I.T.C. Limited vs Agricultural Produce Market Committee ... on 24 January, 2002

Equivalent citations: AIR 2002 SUPREME COURT 852, 2002 (9) SCC 232, 2002 AIR SCW 523, 2002 AIR - JHAR. H. C. R. 216, (2002) 1 JT 294 (SC), (2002) 2 JCR 177 (SC), 2002 (1) SCALE 327, 2002 (1) SLT 401, 2002 (1) JT 294, 2002 (2) SRJ 253, 2002 (1) ARBI LR 112, 2002 (1) UPLBEC 814, (2002) 3 PAT LJR 110, (2002) 1 UPLBEC 814, (2002) 1 ARBILR 112, (2002) 1 SUPREME 258, (2002) 1 SCALE 327, (2002) 2 JLJR 257

Bench: S.P.Bharucha, Ruma Pal, Brijesh Kumar

CASE NO.:
Appeal (civil) 6453 of 2001

PETITIONER:
I.T.C. LIMITED

RESPONDENT:
AGRICULTURAL PRODUCE MARKET COMMITTEE & ORS.

DATE OF JUDGMENT: 24/01/2002

BENCH:
S.P.BHARUCHA CJI & G.B.PATTANAIK & Y.K.SABHARWAL & RUMA PAL & BRIJESH KUMAR

JUDGMENT:

JUDGMENT With Civil Appeal Nos. 540/87, 541/87, 3872/90, 3024/88, 3023/88, 1535/88, 1194/88, 1394/88, 1536/88, 1980/88, 1981/88, 3715/88, 2464/88, 6619/97, 2088-89/99, C.A. No. 671 of 2002 @ S.L.P.(Civil) No. 892/85, C.A. Nos. 673- 675/2002 @ 27568-27570/95 and Writ Petition (Civil) No. 8614/1982.

DELIVERED BY:

G.B. PATTANAIK (J) Y.K.SABHARWAL (J) BRIJESH KUMAR (J) RUMA PAL, (J)

PATTANAIK, J.

Leave granted in all the Special Leave Petitions. I.T.C. Limited filed a writ petition under Articles 226 and 227 of the Constitution of India before the Patna High Court against an order of assessment passed by the Agricultural Produce Market Committee, Monghyr, demanding a sum of Rs.35,87,072/-, inter alia on the ground that the purchase of unprocessed tobacco leaves from the growers, being the subject matter of the levy, the Market Committee has no power to levy and collect fee. The

stand taken before the High Court was that tobacco leaves neither having been bought or sold within the market area and the power to levy and collect market fee under Section 27 of the Bihar Agricultural Produce Markets Act, being on the Agricultural produce bought or sold in the market area, the Market Committee was not entitled to levy market fee. The Division Bench however without entering into the aforesaid controversy, came to the conclusion that no clear notice appears to have been given to the company to produce the records for the purpose of satisfying the Market Committee that the tobacco leaves in question were either not processed or exported from the market area and, therefore, the company must be given a fresh opportunity of adducing all the relevant documents before the Market Committee to escape the presumption arising out of proviso to Section 27 of the Act. The High Court having remitted the matter to the Market Committee for passing a fresh assessment order, the company has approached this Court, which is the subject matter in Civil Appeal No. 6453 of 2001 arising out of SLP(Civil) No. 12374/84. When the Special Leave Petition was listed before a Bench of this Court in February, 1987, the judgment of this Court in I.T.C. Ltd. etc. vs. State of Karnataka, reported in 1985 Supp.(1) S.C.R. 145 had been placed. The Bench tentatively being of the view that the decision of this Court requires reconsideration directed that the matter be placed before a Constitution Bench of five Judges and that is how the matter has been placed before the Constitution Bench. Subsequent to the Bihar case, similar cases arising out of judgment of other High Courts on being assailed before this Court, those cases also have been tagged on to this case. When this batch of cases had been earlier listed before a Constitution Bench and arguments had been advanced on behalf of company, the Court felt that it would be appropriate to issue notice to the Attorney General and the Advocate Generals of all the States, as most of the States have their State Act called the Agricultural Produce Market Act and pursuant to the order of this Court dated 10th of April, 2001, notices were issued to Advocate Generals of all the States as well as to the Ld. Attorney General, whereafter this case has been heard by this Bench.

Different State Legislatures have enacted Agricultural Produce and Markets Act for regulating sale and purchase of the agricultural produce within the market area and for levy and collection of market-fee. Parliament having declared that it is expedient in the public interest that Union should take under its control the tobacco industry, enacted the Tobacco Board Act, 1975 which is an Act to provide for the development of tobacco industry under the control of the Union Government. Under the Agricultural Produce Markets Act, the State Government having notified 'tobacco' as an agricultural produce, the purchase and sale of tobacco is to be regulated under the provisions of the State Act and the Market Committee has the right to levy and collect market- fee on such sale and purchase of the notified agricultural produce viz. the tobacco. In a case arising from the State of Karnataka, this Court by a majority of 2:1, came to hold that the tobacco industry having been taken over by the Central Government under Entry 52 of List I and having passed the Tobacco Board Act, the State Legislature ceases to have any jurisdiction to legislate in that field and,

therefore, the provisions contained in the Karnataka Act, entitling the Market Committee to levy market-fee in respect of sale and purchase of tobacco within the market area directly, collides with the Tobacco Board Act, 1975 and as such the State Act so far as it relates to tobacco was struck down. The minority view expressed by Justice Mukherjee was however to the effect that both Acts can operate in their respective fields and there is no repugnancy if both the Acts are considered in the light of their respective true nature and character. The majority view relied upon the decisions of this Court in State of Orissa vs. M.A. Tulloch and Co., 1964(4) S.C.R. 461 and Baij Nath Kedia vs. State of Bihar and Ors., 1969(3) S.C.C. 838.

The other matter, arising out of the judgment of Patna High Court is one filed by Agricultural Produce Market Committee, against a similar order as in Civil Appeal No. 6453 of 2001, remanding the matter for making a fresh assessment order, after issuing notice to the ITC. So far as Civil Appeals arising out of the judgment of Allahabad High Court is concerned, the Division Bench of Allahabad High Court followed the judgment of this Court in ITC vs. The State of Karnataka 1985 (Suppl.) Supreme Court Cases, 476, and held that Mandi Samiti cannot charge a market fee on sale and purchase of Tobacco, and consequently Krishi Utpadan Mandi Samiti has preferred the appeals in question. Civil Appeal No. 3872 of 1990 also arises out of a judgment of Allahabad High Court and the Tobacco Merchants' Association and Ors., are the appellants. The Full Bench of Allahabad High Court considered the constitutional validity of U.P. Krishi Utpadan Mandi Adhiniyam, 1964, and came to hold, that the Adhiniyam permitting levy and collection of fee under Section 17(iii), in so far as it applies to tobacco, is not repugnant to the provisions of Tobacco Board Act and further held that the decision of the Supreme Court in Ram Chander Kailash Kumar vs. State of U.P. is binding, notwithstanding the subsequent decision of the Supreme Court in the case of ITC vs. State of Karnataka (supra), and therefore, the Tobacco Merchants' Association has assailed the legality of the aforesaid Full Bench decision. So far as the State of Tamil Nadu is concerned, the Tamil Nadu Agricultural Marketing Board has assailed the judgment of the Division Bench of the High Court as the High Court followed the judgment of this Court in the ITC case and held that the State Legislature has no legislative power or competence to notify tobacco for the purpose of control and regulation and levy market fee under the provisions of Tamil Nadu Regulation Act, 1959. In fact the High Court held that the ratio of majority opinion in ITC case squerely applies and, therefore, the State Legislature of Tamil Nadu has no legislative power to notify or provide for notifying tobacco for the purpose of control, regulation and levy of fee or other charges under the provisions of Tamil Nadu Agricultural Produce Markets Act, 1959.

