challenges to the levy of market fee on transactions of sale of sugar and molasses were concerned, as under Section 27 of the Market Act levy was imposed on the buyers of sugar and molasses manufactured by the appellant companies, these sugar mills were not affected by the levy. That the appellant companies may at the highest be collecting agents of market fee if the buyers were not licensed under the Act but in most of the cases the appellant sugar companies were selling levy sugar to the Food Corporation of India and even free sugar was mostly sold by them to licensed buyers. Same was the case of sale of molasses to the concerned buyers. They, however, rightly conceded that the appellants cannot be said to be not having any locus standi to challenge the market fee levied on their purchase of sugarcane as the charge of market fee would be on them as buyers of sugarcane.

On the merits of the contentions raised by learned senior counsel for the appellants, learned senior counsel for the respondents submitted that even if the exemption notification under Section 42 of

the Act purports to exempt the appellant sugar companies from whole of Section 15 of the Market Act, in substance the exemption is confined to Section 15(2) of the Act as there is already a declaration under Section 4 of the Market Act treating the purchase centres of the appellant sugar companies at the factory gates as well as at other places in the market area as sub-market yards. On a conjoint reading of these two notifications, therefore, it can be seen that exemption under Section 42 of the Act was confined to excluding the operation of Section 15(2) of the Act qua these sugar factories. In the alternative, it was submitted that if the exemption notification is treated to cover entire Section 15 even then once the transactions of sale and purchase take place within the market area, charge under Section 27 would get settled on these transactions. It was further submitted that there is enough return benefit made available to the sugar factories admittedly situated within the market area. That, in fact, their service centres are also declared to be sub-market yards even beyond the factory gate. That they utilise the link roads made available by the market committee for bringing sugarcane produce to the factory premises by giving facility of swift transportation. Thus the sugarcane as a raw material is brought to the factory premises before it gets dried up. This yields better quality and larger quantity of sugar and molasses. In addition thereto facilities of supply of necessary information regarding the prevalent prices of sugarcane are made available by the market committee. But even apart from that, the market committee can act as a mediator in enabling the sugarcane growers to get better price of sugarcane above the minimum price fixed under the Control Order and the Sugarcane Act and this role of the market committee would be beneficial not only to the producers of sugarcane but also to the factories which can be assured of appropriate good quality sugarcane purchased from the sugarcane growers. It is, therefore, wrong to suggest that there is no quid pro quo between the charge of market fee and the payment thereof by the sugarcane factories, that the infrastructural facilities made available to the industry as a whole have to be seen and transactions are not to be dissected for finding out the quid pro quo between charging of the market fee and the burden thereof borne by the sugar companies. It was, therefore, contended that none of the submissions canvassed by learned senior counsel for the appellants deserved to be accepted. In the light of the aforesaid rival contentions, we now proceed to deal with the twin contentions submitted for our consideration by learned senior counsel for the appellants in support of these appeals. However, before we deal with the merits of these contentions, the question of locus standi of the appellants is required to be considered at the outset.

LOCUS STANDI OF THE APPELLANTS TO MAINTAIN THESE PROCEEDINGS :

> It has to be kept in view that as per Section 27 of the Market Act the charge of the market fee is on the buyer of the agricultural produce bought or sold in the market area. The said section reads as under :
>
> "Power to levy fees - (1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of rupee one per Rs.100 worth of agricultural produce.
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> Xxxxx xxxx xxxx (2) The market fee chargeable under sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) The fee chargeable under sub-section (1) shall not be levied more than once on a notified agricultural produce in the same notified Market Area.

It is not in dispute between the parties that sugarcane is an agricultural produce as it is grown in fields by the cultivators. Both sugarcane and sugar are listed as Item nos. 1 and 3 in Para XII dealing with miscellaneous items as found in the Schedule to the Market Act enacted as per Section 2(1)(a) of the Act.

Section 2(1)(a) of the Act defines agricultural produ as under : Agricultural produce means all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal, Husbandry, Forest, Sericulture, Pisciculture, and includes livestock or poultry as specified in the Schedule.

In the light of the aforesaid provisions, it is obvious that the sugar factories operating in the market area within the jurisdiction of the market committee concerned can be said to be buyers of sugarcane, an agricultural produce. Their purchase centres are situated within the market area. As submitted by learned senior counsel for the respondents, all the purchase centres at which the appellant sugar factories purchase sugarcane as raw material are not only situated within the market area but are also declared as submarket yards. In fact the entire Bihar State is comprised of various market areas within the jurisdiction of different market committees. If that is so, it has to be held that when the charge under Section 27 of paying market fee is imposed on the sugar factories as buyers of sugarcane within the market area, they have to be treated to be having sufficient locus standi as buyers of sugarcane to challenge the imposition of market fee on their purchase transactions. On this aspect, learned senior counsel for the respondents did not contest. However, their submission was that when purchased sugarcane is processed at the factories and converted into sugar and molasses and when such sugar and molasses are sold by the sugar factories, the charge of market fee on these sale transactions would settle on the buyers of sugar and molasses who have not made any grievance about payment of market fee. That may be so, however, the fact remains that if the sugar factories sell manufactured sugar and molasses out of the purchased raw material-sugarcane, and if the buyers are not licensed then as per the provisions of Rule 82 (iii) of the Bihar Agricultural Produce Markets Rules, 1975 the sugar factories as sellers have to realise the market fee from the buyers and have to deposit the same with the market committees. That obligation by itself would give sufficient locus standi to the sugar factories which sell sugar and molasses within the market area to challenge the aforesaid statutory obligation imposed on them by the Act and the Rules and to submit as to how they are not covered by the provisions of the Act. It may be that when they sell levy sugar to the Food Corporation of India, they may not have to undertake this liability as collecting agents of the market committee, so far as the market fee is concerned. Still even if partially in case of sale of free sugar to unlicensed buyers they have to be called upon to discharge their statutory obligation under Rule 82 (iii), it cannot be said that they have no locus standi to challenge the imposition of market fee on the transactions of sale effected by them in connection with sugar and molasses. The preliminary objection of learned senior counsel for the respondents against the locus standi of the appellants to maintain these proceedings is, therefore, over-ruled. This takes us to the consideration of the main twin contentions canvassed by learned senior counsel for the appellants for our consideration. CONTENTION NO. 1 : Applicability

of the Market Act to appellants transaction of purchase of sugarcane and sale of sugar and molasses.

So far as this contention is concerned, we have to keep in view the relevant provisions of the Market Act, Sugar Act as well as the Orders under the Essential Commodities Act. In the first instance, we shall deal with the transactions of purchase of sugarcane by the sugar factories functioning in the market areas falling within the jurisdiction of respective market committees constituted under the Market Act. The Market Act has been enacted by the Bihar Legislature as per the legislative power vested in it by Entries 26, 27 and 28 of List II of Seventh Schedule of the Constitution. These entries read as under : 26. Trade and commerce within the State subject to the provisions of entry 33 of List III. 27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III. 28. Markets and fairs.

It becomes at once clear that if location of markets and fairs simpliciter and the management and maintenance thereof are only contemplated by the Market Act, then they would fall squarely within the topic of legislative power envisaged by Entry 28 of List II. However, the Market Act, as we will presently show, deals with supply and distribution of goods as well as trade and commerce therein as it seeks to regulate the sale and purchase of agricultural produce to be carried on in the specified markets under the Act. To that extent the provisions of Entry 33 of List III override the legislative powers of the State Legislature in connection with legislations dealing with trade and commerce in, and the production, supply and distribution of, goods. Once we turn to Entry 33 of the Concurrent List, we find that on the topic of trade and commerce in, and the production, supply and distribution of, goods enumerated therein at sub-clause (b), we find listed items of foodstuffs, including edible oilseeds and oils. Thus to the extent to which the Market Act seeks to regulate the transactions of sale and purchase of sugarcane and sugar which are foodstuffs and trade and commerce therein, it has to be held that the Market Act being enacted under the topics of legislative powers under Entries 26, 27 and 28 of List II will be subject to any other legislation under Entry 33 of the Concurrent List. As it will be seen hereinafter, the Bihar Legislature itself has enacted the Sugarcane Act in exercise of its legislative powers under Entry 33 of the Concurrent List and, therefore, the field covered by the Sugarcane Act would obviously remain exclusively governed by the Sugarcane Act and to the extent the latter Act carves out an independent field for its operation, the sweep of the general field covered by the Market Act which covers all types of agricultural produce, would pro tanto get excluded qua sugarcane and the products prepared out of it. So far as the Market Act is concerned, it is necessary to note that it is an Act to provide for better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith. The said Act is enacted essentially to protect the growers of agricultural produce in the State who on account of their ignorance, illiteracy and lack of collective bargaining power may get exploited by middlemen and economically strong purchasers of their agricultural produce with the result that the agriculturists may not get adequate price for their produce. It is with that end in view that the Market Act has been enacted. The constitutional validity of the Madras Commercial Crops Markets Act, concerned with the regulation of purchase and sale of commercial crops grown by agriculturists was considered by a Constitution Bench of this Court in the case of M.C.V.S. Arunachala Nadar Etc. vs. The State of Madras & Others [(1959) Supp.(1) SCR 92]. Subba Rao J., speaking for the Court while upholding the constitutional validity of the said Act emphasised the necessity of such enactment with a view to protect the producers of commercial

crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce. The learned Judge referred to, with approval, the following recommendations of Royal Commission on Agriculture in India appointed in 1928. That cultivator suffers from many handicaps : to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivators marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other Provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation.

Reference was also made to the Report of an Expert Committee appointed by the Government of Madras which graphically described the difficulties of the cultivators and their dependence upon the middlemen. The following is the extract from the Report of the Expert Committee as noted by Subba Rao J., for highlighting the need for regulated markets for cultivators of commercial crops. The middleman plays a prominent part in sale transactions and his terms and methods vary according to the nature of the crop and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to the taluk or district centre and entrusts it to a commission agent for sale. If it is not sold on the day on which it is brought, it is stored in the commission agents godown at the cultivators expense and as the latter generally cannot afford to wait about until the sale is effected he leaves his produce to be sold by the commission agent at the best possible price, and it is doubtful whether eventually he receives the best price. The middle class ryot invariably disposes of his produce through the same agency but, unlike the rich ryot he is not free to choose his commission agent, because he generally takes advances from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore, he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price but he loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between a creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour the villages and the price at which it changes hands is governed not so much by the market rates, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middleman occupies and his methods of sale and the terms of his dealings have long ago been realized.

Relying on the aforesaid observations Subba Rao J., speaking for the Constitution Bench, justified the need for such legislations and upheld the Act by laying down as under

> : The aforesaid observations describe the pitiable dependence of the middle-class and poor ryots on the middlemen and petty traders, with the result that the cultivators

are not able to find markets for their produce wherein they can expect reasonable price for them. With a view to provide satisfactory conditions for the growers of commercial crops to sell their produce on equal terms and at reasonable prices, the Act was passed on July 25, 1933. The preamble introduces the Act with the recital that it is expedient to provide for the better regulation of the buying and selling of commercial crops in the Presidency of Madras and for that purpose to establish markets and make rules for their proper administration. The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated markets by eliminating middlemen and bringing face to face the producer and the buyer so that they meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object to achieve which it is enacted.

It, therefore, cannot be gainsaid that the need to have a regulated market where the agriculturist who grows sugarcane as a commercial crop can be assured of adequate price of the sugarcane produced by him and may not be exploited by middlemen, would justify the enactment of the protective umbrella of the Market Act. However, if the Act had stood by itself, no legitimate grievance could have been made by anyone on this score. But so far as the facts of the present cases are concerned, the very same Bihar Legislature enacted the Sugarcane Act of 1981 which has operated simultaneously with the Market Act for the entire State. The said latter Act is obviously enacted by the very same legislature in exercise of its legislative powers under Entry 33 of the Concurrent List. It is, of course, true that the Union Parliament has not passed any similar legislation in exercise of its concurrent legislative power under the very same Entry 33 of List III. We will, therefore, have to see to what extent the Sugarcane Act, which is a latter Act, has carved out a field for itself for protecting the sugarcane growers resulting in withdrawing the same subject matter from the general sweep of the Market Act which covers not only sugarcane but also number of other agricultural produce. In this connection, Section 3 of the Market Act requires to be noted. It reads as under : 3. Notification of intention of exercising control over purchase, sale, storage and processing of agricultural produce in specified area -

[(1) Notwithstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare its intention of regulating the purchase, sale, storage and processing of such agricultural produce and in such area, as may be specified in the notification.] (2) A notification under sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than two months to be specified in the notification, shall be considered by the State Government.

As per the aforesaid provisions, it has to be kept in view by the State Government concerned while forming the requisite intention whether there is any special legislation of the same State Legislature holding the field and serving the very same purpose of regulating such transactions. Mr. Shanti Bhushan, learned senior counsel for the appellant, vehemently contended that the Bihar Legislature itself had enacted the Sugarcane Act of 1981 whereunder adequate provision was made for regulating the purchase, sale, storage and processing of sugarcane. The complete machinery was provided thereunder for protecting the sugarcane growers and, therefore, there was no occasion for the State of Bihar to continue the regulation of purchase and sale transactions of sugarcane atleast after 1981 as per Section 3(1) of the Market Act. The preamble of the Sugarcane Act shows that amongst others it is enacted to regulate the production, supply and distribution of sugarcane intended for use in sugar factories and taxation of sugarcane and matters incidental thereto. Chapter II of the Sugarcane Act provides for Administrative Machinery for carrying out the purposes of the Act. Section 3 thereof deals with Establishment of Sugarcane Board. Section 4 lays down the Functions of the Board - (1) The Board shall advise the State Government on the following matters, namely :-

> (a) planning of development schemes connected with production, research, transport and sale of sugarcane;
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> (b) matters pertaining to regulation of supply, purchase and weighment of cane;
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> (c) the varieties of sugarcane, tested by the Sugarcane Research Institute in the State, which are suitable or unsuitable for use in a factory;
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> (d) recommendations in respect of the price of cane to be supplied to factories;
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> (e) determination of the price of cane payable by owners of units;
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> (f) maintenance of healthy relations between the occupiers and managers of factories on the one hand and the cane-growers and co-operative societies on the other; and
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> (g) such other matters as may be prescribed.

Section 7 deals with Establishment of Zonal Development Council working of which can be supervised by the Board. The Collector of the District or the Sub-divisional Officer is to be the Chairman of the Zonal Development Council and is to be assisted by various persons as provided by Section 7. Section 8 deals with Functions of the Council - The functions of the Council shall be as follows :(a) to consider and prepare the programme for the development of communications, irrigations, soil analysis and other agricultural facilities relating to sugarcane;

(b) to devise ways and means for executing development plan in all its essential including improvement and development of communications, cane varieties, supply of good quality seeds, fertilisers and manures, plant protection and prevention and control of diseases and pests;

(c) to render all possible help in agricultural extension work of cane;

(d) to assist in arrangements for the training of cultivators in improved methods of sugarcane cultivation; and

(e) to perform such other functions pertaining and conducive to the general development of the reserved area as may be prescribed.

Section 12 deals with Appointment of Cane Commissioner. It reads as under :- (1) The State Government may, by notification in the official Gazette, appoint any person to be the Cane Commissioner for the State of Bihar and to exercise the powers and perform the duties conferred and imposed on the Cane Commissioner by or under this Act.

(2) The State Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be the Additional Cane Commissioner, Joint Cane Commissioner, Deputy Cane Commissioner and Assistant Cane Commissioner to assist the Cane Commissioner within such local limits as may be assigned to them and confer and impose upon them all or any of the powers and duties of the Cane Commissioner within their respective jurisdiction.

Section 13 deals with Appointment of Cane Officer. Then comes Chapter IV which deals with Purchase and Supply of Cane to sugar factories. Section 25 deals with Appointment of Manager and provides as under :- (1) Within thirty days of the commencement of this Act and thereafter within the same period before the commencement of every crushing year the occupier of a factory shall send to the Collector a notice of appointment of any person as manager for the purposes of this Act or the rules :

> Provided that until the first notice of appointment of manager under this Act is sent, the person appointed or deemed to be appointed as manager under the Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, 1973 (Bihar Ordinance 47 of 1973) shall be deemed to be a manager under this Act.
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> (2) No person shall be deemed to have been appointed as manager until a sum of two thousand and five hundred rupees is deposited by him or on his behalf as security, with the Collector concerned in the prescribed manner.
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> (3) Whenever a new manager is appointed, the occupier of the factory shall send to the Collector a written notice of the change within fifteen days of the date on which the new manager assumes charge of his work.
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> (4) During any period for which provisions of sub-sections (1) and (2) are not complied with or the person appointed as manager does not manage the factory, or his security money is not replenished to the extent of its forfeiture under sub-section (2) of section 57, the occupier of the factory himself shall be deemed to be the manager of the factory for the purposes of this Act and the rules.

Section 27 deals with Estimate of quantity of cane required by factory and lays down as follows:- (1) The occupier of every factory shall submit to the Cane Commissioner, on or before the prescribed date, in every crushing year, an estimate, in the prescribed manner, of the quantity of cane which may be required in the factory during such crushing year.

(2) The Cane Commissioner shall examine every estimate submitted under sub-section (1) and where the occupier of a factory has failed to submit an estimate under subsection (1), he shall draw up an estimate by himself in the prescribed manner and shall publish the same in such manner as may be prescribed with such modifications, if any, as he may think fit, after consultation with the council concerned.

(3) The prescribed authority may, either suo motu or on an application made to it by the occupier of the factory, within thirty days of the publication of the estimate under sub-section (2), revise the estimate, published under that sub-section and that authority shall cause the estimate so revised to be published in the prescribed manner.