Jayalakshmi Tobacco Company filed a Civil Writ Petition No. 8614 of 1982 under Article 32, challenging the constitutional validity of certain provisions of Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, on the ground that in view of Tobacco Board Act, 1975 and Tobacco Association Act, 1975, the entire field regarding the development of tobacco industry including the marketing of tobacco

was occupied and the State legislation is repugnant to the Central Act.

So far as 12 appeals arising out of the judgments of Madhya Pradesh High Court are concerned, the High Court of Madhya Pradesh followed the judgment of this Court in the ITC case and held that the Market Committee will not be entitled to realise any market fee in relation to the trade with regard to tobacco since the Market Committee Act is repugnant to the Tobacco Board Act. It may be stated that though the Writ Petition had been filed challenging the constitutional validity of the State Act, the High Court held the M.P. Krishi Utpadan Mandi Adhiniyam 1972 as amended by M.P. Krishi Utpadan Mandi Sanshodhan Adhiniyam, 1986 to be valid.

Mr. Shanti Bhushan, learned senior counsel appeared for ITC, and argued, that the majority view in the decision of ITC case is correct and once Parliament has made a law relating to tobacco industry, which provides for the manner and place of sale as well as levy of fee on the sale, the Market Committee Act enacted by the State Legislature, providing levy of fee for sale of the tobacco within the market area will be repugnant to the Central law, and therefore, the State Act, so far as it deals with tobacco, must be held to be ultra vires.

Mr. Rakesh Dwivedi, the learned senior counsel, appearing for the State of Bihar, on the other hand contended, that the majority decision in ITC case must be held to be contrary to several Constitution Bench decisions of this Court starting from Tika Ramji vs. State of U.P. (1956) SCR 393, and the word 'industry' in Entry 52 of List I must be given a limited meaning. So construed, according to Mr. Dwivedi, the Parliament cannot be said to have legislative competence to make law in relation to growing of raw tobacco, or even sale thereof, and to that extent the Tobacco Board Act must be held to be invalid. According to him the State Legislature was fully competent to enact the Agricultural Market Committee Act, and providing therein, for levy of fee for sale and purchase of agricultural produce including tobacco. Apart from the main arguments, advanced by these two learned senior counsel, several other counsel appearing for Market Committee, namely, Mr. Ashok Ganguli, appearing in Tamil Nadu case, Dr. A.M. Singhvi, appearing for Market Committee, Monghyr , Mrs. Shobha Dikshit, appearing for Krishi Mandi of Farukkabad, Mr. Pramod Swarup appearing in the case arising out of the judgment of Allahabad High Court, Mr. G.L. Sanghi appearing for Krishi Mandi in the Madhya Pradesh batch of appeals, supported the arguments advanced by Mr. Dwivedi. Mr. G.L. Sanghi, the learned senior counsel appearing for Madhya Pradesh Krishi Mandi, in M.P. batch of appeals submitted for re-conciliation of both the Acts, and contended that there exists no repugnancy and both Acts can be allowed to operate. Mr. Trivedi, the learned Additional Solicitor General, appearing for the Attorney General of India, however, contended, that the constitutionality of Tobacco Act, not having been assailed in any of these cases, the Court need not embark upon an enquiry with regard to the competence of Parliament to enact the Tobacco Board Act under Entry 52 List I of the VIIth Schedule. He also further contended, that the tobacco industry

having been notified, as an industry, the control of which the Parliament thought it expedient to be taken over in the public interest, and the Tobacco Board Act having been enacted, there cannot be any limitation for exercise of power of the Parliament even in relation to the growing of tobacco or sale of tobacco at specified place as well as levy of fee for such sale, and in that view of the matter, the Market Committee Act providing levy of market fee on sale and purchase of tobacco within the market area must be struck down. It is true, as contended by the learned Additional Solicitor General that the constitutional validity of the Tobacco Board Act had not been assailed in any of these cases, and only in this Court, Mr. Rakesh Dwivedi, the learned senior counsel, appearing for the State of Bihar raised the contention in view of the judgment of this Court in ITC case. Ordinarily, this Court does not embark upon an enquiry on the constitutionality of the legislation if that had not been assailed. But taking into account the procedure, that had already been adopted, and noticing all the Advocate Generals and the Attorney General, in view of the amplitude of arguments advanced by the counsel for the parties, we do not think it appropriate to dispose of this batch of cases without examining the constitutional validity of the Tobacco Board Act, enacted by the Parliament under Entry 52 of List I. In fact the main thrust of the rival contention centers round the same. Mr. Shanti Bhushan, learned senior counsel appearing for the ITC Ltd. Contended, that Entry 52 of List I of the VIIth Schedule of the Constitution requires the Parliament to make a declaration by law identifying an industry, the control of which is expedient to be taken over by the Union in the public interest. Once such a declaration is made by the Parliament, the entire gamut would be within the legislative competence of Parliament to make law, and the very industry having been made the subject of legislation, the Parliament gets exclusive power under Article 246(1) of the Constitution. Article 246(1) itself being, notwithstanding anything in Clauses 2 and 3 of such Article, once Parliament makes a law in relation to control of an industry in respect of which a declaration has been made, the State Legislature will be denuded of its power to make any law in respect of that industry. Mr. Shanti Bhushan contends, that every Entry in the Legislative List has to be construed in its widest sense, as was held by this Court in Harakchand Ratanchand Banthia & Ors. etc. vs. Union of India & Ors. (1970) 1 SCR 479, and even Privy Council has also laid down the said proposition. There is, therefore, no rational to give restrictive meaning to the expression 'industry' in Entry 52 of List I of the VIIth Schedule. The learned counsel placed reliance on the meaning of the word 'industry' contained in Encyclopedia of Britannica, which indeed is too wide and submitted, the Court cannot and ought not give a restricted meaning to the expression so as to denude the legislative authority to make law on the subject. The learned counsel made a reference to laws made by the Parliament, on a declaration being made in terms of Entry 52 of List I, namely, the Cardomon Act, 1965; The Central Silk Board Act, 1958; The Coffee Act, 1942; The Rubber Act, 1947; The Tea Act, 1953; The Coir Industry Act, 1953; The Coconut Development Board Act, 1979 and The Tobacco Board Act, 1975. The learned Counsel urged that the Industries (Development & Regulation) Act, 1951, had declared only certain manufacturing industries, but that by itself will not denude the Parliament of

its legislative competence to make law over any industry once a declaration, in terms of Entry 52 of List I is made, vesting the entire control over the industry with the Union Government. According to Mr. Shanti Bhushan, the Constitution Bench decision in Harakchand's case (1970) 1 SCR 479, fully answers this question. The learned counsel contends that the Entries in the three lists are only the heads or fields of legislation demarcating the area over which the appropriate legislalture can operate. The legislative entries must be given a large and liberal interpretation, reason being that the allocation of subjects to the lists is not by way of scientific or logical definition but is a mere enumeration of broad and comprehensive categories. According to Mr. Shanti Bhushan, in the Constitution Bench decision of this Court in Harakchand (supra) while construing the expression 'industry' in Entry 52 of List I the wider definition of the Industry in the Webster's Dictionary has been approved and, therefore, there is no justification in giving the expression any restrictive meaning. The learned counsel also urged that in the very same case, construing Entry 27 of List II, the Court observed that the Entry Indusry is a special Entry while Entry 27 dealing with production, supply and distribution of goods is a general Entry. Mr. Shanti Bhushan contends that the word 'industry', if has been held to be a special Entry, whether in Entry 24 of the List II or Entry 7 and Entry 52 of List I, law made under that Entry must prevail over any law which could be referrable to a general Entry. According to Mr. Shanti Bhushan, applying the ratio in Harakchand (supra), it must be held that the majority view in the ITC case is correct. Mr. Shanti Bhushan further urged, a particular industry, in respect of which a declaration is made by the Parliament in terms of Entry 52 of List I, the industry itself having become a subject of Parliamentary Legislation, any provision contained therein, which have a reasonable nexus would be within the legislative competence of the Parliament under Article 246(1) of the Constitution and would be valid.

According to the learned counsel, a law dealing with the raw- material of a declared industry cannot be held to be having no nexus with the industry itself and if the Parliament would be denuded of its power to make law, dealing with raw-material of the declared industry then the very purpose of making a declaration and taking over the control of the industry in the interest of the public would be frustrated. If the Parliament does not choose to cover all aspects of that industry and may confine the regulation of that industry only with regard to the manufacturing part, as was done in the Industries (Development & Regulation) Act, 1951, then certainly there would be no repugnancy even if the State Legislature makes a law dealing with the raw materials of the notified industry, provided the State law is referable to any of the Entries in List II. So far as the observations made by the Consntitution Bench in Tikaramji's case (supra), Mr. Shanti Bhushan contends that the articles relatable to the scheduled industry were finished products and not raw materials and therefore the Industries (Development & Regulation) Act, 1951 did not at all purport to cover or have any provisions therein relating to sugarcane. It was in this context the observations came to be made by this Court in Tikaramji's case (supra) that the expression 'industry' will have a limited meaning. Mr. Shanti Bhushan also placed reliance on the Constitution Bench decision in Chaturbhai M. Patel vs. Union of India 1960 (2) SCR 362 which dealt with the legislative competence under the Government of India Act, 1935. The Court was, in that case examining the question, whether the Central Exicse

Act was beyond the legislative competence under the Government of India Act 1935. On examining Entry 45 of the Union List and Entries 27, 29 and 31 of the State List, the Court held that the examination should be as to whether the Act in question, is a law with respect to matters enumerated in item 45 of List I, or to the matters enumerated in items 27 and 29 of List II. Quoting the observations of Federal Court to the effect ;

> "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely interwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere"

approved the same and held that it was a correct method of interpreting the various items in different lists. Mr. Shanti Bhushan also pointed out that in the aforesaid judgment the Constitution Bench followed the earlier observation of Hon'ble Hidaytullah, J. in the case of State of Rajasthan vs. G. Chawla (AIR 1959 SC 544) to the effect ;

> "It is equally well settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given".

According to the learned counsel, it would be within the competence of the Central Legislature to provide for matters which may otherwise fall within the competence of the State legislature if they are necessarily incidental to effective legislation by the Central legislation on a subject of legislation expressly within its power. According to Mr. Shanti Bhushan, if the expression 'industry' is construed in the wide sense, in which it was construed by this Court in the Constitution Bench judgment of Harakchand(supra) then the provisions of Tobacco Board Act of 1975 would certainly be within the legislative competence of Parliament, notwithstanding the fact that some of those provisions may touch upon subjects contained in the State Lists. The learned counsel, in this connection also placed reliance on a recent decision of this Court in the case of State Bank of India vs. Yasangi Venkateswar Rao (1999) 2 SCC 375. With reference to the decisions of this Court in Calcutta Gas (1962) Supp. SCR 1, the Mcdowell (1996) 3 SCC 709and Tikkaramji (supra), the learned counsel contended, that in none of these cases, the competence of Parliament to make any law was under consideration. On the other hand, both in Calcutta Gas (supra) case and in Mcdowell (supra) case, what was under consideration is as between the two entries, if one is general and the other is special then which law would prevail, and the Court held that the special law would prevail over the general law. In Calcutta Gas case the word 'industry' in Entry 24 was held to be a general entry, whereas word 'gas and gas works' in Entry 27 was held to be a special entry and applying the principle of harmonious interpretation the Court held that the expression 'industry' will be given a limited scope so as to exclude from its ambit gas and gas works, and it is in this sense, it was held that from the expression 'industry' in Entry 24 in List II the gas and gas works must be excluded. In Mcdowell's case (supra) also the Court applied the same principle of special excluding general and held that the production and manufacturing of liquor would not fall under Entry 24 of List II but

under Entry 8 of List II, which relates to intoxicating liquor that is to say that the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. According to the learned counsel, these decisions will have no relevance in the context of the present case, where the competence of the Parliament to make any law within the ambit of Entry 52 of List I is the subject matter of scrutiny. Mr. Shanti Bhushan also urged, that Entry 27 of the State List relating to production, supply and distribution of goods cannot be held to be a special Entry so as to be excluded from the purview of Entry 52 of List I. According to him the two entries do not form the part of the same genus so as to apply in the same field, and if the ratio in the judgment in Harakchand(supra) case is applied then Entry 27 cannot be held to be a special Entry. He also relied upon the Constitution Bench judgment in Waverly Jute Mills Case (1963) 3 SCR 209, where the Court was required to examine the competence of the Parliament to enact Forward Contract Regulation Act, 1952 , and whether it encroached upon the subject matter falling under Entry 26 and Entry 28 of List II. The Court upheld the validity of the law by holding that the Parliament has legislative competence under Entry 48 of List I relating to stock exchanges and future markets, and in fact it has the exclusive competence. Mr. Shanti Bhushan contended, that apart from the fact that in Tikaramji (supra), in Calcutta Gas (supra), in Mcdowell (supra) the competence of the Parliament to make law had not been assailed, and on the other hand, what was under

> consideration is whether the Central Act and the State Act could be held to cover different fields so that there was no repugnancy between the two. It was further contended that the State Acts would be ultra vires as they related to subject which were brought to the Union List by a declaration in terms of Entry 52. Mr. Shanti Bhushan contends, that all the decisions in which constitutional validity of Parliamentary enactment was questioned on the ground of ambit of Entry 52 of List I, the Court has upheld the validity of the same as in Harakchand(supra). Any incidental observation where the competence of Parliament to make law was not under assail, cannot be relied upon for the proposition that the expression 'industry' in Entry 52 of List I must have a restricted meaning. With special reference to Tikaramji's case (supra) the learned counsel contended that the Court was not examining the scope of word 'industry', as contained in Entry 52 of List I, as is apparent from the discussions at page 414 of the SCR, but was examining the question, whether raw-materials of an industry which form an integral part of the process are within the topic of 'industry' which forms the subject-matter of item 52 of List I as ancillary or subsidiary matters which can fairly or reasonably be said to be comprehended in that topic and whether the Central Legislature while legislating upon sugarcane industry could act within the scope of Entry 52 of List I, and would as well legislate upon sugarcane. The observations of the learned Judges at page 420 of the report, according to Mr. Shanti Bhushan, are only in that context and when the Court did not go into the question as to whether the word 'industry' could or could not have a wide meaning which could be applied when Parliament purported to cover other aspects apart from the manufacturing processes, it would not be appropriate to hold that the word 'industry' in' Entry 52 of List I must be given a restricted meaning. According to the learned counsel in Tikaramjis (supra) the Court was considering the question of repugnancy and it answered by comparing the provisions of Industries