Section 28 deals with Conditions precedent to commencement of purchase of cane. It states as under :(1) The occupier of a factory or any person acting on his behalf shall not commence the purchase of cane unless adequate arrangements, as may be prescribed, have been made in respect of the following matters, namely :-

> (a) weighment of cane to be purchased; (b) payment of the price of cane purchased; (c) parking of cane-carts;
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> (d) approach roads to the place of weighment; and (e) distribution of requisition slips.
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> (2) Where survey has not been made under section 34, the occupier of the factory shall, before the commencement of purchase of cane, have the survey of the standing cane-crop made as the prescribed manner.

Then follows Section 29 which deals with Establishment of purchasing centres. It reads as under :- (1) The occupier of a factory, or the Secretary of a Cooperative Society may establish a purchasing centre after giving a notice in writing to the Collector at least thirty days before the commencement of purchase of cane and copies of such notice shall be sent by the occupier of the factory or the Secretary of the Society forthwith to the Cane Officer concerned and the Cane Commissioner .

The remaining sub-sections of Section 29 lay down the procedure under which the Collector can direct shifting of the location of any purchasing centre to another place and also the power of the prescribed authority to revise the order of the Collector. Section 31 deals with Declaration of reserved area and provides as follows :(1) The Cane Commissioner may, having regard to the crushing capacity of the factory, the availability of sugarcane in such area and the need for production of sugar and after consulting the council concerned and the occupier of the factory or the occupiers of other affected factories and after considering any objection that may be raised, issue an

order, by notification in the official Gazette, declaring any area to be the reserved area for the purpose of supply of cane to the factory during a particular crushing year or years and may likewise cancel any such order or alter the extent of the area so reserved :

> Section 32 deals with Purchase of cane grown in a reserved area. Sub-section (6) thereof reads as follows Except with the permission of the State Government, cane grown in a reserved area shall not be sold to or purchased by -
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> (i) the occupier of any factory other than the factory for which the area is reserved; or
>
> (ii) any person for the purpose of supply to any factory other than the factory for which the area is reserved; or
>
> (iii) the owner of a unit to whom a licence has not been granted under section 16.

Sub-section (9) of Section 32 reads as follows :-

> Subject to the provisions of sub-section (1), the State Government may prohibit or restrict or otherwise regulate the movement of sugarcane from any reserved area except under and in accordance with a permit issued by it in this behalf.
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> Section 39 deals with Recording of correct weight of cane and reads as under :- (1) The occupier of every factory, the owner of every unit, Secretary of every Co-operative Society and every person in charge of weighmens shall maintain, subject to such limits of error as is prescribed by the State Government under the law relating to weights and measures, for the time being in force, a record of the correct weight of cane purchased at the place of weighment.
>
> (2) No cane shall be purchased without being weighed.

Section 40 deals with Provisions for approach roads etc., at the purchasing centres and reads as under :The occupier of a factory or a co-operative society purchasing cane at any purchasing centre shall make such provisions for the following and keep them in such repairs as may be prescribed, namely :-

> (a) approach road and parking space for animal-driven carts;
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> (b) sheds for animals and cart-drivers;
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> (c) drinking water for persons using the purchasing centre; and
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> (d) drinking water and water-trough for animals.

Then follows Chapter V which deals with Payment of price of cane and other matters. Section 42 deals with minimum price of cane supplied to a unit and reads as under

> :The State Government may, after consulting the Board, determine by notification in the official Gazette, in respect of any area the minimum price of cane payable by the owners of units to the cane-growers or co-operative societies for cane supplied to them in the crushing year concerned :
>
> Provided that the minimum price so determined shall not exceed the minimum price payable by the occupier of a factory under any law for the time being in force, in respect of the cane supplied from the same area.
>
> Mode of payment of price of cane to the sugarcane growers is provided by Section 43. Section 44 deals with Deduction and provides as follows :(1) The occupier of a factory or any person on his behalf shall not make any other deductions from the price of cane except the deduction on account of any loan advanced by him, or on his guarantee or otherwise advanced by a bank or other institutions under section 50(1).
>
> The remaining sub-sections of Section 44 deal with the circumstances under which any person in charge of payment of price of cane on behalf of a co-operative society cannot make deductions from the price of cane as fixed. Section 46 deals with Decision of certain disputes and reads as under :-
>
> (1) If any dispute arises regarding the price of cane supplied to the occupier of a factory the person entitled to the price or the document on the basis of which the price is claimed, payment of the price shall be withheld and the occupier of the factory to which the cane was supplied shall enter the dispute in a register in the prescribed form and refer it within the prescribed period to the prescribed authority who shall, after giving the parties a reasonable opportunity of being heard and after such inquiry as he may consider necessary, decide the dispute :
>
> Provided that whenever the payment of the price is whether held under this sub-section, the occupier of the factory shall deposit with the prescribed authority in the prescribed manner the amount in dispute, within one week of such reference.
>
> (2) Any other dispute touching an agreement for purchase of cane by the occupier of a factory or its supply to him and any dispute relating to purchase of cane or cane-juice by the owner of a unit and payment of price thereof shall be referred to the authority prescribed under sub-section (1) who shall decide it in the manner laid down in that subsection.

Xxxx xxxx xxxx (3) Any person aggrieved by a decision made under subsection (1) or sub-section (2) may, within thirty days of the decision, prefer an appeal to the Collector who shall, after giving the parties a reasonable opportunity of being heard and after such inquiry as he may consider necessary,

pass such order, as he thinks fit.

(4) An order of the Collector under sub-section (3) and subject to such order, the decision of the prescribed authority under sub-sections (1) or sub-section (2) shall be final.

Section 48 deals with Payment of commission on purchase of cane and reads as follows :(1) The State Government may, by notification in the official Gazette, require the occupier of a factory to pay in the prescribed manner a commission not exceeding fifteen paise per quintal on the purchase of cane made by him or on his behalf and may, by a like notification exempt the occupier of any new factory to be specified in the notification, from the payment of such commission for prescribed period.

Section 49 imposes Tax on Sugarcane which reads as follows :(1) The State Government may, by notification in the official Gazette, impose -

(a) a tax not exceeding one rupee per quintal on entry of sugarcane into a local area specified in such notification, for consumption or use of, or sale to a factory situated therein :

(b) a tax not exceeding one rupee per quintal on the purchase of sugarcane by or on behalf of the occupier of a factory :

Section 50 deals with Advance of loan by occupier of factory and lays down as follows :(1) The occupier of a factory or any person working on his behalf or any bank may advance loan to a cane-grower or a Co-operative Society for such purposes connected with cultivation or supply of cane to the extent of the amount and in the manner as may be prescribed.

(2) Interest at the rate specified in section 51 shall be payable on the loan advanced under sub-section (1) and the loan and the interest shall be realisable in the prescribed manner.

Chapter VI deals with miscellaneous items. Section 52 of the said chapter deals with penalty for offences and provides as follows :If any person contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or the rules or of any order made or direction given thereunder or the terms and conditions of any licence, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both and in the case of a continuing contravention, with an additional fine which may extend to one thousand rupees for every day during which such contravention continues after conviction for the first contravention :

Section 58 deals with the power to summon and enforce attendance of witnesses and production of documents and provides as under :For the purposes of enquiries under this Act the Cane Commissioner or any person exercising the powers of the Cane Commissioner or a Cane Officer or an Officer appointed under section 34 shall have

the same powers to summon and enforce the attendance of witnesses and parties and to examine them on oath and to compel the production of document as a civil court under the Code of Civil Procedure, 1908 (5 of 1908) :

Provided that for the purpose of any penalty under the provision of the said Code upon any defaulter, a reference shall be made to the civil court of competent jurisdiction for appropriate action.

The aforesaid provisions of the Sugarcane Act leave no room for doubt that the Bihar Legislature in its wisdom has enacted a special machinery for regulating the purchase and sale of sugarcane to be supplied to sugar factories for manufacturing sugar out of the sugarcane produced for them in the reserved area. The relevant provisions of the Act project a well knit and exhaustive machinery for regulating the production, purchase and sale of sugarcane for being supplied as appropriate raw material to the factories manufacturing sugar and molasses out of them. We may also turn to Rule 22 of the 1978 Rules, made under the Bihar Sugarcane Act, which provides that the factory shall not commence the purchase of cane at any purchasing centre unless (a) all the weighbridges to be used for weighment of cane have duly been checked and certified as workable by the competent authority under the law relating to weights and measures;

(b) appropriate arrangements to the satisfaction of the Collector have been made for arranging funds for making payment of the price of cane;

(c) Cane Officer of the area concerned has certified that suitable arrangements for parking of cane carts and approach roads, as specified in rule 30 and for distribution of requisition slips and identification cards have been made; and

(d) adequate arrangements for weighment, adequate staff, sufficient number of weighbridges and adequate means of transport for carrying cane from all outlying purchasing centres to the factory, to the satisfaction of the Collector, have been made.

Rule 30 requires the sugar factory to : (a) provide at every purchasing centre suitable approach roads connecting the nearest public roads with the parking ground and likewise suitable tracks from the parking ground to the point where cane is unloaded after weighment;

(b) keep such roads and tracks repaired and satisfactorily workable at all times the purchasing centre is in operation;

(c) provide space in the parking ground for accommodating at least one-fourth of the maximum number of animal-driven carts carrying cane required to be brought to the purchasing centre on any day for weighment and purchase;

(d) keep the metalled tracks neat and clean and separated by railing or trenches;

(e) provide shelters for animals and cart-drivers at every purchasing centre, to the satisfaction of the Collector;

(f) provide at least four water taps or hand pumps at convenient points of each purchasing centre located at or adjoining factory premises (referred to hereinafter as mill gate purchasing centre) and one such water tap or hand pump at every purchasing centre other than the mill gate purchasing centre (referred hereinafter as the outstation purchasing centre),

(g) provide adequate number of water troughs in each parking yard to be located at such points as may be determined by the Cane Officer concerned, and;

(h) provide such other facilities at any purchasing centre as may be specified in the directions of the Cane Commissioner issued from time to time.

The aforesaid provisions, therefore, clearly indicate that the need for regulating the purchase, sale, storage and processing of sugarcane, being an agricultural produce, is completely met by the comprehensive machinery provided by the Sugarcane Act enacted by the very same legislature which enacted the general Act being the Market Act. Once that conclusion is reached, it becomes obvious that the Market Act which is an enabling Act empowering the State Authorities to extend the regulatory net of the said Act to notified agricultural produce as per Section 3(1) will get its general sweep curtailed to the extent the special Act being the Sugarcane Act enacted by the very same legislature carves out a special field and provides special machinery for regulating the purchase and sale of the specified agricultural produce, namely, sugarcane. It has also to be kept in view that the very heart of the Market Act is Section 15 of the Act which reads as under : [15. Sale of agricultural produce - (1) No agricultural produce specified in notification under sub-section (1) of section 4, shall be made bought or sold by any person at any place within the market area other than the relevant principal market yard or sub-market yard or yards established therein, except such quantity as may on this behalf be prescribed for retail sale or personal consumption.

(2) The sale and purchase of such agricultural produce in such areas shall not withstanding anything contained in any law be made by means of open auction or tender system except in cases of such class or description of produce as may be exempted by the Board.] It is this section which enables the market committee concerned to monitor and regulate the sale and purchase of the agricultural commodity which is covered by the protective umbrella of the Act. Once such an agricultural produce is brought for sale in the market yard or sub-market yard, the sale is to be effected by auction or by inviting tenders. Such a scheme is in direct conflict with the scheme of the Sugarcane Act wherein there is no question of sugar factory being called upon to enter into a public auction for purchasing sugarcane which is specially earmarked for it out of the reserved area. In fact, provisions of the Sugarcane Act and the provisions of the Market Act, especially Section 15 read with Section 3(1), cannot harmoniously co-exist. It is precisely to avoid such a possible conflict and head-on collision between general Act, namely, the Market Act and the special Act, namely, the Sugarcane Act which was later on enacted in 1981 by the very same Bihar Legislature, that the State Government in exercise of its exemption power under Section 42 of the Market Act issued a notification dated 22nd March, 1976 to the following effect: S.O. 550 the 22nd March, 1976

(Published in Bihar Gazette (ex-order) dated 23-3-1976) .- In exercise of the powers conferred under Section 42 of the Bihar Agricultural Produce Markets Act, 1960, the Governor of Bihar is pleased to exempt all sugar mills from the provisions of Section 15 of the Bihar Agricultural Produce Markets Act, 1960 with regard to their sale and purchase of agricultural produce notified under sub-section (1) of Section 4 of the said Act) This very notification shows that the State Government had given up its erstwhile intention of regulating the sale and purchase of sugarcane as per Section 3(1) of the Market Act which could not survive any further after the issuance of the aforesaid exemption notification. It is easy to visualise that the market committee can control purchase, sale, storage and processing of agricultural produce in the specified area under the Market Act only when the sale and purchase of agricultural produce can be effected as per Section 15 in the principal market yard or sub-market yard. Market is defined by Section 2(1)(h) of the Market Act which reads as under : market means a market established under this Act for the market area and includes, a principal market yard and sub-market yard or yards, if any.

It is at such market yard that the regulation of sale and purchase of agricultural produce shall be effected as required by Section 15. Once Section 15 is out of picture, the mere declaration of market area as per Section 4 and the general declaration of intention to regulate purchase, sale, storage and processing of agricultural produce like sugarcane as per Section 3 of the Market Act or declaration of market yard or sub-market yards as per Section 5 would remain an empty formality or would represent an empty eggshell with its contents taken out. The entire machinery of the Market Act would be rendered redundant qua agricultural produce to which Section 15 does not apply. Section 15 is the heart and soul of the Act. Due to its inapplicability to a given agricultural produce there would remain no occasion for the market committee concerned to exercise its regulatory functions for such a produce. This is the precise result which has ensued regarding regulation of purchase and sale of sugarcane by the market committee concerned in view of the combined operation of the relevant provisions of the Sugarcane Act and the exemption notification under Section 42 of the Market Act excluding the application of Section 15 of the Market Act to the sale and purchase transactions of sugarcane in the market area. It is not possible to agree with learned senior counsel for the respondents that notification under Section 42 of the Act in substance excludes only the applicability of Section 15(2). On the express wordings of the said notification it is not possible to countenance this contention. Even if declaration under Section 5 treating the premises of the sugar factories and the purchase centres from which they have to purchase sugarcane as per the Sugarcane Act is to be held to be operative, such a declaration would be devoid of any efficacy under the Market Act as the very purpose of the declaration of such market yard would not get fructified once sugarcane will not be required to be brought for purchase and sale in such declared market yard. It has to be kept in view that the relevant provisions of the Market Act laying down the machinery for effecting the regulation of purchase, sale, storage and processing of agricultural produce cannot be of any avail once purchase and sale of such an agricultural produce are not required to be effected at the relevant market yard and have not to be subjected to open auction or tender for fixing proper prices for such agricultural produce to be paid to the growers of such produce. It must, therefore, be held that the entire machinery of the Market Act cannot apply to the transactions of purchase of sugarcane by the appellant sugar factories as they are fully covered by the special provisions of the Sugarcane Act. It is also necessary to note that if both these Acts are treated to be simultaneously applying to cover sale and purchase of sugarcane, the possibility of a clear conflict of decisions of

Officers and Authorities acting under the Sugarcane Act on the one hand and the Market Act on the other would arise. These authorities acting under both the State Acts, dealing with the same subject-matter and covering the same transactions may come to independent diverse conclusions and none of them being subordinate to the other may create a situation wherein there may be head-on collision between the decisions and the orders of these authorities acting on their own in the hierarchy of the respective statutory provisions. For example, the Marketing Inspector may find that weighment of sugarcane was not proper at a given point of time, while the Cane Officer may find to the contrary. In the hierarchy of proceedings under the Market Act the market committee may take one decision with respect to the same subject matter, for which the Collector exercising appellate powers under the Sugarcane Act may take a contrary decision. This would create an irreconcilable conflict of decisions with consequential confusion. So far as the buyers and sellers of agricultural produce-sugarcane are concerned, it is of no avail to contend as submitted by learned counsel for the respondents that for avoiding such conflicts, Section 15 is dispensed with by the State in exercise of its power under Section 42 of the Market Act, whether such an exemption can be granted by the State under Section 42 or not is not a relevant consideration for deciding the moot question whether the statutory scheme of the Market Act can harmoniously co-exist with the statutory scheme of the Sugarcane Act as enacted by the very same legislature. It is possible to visualise that the State Authorities may not exercise powers under Section 42 of the Act. In such an eventuality, the Sugarcane Act would not countenance a public auction of sugarcane to be supplied by cane grower to the earmarked factory for which sugarcane is grown in the reserved area. On the other hand, the Market Act would require the very same sugarcane to be brought to the market yard for being sold at the public auction to the highest bidder who may not be the sugar factory itself. Thus what is reserved for the sugar factory by way of raw material by the Sugarcane Act would get de-reserved by the sweep of Section 15 of the Market Act. To avoid such a head-on conflict, it has to be held that the Market Act is a general Act covering all types of agricultural produce listed in the Schedule to the Act, but out of the listed items if any of the agricultural produce like sugarcane is made subject-matter of a special enactment laying down an independent exclusive machinery for regulating sale, purchase and storage of such a commodity under a special Act, then the special Act would prevail over the general Act for that commodity and by necessary implication will take the said commodity out of the sweep of the general Act. Therefore, learned counsel for the appellants are right when they submit that because of the Sugarcane Act the regulation of sale and purchase of sugarcane has to be carried out exclusively under the Sugarcane Act and the said transactions would be out of the general sweep of the Market Act. None of its machinery would be available to regulate these transactions. But even apart from the provisions of the Sugarcane Act, learned senior counsel for the appellants also placed reliance on the Sugarcane (Control) Order, 1966 enacted under the provisions of Section 3 of the Essential Commodities Act, 1955 for submitting that purchase and sale of sugarcane is also controlled by the aforesaid Central Government Order issued under the Essential Commodities Act, and consequently the said provision would supersede the general provisions of the Market Act. We, therefore, now proceed to consider this submission. Sugarcane (Control) Order, 1966 is issued by the Central Government in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955. Clause 2 sub-clause (c) defines factory and reads as under : factory means any premises including the precincts thereto in any part of which sugar is manufactured by vacuum pan process.