> (Development and Regulation) Act with the provisions of UP Regulation of Sugarcane Act and found that there was no repugnancy and two were covering two different fields and could therefore co-exist. It is urged that a restricted meaning, being given to the expression 'industry' in Entry 7 and 52 of List I or Entry 24 of List I will have disastrous consequences, inasmuch as the Parliament would declare by law a particular industry to be necessary for the purposes of defence or for the prosecution of war under Entry 7, and yet in such law, cannot make any provision in respect of raw-materials or growth of any item, which may be absolutely necessary for the industry in question.

According to Mr. Shanti Bhushan, the learned senior counsel, the majority judgment in ITC case, no doubt, relied upon the decisions of this Court in State of Orissa vs. M.A. Tulloch (1964) 4 SCR 461 and Baijnath Kedia vs. State of Bihar - (1969) 3 SCC 838, for the proposition that, when the Central Government takes over an industry under Entry 52 of List I and passes an Act to regulate the legislation, the State Legislature ceases to have the jurisdiction to legislate in that field, and if it does so, then it would be ultra vires of the powers of the State Legislature as the entire field is occupied by the Central Legislation. The case of Tulloch (supra) as well as the case of Baijnath (supra) deal with the laws made by the Parliament under Entry 54 of List I of the VIIth Schedule and the Court was examining those laws and the legislative competence vis- -vis Entry 23 of List II, but those principles laid down in Tulloch's case (supra) as well as in Baijnath's case (supra) would equally apply to the legislation made under Entry 52 of List I, as has been held by this Court in paragraph 11 of Ishwari Khetan Sugar Mills vs. State of U.P. (1980) 4 SCC 136 judgment. The learned counsel stated that what has been stated therein, that on a law being made by the Parliament in respect of a particular industry the State's legislative power would stand denuded only to the extent that any aspect related to that industry is actually covered by the Parliamentary legislation. In other words, it is necessary to examine the extent of coverage by the Parliament enactment, as has been held in Ganga Sugar, and the extreme argument advanced in the case that the industry as a subject by itself goes out of the competence of the State Legislature, was not accepted. According to Mr. Shanti Bhushan, it is a well settled principle, once a Parliamentary Legislation is enacted, whether in exercise of its competence under Entry in List I or List III, or there is an incidental or anciliary coverage over some Entries in the State List, and there is any repugnancy between the law made by the Parliament and law made by the State Legislature, then it is only the Parliamentary law to the extent of repugnancy which has to prevail and not the State legislation. On the question of the re-conciliation between the Tobacco Board Act and the Agricultural Market Committee Act, and in relation to the provisions contained in Section 31 of the Tobacco Board Act to the effect, - "provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force", the learned counsel contends, the aforesaid provision by no stretch of imagination can be construed to mean, that notwithstanding the State Legislation being repugnant to the Parliamentary law, yet the State legislation will be permitted to operate. According to the learned counsel, Section 31 of the Tobacco Board Act purports to declare that if a law which was consistent with the Tobacco Board Act and made additional requirement of some kind, laid down under any other Act, it should not be taken as if in respect of any matter relating to Tobacco, all other acts whether consistent or inconsistent with the Tobacco Act will cease to prevail. In other words, if there is any field which is not covered by the Tobacco Board Act, and if there was some

other valid provision, then the Tobacco Board Act would not come in the way. In support of this contention Mr. Shanti Bhushan relied upon the decision in M. Karunanidhi vs. Union of India (1979) 3 SCC 431, wherein in paragraph 57 this Court in unequivocal terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only be in addition to and not in derogation of any other law for the time being in force, which manifestly includes the Central Acts, namely the Indian Penal Code, the Corruption Act and the Criminal Law (Amendment) Act. In analysing the provisions of the Tobacco Board Act, the counsel contends, that the intention of the Parliament is to cover the field of trade in Tobacco. Relying upon the Constitution Bench decision in Belsund Sugar Company (1999) 9 SCC 620, the learned counsel contends that if a special Act deals with regulating trade in an Article, it has to go out of the sweep of the Agricultural Markets Act. In this view of the matter, the Tobacco Board Act having been a special Act regulating the sale and purchase of the agricultural produce, namely, Tobacco and the Marketing Act, being of a general nature, the Marketing Act will cease to operate in respect of Tobacco. Analysing different provisions of the Tobacco Board Act, 1975 and the Bihar Agricultural Produce Marketing Act the counsel urged, that the provisions cannot co-exist and, therefore, the majority view in ITC case rightly held that the Agricultural Market Committee Act, framed by the State Legislature is ultra vires.

Mr. Nageshwar Rao, learned senior counsel appearing for the Tobacco Merchants' Association, reiterated all that had been argued by Mr. Shanti Bhushan, and placing reliance upon several authorities submitted, that the Tobacco Board Act being a special Act, enacted by Parliament for controlling the tobacco industry and making provision therein, relating to growing of tobacco and purchase or sale of tobacco, which have direct nexus with the tobacco industry, the general provisions of the Agricultural Produce Market Act will have to give way to the Tobacco Board Act, and therefore, the Market Committee would have no power to levy market fee by taking recourse to the provisions of the Market Committee Act on the purchase and sale of tobacco within a market area.

Mr. Rakesh Dwivedi, learned senior counsel, who led the main argument by contending that the Parliament had no competence to make the Tobacco Board Act in its entirety, particularly in relation to growing and raw-materials of the tobacco industry, appearing for the State of Bihar contended, that the subject matter 'industry' in Entry 52 of List 1 of the VIIth Schedule cannot be construed to be all pervasive and the Constitution Bench of this Court in Tikaramji (supra) conclusively held that the raw-materials which are integral part of the industrial process cannot be included in the process of manufacture or production. According to Mr. Dwivedi, the Court should construe a particular entry in the Schedule in a manner so that the other Entries in the Schedule will not be otiose. Consequently, the raw-materials would be goods which would comprised in Entry 27 of List II and the manufacturing process or production would come within the ambit of expression 'industry' in Entry 24 of List II. Entry 24 of List II being subject to Entry 52 of List I, when Parliament makes a law in respect of an industry in exercise of its power referable to Entry 52 of List I then that expression cannot be wider than the word 'industry' in Entry 24 of List 2. It would, therefore, be given a restricted meaning to the expression 'industry', as was done by this Court in Tikaramji's case, which was followed in Calcutta Gas, Kannan Devan Hills and Ganga Sugar Corporation. According to Mr. Dwivedi, even in the case of B. Viswanathaiah & Co. vs. State of Karnataka (1991) 3 SCC 358, a three Judge Bench of this Court construed the declaration made in terms of Entry 52 of

List I in relation to silk industry and held that taking over the control of raw silk industry must be restricted to the aspect of production and manufacture of silk yarn or silk and did not take in the earlier stages of the industry, namely the supply of raw-materials. According to Mr. Dwivedi, in the aforesaid case the Court unequivocally held that the declaration in Section 2, which is under Entry 52 of List I, do not in any way, limit the powers of the State Legislature to legislate in respect of goods produced by the silk industry. The Court so held being of the opinion that any wider interpretation to the expression 'industry' in Entry 52 of List 1 would render Entry 33 in List 3 to be otiose and meaningless. Mr. Dwivedi also further contended that both in Indian Aluminium Company (1992) 3 SCC 580 as well as Siel Ltd. And Others vs. Union of India and Others (1998) 7 SCC 26, Tikaramji and Calcutta Gas have been followed and it has been held that the term 'industry' in Entry 24 of List II and Entry 52 of List 1 could have the same meaning and it would not take within its ambit Trade and Commerce or production, supply and distribution of goods coming within the province of Entry 26 and 27 of List II. Referring to the Constitution Bench decision of this Court in Belsund Sugar Mills (1999) 9 SCC 620, Mr. Dwivedi submits that in the aforesaid case the Court was construing the provisions in Entry 28 of List II as well as Entry 33 of List III and sugar and sugar cane having been held as food stuff coming within the ambit of Entry 33 of List III, the Market Committee Act referable to Entries 26, 27 and 28 of List II was held to be subject to the Sugar Cane Act. Thus industry in Entry 24 of List II and Entry 52 of List I would not cover the subject matter coming within the ambit of Entries 26 and 27 of List II or Entry 33 of List III. It is therefore urged, that the raw tobacco which would be a produce of agriculture and thus the raw-material for the tobacco industry, which required to be cured and processed and for such a raw-material for the tobacco industry, the Parliament cannot make any legislation by making a declaration and taking over the control of tobacco industry under Entry 52 of List I. Tobacco, not being a food stuff, the same will also not come within the ambit of Entry 33 of List III, and therefore, the raw-tobacco would continue to be within the exclusive domain of the State Legislature and State Legislature would have power to make law in relation to the raw-tobacco which would be referable to Entry 14 (Agriculture), Entries 26, 27 and 28 of List II, as has been held by this Court in the Constitution Bench decision in the case of Belsund Sugar (supra). Mr. Dwivedi contends that judged from this angle to the extent the Tobacco Board Act seeks to regulate the market by providing for auction platform and by seeking to regulate growing of raw-tobacco, must be held to be beyond the competence of Parliament, and on the other hand, is within the exclusive domain of the State Legislature. State Legislature having provided for a market where alone the trade and commerce in and the production supply and distribution of tobacco can take place, the Tobacco Board Act would cease to operate and it is the State law which would prevail. With reference to the judgments in M.A. Tulloch and Baij Nath Kedia relied upon in the majority judgment of ITC's case, Mr. Dwivedi contends that those decisions will have no application, inasmuch as a comparison of Entry 23 of List II and Entry 54 of List I would indicate that the head of the Legislation is one and the same, and Entry 23 of List II itself is subject to Entry 54 of List I. Necessarily, therefore, the entire field, which was there available for the State Legislature to make law under Entry 23 of List II, once assumed by the Parliament under Entry 54 of List I, then the State Legislature is denuded of its power. Question of giving narrow meaning or wider meaning to the legislative Entry does not arise for consideration in those cases. Accordingly the majority judgment of this Court committed error in construing the meaning to be given to the word 'industry' under Entry 52 of List I by relying upon the decision under Mining Legislation, which was wholly unwarranted. Mr. Dwivedi urged that even the Tobacco

Board Act has not been made operative in the State of Bihar and several other States, for instance, Section 13, 13A and 14A. This being the position, in the States where aforesaid provision had not been brought into force, there cannot be any difficulty in allowing the State Act, namely, the Agricultural Market Committee Act to operate. With reference to legislative history for the expression 'industry' in Entry 52 of List I, Mr. Dwivedi contends that the fact that a separate entry was made for regulating trade and commerce, production, supply and distribution of the products of controlled industry would suggest that the expression 'industry' in Entry 52 of List I will have a restricted meaning. Mr. Dwivedi urged that if the contention of the appellant, that the word 'industry' in Entry 52 of List I should be given a wider interpretation is correct, then the same would be destructive of the scheme pertaining to distribution of powers. Mr. Dwivedi refers to the judgment of this Court in Tikaramji as well as the judgment of Full Bench of Allahabad High Court in SIEL case and points out as to how the law relating to trade and commerce and production, supply and distribution of goods has been traced in these two cases and how after the end of the second world war when emergency was lifted, the power to enact on the subject was given to the Central Legislature by India (Central Government & Legislature) Act, 1946. Mr. Dwivedi urged, even though under Government of India Act 1935, the subject of trade, commerce, production, supply and distribution of goods was within the competence of the provincial legislature, the law was made temporarily by the Central Legislature. Under the Constitution of India, Article 369 was included which empowers the Parliament to make laws for 5 years with respect to trade and commerce in and the production, supply and distribution of certain specified products. That very Article 369 shows that the subject matters of raw-cotton, raw-jute, cotton seed etc. would be covered by the Entries in List II and even the marginal note of Article 369 throws sufficient light on the subject. By referring to Articles 249, 250, 252 and 253, the learned counsel urged that they are special provisions which provide that in the national interest, during proclamation of emergency with the consent of two or more states Parliament can make law with respect of any of the matters coming within the State List. In fact in the Constituent Assembly there was a heated debate in relation to Article 249 and there was a strong objection to wide power being given by that Article for legislation in the national interest with respect to the State List. The Founding Fathers apprehended that in the name of national interest the federal character of the Indian polity could be completely destroyed and India could be converted into a unitary state, therefore, Article 249 was re- tailored and was provided for a shorter duration of operation of parliamentary law so made. Mr. Dwivedi urged that the term 'industry' in Entry 7 of List I as well as Entry 52 of List I should be confined to the process of manufacture of the industries which are declared to be necessary for the purposes of defence or for prosecution of war. According to Mr. Dwivedi there is no necessity or compulsion to give this entry a wider meaning merely because the war situation is being dealt with in the State Entry. In such a situation Entry 33 of List III is always available to Parliament for controlling products and Article 250 gives over riding power to the Parliament to legislate with respect to any matter enumerated in the State List during the period of proclamation of emergency. Even Articles 352 to 354 also confer sufficient power on the President to declare by proclamation that a grave emergency exists which can be kept alive as long as the war situation or need of defence is required. By virtue of Article 353 the power of Parliament would extend to making of laws with respect to a matter not enumerated in the Union List, therefore the Constitution makers have well thought of and designed the Constitution in such a manner in the matter of distribution of power that there would be no difficulty at all for the Parliament to enact any law when the country is in war, and therefore, in