Price is defined by sub-clause (g) thereof which reads as under : price means the price or the minimum price fixed by the Central Government from time to time for sugarcane delivered Clause 3 of the Order deals with the fixation of minimum price by the Central Government for making it payable by purchaser of sugar to the sugarcane growers. Clause 3A deals with rebate that can be deducted by purchaser of sugar from the price to be paid to the sugarcane grower or the sugarcane growers co-operative society. Rebate provided therein pertains to the minimum price of sugarcane fixed under Clause 3, or the price agreed to between the producer or his agent and the sugarcane grower or the sugarcane growers co-operative society. There is a provision for additional price to be paid to the sugarcane grower by the purchaser of sugarcane as laid down in Clause 5. Clause 5-A deals with additional price for sugarcane purchased on or after 1st October, 1974 by the producer of sugar. Clause 6 deals with power of the Central Government by Order to regulate distribution and movement of sugarcane. As per this clause the Central Government can, by order, direct the sugarcane growers to supply the earmarked quantity of sugarcane grown by them in the reserved area fixed for sugar factories to ensure continuous supply of sugarcane as raw material to such factories. This provision is parallel to the statutory provisions enacted by the Bihar Legislature in the Sugarcane Act referred to earlier by us. Clause 9 refers to the power of the Central Government or any person authorised in this behalf to call for information from various sources as enacted therein. Clause 9-A deals with the power of entry, search and seizure of premises which obviously has to be exercised for fructifying the purposes of the Act. Clause 11 deals with delegation of powers by the Central Government to any officer or authority thereof or to any State Government or any officer/authority of a State Government. The aforesaid relevant provisions of the Sugarcane (Control) Order show that it seeks to lay down the minimum guaranteed price of sugarcane to the sugarcane growers with a corresponding obligation on them to supply sugarcane to the earmarked factories for which the reserved areas can be fixed. This Order also contemplates negotiated price between the sugarcane growers on the one hand and the sugarcane factories on the other, for whom fixed quota of sugarcane can be earmarked. It has to be appreciated that the aforesaid provisions of the Sugarcane (Control) Order operate in the same field in which the Bihar Legislative enactment, namely, the Sugarcane Act operates and both of them are complementary to each other. When taken together, they wholly occupy the field of regulation of price of sugarcane and also the mode and manner in which sugarcane has to be supplied and distributed to the earmarked sugar factories and thus lay down a comprehensive scheme of regulating purchase and sale of sugarcane to be supplied by sugarcane growers to the earmarked sugar factories. It is, however, true that comprehensive procedure or machinery for enforcing these provisions is found in greater detail in the Sugarcane Act of the Bihar Legislation. But on a combined operation of both these provisions, it becomes at once clear that the general provisions of the Market Act so far as the regulation of sale and purchase of sugarcane is concerned get obviously excluded and superseded by these special provisions. In this connection, we may refer to a decision of the Karnataka High Court in the case of Vasavi Traders vs. State of Karnataka & Ors. (1982 (2) Karnataka Law Journal 357). In that case Venkatachaliah J., (as he then was) speaking for a Division Bench of the Karnataka High Court, considered the impact of Sugarcane (Control) Order on the general sweep of the Karnataka Agricultural Produce Market (Regulation) Act, 1966. Point no. 3 was framed in this connection, which reads as under : Whether the Act as amended by Act 17 of 1980 in so far it provides for regulation of marketing of sugarcane is unconstitutional, as its marketing is regulated by the provisions of the Central Act, viz., The Essential Commodities Act, 1955, and the Sugarcane (Control) Order made thereunder?

While answering point no.3 in affirmative, the learned Judge at para 39 of the report, made the following pertinent observations : .. It appears to us that the Sugarcane (Control) Order regulates every aspect of marketing of sugarcane and its provisions are irreconcilable with the provisions relating to the marketing under the Act. For instance, the place of delivery, the price, the manner of its payments are all fixed by the statutory order. The same aspects of marketing are sought to be regulated by the Act. The two sets of provisions collide. S.6 of the Essential Commodities Act gives overriding effect to the orders made under S.3 of that Act as against any other Law. The small portion of the sugarcane grown by the grower the sale of which is left regulated under the statutory Order is again a matter - and part - of the policy of the regulation itself.

Accordingly, point no.3 in that case was answered in affirmative apart from the question of repugnancy which strictly did not arise for their consideration. The aforesaid reasoning of the learned Judges of the Karnataka High Court clearly indicates that the entire field of regulation of purchase and sale of sugarcane in the market area is occupied by the Sugarcane Control Order. This reasoning was left untouched by this Court in appeal against the said decision and, therefore, got confirmed in the case of I.T.C. Ltd. and Others vs. State of Karnataka and Others (1985 (Suppl.) SCC 476). Learned senior counsel for the respondents was right when he contended in the aforesaid decision before this Court that the merits of the reasoning which appealed to the High Court were not gone into as the appeal arising from the judgment on this point was not pressed. However, the fact remains that the aforesaid reasoning of the Karnataka High Court remained untouched by this Court, nor was it dissented from. The facts of the present case project even a stronger situation, so far as the appellants are concerned. Whatever shortfall is found in the Sugar (Control) Order has been supplemented by the Sugarcane Act by the Bihar legislation itself. Reasoning which appealed to the Karnataka High Court in the above judgment rendered in absence of a separate complementary legislation by the Karnataka Legislature gets further strengthened in the light of the Sugarcane Act in the present case. Consequently on a conjoint reading of the Sugarcane Order as well as the Sugarcane Act, an inevitable conclusion has to be reached that the regulation of sale and purchase of sugarcane in the entire market area for which the general Act, namely, the Market Act is enacted, is fully governed and highlighted by these two special provisions harmoniously operating in the very same field. Therefore, there would remain no occasion for the State Authorities to rationalise and reasonably visualise any need for regulating the purchase, sale as well as storage of sugarcane in the market area concerned. The wide sweep of general notification of Section 3 of the Market Act, therefore, will have to be read down by excluding from its general sweep sugarcane and its products as the definition of agricultural produce as noted earlier would otherwise include not only primary produce of agriculture but also any other commodity processed or manufactured out of such primary agricultural produce. That is precisely the reason why the State of Bihar having realised the futility of the need about controlling and regulating the sale and purchase of sugarcane in the market area by the sugar factories excluded the operation of Section 15 of the Act, which noted earlier, is the soul of the Act. It is easy to visualise that if transactions concerning an agricultural produce are excluded from the operation of Section 15 of the Act, the entire machinery available to the market committee to regulate such transactions would get out of picture and there would be no room for the market committee to supply any infrastructural facility or other benefits to the seller of such agricultural produce on the one hand and the purchaser thereof on the other. Before parting with the discussion on this point, it is necessary to note one submission of learned senior counsel

Shri Rakesh Dwivedi for the respondents - State of Bihar. He submitted that the legal proposition regarding special Act excluding the operation of general Act can be invoked only when the general Act irreconciliably derogates or conflicts with the special Act while dealing with the same subject matter and cannot be harmonised. He submitted that the broad objective of the two enactments is different. The Sugarcane Act purports to regulate production, supply and distribution of sugarcane whereas the Market Act lays emphasis on regulating the market. The subject matters are closely allied, but nevertheless distinct. He placed reliance on two decisions of this Court in support of his aforesaid contention. In the case of Jugal Kishore vs. State of Maharashtra and Others (1989 Suppl. (1) SCC 589), this Court was concerned with the question whether the provisions regarding Ceiling on Land as fixed by the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 could be reconciled and could harmoniously co-exist with 1958 Act. In this connection, Sabyasachi Mukharji J., speaking for the Court made the following pertinent observations : Unless the Acts, with the intention of implementing various socio-economic plans, are read in such complementary manner, the operation of the different Acts in the same filed would create contradiction and would become impossible. It is, therefore, necessary to take a constructive attitude in interpreting provisions of these types and determine the main aim of the particular Act in question for adjudication before the court.

The aforesaid observations cannot be of any assistance to learned senior counsel for the respondents as the schemes of the relevant Acts to which we have made a detailed reference contra-indicate the possibility of harmonious operation of the Market Act on the one hand and the Sugarcane Act and the Sugar (Control) Order on the other. Shri Dwivedi tried to get out of this situation by submitting that as there is already an exemption notification under Section 42 of the Market Act, Section 15 will not be applicable to such transactions and, therefore, it would remain governed by the provisions of the Sugarcane Order and the Sugarcane Act. With respect, as seen earlier, it is an over simplification of the situation. As a question arises whether two legislations operating in the same field can be reconciled or not, a mere possibility of the provisions of one of the inconsistent enactments being excluded by resorting to exemption power under another enactment cannot cure the basic inconsistency between them. It is obvious that such exemption power entrusted to its delegate by its Legislature may or may not be utilised. Consequently, a basic inconsistency between two legislative enactment would remain operative dehors such exemption, if any. Such conflicting statutory schemes in their operation in the same field would directly collide. It may be that the Market Act and the Sugarcane Act can both be treated as dealing with socio-economic balancing of interests of growers of agricultural produce and the purchasers thereof, but if it is impossible to reconcile them, the statute laying down the general scheme of operation has to make room for a special statute for which a separate and exclusive field is carved out by the legislature itself. Reliance placed by Shri Dwivedi, senior counsel for the State of Bihar, on a decision of the two judge Bench of this Court in the case of S. Satyapal Reddy and Others vs. Govt. of A.P. and Others (1994(4) SCC 391) for submitting that minimum qualifications prescribed by the rules framed under the Central Act could co-exist with higher qualifications prescribed by the State rules also cannot be of real assistance to him for the simple reason that if minimum prices were fixed by the Sugarcane (Control) Order and the Sugarcane Act had stopped short by providing only minimum price and had not regulated the fixation of even higher contractual price by providing for a machinery for the same and had not fixed and regulated the production, control, distribution, sale and purchase of sugarcane, it could have

been urged by counsel for the respondents with some emphasis that both these statutory provisions could harmoniously coexist but as discussed earlier such a possibility is not only remote but incapable of visualisation. It is also not possible to agree with the contention of learned senior counsel Shri Dwivedi that the Sugarcane Act of 1981 does not expressly purport to exclude the Market Act, especially when the Bihar Legislature that had enacted the former Act was aware of the Market Act, 1960 holding the field. That this circumstance shows that the legislature purposely did not exclude the applicability of the Market Act so far as the purchase and sale of sugarcane in market areas were concerned. However, this contention by itself cannot clinch the issue. If the very same legislature had felt that existing general Act was sufficient to foot the bill, then there would have been remained no occasion for the very same legislature to enact a special Act for control, regulation, sale and purchase of sugarcane after passage of 21 years. Therefore, the latter Act clearly envisaged carving out of a special field for regulating the sale and purchase of sugarcane and to that extent pro tanto it excluded the operation of the Market Act for that commodity. The intention of the legislature is thus very clear on this aspect. But apart from that, intention of its delegate-the State of Bihar itself is also clear when it excluded Section 15 of the Market Act in exercise of its exemption power under Section 42 of the Market Act. It is difficult to appreciate the contention of learned senior counsel that Section 15 of the Market Act is not the core of the Act. On a conjoint reading of Sections 3, 4, 15, 27 and 30 of the Act it has to be held that it is only because of the operation of Section 15 covering the sale and purchase transactions of agricultural produce that the market committee can effectively discharge its functions entrusted to it by the Act. But for Section 15 there would remain no occasion for the market committee to effectively regulate the sale and purchase transactions of the agricultural produce concerned. Section 15 mandates the sellers and producers of agricultural produce to operate in the notified market yard or sub-market yards and only at these places the market committee through its officers and servants can discharge its functions effectively by regulating these transactions and for that purpose all the infrastructural facilities would be available. The entire machinery provisions enacted for the purpose would fulcrum round the vibrant operation of Section 15. Once Section 15 is excluded qua any agricultural produce the entire machinery of the Market Act would come to a grinding halt so far as such an excluded agricultural produce is concerned. Sugarcane is one such produce as we have already seen earlier. Consequently, qua such a produce the general sweep of the Market Act will be a total non-starter. Logically, therefore, there would remain no occasion for the market committee to justify levy of market fee under Section 27 of the Act read with Section 30 on these transactions. On a conjoint reading of Sections 27 and 30 of the Market Act, it becomes clear that a market committee which has to effectively control and regulate the sale and purchase of agricultural produce brought for sale and purchase in the market area as enjoined by Section 15 can effectively discharge its functions and spend its funds for supplying the necessary infrastructure for this purpose as laid down by Section 30. At this stage, we may also refer to an additional submission of the Addl. Solicitor General of India Shri R.N. Trivedi in support of the respondents. He submitted that Entry 28 of List II of the Seventh Schedule of the Constitution operates on its own and cannot be affected by any legislation pertaining to industry as found in Entry 52 of List I of Seventh Schedule of the Constitution. To that extent the learned senior counsel is right. However, as we have seen earlier, Entry 28 of List II dealing with Markets and Fairs has to be read jointly with Entries 26 and 27 dealing with Trade and Commerce and once the State Legislation deals with these topics then it also squarely invokes legislative powers under Entry 33 of List III. That is precisely the entry under which the Sugarcane

Act, 1981 can be said to have been enacted. It is, of course, true that the Union Parliament has not exercised its concurrent legislative powers under Entry 33 of List III for regulating the sale and purchase of sugarcane. But, as noted earlier, the Sugarcane (Control) Order promulgated under the central legislation of the Essential Commodities Act when read harmoniously and in conjunction with the State Sugarcane Act carves out a special field for their operation and by the sweep of their combined operation the general provisions of the Market Act pro tanto get excluded so far as the transactions of purchase and sale of sugarcane in the market area are concerned. 2. SALE OF SUGAR AND MOLASSES: So far as the sale transactions pertaining to these commodities are concerned, it has to be kept in view that they will have to be treated as agricultural produce in the light of the definition of Section 2(1)(a) of the Market Act. They get manufactured from the basic agricultural produce, namely, the sugarcane. However, the question remains whether their sales are also controlled by the relevant special statutory provisions. It will, therefore, be necessary for us to have a look at these relevant special statutory provisions. In this connection, our attention was invited to four Orders framed under Section 3 of the Essential Commodities Act pertaining to sugar : 1. Sugar (Control) Order, 1966; 2. Sugar (Packing & Marking) Order, 1970; 3. Sugar (Restriction on Movement) Order, 1970; 4. Levy Sugar Supply (Control) Order, 1979. Clause 3 of the Sugar (Control) Order, 1966 deals with regulation and production of sugar which enables the Central Government to direct that no sugar can be manufactured from sugarcane except and in accordance with the conditions specified in a licence issued in this behalf. Clause 4 thereof deals with permissible directions to be issued by the Central Government to the effect that no producer shall sell or agree to sell or otherwise dispose of or deliver or agree to deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced. Clause 5 enables the Central Government to issue directions to producers and dealers of sugar regarding the production, maintenance of stock, storage, sale grading, packing, marking, weighment, disposal, delivery and distribution of (any kind of sugar). Clause 6 deals with the power of the Central Government to regulate movement of sugar. Clause 7 deals with the power to regulate quality of sugar. Clause 10 deals with the power of the Central Government to call for requisite information from different sources enacted therein. Clause 11 deals with the power of any officer authorised by the Central Government to inspection, entry, search, sampling, seizure, etc. as enacted therein. The Sugar (Packing and Marking) Order, 1970 provides statutory directions as to the quality of sugar to be packed in each bag. The Sugar (Restriction on Movement) Order, 1970 deals with restrictions on transport of certain types of sugar. The Levy Sugar Supply (Control) Order, 1979 enables the Central Government to issue directions to any producer or recognised dealer to supply levy sugar of such type or grade to such persons or organisation as may be enacted in the Order. The aforesaid provisions of the various Orders issued under Section 3 of the Essential Commodities Act clearly indicate that all sale transactions of sugar by factories manufacturing sugar out of the sugarcane, the basic agricultural produce and raw material, are regulated by these provisions. As noted earlier, Section 15 of the Market Act is out of picture qua even these transactions. The sale of sugar manufactured out of sugarcane and fixation of price thereof would also, therefore, go out of the sweep of Section 15(1) & (2) of the Market Act and would be governed wholly by these special provisions of the Control Orders. On the parity of reasons governing the transactions of sale and purchase of sugarcane, transactions of sale of sugar manufactured out of purchased sugarcane by the very same sugar factories functioning in the market area would also be governed by special provisions of the aforesaid special Sugar (Control) Orders and would pro tanto get excluded from

the general sweep of the Market Act. In this connection, we may also refer to the main contentions of Shri Rakesh Dwivedi, learned Senior counsel for the State. He submitted that the aforesaid various Control Orders regulating sugar have been issued with the objective of maintaining supply of sugar and ensuring availability of the same. Not only the object is different, but in effect the Control Orders regulate production of sugar, impose levy, determine price of levy sugar, provide for packing in bags in quantities of 100 kgs., provide for transport under a permit issued by the Central Government/State Government when sold under Section 3(2)(f) of Essential Commodities Act, 1955 (levy sugar) and specifications of dealer for supply of levy sugar. As far as free sugar is concerned, only monthly quotas are fixed (see pages 44-46 of additional documents). Thus, as far as free sale sugar is concerned, the Central Government does not fix the price and does not determine the person to whom it is to be sold or the manner in which it is to be transported. The various provisions of the Market Act for regulating sale, purchase and storage of free sugar would, therefore, be available and the capacity of market committee to regulate these transactions is not affected by these Orders and to that extent there is no repugnancy between them and the Market Act. It is not possible to agree with this submission for the simple reason that the provisions of Sugar (Control) Orders have not to be read in isolation but will have to be read with the special provisions controlling the production, sale and purchase of sugarcane out of which sugar is manufactured by the very same sugar factories functioning in the market area. They are all integrated transactions and are subject to a well knit statutory scheme of control of these commodities. It is obvious that regulation of sugarcane supply and distribution is not in isolation. The main purpose of such regulation is for ensuring better quality and adequate quantity of sugar manufactured out of sugarcane supplied by sugarcane growers to earmarked sugar factories which manufacture sugar by crushing sugarcane in their factories by resorting to vacuum pan manufacturing process. Therefore, it is the ultimate sale of the manufactured article, namely, sugar by way of levy sugar or in free market that is sought to be controlled by the Control Orders which cannot effectively operate save and except in harmony with the provisions enacted for the control of raw material, namely, the sugarcane as envisaged by the Sugarcane Orders as well as the Sugarcane Act. They together, therefore, provide a complete machinery for controlling the production, sale and purchase not only of the raw material - sugarcane but also finished product sugar and in this background we have to visualise the legislative intent underlying the enactment of the Sugarcane Act on the one hand and the exclusion of Section 15 to such transactions by the delegate of the legislature, namely, the State of Bihar on the other. It is also necessary to visualise that once Section 15 is out of the way for governing the sale and purchase transactions by sugar factories not only the purchase of sugarcane as raw material by them but also the sale of their finished product, namely - sugar is also out of the sweep of Section 15 of the Market Act. Consequently, the entire regulatory machinery and the infrastructural facilities to be made available by the market committees for regulating the sale and purchase of such an agricultural produce would not give any signals and would get totally excluded.