normal times there should be no justification to give the expression 'industry' a wider meaning and thereby denuding the State Legislatures to make law on several heads of legislation enumerated in List II. According to Mr. Dwivedi, reference to Entry 5 of List I, in this context was wholly mis-conceived as that is a specific Entry in List I with regard to arms, and as such, would not be covered under Entry 27 of List II and Entry 33 of List III. Mr. Dwivedi also contended that reference to Article 254(1), in this context is mis-conceived as the said Article can be invoked both by the Parliament and the State Legislatures to make law with respect to one of the matters enumerated in the Concurrent List. The expression 'repugnant' in Article 254(1) refers to matter only in the Concurrent List, and it is in this connection, he placed reliance on the decision of this Court in the case Deep Chand (1959) Suppl.(2) SCR 8 and Hoechst Chemicals (1983) 4 SCC 45 . According to Mr. Dwivedi Federalism having been accepted as one of the basic features of our Constitution, as was held by this Court in S.R. Bommai (1994) 3 SCC 1, a construction of a particular legislative Entry which would denude another legislative body from exercising its power in respect of several heads of legislation could be held to be contrary to the basic feature of the Constitution, and therefore, the Court should avoid giving a wider meaning to the expression 'industry' Entry 7 and Entry 52 of List I as well as Entry 24 of List II. With reference to different Articles of the Constitution, Mr Dwivedi contends that the State Legislatures have exclusive power to make laws with respect to Entries in the State List and only in specified contingencies Parliament can legislate with respect to them. In this view of the matter counsel contends, entries in List I ought not to be construed very widely as construed by this Court in ITC case. The counsel says that in the State of Bihar, Market Act in relation to tobacco is relatable to Entries 26 and 27 of List II whereas Tobacco Board Act, enacted by the Parliament includes within its fold the entire process of growing, curing and marketing of tobacco and unlike the sugar industry and purchase of sugar cane by it which was dealt with by the Constitution Bench in the case of Tika Ram ji the tobacco industry cannot be split up with reference to the raw-material. According to learned counsel growing of tobacco, its curing and marketing being one integrated industrial process the same would be embedded into Tobacco Industry. The very object of the Tobacco Board Act, being to encourage export of good quality tobacco and to augment the foreign exchange reserves, the same does not seek to regulate and control the sale and purchase of tobacco in normal markets in different States. Therefore trade and commerce, production, supply and distribution of tobacco in different markets in India could not be regulated by the Tobacco Board Act. He also urged that the Act in question may not be solely to the field of Legislation in Entry 52 of List I inasmuch as foreign exchange comes within Entry 36 of List I, whereas law ensuring fair and remunerative prices for the growers and minimum prices for export of tobacco could be referable to Entry 34 of List III. This being the position, it is not possible to define the 'industry' in its widest form. Further the Tobacco Board Act being an Act to regulate the sale of tobacco at auction platform, the raw-material which is produced by the growers in so far as the growing of raw- material is concerned, the same would be the matter pertaining to exclusive domain of 'agriculture' covered by Entry 14 of List II and the Parliament cannot be permitted to encroach upon the domain of the State Legislature. The learned counsel places reliance on the decision of this Court in A.S. Krishna (1957) SCR 399. Mr. Dwivedi does not agree with the submission of the counsel appearing for the company that the tobacco industry is one comprehensive integrated industry covering within its expanse the growing of tobacco, curing, marketing and export. According to him, growing of tobacco is pure and simple agriculture and the industrial aspect begins after the industries purchase raw tobacco from the growers and begin

curing the same. Consequently the Market Acts enacted by the State Legislature would be fully competent, legal and valid governing the sale and purchase of tobacco within the local market area. Referring to the provisions of the Bihar Act, the counsel urged that the same had been enacted by the State Legislature under Entry 28 of List II, the object being to provide for better regulation of buying and selling of agricultural product and the establishment of markets for agricultural produce. The comparison of the provisions of the Market Act and the Tobacco Board Act would show that both the Acts can operate, particularly when the Tobacco Board has not set up any auction platform or any kind of market centre in Bihar and in fact several relevant provisions like Section 13, 13A and 14 have not been enforced in the State of Bihar. If the provision of the Tobacco Board Act is construed in its wide meaning then the Parliament must be held to have no competence to make laws in respect of anything prior to the curing of tobacco. According to the learned counsel, when this Court in ITC case held the State Act to be invalid, it so held on the conclusion that the entire field is covered by the Central Legislation. But no steps having been taken by the Tobacco Board in the State of Bihar under Sections 8, 20 and 20A and other provisions not having been applied, it is difficult to subscribe that the entire field is covered by the Tobacco Act. Mr. Dwivedi also very seriously contended that the Parliament by enacting the law under Entry 52 of List I in relation to the Tobacco Industry and having enacted Tobacco Board Act included the provisions of Section 31, which unequivocally indicates that the Act is in addition and not in derogation of any other law for the time being in force. This being the position, the Market Act must be allowed to operate.Therefore, the Market Committee would be entitled to levy market fee on the sale and purchase of Tobacco within the market area. Reliance was placed on the decisions of this Court in M. Karunanidhi (1979) 3 SCC-431, Chanan Mal (1977) 1 SCC-340 and Ishwari Khaitan (1980) 4 SCC 136. With special reference to the majority judgment of this Court in ITC's case the counsel urged that the aforesaid decision has not noticed several decisions of this Court starting from Tikaramji, Calcutta Gas -----etc. Mr. Dwivedi also contended that, as has been held by this Court in several decisions, in the event of any conflict between the law made by the Parliament with reference to some Entry in List I and the law made by the State Legislature with reference to any Entry in List II, the Courts must try to harmonise and re-concile, which is well known method of construction. The majority view, however, did not examine the provisions of two Acts for its conclusion as to whether both Acts could be allowed to operate, whereas the judgment of Hon'ble Mukherjee, J proceeds on the basis that both the Acts could operate in its own field. According to Mr. Dwivedi, the principle of occupation of field by a particular legislature is a concept relevant for interpreting an entry in the Concurrent List and it will have no application when the legislation in question is under a particular Entry in List I. According to Mr. Dwivedi, where a particular legislation made by the Parliament is found to be occupying the entire field then the extent of occupation of the field would have to be examined with reference to Entry 33 of List III to find out which field remains available to the State Legislature, and if, there is any repugnancy then same has to be dealt with, with reference to Article 254. But the Act in question not having been made (Tobacco Board Act) with reference to Entry 33 of List III, conclusion with reference to Article 254 was wholly erroneous. It is lastly urged, that the majority view in ITC case not having noticed the earlier Constitution Bench decisions in Tikaramji, Calcutta Gas as well as other cases following the same, the conclusion is unsustainable in law, and therefore, this Constitution Bench must hold that the ITC case has not been correctly decided. While interpreting and considering the word 'industry' occurring in different Entries of List I and List II, it would be wholly inappropriate to refer to the meaning of the word given in Encyclopaedia of

Britannica, as was held by this Court in Tikaramji. It is also urged that the scope of Constitutional Entry in the 7th Schedule can never be left to be determined on a case to case basis depending upon how much field the Parliament deems fit to cover. The scope of the word 'industry' in Entry 52 of List I will not expand or restrict depending upon what the Parliament does in its legislation. The competence of Parliamentary law can never be adjudged with reference to the nature of the law which is being enacted. The scope of the Entries in List II also cannot be determined with respect to Parliamentary enactment made from time to time. On the other hand, the scope of entries have to be determined by reference to each other and by modifying one with respect to the other on the basis of the context without making any of the entries otiose. It was so held by this Court in the case of McDowell (1996) 3 SCC 709. Since a law made by a legislature, be it Parliament or be it the State, has to be tested on the anvil of the entries in the 7th Schedule of the Constitution when a question of legislative competence arises, the head of the Legislation in any entry cannot be differently construed. In other words, the word 'industry' occurring in Entry 24 of List II as well as Entry 7 and Entry 52 of List I must have the same meaning. That being the position, Parliament cannot be permitted to amend Industry Development Regulation Act by including Sugarcane, as has been held by this Court in Belsund Sugar. Mr. Dwivedi repelled the argument of Mr. Shanti Bhushan that the observations in Tikaramji must be confined to the fact from that case on the ground that, it is no doubt true, that in Tikaramji the validity of the Parliamentary enactment had not been questioned, and on the other hand, it is the power of the State Legislature to enact the Sugarcane Act, was the subject matter of consideration. But the Court did examine the provisions of the State Act to find out whether it encroached upon Entry 52 of List I as sugar industry was a controlled industry under the provisions of IDR Act, 1951. That apart, the Constitution Bench having thoroughly gone into the constitutional history including the corresponding entries in the Government of India Act, and then considering a particular provision, and ultimately holding that it would not bring within its sweep the raw-materials which is the stage prior to the manufacture of industry, it is not permissible for another Constitution Bench to by pass the earlier Constitution Bench decision by limiting the ratio therein to the fact of that case, more so when the said decision had been followed later on in several other Constitution Bench decisions and has stood the test for last two decades. With reference to Banthia's case Mr. Dwivedi contends that in the very same judgment the only question that cropped up for consideration is whether the Goldsmith's work was a handi-craft requiring application of skill and the art of making gold ornaments and was not an 'industry', within the meaning of Entry 52 of List I or Entry 33 of List III of the 7th Schedule, the Court never examined with reference to Entry 14 dealing with agricultural raw- material and in fact the Court observed that it is not necessary for the purposes of this case to attempt to define the expression 'industry' precisely or to state exhaustively all the different aspects. The Court was however, satisfied that the manufacture of gold ornaments by the Goldsmith is a process of systematic production for trade or manufacture and, would therefore fall within the connotation of the word 'industry' in the appropriate legislative entries. Thus Harakchand also follows the ratio in Tikaramji and not departed from the view taken in Tikaramji. In HR Banthia, the Supreme Court rejected the submission to adopt the definition of 'industry', as given in the Industrial Disputes Act. According to Mr. Dwivedi, the observations of this Court in Harakchand and Banthia cannot be utilised for the purposes of the agricultural raw-material and its production within the word 'industry' in Entry 52 of List I, how so ever wide the same word may be construed. With reference to the judgment of this Court in Ishwari Khaitan Mr. Dwivedi contends that the enunciation of law made therein would indicate that the Court was

examining to find out by virtue of law made under Entry 52 of List I to what extent there has been denudation of the State Legislature's power to legislate under Entry 24 of List II. The Court did find that the extent of erosion is not absolute but only to the extent the control is spelled out by the parliamentary legislation. The extent of parliamentary legislation is seen only to determine how much is taken out from Entry 24 of List II and nothing more. Though in this case the Court relied upon the earlier decision of this Court in State of West Bengal vs. Union of India (1964) 1 SCC 371, but unfortunately in the West Bengal case the scope of 'industry' did not fall for consideration, and that is why even Tikaramji had not been referred to. But it cannot be concluded that the Constitution Bench was departing from Tikaramji and laying down some new principles without even discussing Tikaramji. Mr. Dwivedi submitted that in Ishwari Khaitan, no doubt the judgment of this Court in Baijnath has been relied upon but the said reference and reliance was for a different purpose and not to equate the structure of Entry 52 of List I with Entry 54 of List I. The Court referred Baijnath Kedia for the limited purpose as in both cases the denudation of States' power is only to the extent of control, while Baijnath dealtwith Entry 23 of List II, Ishwari Khaitan dealt with Entry 24 of List II. The subject matter of other entries was not in issue. It would, therefore, be a fallacy to contend that Ishwari Khaitan relied upon Baijnath Kedia to hold that the entire field is occupied by the Central Legislation though the majority view in ITC case holds so, and that must be held to be not correctly decided in view of the series of decisions starting from Tikaramji, already referred to. Mr. Dwivedi, in this connection relies upon the Constitution Bench decision in Belsund Sugar Company (1999) 9 SCC 620 wherein in paragraphs 117 and 118 the cases under Mines and Mineral Regulation and Development Act had been noticed and the Court ultimately held that this scheme of the legislative entries is entirely different from the scheme of Entry 52 of List I read with Entry 24 of List II with which the Court was concerned in Belsund Sugar. According to Mr. Dwivedi the ratio in Belsund Sugar would support the contention on the question of competence of Parliament to enact Tobacco Board Act covering the field of growing and raw-material prior to any manufacturing process. Mr. Dwivedi strongly relied upon the Full Bench decision of Allahabad High Court in SIEL's case (AIR 1996 All. 135) and submitted that the Full Bench had considered all the relevant decisions and has come to the right conclusion. According to Mr. Dwivedi, Tikaramji principles enunciated therein having been approved in the subsequent cases, and even in Ganga Sugar case Hon'ble Krishna Iyer, J. having negatived a similar contention, as was urged in the present appeal as a desperate plea and Belsund's case have approved Tikaramji, irresistible conclusion would be that the majority view in ITC judgment is incorrect and necessarily, therefore, the Parliament did not have the legislative competence while enacting the Tobacco Board Act after declaring Tobacco industry to be taken over as a controlled industry to make any provision therein relating to growing of tobacco or sale of tobacco within the market area prior to its curing or any subsequent process of manufacturing.

Dr. A.M. Singhvi, appearing for the Agricultural Produce Market Committee, Munger, on an analysis of different entries made in List I, List II and List III of the Seventh Schedule submitted that there are as many as nine entries in List II out of 66 entries which are specifically made subject to List I. 3 of the entries in List II are subject to list III. Entry 24 of list II however is subject to entry 52 of list I. According to the learned counsel, wherever the Constitution intended that the entries in list II were to be made subject to entries in list I, it was specifically and clearly so provided. Where however an entry in list II is not subject to list I or list III, then the power of the State legislature to legislate with