SALE OF MOLASSES : This takes us to the consideration of the statutory control of sale of molasses by sugar factories functioning in the market area. It has to be kept in view that molasses is a by-product of the sugar industry and the sale of molasses by the sugar factories is wholly controlled by the statutory provisions contained in the Bihar Molasses (Control) Act, 1947. The preamble to the Act reads as under

: An Act to provide for the control of the distribution, supply, storage and price of molasses produced by factories in the State of Bihar.

Section 2(c) of the Molasses Act defines Molasses as under : Molasses means final residual by-product of factories manufacturing sugar from cane or by refining gur, by means of vacuum pans but does not include convertible molasses, which are the final residual by-product of sugar factories operating on the open pan system.

Section 3 of the Act provides as under : Submission of returns by occupiers of factories and stockists.- Every owner, manager or occupier of a factory and every stockist shall furnish to the Controller within the time and in the manner specified by the Controller such returns relating to stocks of molasses as the Controller may, by order from time to time, direct.

Section 4 of the Act provides that No molasses produced in the State nor any molasses held by the stockists in this State, shall, without the permission of the Controller, be moved by rail, road or river from any place in the State to any other place therein.

As per Section 5 of the Act, a sugar factory cannot even enter into an agreement or contract with any person other than the Government or person licensed by the controller for supply of molasses. All molasses have to be sold by sugar factories in accordance with the directions of the Molasses Controller issued under Section 6 of the Molasses Act. The price of molasses is regulated by Section 8 of the Act. Section 8A provides that the State Government may impose administrative charges on the sale of released molasses for meeting the cost of establishment for supervision and control over such release. It is thus clear that the sale of molasses is also regulated by the State Government and the cost of such regulation is recovered under the Molasses Act in the form of administrative charges. Section 8C requires every owner occupier and manager of sugar factory to place in a separate fund suitable amount for the purpose of construction and maintenance of adequate facilities for storage of molasses.

Section 9C makes detailed provisions relating to storage of molasses and construction of storage tanks by the sugar factories. Section 11 gives overriding effect to the provisions of the Molasses Act over any provision contained in any other Act. Section 13 which is the section conferring the power to make Rules provides for the making of rules for carrying out the purposes of the Act and empowers in particular a) prescribe the specifications and tests in respect of the purity of molasses;

b) regulate sale and price of molasses intended for use in distilleries or for other purposes;

c) prescribe conditions in respect of storage, loading and transport of molasses at factories;

d) prescribe the forms and returns to be submitted, and the records and books to be maintained, by factories;

e) prescribe the manner in which molasses produced in factories shall be graded, marketed, packed or stores for sale;

f) regulate imposition and recovery of permit fee and administrative charges on released molasses;

ff) prescribe the manner in which accounts of funds for regulation of adequate storage facilities in respect of molasses produced in factories shall be maintained and operated;

g) any other matter which is required to be or which may be prescribed under this Act.

The Bihar Molasses (Control) Rules, 1955 contain detailed provisions in Rule 3 relating to supply of molasses by sugar factories. Reference may be made to clause h of Rule (3), which is in the following terms : Every sugar factory and every stockist shall, on receipt of an order from the Controller and on intimation of the allotment of tank wagons for the transport of molasses, make all necessary arrangements promptly for the haulage and loading of molasses and where the owner, occupier or Manager of a sugar factory or the stockist fails to make such arrangements without sufficient reason, the Excise Officer shall have the power on his behalf, to enter upon the premises, make arrangement for the haulage and loading of molasses by manual labour, if necessary recover the cost incurred thereby from the said owner, occupier as manager of the sugar factory or the stockist.

Rule 10 provides that no molasses can be moved from the premises of a sugar factory except under a pass in Form M.F.6. Rule 11 provides that molasses cannot be moved from the premises of any sugar factory except under a movement order in Form M.F.7 issued by the Controller as provided in the Act and Rules. The aforesaid provisions leave no room for doubt that the sale and purchase of molasses which would be an agricultural produce as defined by Section 2(1)(a) of the Market Act being a by-product resulting from manufacture of sugar by utilising the basic agricultural produce, namely, sugarcane are wholly controlled by the Molasses Control Act enacted by the very same legislature which has enacted the Market Act. It is easy to visualise that the very same legislature which enacted both these provisions was pressed to be alive to the need of having special provisions for regulating the sale and purchase of molasses and that by itself would exclude the need to get these transactions generally controlled and regulated by the sweep of the Market Act as per Section 3 of the said Act. That is precisely the reason for even its delegate, the State of Bihar in its wisdom to exclude the applicability of Section 15 of the Market Act, so far as the sale transactions of molasses by the sugar factories operating in the market area are concerned. The validity of the Bihar Molasses Act, 1947 has been upheld by this Court in the case of SIEL Ltd. and Others vs. Union of India and Others (1998 (7) SCC 26). It has been held to be traceable to Entry 33 List III and is having Presidents assent. It is, therefore, obvious that the Molasses Act laying down a detailed statutory scheme of control of sale and purchase of molasses produced by the sugar factories in the market area will remain within the statutory framework of the aforesaid special statute. The general provisions of the Market Act has, therefore, to give way to the aforesaid special provisions. It was next submitted by learned senior counsel for the State of Bihar that even though the market

committee may not be in a position to regulate sale, purchase, storage or processing of molasses not released by the Controller atleast after they were decontrolled by the Central Government in June, 1993 and even when the State Governments have partially decontrolled transactions regarding molasses, such transactions could be regulated under the Market Act. This submission also cannot be countenanced. The reason is obvious. Once the State of Bihar itself has exempted these sale transactions from the operation of Section 15 of the Act, they would be out of sweep of the general provisions of the Market Act and would not statutorily enjoin the market committees to provide any infrastructure for regulating sale of molasses to enable them to bring home the charge of market fee on the sale transactions of molasses as per Section 27 of the Act. As a result of this discussion, the first contention will have to be answered in negative by holding that the provisions of the Market Act cannot apply to the transactions of purchase of sugarcane and sale of sugar and molasses by the sugar mills situated and functioning within the market area of the concerned market committee constituted under the Market Act. CONTENTION NO. 2 : This takes us to the consideration of the alternative contention canvassed by learned senior counsel for the appellants in support of the appeals. Strictly speaking, this alternative contention does not survive for our consideration, in view of our answer to the first contention. However, as we have heard learned counsel for the parties on this alternative contention, we may deal with the same on merits. It has to be kept in view that market fee levied under the Market Act is a fee and not a tax. The Market Act in so far as it enacts Section 27 levying market fee is referable to Entry 66 of the State List read with Entry 47 of the Concurrent List. Both of them deal with topics of legislation pertaining to fees in respect of the matters enumerated in the respective lists. In the case of Kewal Krishan Puri and Anr. vs. State of Punjab and Anr. etc. etc. (1980 (1) SCC 416), a Constitution Bench of this Court, while upholding the levy of market fee under the Punjab Agricultural Produce Markets Act, 1961, has made the following pertinent observations in paragraph 23 of the report. Untwalia J., speaking for the Court observed :

> From a conspectus of the various authorities of this Court we deduce the following principles for satisfying the tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area :
>
> (1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.
>
> (2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.
>
> (3) That while rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.
>
> (4) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all

concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

It becomes at once clear that before justifying levy of market fee on any transaction the services to be rendered by the market committee must be in connection with the sale and purchase transactions of agricultural produce falling for regulation under the Market Act, when the purchase and sale of agricultural produce like sugarcane, sugar or molasses are not governed by the Market Act, as we have seen while considering contention no.1, there would remain no occasion for the market committee to be statutorily under any obligation to provide any services or infrastructural facilities for covering such transactions so as to be entitled to charge market fee on such transactions. It was vehemently contended by learned senior counsel for the respondents that various types of infrastructural facilities are being made available to sugar factories who are purchasing sugarcane in the market area and selling manufactured sugar and molasses in the very same market area. The following are the various facilities and services highlighted in this connection :1. Link road facilities by which market committees were to spend monies for connecting villages in the market area with the main roads for facilitating the movement of agricultural produce including the sugarcane from the farms to the purchase centres of the factories.

2. Spread of information regarding prices of agricultural produce for information of growers of sugarcane.

3. Providing mediation facility to enable the growers of sugarcane to get higher price for sugarcane as compared to the minimum prices fixed under the control orders.

4. Supervision of weighment of sugarcane.

5. Licensing of weighing inspectors.

6. Providing for drinking facility and park.

7. Parking facilities at the purchase centres.

Shri Trivedi, Addl.Solicitor General, in his turn, tried to highlight the concept of link roads being other than approach roads. He submitted that near the factory gate or purchase centres provision of approach roads may be a statutory obligation of the sugar factories. Thus approach roads would connect the purchase centres with the nearby public roads. But so far as link roads are concerned, they are also public roads other than approach roads which connect villages with main roads and all these facilities make possible quicker movement of sugarcane from farms to the purchase centres. This results in supplying better quality of sugarcane for being crushed in the factories so that before such sugarcane dries out it gets crushed resulting in better quality and larger quantity of sugar for the benefit of sugar factories. Strong reliance was placed in this connection on various provisions of Section 30 of the Market Act and it was submitted by learned senior counsel for the respondents that all these benefits are being made available to sugar factories and there is no reason for them to oppose payment of small amounts of market fees after getting these benefits from the market committees. The aforesaid contentions of learned senior counsel for the respondents for salvaging the situation for the market committees though appearing attractive at the first blush, do not survive on a closer scrutiny. The reason is obvious. Only because the sugarcane factories are located in the market area they can be said to be covered by the general sweep of Section 27 of the Market Act as the agricultural produce, namely, sugarcane as well as sugar and molasses can be said to be bought and sold in the market area. But by the fact only of sale and purchase of these commodities in the market area, it cannot be said that such agricultural produce belongs to the category of agricultural produce which is covered by the general sweep of the Act. In order to attract the charge under Section 27, the concerned agricultural produce on which the market fee is to be levied must be required to be bought and sold in the market area within the jurisdiction of the concerned market committee as per Section 15 of the Market Act which enjoins that no agricultural produce specified in the notification under sub-section (1) of Section 4 shall be bought or sold by any person within the market area other than the relevant principal market yard or sub-market yards. Thus, on a conjoint reading of Sections 27 and 15 of the Market Act, it must be held that before any charge of market fee can settle regarding any purchase and sale transactions concerning the agricultural produce, such agricultural produce must have been required to be sold or purchased at the relevant principal market yard or sub-market yards. It is obvious that principal market yard or submarket yards would be situated within the market area, but if any agricultural produce is exempted from the provisions of Section 15(1) of the Act as in the case of sugarcane, sugar and molasses there would remain no occasion for transactions of sale and purchase of these commodities to be carried on only in the principal market yard or sub-market yards and not elsewhere in any other part of market area. It is only those agricultural produce which are required to be bought and sold in the relevant principal market yard or sub-market yards situated within the market area that attract charge of Section 27 of the Act. Once this charge is attracted, the further question whether it is backed by any quid pro quo would survive for consideration. On the facts of the present case, Section 15 as a whole is out of picture for controlling purchase and sale of sugarcane, sugar and molasses by sugar factories operating in the market area, as we have seen earlier, the charge of market fee as envisaged by Section 27 would not get attracted at all for them. Hence the aforesaid list of the infrastructural

facilities made available to sugar factories in general with other dealers in agricultural produce attracting Section 15 of the Act would pale into insignificance. Market Committees would not supply adequate quid pro quo for levying market fee as the charge itself does not settle on these transactions by the sugar factories. It may be, as submitted by learned senior counsel for the respondents, that some sugar factories may have taken benefit of electric lighting and preparation of approach roads by the market committees which might have spent sufficient funds for giving these facilities. Still they would not be a part and parcel of the statutory obligations of the market committees qua such sugar factories and may remain in the domain of Section 72 of the Indian Contract Act and if such benefits are received by the factories they may be liable on the principle of quantum meruit to reimburse or compensate the market committees for the voluntary facilities given by them but they would not support any legal quid pro quo by way of statutory obligation of the market committees for giving facilities to the sugar mills for supporting the levy of market fees on their transactions. Contention no.2 is, therefore, answered in negative not on the ground that the services rendered by the market committee to the appellant sugar factories were not having any adequate quid pro quo but on the ground that they were not statutorily required to be made available to the sugar factories by way of statutory obligation of the market committee to regulate the sale and purchase transactions of sugarcane, sugar and molasses by these sugar factories and also on the ground that the charge under Section 27 by levying market fee on the aforesaid transactions was not attracted at all on the facts and circumstances of the case, as seen earlier. As a result of our conclusion on the findings of the aforesaid two contentions, the appeals and other Writ Petition in sugar group matters will be required to be allowed and the impugned judgment of the High Court in all these matters will have to be set aside. However, the further question that survives is as to what relief can be given to the appellants and the writ petitioners in this sugar group of matters. It is obvious that during the pendency of these proceedings no interim relief was given to the appellants and the writ petitioners. Therefore, they must have paid the market fee on the concerned transaction all these years. In the common course of events, they would have passed on the burden of market fee on purchasers and the ultimate consumers of sugar and molasses produced by the sugar factories by utilising sugarcane as raw material. Shri Shanti Bhushan, learned senior counsel for the appellants, in this connection, submitted that accepting the principle of unjust enrichment we may reserve liberty to the appellants to show before the authorities whether they have in fact passed on the burden of impugned market fee at the relevant time and if they could show to the satisfaction of the authorities that in fact they have not passed on the burden then they may be treated to be entitled to get refund of all the appropriate amounts of market fee not passed on. In our view it is not possible to accept this contention as years have rolled by since the impugned market fees have been levied by the different market committees in the State of Bihar. In the normal course of events, no prudent businessman/manufacturer would ever bear the burden of such compulsory fee or tax to be paid from his own pocket. Even otherwise reserving such liberty would create unnecessary complication and may give rise to spate of avoidable litigations in the hierarchy of proceedings. Under these circumstances, keeping in view the peculiar facts and circumstances of these cases, we deem it fit to direct in exercise our powers under Article 142 of the Constitution of India that the present decision will have only prospective effect. Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced therefrom by utilising this purchased sugarcane by these factories will not be subjected to

the levy of market fee under Section 27 of the Market Act by the market committees concerned. All past transactions upto the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgement will not be required to be refunded to any of the sugar mills which might have paid these market fees. However, one rider has to be added to this direction. If any of the market committees has been restrained from recovering market fee from the writ petitioners in the High Court or if any of the writ petitioners in the High Court has, as an appellant before this Court, obtained stay of the payment of market fee, then for the period during which such stay has operated and consequently market fee was not paid on the transactions covered by such stay orders, there will remain no occasion for the market committee concerned to recover such market fee from the concerned sugar mill after the date of this judgment even for such past transactions. In other words, market fees paid in past shall not be refunded. Similarly market fees not collected in past also shall not be collected hereafter. The impugned judgments of the High Court in this group of sugar matters will stand set aside as aforesaid. The Writ Petition directly filed before this Court also will be required to be allowed in aforesaid terms. Before parting with this group of matters, it must be clarified that the present judgment will be applicable in connection with the purchase of sugarcane by the sugar factories as well as the sale of manufactured sugar and molasses by these factories functioning in the areas of market committees concerned and whose transactions are governed by the provisions of the Sugarcane (Control) Order, 1966 as well as the Sugarcane Act of 1981 and also by the relevant provisions of the Sugar Orders and the provisions of Molasses Control Act. Any other transactions of purchase and sale, in principal market yard or sub-market yards, of sugarcane, sugar or molasses by any other licensed dealers not governed by the aforesaid provisions will not be covered by the ratio of this judgment.

2. WHEAT PRODUCTS - ATTA, MAIDA, SUZI, BRAN ETC. In this group of matters, six flour mills functioning in market areas within the jurisdiction of market committees concerned have brought in challenge the applicability of the Market Act to the transactions of purchase of wheat by these mills and manufacture out of the same different wheat products like atta, maida, suzi, bran, etc. The High Court of judicature at Patna repelled their contentions against the applicability of the Market Act. On grant of special leave to appeal they are before us in these proceedings. Shri Ranjit Kumar, learned counsel appearing for the appellants raised two contentions for our consideration. 1. Under the Industries (Development and Regulation) Act, 1951 (for short I.D.R. Act) in public interest the Union of India has taken over the control of the wheat industry as specified in the First Schedule to the Act and consequently any transaction of purchase and sale of the products of that industry cannot be regulated by the State Act like the Market Act. As a part of the very same contention, it was submitted that Wheat Rolling Flour Mills (Licensing and Control) Order, 1957 and the Bihar Trading Articles (Licenses Unification) Order, 1984 issued under Section 3 of the Essential Commodities Act, 1955 lay down a complete scheme for regulating purchase and sale of wheat products and hence these transactions cannot be covered by the general sweep of the Market Act. 2. Alternatively, it was contended that wheat may be an agricultural produce, but sale of atta, maida, suzi cannot be treated as agricultural produce. We shall deal with the aforesaid contentions point wise. Point No.1: It is true that the Union Parliament in exercise of its legislative power under Entry 52 of List I of the Seventh Schedule has enacted the I.D.R. Act. It is also true that flour industry is listed as one of the scheduled industries as item no.27(4) under the caption food processing

industries. However, production of wheat as raw material or its sale is not covered by the said Act. Consequently, so far as wheat as agricultural produce is concerned, it is outside the sweep of the I.D.R. Act. However, when flour industry is covered by the said Act, question remains whether sale of flour or any other products out of wheat can be said to be covered by the sweep of the I.D.R. Act. Regulation of sale and purchase of flour as a controlled industry was sought to be emphasised by Shri Ranjit Kumar by inviting our attention to Section 18G of the I.D.R. Act. Section 18G sub-section (1) reads as follows :

> 18G. Power to control, supply, distribution, price, etc., of certain articles. - (1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.
>
> It is obvious that unless the Central Government in exercise of its statutory power under Section 18G promulgates any statutory order covering this field, it cannot be said that mere existence of a statutory provision for entrustment of such power by itself would result into regulation of purchase and sale of flour even if it is a scheduled industry. Shri Ranjit Kumar fairly stated that no such order has been promulgated by the Central Government for regulating the purchase and sale of flour in the market area. According to him, however, the mere existence of such a statutory provision in the Act enabling the Central Government to issue such orders would be sufficient to occupy the filed contemplated by this provision. In support of this contention, he invited our attention to a decision of this Court in the case of The Hingir-Rampur Coal Co., Ltd. and Others vs. The State of Orissa and Others (1961 (2) SCR 537). At page 558 of the report Gajendragadkar J., speaking for the Court, made the following pertinent observations : .Entry 54 in List I dealing with Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. The effect of reading the two Entries together is clear. The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded.

It was contended by Shri Ranjit Kumar relying on these observations that mere declaration under the I.D.R. Act is enough to exclude the jurisdiction of the State Legislature in connection with such a declared industry. It is difficult to appreciate this contention. It has to be kept in view that any legislation in exercise of legislative power under Entry 54 of List I would enable the Parliament to regulate mines and mineral development by taking them under the control of the Union in public interest. Thus all aspects of mining industry would be covered by the general sweep of such a declaration. However, so far as the I.D.R. Act is concerned, it is enacted under Entry 52 of the First

Schedule which deals with industries in general. Simultaneously in the State List itself there is Entry 24 which deals with industries subject to the provisions of Entries 7 and 52 of List I. Consequently, the products of such controlled industries would necessarily not be governed by the sweep of the general legislation pertaining to such industries as per Entry 52 of the Union List. The aforesaid Constitution Bench judgment was not concerned with any State Legislation enacted under Entry 24. On the contrary, it dealt with legislation of the Union Parliament under Entry 54 of the Union List read with Entry 23 of the State List. The scheme of the aforesaid legislative entries is entirely different from the scheme of Entry 52 of List I read with Entry 24 of List II with which we are concerned. On a conjoint reading of the aforesaid two entries, therefore, the ratio of the decision of the Constitution Bench in the aforesaid case cannot be effectively pressed in service by Shri Ranjit Kumar for supporting his contention. In this connection, we may usefully refer to a decision of this Court in SIEL Ltd. and Others (supra) wherein one of us, Sujata V. Manohar, J was a member. It has rightly distinguished the ratio of the Constitution Bench decision in the case of The Hingir-Rampur Coal Co., Ltd. and Others (supra) and taken the view that merely because an industry is controlled by a declaration under Section 2 of the I.D.R. Act enacted by Entry 52 of the Union List, the State Legislature would not be denied of its powers to regulate the products of such an industry by exercise of its legislative powers under Entry 24 of the State List. In that case the question was whether U.P. Sheera Niyantran Adhiniyam, 1964 could be said to be repugnant to the Molasses Control Order issued by the Central Government under Section 18-G of the I.D.R. Act imposing restrictions on the sale of molasses and fixing the maximum price of molasses. Answering the question in negative, it was held that the term industry in Entry 24 would not take within its ambit trade and commerce or production, supply and distribution of goods which are within the province of Entries 26 and 27 of List II. Similarly, Entry 52 in List I which deals with industry also would not cover trade and commerce in, or production, supply and distribution of, the products of those industries which fall under Entry 52 of List I. For the industries falling in Entry 52 of List I, these subjects are carved out and expressly put in Entry 33 of List III. It was also held that since the Molasses (Control) Order of 1961 passed by the Central Government in exercise of powers conferred by Section 18-G was not extended at any point of time to the State of U.P. or the State of Bihar, the question of repugnancy between the Molasses Control Order, 1961 and the U.P. Sheera Niyantran Adhiniyam, 1964 does not arise. Consequently, it must be held that in the absence of statutory order promulgated under Section 18G of the I.D.R. Act, it cannot be said that the field for regulation of sale and purchase of products of flour industry like atta, maida, suzi, bran etc. would remain outside the domain of the State Legislature. Shri Ranjit Kumar then placed reliance on the statutory orders framed under Section 3 of the Essential Commodities Act, 1955. So far as the Wheat Rolling Flour Mills (Licensing and Control) Order, 1957 is concerned, reliance was placed by him on Clauses 2 and 10 of the definition clause. These clauses clearly indicated that the said order was not concerned with agriculturists nor was the order concerned with the pricing, purchase and sale of wheat or wheat products. Consequently, the said order cannot be said to have occupied the field so far as these topics are concerned. He then invited our attention to the Bihar Trading Articles (Licenses Unification) Order, 1984. Clauses 2 (c) (g) (h) and (j) as well as Clauses 15 and 18 on which reliance was placed were found not to be of any assistance to him for the simple reason that under that Order dealers of foodgrains like wheat had to be licensed and their activities had to be supervised. This order had also nothing to do with fixation of prices and regulating the purchase and sale of wheat and wheat products. Consequently, the first contention canvassed by Shri Ranjit Kumar cannot be

sustained and is accordingly rejected. POINT NO. 2: So far as the alternative contention is concerned, he submitted that even though wheat is an agricultural produce, atta, maida, suzi manufactured out of the same cannot be said to be agricultural produce as it is a produce of the factory and not of an agriculturist. This contention of Shri Ranjit Kumar also cannot be sustained for the simple reason that agricultural produce as defined by Section 2(1), as already noted earlier, would include all agricultural produce whether processed, non-processed or manufactured out of any primary agricultural produce. Wheat is a produce of agriculture, therefore, any product resulting after processing such basic raw material or which results after process of manufacture is carried on qua such basic raw material would remain agricultural produce. Shri Ranjit Kumar fairly stated that he has not challenged the vires of Section 2 (1)(a) but in his submission items 14 to 16 as found in the Schedule to the Act under the caption Cereals are wrongly included as agricultural produce as they are not produce of agriculture. Moment the artificial definition of agricultural produce as aforesaid holds the field, as a logical corollary these three disputed items would squarely get covered by the sweep of the term agricultural produce and hence their inclusion in the schedule enacted under Section 2(1)(a) as types of cereals cannot be found fault with. These were the only contentions canvassed by Shri Ranjit Kumar in support of his appeals. As they fail the inevitable result is that all the civil appeals would be liable to be dismissed.

3. VEGETABLE OILS : Civil Appeal No.1427 of 1979 moved by M/s Rohtas Industries Ltd., which is now under liquidation represented through its liquidator raises similar contention as canvassed by Shri Ranjit Kumar in support of the appeals moved by flour mills. All vegetable oils are treated to be agricultural produce as per serial no.4 of the schedule framed under Section 2(1)(a) of the Market Act. In view of the general sweep of the said definition, oil manufactured by the oil mills functioning within the areas of the Market Committees concerned by crushing oil-seeds which are undisputedly agricultural produce and subjecting them to manufacturing process cannot be said to be outside the sweep of the regulatory provisions of the Market Act. Reliance placed in support of this appeal on the Vegetable Oil Products Control Order, 1947 the Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977, the Vegetable Oil Product Producers (Regulation of Refined Oil Manufacture) Order, 1973, all framed under Section 3 of the Essential Commodities Act, 1955, also cannot be of any avail to the appellant industries for the simple reason that none of these orders deals with the topic of regulation of prices and sale and purchase of vegetable oil products. Consequently, the field is wide open for the legislation of the State, namely, the Market Act for its applicability to the transactions of sale and purchase of vegetable oil products in the market areas concerned. This civil appeal, therefore, also is liable to fail, falling in line with the appeals concerning wheat and wheat products. Civil Appeal Nos. 4500-05 of 1992 and Civil Appeal arising out of SLP (C) No.9684 of 1992 raise similar contentions in connection with vegetable edible oils on the very same reasoning, as aforesaid. These appeals are liable to fail.

4. RICE MILLING INDUSTRIES The appeals arising from SLP (Civil) Nos.3159-60 of 1994 are moved by Rice Milling Industries operating in the market area of the concerned market committees. Learned senior counsel for the appellant mills challenged notices issued to them by the Agricultural Produce Market Committees concerned requiring them to shift their trade to principal market yards. It was contended that on account of the Rice Milling Industry (Regulation) Act, 1958 which is a Central Act, the field for regulation of purchase and sale of products of rice milling industries

would be fully occupied by the Central Act and if the State Act like the Market Act seeks to encroach upon the said field, it would become repugnant to the Central Act. A close look at the relevant provisions of the said Act shows that it does not seek to cover the aforesaid field. Sub-section (1) of Section 6 of the said Act reads as follows :Any owner of an existing rice mill or of a rice mill in respect of which a permit has been granted under section 5 may make an application to the licensing officer for the grant of a licence for carrying on rice-milling operation in that rice mill. Section 8 deals with restrictions statutorily imposed on rice mills. Section 9 empowers the licensing officer or any person authorised by the Central Government to inspect the working of the rice mill. The aforesaid relevant provisions of the Act leaves no room for doubt that the working of the rice milling industries was sought to be regulated by the said Act and it has nothing to do with the regulation of purchase and sale of products of such mills. It was then submitted that the appellant rice mills import paddy from other State territories which are outside the notified market area falling under the Market Act and such imported paddy is processed and after manufacturing activities qua them, rice is manufactured, hence such activity cannot be governed by the Market Act. It is obvious that if the appellant rice mills import paddy already purchased from outside the market area then on such transactions of outside purchase and import of paddy in the market area, there would remain no occasion for the market committees concerned to subject such transactions to the regulating machinery of the Market Act or to demand any market fee thereof. This was fairly conceded by learned senior counsel for the respondents. He, however, added that if these rice milling industries located and functioning in the market area purchase within the market area, raw material paddy, whether grown in the market area concerned or outside, then such purchases within the market area will attract the regulatory provisions of the Market Act. There cannot be any dispute on this aspect as paddy obviously is an agricultural produce being item no.1 in the category of Cereals as found in Schedule to the Act. So far as the manufactured rice out of such paddy is concerned, once manufacturing takes place within the market area, it would get squarely covered by the wide sweep of definition of Section 2(1)(a), as we have seen earlier. Even apart from that, rice is mentioned as a separate item no.2 in the category of Cereals in the Schedule of the Market Act. It cannot be disputed that rice manufactured out of basic agricultural produce paddy would also remain agricultural produce falling within the sweep of the Act. So far as the regulation of sale and purchase of rice within the market area is concerned, Section 15 of the Act applies to the transactions of licensed dealers dealing with such agricultural produce in the market area. Hence the entire machinery of the Market Act will be applicable to regulate transactions of sale and purchase of paddy by the rice mills within the market area as well as sale of rice by them within that area as all these transactions will have to take place in the market yard or sub-market yards as per Section 15 of the Act. However, one grievance voiced by learned senior counsel for the appellants deserved to be noted before parting with the discussion in these appeals. He submitted that there is no power and authority in the market committee to insist that the location of the rice milling industries also should be changed and must be shifted to the market yard. In this connection, our attention was invited to the notice (page 156 of the paper book) as a specimen notice. In the said notice addressed to Janta Rice & Flour Mills issued by the advocate acting on behalf of the Secretary, Agricultural Produce Market Committee, Chakulia, in the last but one paragraph, the addressee was requested to shift the establishment of business in the main market yard at Dighi of the Agricultural Produce Market Committee, Chakulia within 7 days. It was submitted that this part of the direction is totally without jurisdiction as no market committee can compel the shifting of the business premises of the

rice milling industries to any particular market yard as Section 15 of the Act only requires the sale and purchase transactions regarding the agricultural produce to be carried on in the market yard or sub-market yards. To that extent, learned senior counsel for the appellant is right. The statutory mandate of Section 15 does not go beyond the regulation of transactions regarding purchase and sale of agricultural produce and that can be required to be effected only at the relevant principal market yard or sub-market yard or yards. None of the provisions of the Market Act would entitle the market committee to insist on shifting of the business premises of any milling company or factory processing agricultural produce located within the market area to any particular market yard or sub-market yards. Learned senior counsel for the respondents Shri Dwivedi fairly conceded that the aforesaid direction contained in the impugned notice as worded is not correct and can be read down to mean only the shifting of the sale and purchase transactions concerning paddy and rice to the relevant market yard or sub-market yards. These directions are accordingly read down. The said notice when so read down would remain well sustained. In other words, the appellants will not be required to shift the location of the rice mills to principal market yard or sub-market yards if otherwise they are not already so located but are functioning at any place within the market area. However, their sale and purchase transactions of paddy and rice will, of course, be required to be carried on only in market yard or sub-market yards concerned as mandated by Section 15 of the Market Act. Subject to these clarifications and modifications in the directions contained in the impugned notice, these appeals are liable to fail.

5. MILK AND MILK PRODUCTS This takes us to the consideration of Civil Appeal No.1880 of 1988. The appellant in this appeal is an incorporated company with its Registered Office and factory at Bombay. It claims to produce baby food under the trade names LACTODEX and RAPTAKOS S.I.F. (Special infant food). Its products are sold all over the country including Bihar State. It has its Central Office at Patna. Being located outside Bihar it purchases its raw materials from the territories outside Bihar. Out of the raw materials procured from outside, the aforesaid two types of infant food are manufactured outside Bihar but some of the products of the company are received in Bihar State packed in sealed tins. The appellant company earlier had two branches being sales offices, one at Patna and other at Muzaffarpur. The latter branch is since closed. Both these branches fall within the jurisdiction of the Agricultural Produce Market Committees at Patna and Muzaffarpur. According to the appellant though its activities were not covered by the sweep of the Market Act, it was required to obtain licences under the Act for operating at both these places in the market areas. The appellant contended in the Writ Petition before the High Court that the direction of the marketing authorities requiring the appellant to take licences under the Market Act was clearly ultra vires and illegal for the simple reason that the products sold by it within the market area were not agricultural produce at all. Therefore, they were not governed by the sweep of the Act. The High Court in the impugned judgment negated this contention and held that both these articles sold in packed tins were in substance milk products and, therefore, agricultural produce as defined by Section 2(1)(a). Learned counsel appearing for the appellant vehemently submitted that before the aforesaid two products can be subjected to the regulatory procedure of the Market Act, it must be shown by the respondents that they are agricultural produce. He invited our attention to Section 3 of the Act and submitted that the very first step of the applicability of the Act is the declaration of intention by the State Government for regulating the purchase, sale, storage and processing of agricultural produce as mentioned in the notification. That the said term agricultural produce as

defined by Section 2(1)(a) clearly indicates that the agricultural produce which is to be covered by the sweep of the Act has to be one which should be specified in the Schedule. When we turn to the Schedule of the Act framed as per Section 2(1)(a), we find one of the animal husbandry products at item VIII, sub-item 20 as milk except liquid milk. Thus any product consisting of solidified milk, like milk powder, is contemplated by the said item. It was submitted that in the entire Schedule no where we find any mention of baby food which may be a substitute for milk or solidified milk. It was, therefore, contended that the appellant which manufactures and sells special infant foods like Lactodex and "Raptakos" cannot be required to take any licence under the Market Act. Refuting this contention, learned senior counsel for the respondents submitted that as noted by the High Court the aforesaid two products manufactured and sold by the appellant do contain as base material "milk" in solidified form. He invited our attention to the details submitted by the appellant before the High Court and as noted by the High Court in its judgment in connection with the ingredients and constituents of these two products. "LACTODEX"

Per 100 ml. When reconstituted. 6 g. : 45 ml.

Protein 1.9 g. Carbohydrate 9.6 g. Milk fat 0.9 g. Minerals 0.5 g. Vitamin A 265 I.U. Vitamin B6 40 mcg. Including that derived from milk powder Vitamin D 40 I.U. Calories 54 RAPTAKOS S.I.F. Per 100 ml. When reconstituted 4.5 g. : 30 ml.

Protein 1.8 g. Fats 3.0 g. Carbohydrates 9.6 g. Minerals (Ash) 0.4 g. Iron 0.6 g. Vitamin A 225 I.U. Vitamin D 60 I.U. Vitamin E 1.3 I.U. Vitamin B1 0.07 mg. Vitamin B2 0.11 mg. Nicotinamide 0.9 mg. Vitamin B6 0.04 mg. Vitamin B12 0.15 mg. Vitamin C 0.5 mg. Calories 73 mg.

Placing reliance on these ingredients, it was submitted that per 100 milligrams of Lactodex milk fat content is 0.9 gms and that other minerals and vitamins may also include milk powder. Similarly, Raptakos (Special infant food) also contains proteins and fats. He also contended that even milk which is a complete food may contain vitamins, therefore, it cannot be said that these two products are not milk products or products containing some ingredients of milk. It is difficult to accept this contention for the simple reason that the aforesaid Schedule at sub-item no.20 captioned under the title "Animal Husbandry Products" refers to milk except liquid milk. By no stretch of imagination, tinned baby food containing various ingredients which may include some milk fats or proteins though in powder form can be said to be milk powder simpliciter or whole milk not in liquid form. It is also pertinent to note that there is no item of milk products in the Schedule to the Act under the caption "Animal Husbandry Products". In this connection, it is profitable to contradistinguish this entry in the Schedule with items 14,15 and 16 under the caption "Cereals" in the very same Schedule. In the listed items under the caption "Cereals", we find "Wheat" separately mentioned at item no.3 as compared to Wheat Atta, Suzi and Maida separately mentioned at items 14,15 and 16. This shows that basic agricultural produce - "wheat" is treated as a separate agricultural produce as compared to its own products manufactured out of wheat, namely, atta, suzi and maida. Those products of the concerned basic agricultural produce are separately mentioned as "agricultural produce" in the Schedule so far as "cereals" are concerned. But similar is not the scheme in connection with milk. Milk products like baby foods are not separately mentioned. Under the very caption "Animal Husbandry Products", Butter and Ghee are separately mentioned as items 7 & 8 which are wholly

manufactured out of milk. It, therefore, becomes clear that save and except butter and ghee no other milk product is sought to be covered by the sweep of the Act as "Animal Husbandry Products" and the basic Animal Husbandry Produce like "milk" only in solid form is sought to be covered by a separate solitary item no.20 as one of the "Animal Husbandry Products". Therefore, any other manufactured product like the present ones, utilising same ingredients of milk powder as one of the ingredients but which are processed by addition of all other extra items with the result that finished products like baby foods emerge as manufactured items for serving as substitute for milk to be fed to infants who cannot digest liquid milk or solidified milk as such, cannot be treated to be "agricultural produce" as part and parcel of listed "Animal Husbandry Products" mentioned in the Schedule to the Act. Learned senior counsel for the appellant in support of his contentions tried to rely upon specimen copies of printed material affixed to the sealed tins of these manufactured commodities, "Lactodex" and "Raptakos", which, according to him, are substitutes for mother's milk and are to be used to feed infant babies who cannot take milk in its natural form. Learned senior counsel for the respondents tried to repel this submission by contending that this type of printed material was not produced before the High Court. Be that as it may, the undisputed fact remains that these two special infant foods are meant for infant babies who are to be fed by mixing this baby food powder with water to make it a paste as a substitute for mother's milk. In the light of the express provisions concerning the relevant items of the Schedule to the Act to which we have referred, it has to be held that on the material before the High Court in connection with the ingredients of the aforesaid two products of the appellant, it could not be effectively shown by the respondents beyond any doubt that these two products also were "agricultural produce" being Animal Husbandry Products of "milk" in a non-liquid form. Consequently, there was no occasion for the respondent authorities to insist that the appellant for the sale of the aforesaid two products within the market area governed by the Market Act in the State of Bihar was required to take any licence under that Act. It is not the case of the appellant that any market fee was required to be charged from him by the market committee. The only grievance made was that the appellant was required to take licence under the Market Act. Hence the question of refund of any market fee would not survive for consideration in the present case. This appeal will have to be allowed and the Writ Petition filed by the appellant in the High Court also consequently will have to be allowed by quashing the impugned notice calling upon the appellant to take licences under the Market Act.

6. TEA MATTERS In the appeal filed by M/s. Lipton Tea (India) Ltd., the appellant company has brought in challenge the order of the High Court of judicature at Patna in Writ Petition No.1027 of 1977 which was disposed of along with other cognate matters by a common judgment. The appellant had contended before the High Court that the Market Act cannot apply to the transaction of manufactured blended tea sold in packed tins and packets by it in the State of Bihar, consisting of areas of different market committees. According to the appellant, the object of the Market Act was to provide for better regulation of buying and selling of agricultural produce. It was for the benefit of the agriculturists by providing them a market assuring a reasonable price of their products and also eliminating unhealthy competition and loss due to malpractices prevailing in the market. That the appellant was neither an agriculturist nor did it purchase any article from any agriculturist in the Bihar State. That it purchased tea in auction under the Tea Act held at various notified centres in other States outside the Bihar territory. That the purchased tea was blended at appellant's factories which were also situated outside Bihar. Only after the purchased tea had undergone manufacturing

process in appellant's tea factories, after blending and preparation of appropriate final product packed in tins and other receptacles, this marketable commodity "tea" consisting of red label, green label tea etc. was being brought for sale within the territories of the State of Bihar. Hence, there was no occasion for the market committees to regulate the sale and purchase of such tea by the appellant manufactured outside the State of Bihar. It was also contended that the Tea Act, which is the Central Act, fully occupied the field of regulation of sale of such tea by the appellant. In view of the special machinery provided under the Tea Act, the general sweep of the Market Act could not be made applicable to the appellant's sale transactions of manufactured tea within the State of Bihar. It was lastly contended that when the appellant was selling its manufactured tea in packed condition in the market area through its stockists, no benefits of infrastructural facilities were required to be furnished by the market committee concerned and, therefore, insistence on the part of the market committee, that the appellant's stockists should sell packed tea only in the market yard or sub-market yards was totally unauthorised and in fact amounted to imposition of sales tax on the sale transactions of tea and could not remain in the realm of genuine market fee. These contentions were repelled by the High Court and it was also held that any manufactured product out of the basic agricultural produce, namely, tea leaves, would be covered by the Act and as the manufactured items in packed conditions out of the basic agricultural produce - "tea" were being sold in the market area, the machinery of the Act was applicable to cover these transactions. Accordingly, the Writ Petition was dismissed. Hence this appeal by special leave. The learned senior counsel for the appellant Shri Shanti Bhushan vehemently submitted that the very purpose of the Market Act is not to regulate the sale of tea manufactured by big tea manufacturing companies like the appellant whose factories are situated outside the State of Bihar. They purchase tea leaves in auction under the Tea Act held at different centres outside the State of Bihar and manufacture after proper blending tea by packing it in suitable packings having labels showing different qualities of tea like green label tea, red label tea etc. That because the appellant imports manufactured tea only for the purpose of sale in Bihar markets, it cannot be said that the machinery of the Market Act which is essentially meant to regulate the sale and purchase of agricultural produce, gets attracted. That the Market Act is, in substance, meant to cover agricultural produce which are first grown in the market area and then sold within the same area. It was also contended that tea was not one of the scheduled items earlier covered by the Act enacted as early as in 1960. That only after 16 years in 1976, tea was added as one of the items in the Schedule to the Act under the caption "Miscellaneous item No. XII"

> as sub item 30 being Tea (leaf and dust). It was submitted that this addition to the Schedule was made by the State of Bihar in exercise of its power under Section 39 of the Act which confers power on the State Government by notification to add any of the items to be treated as "agricultural produce" for being specified in the Schedule. That this addition was made after the basic notification under Section 3 of the Act was issued declaring the intention of the State to regulate the purchase, sale, storage and process of agricultural produce in such areas as may be specified in the notification. This basic notification which was followed by the procedure of inviting objections and suggestions had culminated into declaration of market area under Section 4. That initially as the item of tea was not in the Schedule, it was obviously not sought to be subjected to the regulation under the Act. Consequently, its purchase, sale, storage and process were obviously not intended to be covered by the

Act. But when tea was added as an item in the Schedule in 1976 the procedure contemplated by Section 3 was obviously not undergone and no objections were invited. Section 4 (a) of the Act which was inserted by way of clarification in 1993 also made it clear that the provisions of Sections 3 and 4 shall not apply to the exercise of power by the State Government under Section 39 to amend the Schedule by addition of any item of agricultural produce not specified therein. In the light of the aforesaid statutory scheme, it was vehemently submitted by Shri Shanti Bhushan, learned senior counsel appearing for the appellant, that this insertion of tea as an added item in the Schedule was ex-facie unauthorised and a result of total nonapplication of mind on the part of the State and it is this exercise under Section 39 of the Act by the State authorities that was challenged in the Writ Petition. In support of this challenge, Shri Shanti Bhushan pressed in service the following three contentions :CONTENTION NO.1:

The very scheme and purpose underlying the enactment of the Market Act shows that only those agricultural produce which are grown within the market area and whose sale in the first instance is to be regulated and also the subsequent sale of any manufactured item out of such basic agricultural produce raw material taking place within the market area are required to be regulated by the Act so that illiterate and ignorant agriculturists who would, otherwise, suffer at the hands of middlemen and may not get adequate price for their product and due compensation for the toil undertaken by them in producing these agricultural commodities, may get adequate return for their products. The benevolent provisions of the regulatory scheme of the Act are essential to protect the agriculturists from exploitation of middlemen. In this connection, our attention was drawn to the salient observations highlighting the basic purpose for enactment of such Market Acts as laid down by the Constitution Bench of this Court in M.C.V.S. Arunachala Nadar case (supra). Shri Shanti Bhushan submitted that the large scale manufacturers like Lipton Tea (India) Ltd. who manufacture tea outside the State in their sophisticated factories having latest machinery are not illiterate agriculturist producers of agriculture goods and commodities in their fields and do not require protection under the Act. That as these salient features of the Act are not kept in view by the State Authorities while inserting entry of tea in the Schedule, the said Act on the part of the State authorities was clearly ultra vires and incompetent. CONTENTION NO. 2: In any case, as the purchase and sale of tea were governed by the comprehensive provisions of the Central Act, namely, the Tea Act, 1953, the said Act would wholly govern transactions of purchase and sale of tea by the appellant and to that extent the Market Act would stand superseded or at least the statutory intention of regulating the purchase, sale, storage and processing of tea as per the provisions of Section 3 of the Market Act would stand completely negated. Hence, on that ground also the insertion of this item in the Schedule would remain unauthorised and consequently the insistence on the part of the authorities that the sale transactions should be carried on only within the market yard or sub-market yard was clearly illegal and violative of Article 19 of the Constitution of India. CONTENTION NO. 3: It was lastly contended by Shri

Shanti Bhushan that no quid pro quo existed between the demand for market fee by the market committees and the sale transactions effected by appellants selling agents so far as tea in packed tins was concerned. No infrastructural facilities were available for or required to be supplied to the sellers of such tea. Learned senior counsel for the respondents, on the other hand, tried to salvage the situation by submitting that even though the Tea Act may control the sale and purchase of tea which is a highly monopolistic and export earning commodity, once the blended tea in deliverable state duly packed in tins and other packages by the appellant tea company enters the Bihar markets for sale, it cannot be said that the sale of this commodity cannot be treated to be sale of agricultural produce by the appellant within the market area in the State of Bihar as agricultural produce defined by Section 2(1)(a), would cover not only the purchase and sale of agricultural produce in its raw form but also in its processed and manufactured form as per the wide sweep of the said definition. He submitted that it cannot be disputed that tea in its raw form is an agricultural produce because tea leaves are grown in tea gardens and then they are plucked and processed in tea factories and after blending the manufactured tea in deliverable state becomes available to be sold in wholesale markets and then in the retail markets. That even though the appellant's factory manufacturing the blended tea may be outside the State of Bihar, the moment the blended tea in packed form is sold in the State of Bihar in the market areas concerned, it cannot be said that the provisions of the Market Act would not apply to such sale transactions. On a conjoint reading of Section 2(1)(a) and the Schedule under Miscellaneous item XII sub-item 30, therefore, it has to be held that the Market Act would squarely get attracted to regulate the sale of such produce of tea by the appellant in the Bihar markets. So far as the Tea Act is concerned, it is submitted that it only regulates the sale of plucked tea from the tea gardens and provides machinery for sale by auction of such tea at the relevant centres and even in such auction when the appellant purchases these roasted tea leaves, it cannot be said that the Tea Act would cover any further transactions of manufactured tea out of the purchased tea leaves by auction purchasers like the appellant at its factories situated outside the Bihar State. That auction purchased tea leaves are processed by the appellant and blending work is done thereafter. That what is relevant for the applicability of the Market Act is the fact that this manufactured tea packed in suitable packets and tins is brought for sale within the market area in the Bihar State and these are the transactions of sale of manufactured tea out of the basic agricultural produce tea leaves that would attract the sweep of the Market Act, notwithstanding the provisions of the Tea Act. That once the Market Act applies to such sale transactions, the entire infrastructural facilities would be available to the appellant as these sales have to take place in the market yard or sub-market yards as required by Section 15 of the Act. Once the appellant gets the benefit of this infrastructure, it cannot be said that no sufficient quid pro quo is made available under the Act by the market committees concerned to justify them to levy the market fee from the buyers of tea. That so far as the appellant is concerned, there is no burden of paying market fee as a seller of manufactured tea. The burden will be borne by the buyers who are not making any grievance in this connection. In the light

of the aforesaid contentions, the following points arise for our consideration :1. Whether the basic agricultural produce i.e. "tea leaves" which is subjected to manufacturing process outside the Bihar State and is imported and sold in manufactured condition as packed tea within the Bihar State in the market areas concerned, attracts the provisions of the Market Act for regulating such transactions of sale. 2. Whether the Tea Act of 1953 and the relevant orders promulgated thereunder fully occupy the field regarding regulation of purchase and sale of tea and, consequently, the Market Act, being a general Act, would get excluded for regulating the transactions of sale of manufactured tea in Bihar State and 3. Whether there is adequate quid pro quo supporting the levy of market fee on such transactions of sale of manufactured and packed blended tea in markets governed by the Market Act. We will now deal with the aforesaid three points in the same sequence in which they were pressed for consideration. POINT NO.1: At first blush, learned senior counsel for the appellant Shri Shanti Bhushan appeared to be on a firm footing when he submitted that the legislative intention underlying the enactment of the Market Act was to protect illiterate and unwary agriculturist from middlemen so that he may not be exploited by them and may get appropriate price for his basic agricultural produce. But on a closer scrutiny, the said contention does not appear to be well sustained. Section 2(1)(a) of the Market Act, as seen earlier, includes in the definition of agricultural produce not only the primary produce grown in the field but also covers all processed or non-processed, manufactured or nonmanufactured agricultural produce as specified in the Schedule. In the light of the aforesaid wide sweep of this definition, it cannot be said that tea leaves which are produced in tea gardens being primary agricultural produce would cease to be agricultural produce once they got processed. After plucked tea leaves are processed by roasting them and then by subjecting them to further process of blending and ultimately packing them in suitable packets they still remain all the same agricultural produce so manufactured out of the basic agricultural raw material "tea leaves". It is also not in dispute that Tea (leaf and dust) is a Scheduled item. Once that is so, sale of manufactured tea in packed condition within the market area would squarely attract the charge under Section 27 of the Act which, as noted earlier, is widely worded. The moment the agricultural produce as defined by Section 2(1)(a), is bought or sold in the market area, Section 27 would get attracted to cover such transaction. It is also pertinent to note that Section 15 sub-section (1) of the Act is applicable in the present case to cover such transactions of sale of packed tea within the market areas of the concerned market committees governed by the Act. Save and except such quantity as may be prescribed for retail sale or personal consumption to be outside the sweep of Section 15(1) of the Act, rest of these sale transactions regarding manufactured agricultural produce would remain governed by the sweep of the Act. On a conjoint reading of Section 2(1)(a) and Section 15 and the relevant entry in the Schedule, there is no escape from the conclusion that whether the manufactured agricultural produce has undergone manufacturing process within the market area or not or whether such agricultural produce in its raw form is grown in the market area or outside or whether the processed "agricultural produce" is imported only for sale within the

> market area, the applicability of the Act cannot be said to be ruled out to cover all these types of sale transactions. The question posed by Shri Shanti Bhushan learned senior counsel appearing for the appellant for our consideration is no longer res integra. A Constitution Bench of this Court in the case of Ram Chandra Kailash Kumar and Company and Others vs. State of U.P. and Another etc. etc. (1980 Suppl. SCC 27), speaking through Untwalia J., had to consider the question of imposition of market fee under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 on transactions of purchase and sale of agricultural produce in the market area. While considering this question, various contentions raised by traders operating in the agricultural market in U.P. were listed in para 9 of the report. Contentions no.9 and 23 listed in para 9 of the report are relevant for our purpose. Contention no.9 reads as under : "No market fee could be levied on goods not produced within the limits of a particular market area and if produced outside and brought in such area."

Contention no.23 reads as under : "Fee can be charged only on those transactions in which the seller is producer and not on any other transaction."

Repelling these contentions, the Constitution Bench held that market fee could be levied on transactions of sale of goods even though such goods are produced outside the State of Uttar Pradesh or outside the market area of that particular market committee, provided the transactions of sale take place within the limits of that market area. It was also held that, on the other hand, there was no provision in the Act or the Rules to limit the operation of the law in a particular market area only in respect of the agricultural produce produced in that area. So far as Contention no.23 was concerned, approving the Patna view it was held that in the U.P. Act even traders under certain circumstances had been made liable to pay such fee. Similarly, the argument that the market fee can be charged only on those transactions in which the seller is the producer of agricultural produce and not on any other transaction, was also found devoid of any substance by the Constitution Bench. In view of the aforesaid pronouncement of the Constitution Bench, therefore, it must be held that even if an agricultural produce initially is not grown in the market area and it is brought in manufactured form within the market area for sale, such sale transaction in connection with such a produce would be covered by the sweep of the Market Act. The same view was taken by two later judgments of this Court. In the case of Rameshchandra Kachardas Porwal and Others vs. State of Maharashtra and Others etc. etc. (1981 (2) SCC 722), wherein a three Judge Bench of this Court, speaking through Chinnappa Reddy, J. amongst others, had to consider the question whether change of location of market under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 could be held to be legally justified. It was held that the power to establish principal market or a subsidiary market carried with it the power to "dis-establish" such market and that power to establish principal or sub-market yard could be exercised from time to time. In para 11 of the report the further contention was examined as to whether agricultural produce which is imported into the market area from outside the market would be covered by the sweep of the Market Act. While answering this contention in affirmative, it was held that even if agricultural produce is imported into the market area and subjected to sale and purchase thereof in the market area, the provisions of the Market Act would get attracted. The very same contention which learned senior counsel Shri Shanti Bhushan urged for our consideration that the Act is enacted for the interest of agriculturists only and for their

sole benefit was repelled. For coming to that conclusion reliance was placed on a decision of the Constitution Bench of this Court in the case of Rameshchandra Kachardas Porwal and Others (supra). In this connection, the following pertinent observations were made at page 735, para 11 of the report. "..The basic assumption of the submission was that the Maharashtra Agricultural Produce Marketing (Regulation) Act was conceived in the interests of the agriculturists only and intended for their sole benefit. This basic assumption is not well founded.

It is also clear to our mind that the regulation of marketing of agricultural produce, if confined to the sales by producers within the market area to traders, will very soon lead to its circumvention in the guise of sales by traders to traders or import of agricultural produce from outside the market area to within the market area..

In our view the aforesaid observations are in Rameshchandra Kachardas Porwal's case (supra) are in consonance with the decision of the Constitution Bench of this Court in Ram Chandra Kailash Kumar and Company and Others (supra) and are well sustained. This very question was once again examined by another three Judge Bench of this Court in the case of Rathi Khandsari Udyog and Others vs. State of Uttar Pradesh and Others (1985 (2) SCC 485) wherein Fazal Ali J., speaking for majority, relying upon the earlier decisions of this Court including the Constitution Bench judgment in the case of Ram Chandra Kailash Kumar and Company and Others (supra), considered the very same contention as canvassed by learned senior counsel Shri Shanti Bhushan, namely, that the Market Act was meant to protect the agriculturists who produce basic agricultural produce and was not meant to protect big producers having factories wherein they process the raw agricultural produce and manufacture marketable commodity out of it. Repelling such narrow view of the regulatory provisions of the Market Act, at para 35 of the report, the following pertinent observations were made : "The Legislature, it is also argued, "could not have intended" to cover the produce turned out by producers like the petitioners.

While this is one of the objects of the Act, it is not the sole or only object of the Act. The Act has many more objects and a much wider perspective such as development of new market areas, efficient collection of data, and processing of arrivals in Mandis with a view to enable the World Bank to give substantial economic assistance to establish various markets in Uttar Pradesh, as also protection of consumers and even traders from being exploited in the matter of quality, weight and price.."

In view of this settled legal position, therefore, it cannot be held that merely because the tea leaves produced in tea gardens outside the State of Bihar are processed by the appellant in its factories outside Bihar and are converted into blended and branded qualities of packed tea like red label tea or green label tea etc., and even though such packed tea is sold within Bihar Market areas, the Market Act cannot be applied to such sale transactions of manufactured tea after importing it in the State of Bihar. The first point, therefore, has to be rejected. That takes us to the second contention in support of the appeal. POINT NO.2 : The Tea Act of 1953 provides for control by the Union Government of the Tea Industry, including the control, in pursuance of the International Agreement now in force, of the cultivation of tea in, and of the export of tea from, India and for that purpose to establish a Tea Board and levy a duty of excise on tea produced in India. It is necessary to have a

bird's eye view of its relevant provisions. Section 4 deals with a board called "Tea Board". The members of the board not exceeding forty are to be appointed by the Central Government by notification in the official gazette and would consist of various persons representing -

(a) owners of tea estate and gardens and growers of tea;

(b) persons employed in tea estates and gardens; (c) manufacturers of tea; (d) dealers including both exporters and internal traders of tea; (e) consumers; (f) Parliament; (g) the Government of the principle tea-growing States. Amongst others, Section 10 deals with the Functions of the Board - It provides as under :

> "(1) It shall be the duty of the Board to promote, by such measures as it thinks fit, the development under the control of the Central Government of the tea industry.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), the measures referred to therein may provide for -
>
> (a) regulating the production and extent of cultivation of tea; (b) improving the quality of tea; (c) promoting co-operative efforts among growers and manufacturers of tea; (d) undertaking, assisting or encouraging scientific, technological and economic research and maintaining or assisting in the maintenance of demonstration farms and manufacturing stations; (e) assisting in the control of insects and other pests and diseases affecting tea; (f) regulating the sale and export of tea; (g) training in tea testing and fixing grade standards of tea; (h) increasing the consumption in India and elsewhere of tea and carrying on propaganda for that purpose; (i) registering and licensing of manufacturers, brokers, tea waste dealers and persons engaged in the business of blending tea; (j) improving the marketing of tea in India and elsewhere; (k) Xxxx xxx xxxx"

Section 12 deals with method of control of extension of tea cultivation. Section 14 deals with grant of permission to plant tea. Section 15 provides for grant of permission to plant tea in special circumstances. Owners of tea estate can establish tea nurseries as provided by Section 16. Chapter IIIA deals with management or control of tea undertakings or tea units by the Central Government in certain circumstances. Section 16E provides for power of the Central Government to take over tea undertaking or tea unit without investigation under certain circumstances. Chapter IV deals with control over the export of tea and tea seed. Section 30 in Chapter IV deals with power of the Central Government to control price and distribution of tea or tea waste. "Power to control price and distribution of tea or tea waste.- (1) The Central Government may, by order notified in the Official Gazette, fix in respect of tea of any description specified therein(a) the maximum price or the minimum price or the maximum and minimum prices which may be charged by a grower of tea, manufacturer or dealer, wholesale or retail, whether for the Indian market or for export; (b) the maximum quantity which may in one transaction be sold to any person." Sub-section (3) of Section 30 enables the Central Government by general or special order to - "(a) prohibit the disposal of tea or tea waste except in such circumstances and under such conditions as may be specified in the

order; (b) direct any person growing, manufacturing or holding in stock tea or tea waste to sell the whole or a part of such tea or tea waste so grown or manufactured during any specified period, or to sell the whole or a part of the tea or tea waste so held in stock, to such person or class of persons and in such circumstances as may be specified in the order."

Sub-section (4) of Section 30 reads as under : "Where in pursuance of any order made with reference to clause (b) of sub-section (3), any person sells the whole or a part of any quantity or tea or tea waste, there shall be paid to him as price therefor-

(a) where the price can be fixed by agreement consistently with the order, if any, relating to the fixation of price issued under sub-section (1), the price so agreed upon; (b) Xxxxxxxxxx (c) Xxxxxxxxx."

Section 32 deals with appeal to the Central Government. Section 33 deals with licensing of brokers, tea manufacturers, etc. Section 39 deals with penalty for illicit cultivation. Section 40 deals with removal of tea planted without permission. It is not in dispute between the parties that, as per the scheme of the Tea Act, tea leaves which are plucked in tea gardens in different States of the country, especially, in North-eastern State like Assam, West Bengal and other States and which are roasted in tea factories are auctioned at Calcutta, Guwahati, Siliguri and other notified places. It is also an admitted position that the appellant purchases roasted tea leaves at such auctions and then they are blended and packed according to different brands and rates by the appellant at its factories outside the Bihar State and then markets it throughout India at fixed prices, local taxes varying from place to place. The aforesaid provisions of the Tea Act which are enacted by the Union Parliament under Entry 52 of List I read with Entry 33 of List III deal with the control of tea industry in public interest. The basic feature of the Tea Act is to provide for control of extension of tea cultivation in the areas where tea leaves are grown in tea gardens. However, it is pertinent to note that the said Act does not provide for regulating the sale of purchased roasted tea leaves after they are subjected to manufacturing process of blending and are brought in the market for sale as packed tea. The place where such packed tea is to be sold and the price at which it has to be sold are matters on which the Tea Act, 1953 does not contain any statutory provisions. However, Shri Shanti Bhushan, learned senior counsel for the appellant, strongly relied upon Section 30 of the Act. It is true, as seen earlier, that the said section found in Chapter VI deals with control by the Central Government and lays down the power of the Central Government regarding control, price and distribution of tea or tea waste. However, it is to be noted that till date no such control order has been issued by the Central Government under the said provision. Learned senior counsel submitted that once the Central Legislature has enacted the aforesaid provision and evinced its intention to control price and distribution of tea or tea waste, the field gets occupied by legislation under Entry 33 of the Concurrent List and to that extent the provisions of Market Act would get excluded. It is not possible to accept this contention for the simple reason that so long as the Central Government does not issue any order under Section 30 of the Tea Act, the field dealing with fixation of maximum price or minimum price to be charged by a grower of tea, manufacturer or dealer, wholesale or retail, for Indian market leaving aside the question of export, would not be occupied. In other words, it would remain open for the State Legislature to cover that field by exercising its legislative power under Entry 33 of the Concurrent List. Even this aspect of the matter is also not res integra. It is covered by

a decision of the Constitution Bench of this Court in Ch. Tika Ramji & Others etc. vs. The State of Uttar Pradesh & Others (1956 SCR

393). In that case, the Constitution Bench was concerned with the question whether the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 could be said to have been legally enacted by the Uttar Pradesh State Legislature despite the operation of the I.D.R. Act which contained a declaration whereby sugarcane industry was sought to be regulated by the I.D.R. Act. Section 18G of the Act referred to earlier whereunder there was a possibility of the Central Government issuing appropriate control order to occupy that field was held not to bar the legislative competence of the State Legislature to enact appropriate provisions regarding the said industry. Such a mere possibility of promulgation of order under Section 18G of the I.D.R. Act was held not to have occupied the field whereby the State Legislature could not enact appropriate statutory provisions by exercise of its legislative power under Entry 33 of List III. Bhagwati, J., speaking for the Constitution Bench, placing reliance on the observations of Sulaiman J., in the decision of the Federal Court in Shyamakant Lal vs. Rambhajan Singh [(1939) F.C.R. 188, 212] extracted, with approval, the following passage from the said decision at page 427 of the report as under :

> "When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility. Their Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not and may never be in force:
>
> (Attorney-General for Ontario v. Attorney-General for the Dominion)"

Thereafter the following pertinent observations were made by Bhagwati, J., speaking for the Constitution Bench :

> "In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act. The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subjectmatter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to cover the whole field."

and thereafter Section 18-G of the I.D.R. Act was considered and it was held as under : "Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of Section 18-G of Act LXV of 1951, it is to be noted that no order was issued by the Central

Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as he has noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under Section 18-G being issued by the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise."

The aforesaid decision of the Constitution Bench, therefore, clearly repels the submission of learned senior counsel Shri Shanti Bhushan that merely because there is a possibility of issuance of a Control Order under Section 30 of the Tea Act by the Central Government, the field is fully occupied in connection with fixation of the maximum and minimum prices of packed tea to be charged by manufacturer or dealer, wholesale or retail or regulating the maximum quantity of packed tea to be sold to any person. In a later decision of the Bench of two learned judges to which one of us, Sujata V. Manohar J., was a party, the very same view has been reiterated relying upon the aforesaid decision in Ch. Tika Ramji & Others etc. vs. The State of Uttar Pradesh & Others (supra). The latter decision is rendered in the case of SIEL Ltd. and Others vs. Union of India and Others (supra), as noted earlier. It must, therefore, be held that mere possibility of issuance of any future order under Section 30 (1) of the Tea Act by the Central Government, in the absence of any existing express order to that effect, cannot be said to have occupied the field regarding purchase and sale of manufactured tea and fixation of maximum or minimum price thereof, or the location of such sales. These topics cannot be said to be legitimately covered by the Tea Act. Hence, the field is wide open for the State Legislature to exercise its concurrent legislative power under Entry 33 of List III for effectively dealing with these matters. This is precisely what has been done by the State Legislature by enacting the Market Act. The insertion of item pertaining to Tea (leaf and dust) in the Schedule, therefore, cannot be said to be an unauthorised exercise on the part of the delegate of the State Legislature, namely, the State Government which has exercised its power under Section 39 of the Market Act. Before parting with the discussion on the Tea Act, it is also necessary to keep in view the history of tea industry in India. It is apparent that the Tea Committee 1934, Indian Tea Control Act, 1938 and Central Tea Board Act, 1949 had been made with a view to control export of tea and tea cultivation. The Tea Act, 1953 was enacted to provide for taking several functions of licensing and vesting it in the Board and to exercise (1) control over tea cultivation and (2) control over the export of tea and tea seeds. The preamble of the Act states that it is intended to provide for the control by the Union of the tea industry, including the control, in pursuance of the International Agreement, of the cultivation of tea and export of tea. Thus the objective of the Tea Act is focussed on tea cultivation/tea export and establishment of tea manufacturing plants. It is quite different from that of the Market Act, 1960 made by the Bihar Legislature. The Tea Act has no concern with the establishment of markets in the State of Bihar or other States wherein packed tea could be sold in wholesale or retail markets so as to ultimately reach the Indian consumers. That takes us to the consideration of the Control Orders issued by the Central Government in exercise of its power under Section 30, sub-sections (3) and (5) thereof. One such order is the Tea (Distribution and Export) Control Order, 1957 which pertains to licensing of the distributors and exporters of tea. Clause 3 requires distributors carrying on the business of distributing tea to have a licence under this order. The export of tea is not touched by the Market Act as it has nothing to do with the export of tea to other countries. Clause 9 says that the licence given is personal and nontransferable. Clause 10 requires the licensee to pack and mark containers of tea in the manner mentioned therein. The

proviso is significant. According to it, Clause 10 (c) does not apply to containers containing not more than 20 Kg. net or such other weight as to make it package tea for the purpose of the Central Excises and Salt Act, 1944. Clause 11 provides that no distributor shall distribute tea for sale which is not packed and marketed as per Clause 10 and which is adulterated or which makes false claim for such tea. Thereafter, are noted various statutory requirements. Firstly, the "distributor" contemplated by the 1957 Order is a distributor in the commercial sense who as principal or agent distributes tea to the wholesaler. Secondly, the distribution controlled is linked with export. Thirdly, since distribution is clubbed with export, it can at best be said to be distribution which is being made in similar bulk as exports. Fourthly, Form A provides for granting of licence to carry on business in manufactured tea as distributors at the places mentioned in the application. While Form B deals with licence to carry on business in manufactured tea as distributor/exporter of tea. It thus, becomes at once clear that this Control Order does not command licencee to carry on distribution of tea for sale at any particular place/market. The aforesaid Control Order has nothing to do with the establishment of markets for selling packed tea. The requirement of packing and marketing is again not contemplated by the Market Act, 1960. Hence, it is difficult to appreciate how this Control Order has occupied the field of regulation of sale and purchase of packed tea in market areas. The next Order on which Shri Shanti Bhushan, learned senior counsel for the appellant, strongly relied was the Tea (Marketing) Control Order, 1984. The said Order was promulgated by the Central Government in exercise of its power under subsections (3) and (5) of Section 30 of the Tea Act, 1953. It pertains to licensing of the distributors and exporters. A mere look at the said Order shows that it does not provide for any regulation of sale and purchase of tea in the markets in different States in India. Clause 3 requires registration of manufacturer of tea and such manufacturer has to submit monthly return under Clause 5 in Form C. Clauses 6 and 7 pertain to Organiser of Tea Auction and Broker in Tea Auction. Clause 14 declares that the licence is personal and non-transferable. These persons are to maintain records as per Clause 16. Clause 17 directs the manufacturer to sell not less than 75% or such higher percentage, as specified by the Board, of tea manufactured by him in a year through public tea auctions in India held under the control of organisers of tea auction. Clause 19 exempts tea marketed directly by the manufacturer as packet tea, instant tea, tea bags, aromatic tea and green tea from computation of the total production under para 17. Firstly, 1984 Order deals with manufacturers and organisers of tea auction and brokers of tea auction and its basic concern is to require them to have licences in the form of authority. It is obvious that even this Order cannot advance the case of the appellant. The next Order which was pressed in service was the Tea Warehouses (Licensing) Order, 1989. The said order was also promulgated by the Central Government in exercise of the power conferred by sub-sections (3) and (5) of Section 30 of the Tea Act, 1953. A mere look at the salient features of 1989 Order shows that it has not covered the field tried to be occupied by the Market Act. The public tea auctions contemplated by 1984 Order are those which are held under Clause 3 of the Tea Warehouses (Licensing) Order, 1989. In fact Clause 14(7) prohibits the warehouse owner from entering into any transaction with the manufacturer/broker/organiser of tea auction unless they have licences under the 1984 Order. The public tea auctions are held in specified areas in Calcutta, Siliguri, Guwahati, Cochin, Coimbatore and Amritsar. Thus, the 1984 Order and the Tea Warehouses (Licensing) Order 1989 are basically concerned with the public tea auctions and the licensing of manufacturer/broker/organiser of public auction and warehouses with regard to holding of public tea auctions. The warehouse is to be governed as per Clause 10(7) of the 1989 Order. This Order does not apply to the storage godowns in

the markets established under the Market Act, 1960. But assuming it applies, the only effect would be that the storage places in markets should be in conformity with Clause 10(7). As far as obtaining of licence is concerned, it has to be obtained by the warehouse owner who carries on the activities of storing, blending or packing of tea in the warehouse. Once the manufacturer or trader takes space from the Market Committee in the godown in the Market Yard, then he would be the warehouse owner under Clause 2(1) of the 1989 Order and would have to take a licence, as authority, from the Tea Board. Both under the 1984 Order and 1989 Order, there is no requirement to carry on the business at any particular place/market. These Orders do not concern themselves with establishment of market or fixing place of business. The aforesaid Orders on which reliance was placed by learned senior counsel Shri Shanti Bhushan indicate that the Central Government in its wisdom did not think it fit to issue any Order under Section 30, sub-section (1), clauses (a) & (b) and, therefore, kept the field wide open in connection with the topics covered by the said provisions of Section 30 for the State Governments to exercise their legislative powers and enact suitable legislations under Entry 33 of the Concurrent List III of the Seventh Schedule of the Constitution. Our attention was then invited by Shri Shanti Bhushan, learned senior counsel for the appellant, to the Tea Waste (Control) Order, 1959. Even this order is issued by the Central Government under sub-sections (3) and (5) of Section 30 The Tea Waste (Control) Order, 1959 applies only to tea waste as defined in Clause 2 (f). Thereunder a person selling/offering for sale/buying/holding any stock in tea waste is required to have licence. (Clauses 3,4,5, and 6). Clause 9 provides that licence is not transferable. Clause 13 provides that licensee shall have in possession tea waste not exceeding that which may be fixed by the licensing authority. Under Clause 19A false declaration is prohibited. On a conjoint reading of the aforesaid statutory Orders issued under the Tea Act and the relevant scheme of the Tea Act, it becomes at once clear that the provisions regarding fixation of appropriate price at which blended and packed tea can be sold to wholesalers in any established market or particular place at which sale transactions of such manufactured tea between the manufacturers on the one hand and the traders or other wholesale producers/dealers on the other are outside the sweep either of the Tea Act or of the relevant statutory Orders framed under Section 30 by the Central Government under the very same Act. The places at which public auctions can be held in connection with sale of roasted tea leaves to be purchased by manufacturers like the appellant are the earmarked six places indicated in 1984 and 1989 Orders. These auctions have nothing to do with the later sales of manufactured blended tea by such auction purchasers of tea leaves, who manufacture packed tea by blending and packing roasted tea leaves in their factories. The public auctions as contemplated by these Orders, therefore, serve out their purpose once the manufacturers of blended tea, like the appellants, purchase roasted tea leaves in public auctions. Once such purchased tea leaves are further processed after blending and packed in suitable receptacles for sale in local markets the stage is reached for regulating such sale transactions by manufacturers of tea when they are subjected to further auctions to be held in the market areas wherein the licensed distributors and manufacturers of tea can be subjected to the procedure of Section 15, sub-section (2) of the Market Act. So far as these later transactions are concerned, neither the Tea Act nor any of the aforesaid Orders can hold the field. Such sale transactions of manufactured tea in packed condition will, therefore, necessarily have to be governed by the provisions of the Market Act applicable to the area wherein such sale transactions in favour of wholesalers or retailers are effected by the stockists of the appellant operating in the market areas concerned. It is also pertinent to note that Section 15 of the Market Act gets attracted to such transactions of sale. It is not possible to agree with the

contention of learned senior counsel Shri Shanti Bhushan that once the retail prices are fixed by the appellant there is no necessity of auctioning this tea in packed condition as per Section 15 sub-section 2 of the Market Act. It has to be kept in view that under the relevant Orders issued by the Central Government under Section 30 of the Tea Act, as noted earlier, the purchasers of tea have also to be licensed. Such licensed purchasers can bid at the auctions to be held as per Section 15, sub-section (2) of the Market Act for purchasing such packed tea. At that stage, there is no inconsistency or conflict between the earlier public auction held under the relevant statutory Orders issued under Section 30 of the Tea Act concerning roasted tea leaves and the auction of packed and processed tea by the appellant selling such commodities in the market areas through their stockists to wholesale dealers and traders operating in the market area and the market yard or sub-market yards concerned. In this connection, we may note one other submission of learned senior counsel Shri Shanti Bhushan for the appellant. He submitted that for almost 16 years tea was not a scheduled item governed by the Market Act. In fact, the Bihar Legislature did not think it fit to include Tea (leaf and dust) as a scheduled item from the inception but it is only the delegate, namely, the State of Bihar in exercise of its power under Section 39 thought it fit to introduce Tea (leaf and dust) as a scheduled item. The procedure of Sections 3 and 4 has not to be followed while undertaking this exercise. In this connection, it was submitted that no reasonable person could have undertaken such an exercise as tea was already a controlled commodity under the Tea Act and also governed by the relevant Orders issued thereunder. As we have seen earlier, under the relevant provisions of the Tea Act and the operative Orders promulgated thereunder the Central Government has left untouched the field of regulation of prices and the location of market places where such packed tea could be sold to the wholesale dealers or even to the retailers. When that field was wide open, the State Government in its wisdom, could legitimately try to cover the filed by issuing appropriate Orders under Section 39 of the Act. It cannot be said, therefore, that such an exercise was totally ultra vires or amounted to non-application of mind. In fact, what the Central Government should have done and did not do by issuing appropriate Orders under Section 30, subsection (1) Clauses (a) & (b) of the Tea Act could legitimately be done by the State Government. It was not required to wait indefinitely till the Central Government could find time to issue such an Order. Shri Shanti Bhushan, in this connection, further submitted that if that is so, then if in future the Central Government wakes up and issues such an Order, would the then existing Entry in the Schedule regarding tea get superseded or become inoperative ? This is a hypothetical question raised which does not require any answer obviously at this stage. As and when in future such an eventuality occurs, then the question of continuation of regulation of sale and purchase transactions of Tea (leaf and dust) by retaining this item in the Schedule may have to be examined. But as the statutory provisions stand at present, in the absence of any such existing Order under Section 30 sub-section (1) Clauses (a) & (b) by the Central Government, the field remains wide open and at least it was definitely open when the State Government introduced the Entry of Tea (leaf and dust) in the Schedule to the Market Act in 1976. This exercise, by no stretch of imagination, could be said to be unauthorised, illegal or amounting to non-application of mind. The second contention, therefore, is answered in negative against the appellant and in favour of the respondent. That takes us to the consideration of contention no.3 POINT NO. 3 : Once it is held that the Market Act covers the transactions of sale of packed blended tea in sealed packets and receptacles by the appellant's stockist in the market areas concerned especially when these transactions take place in the market yard or sub-market yards as laid down by Section 15 of the Act which remains fully operative to

cover such transactions, there is no escape from the conclusion that the entire infrastructural facilities for regulation of such sale transactions as made available by the market committee concerned would enure for the benefit of sellers of such packed blended tea. It is also pertinent to note that so far as the appellant is concerned, all that is required of it is to take licence for selling packed tea in market yards, sub-market yards from the market committee concerned. The appellant is not required to bear the burden of any market fee. As per Section 27 of the Act, the burden of market fee is to be borne by the purchasers of such packed tea, namely, the wholesale dealers licensed to purchase such tea as per the Central Orders mentioned earlier. Such purchasers have not brought in challenge levy of market fee on them. So far as the appellant is concerned, once its stockist sells the packed tea in the market yard or sub-market yards maintained by the market committee, the entire infrastructural facilities made available by the market committee to all the purchasers and sellers of agricultural produce in the market yard, would automatically become available to the appellant's stockist who sells its goods, namely, packed tea in the market yard or sub-market yards concerned. In this connection, it has also to be kept in view that establishment of markets and maintenance thereof is a topic of legislation squarely covered by Entry 28 of List II of the Seventh Schedule. For maintaining such markets, the market committees obviously have to spend large amounts for providing necessary infrastructure for the benefit of those who use such established markets. In this connection, Section 30 of the Market Act, as noted earlier, becomes relevant for our consideration. Amongst others, the Market Committee Fund has to be utilised under Section 30 for the following purposes :

> "(i) the acquisition of a site or site for the market;
>
> (ii) the maintenance and improvement of the market;
>
> (iii) the provision and maintenance of standard weights;
>
> (iv) the construction and repair of buildings [check posts, market gates and other fixtures] necessary for the purpose of such market and for the health, convenience and safety of the persons using it;
>
> (v) Xxxx xxx xxx
>
> (vi) Xxxx xxx xxx
>
> (vii) Xxxx xxx xxx
>
> (viii) The construction, repair and maintenance of means of communication which are useful for the purposes of [regulation, control and] development of a market or for the convenience and safety of the persons using it;

(viii-a)link roads connecting the main road from the villages in the Market Area of the concerned market committee shall be constructed on priority basis from the Development Fund to facilitate the farmers to go to and from the villages;]

(ix) the planting and rearing of trees, and making arrangements for providing to the persons and cattle coming to a market and like purposes;

(x) Xxxxxx xxxxx xxxxx

(xi) Xxxxx xxxx xxxxx

(xii) Xxxxx xxxx xxxx"

All these provisions clearly indicate that once the transaction of sale or purchase of any agricultural produce is governed by the Act and once Section 15 of the Act applies to such transaction, the entire machinery of the Act would get attracted to regulate such transaction and the complete infrastructure for which provisions are made by the market committee including the facilities available at such markets would become available to the purchasers and sellers of such commodities in the market. For providing these infrastructural facilities the market committee has to spend from its funds. This would supply adequate quid pro quo for levying market fee on the buyers of commodities sold at its market yard or sub-market yard. It is, therefore, not possible to agree with the learned senior counsel for the appellant that there is no quid pro quo underlying transactions of sale of packed tea by the appellant's stockist in the market yard or sub-market yards maintained by the market committee concerned. The third contention, therefore, is to be answered in affirmative against the appellant and in favour of the respondent. Before parting with this appeal, it is necessary to briefly deal with the written submissions furnished in support of the appeal by learned counsel after arguments were over and which have already been dealt with by us in detail hereinabove. So far as the written submissions filed by the appellant on 8th May, 1999 are concerned, we may state that to the extent they tried to re-iterate what was submitted earlier and considered by us, will stand repelled in the light of the detailed reasons recorded by us earlier in this connection. Processing of packed tea manufactured out of tea leaves purchased by the appellant in the auction at six places obviously is not covered by the applicability of the Market Act in the present case. All that the Market Act seeks to cover is the sale transactions pertaining to packed tea branded and marked in accordance with the regulations made by the Tea Board to the extent these sealed packets are sold by the appellant within the market area. These transactions of sale of packed tea, as discussed by us earlier, would squarely attract the applicability of the Market Act as they take place within the market area governed by the Market Act. As seen earlier, manufacturing activities concerning this packed tea has no relevance for arriving at an appropriate answer to this question. Contention raised in para 2 of the written submissions is also besides the point, whether other States levy market fee or not is not at all relevant. The Bihar legislation may be a pioneer in this field. The short question is whether the Market Act can govern the transaction of sale of packed manufactured tea by the appellant within the market areas in the State of Bihar ? So far as this question is concerned, the aforesaid contention can be of no assistance to the appellant.

Contention in para 3 of the written submissions about the basic object of the Bihar Market Act and whether it should ensure only the protection to the grower of the agricultural produce within the market area stands repelled by a Constitution Bench Judgment of this Court to which a detailed reference has been made in the earlier part of this judgment. Para 4 of the written submissions deals with various statutory provisions of the Tea Act of 1953 and the relevant Control Orders thereunder. As discussed earlier, the schemes of the Tea Act and the Control Orders do not cover the field carved out by the Market Act for bringing within its sweep transactions of sale of agriculture produce encompassed by the wider definition thereof under that Act insofar as such produce is sold within the market area to which the Market Act applies. It is difficult to appreciate the contention in para 8 of the written submissions to the effect that the State had not applied its mind in bringing tea within the sweep of the Market Act in exercise of its power under Section 39 of the Act. As discussed earlier, this contention is devoid of any substance. Contention in para 9 of the written submissions is also devoid of any merit. It is not the case of the appellant that the sale of manufactured tea in Bihar markets within the market area of the concerned market committee requires the appellant to bear the burden of the market fee. It is obvious, as seen earlier, that charge of market fee is on the buyer of branded tea and not on the seller thereof, like the appellant. The purchasers of branded market tea manufactured by the appellant who purchase the said produce in market areas governed by the Market Act have made no grievance in this connection. Even otherwise, as seen earlier, once the wide definition of "agricultural produce"

as found in the Market Act governs such sale transactions and when Section 15 of the Act covers such transactions, the charge under Section 27 would obviously get settled on these transactions. As a logical corollary thereof, even if the appellant may have to act as a collecting agent for the market committee concerned as per its legal obligation in given circumstances, that by itself cannot exonerate it, once the statutory scheme of the Act covers transactions of sale of branded tea carried out by the appellant in the market area governed by the Market Act. Contentions found in para 10 of the written submissions are to be stated to be rejected. Once the sale transactions of packed tea are governed by the sweep of the Market Act, and once such sale transactions have to be regulated as per the machinery of the Market Act, on the applicability of Section 15 of the Act, the entire infrastructure available for regulating such sale transactions at the market yard or sub-market yards whose benefit would obviously be available to the appellant cannot entitle the appellant to contend that its fundamental right under Article 19(1)(g) of the Constitution is violated. To say the least, it would be a reasonable restriction on exercise of such a right. It is pertinent to note that the appellant has not challenged the vires of Section 27 of the Market Act. It is difficult to appreciate the submission that compelling the sealed and packed tea to be brought into the market yard and to be auctioned thereof cannot be considered to advance the public interest in any manner. Public interest obviously gets advanced as the sale transactions will get regulated by the infrastructural machinery at the market yard and sub-market yards concerned, where such transactions take place. The contention that the Bihar Act would be unconstitutional cannot be countenanced for twin reasons. Firstly, such a contention was not canvassed either before the High Court or before this Court in the present proceedings. Secondly, in any case, on the applicability of the Act once the transaction of

sale of packed tea takes place in the market area, it cannot but be said to be imposing reasonable restriction under Article 19 sub-article (6) on the appellant's fundamental right. The appellant, as a seller of manufactured tea, has not to bear any burden of the imposed market fee on sale transactions. All that it gets is the benefit of the infrastructural facilities made available by the market committee for regulating such transactions and if the appellant is likely to get more price for its branded tea by subjecting its sale transactions to auction instead of the said provision adversely affecting the appellant would, on the contrary, be more beneficial to it. Maybe, the appellant from commercial point of view may not like to charge higher price for the packed tea from its customers but that does not mean that the infrastructural facilities made available by the market committees to the appellant to get more price of its branded tea if so desired by it can be construed in any way to be adversely affecting its commercial business interests. For obvious reasons, therefore, none of the contentions found in the written submissions can advance the case of the appellant's and they necessarily have to stand repelled. These were the only contentions canvassed by learned senior counsel in support of the appeal and as they fail, the inevitable result is that this appeal fails and will be liable to be dismissed. FINAL ORDER : As a net result of the aforesaid discussion, therefore, the following orders are passed : 1. SUGAR GROUP MATTERS: These appeals, namely, Civil Appeal Nos. 398 and 399/1977, 234/1995, 8163/1994, 7432/1994, 2632-33/1982, 1282/1995 are allowed. The judgments and orders passed by the High Court impugned in these appeals are set aside. The Writ Petition No. 1250/1986 filed by the petitioner will stand allowed accordingly as detailed in this judgment subject to the riders mentioned hereinabove. Civil Appeal Nos.4500-05 of 1992, so far as they seek to challenge the levy of market fee on sugar are concerned, will stand allowed. The respective six petitions filed before the High Court dealing with levy of market fee on sugar will stand allowed. Civil Appeal arising out of S.L.P. (C) No.9684 of 1992 will stand allowed to the extent Civil Writ Petition No.5974 of 1988 filed before the High Court deals with the contention regarding market fee on sugar. Instead of the relief granted by the High Court limiting to the non-levy of market fee on sugar after 2.5.1977, it is directed that levy of market fee on sugar for the entire period covered by the writ petition will be treated to be unauthorised. This judgment will have only prospective operation and will not affect past transactions entered into prior to the date of this judgment.

2. WHEAT PRODUCTS LIKE ATTA, MAIDA, SUZI, ETC. These appeals, namely, Civil Appeal Nos. 2951, 2952 and 2953 of 1992, 3505 & 3506 of 1992 and 829/1993 are dismissed. 3. VEGETABLE OIL MATTERS : Civil Appeal No.1427 of 1979 is dismissed. Civil Appeal Nos.4500-05 of 1992, so far as they deal with levy of market fee on Vanaspati Oil are concerned, will stand dismissed and the High Courts decision in all six writ petitions pertaining to levy of market fee on edible oil shall remain confirmed. Civil Appeal arising out of S.L.P. (C) No.9684 of 1992, so far it challenges the levy of market fee on edible oil is concerned, stands dismissed. The order of the High Court in C.W.J.C. No.5974 of 1984 concerning the vegetable oil is confirmed and the writ petition to that extent will stand dismissed. 4. RICE MILLING INDUSTRY: These Civil Appeals arising out of SLP (C) Nos.3159-60 of 1994 are dismissed.

5. MILK AND MILK PRODUCTS This Civil appeal No.1880 of 1988 is allowed. The judgment and order of the High Court are set aside. However, the past transactions will not be reopened and this judgment will have only prospective effect governing future transactions that are to be entered into

after the date of this judgment. 6. TEA MATTER This Civil Appeal No.2532 of 1980 is dismissed. In the facts and circumstances of the case, there will be no order as to costs in all these appeals.