regard to that matter is supreme. The Bihar Agriculture Markets Act, being relatable to entries 14 and 28 of list II, which is not subject to any entry either in List I or List III, the same must be held to be supreme and there would be no fetter on the power of the State Legislature to make the Agricultural Produce Markets Act. With reference to the expression "subject to List I" in McDowell's case, 1996(3) S.C.C.709, Supreme Court had itself observed that the power to make a law with respect to 'industries' lies with the States under Entry 24 of List II but the said entry is made expressly subject to the provisions of Entries 7 and 52 in List I. If the Parliament declares by law that it is expedient in the public interest to take over the control of a particular industry, then such industry gets transplanted to List I. According to the learned counsel, the industry in respect of which Parliament makes a declaration contemplated under Entry 52 of List I, the States are denuded of the power to make any law with respect to them under Entry 24 of List II. But making of a declaration by Parliament does not have the effect of transplanting the industry from the State List to the Union List. Entry 52 of List I since governs only Entry 24 of List II but not other Entry like Entry 8, as was the case for discussion in Mc.Dowell's case, the power of the State Legislature cannot be denuded to make a law referable to Entry 8. This being the correct position, as enunciated by this Court and the founding fathers of the Constitution having taken due care by expressly stating, when a particular Entry in List II is subject to an Entry in List I or List III, thereby demarcation being made, in respect of other entries in List II, the power of the State Legislature is exclusive and, therefore, it would be prohibited field for the Union to make any law. Reiterating the argument advanced by Mr. Dwivedi, Dr. Singhvi also contends that the question of occupied field is only relevant in the case of laws made with reference to entries in List III. Consequently, neither Entry 14 nor Entry 28 being subject to any of the entries in List I, the Bihar Legislature was fully competent to enact the Agriculture Produce Markets Act and once in exercise of the provisions contained in the Act, tobacco is notified to be one of the agricultural produce, then the power to levy fee for sale or purchase of tobacco within the market area cannot be whittled down by the Central Legislation. According to Dr. Singhvi, the Central Legislation to that extent must be held to be invalid. The learned counsel further urged that in case of a seeming conflict of entries of two lists, the entries should be read together without giving a narrow or restrictive sense to either of them and every attempt should be made to see whether the two entries can be reconciled or harmonized . This approach to the interpretation is necessary to uphold and promote the "Federal Structure" of the Constitution which is a basic structure, as held by this Court in S.R. Bommai vs. Union of India, 1994(3) SCC 1. The fundamental feature of federalism being that within each list each legislature is supreme. There can be no repugnancy between the matters in list I and list II and repugnancy can only be a concept peculiar to list III. It is no doubt true that Entry 52 of List I over rides only Entry 24 of List II and no other entry under List II. It has been held by this Court in Bihar Distillery, 1999(2) SCC 727 and Dalmia Industry 1994(2) SCC 583 that Trade, Commerce, production, distribution of products of alcohol industry can be regulated both by the Centre and the State. Bihar Agriculture Produce Markets Act being relatable to entry 14 and 28 of List II, that Act must operate on its own and not being affected by law made by Parliament under Entry 52 of List I. In this connection, the learned counsel refers to the Judgment of this court in Belsund 1999(9) SCC 620 para 70. According to Dr. Singhvi, the Tobacco Act by providing Section 31 indicates the intention of the Parliament that the Act would not govern the entire field in exclusion to all other Acts in existence. In this view of the matter, there cannot be any justification in denying the market Committee to levy market fee in respect of the sale and purchase of tobacco within the market area

as the Market Committee Act is a duly enacted law by the State Legislature within its competence to legislate under Entry 14 and 28. Dr. Singhvi also urged that mere declaration under Entry 52 is not enough but the law in question must be found which actually occupied the field. Dr. Singhvi urged that mere existence of power is not enough but the power must be exercised and on account of such exercise, the field must be occupied so as to hold that the central law would collide with the State law. It was so held in Belsund 1999(9) SCC 620 with regard to tea. To the same effect is the ratio in the case of Western Coal Fields 1982(1) SCC 125 and Fateh Chand 1977(2) SCC 677. According to the learned counsel in the case in hand, there is no question of conflict or repugnancy between the Tobacco Act and the Bihar Act since both Acts operate in mutually exclusive and different field and therefore, the majority judgment in ITC case would not apply to the Bihar Agricultural Produce Act. Dr. Singhvi also made an extreme argument to the effect that even if the Central legislation is construed to occupy the entire field under list I, yet the State Act can still be operative and market fee could be levied by the Market Committee under the State Act for services provided by it on the principle of quid pro quo. It is in this connection, he placed reliance on the decision in Synthetics and Chemicals JT 1989(4)SC 467. According to Dr. Singhvi, the expression "industry" both under Entry 24 of List II and Entry 52 of List I would not cover subject matters which are mentioned sui generis in different entries and separately from Entry 24 of List II. If a wide meaning to the expression is given, it would run counter to the scheme of distribution of powers and the structural inter-relationship between Entry 52 of List I and Entries 24, 26 and 27 of List II and Entry 33 of List III and would make the State List redundant qua that industry. In this view of the matter, the counsel urged that the decisions relating to mines and minerals would not be relevant because of inter- relationship of Entry 23 of List II and Entry 54 of List I. Once the declaration is made by Parliament in terms of Entry 54 of List I, then both mines and its product minerals get extracted from the State list and get submerged in the Entry 54 of List I but that would not be the case when the power under Entry 52 of List I and Entry 24 of List II as well as other relevant entry in List II are considered. Consequently, the majority view in ITC case must be over-ruled.

Mr. G.L. Sanghi, the learned senior counsel, appearing for Mandi Samiti in Madhya Pradesh batch of appeals, submitted that in the case in hand, relevant enquiry should be whether the State Act is within the exclusive subject matter of the State Legislature under Entry 28 of List II. According to him, there is no irreconcilable clash between the two Acts, which is also apparent from the mandate of Section 31 of the Central Act. The object and purpose of the State Act being establishment of market places and the same object having been achieved by the various provisions providing for large scale infrastructural establishment and provision of a large variety of services, the State Act rightly requires those who avail these services to pay the requisite market fee and also in order to provide for appropriate control, to take licenses wherever a market functionary desires to function within the market yard or market area. The provisions of Tobacco Board Act, more specifically Section 8 however mandates that the Board has to apply its mind to provide appropriate measures including the measure of setting up an auction platform and since the auction platform has to have a location, the Board cannot but think it fit to establish such platform within the market area. Such a step will be consistent with the mandate of Section 31 and, therefore, it will not be in derogation of the State Act. The amendment introduced in Tobacco Board Act, according to Mr. Sanghi is achieved by the enforcement of the amending Act which exhausts itself by merely introducing the amending provisions into the parent Act so that the requirement of sub- section (1) of Section 3 of

the Parent Act, namely bringing into force the newly added Sections will have to be complied with. Thus the amended sections as well as Section 13 of the Act having not been enforced within the State of Madhya Pradesh, there cannot be any inconsistency or repugnancy between the two Acts assuming that bringing into force all the said Sections may create some inconsistency. According to Mr. Sanghi, the objects of the Tobacco Board Act being development of Tobacco Industry, more particularly in respect of virginia tobacco, is not in any manner defeated by the provisions of the State Act and the object of the State Act are not defeated by the existing or even non-enforced provisions of the Tobacco Board Act. In this view of the matter, according to Mr. Sanghi, the minority view in ITC case must be held to be correct and both the Central Act and the State Act should be permitted to operate in their own sphere.

Mr. A.K. Ganguli, the learned senior counsel, appearing for the Tamil Nadu Agricultural Marketing Board, analysed the provisions of Article 246(3) of the Constitution and contended that the expression "subject to" appearing in Article 246(3) has reference to those entries in List II which provides that the subject matter of said entries are subject to the provisions contained in certain specified entries appearing in either List I or List III as for example Entry 2 in List II provides Police (including railways and village police) subject to the provisions of Entry 2A of List I. Similar provisions are found in several entries. In List II like Entry 17, 22, 24, 26, 27, 32, 33, 37, 54, 57 and 63 but only three entries in List II namely Entries 13, 23 and 50 do not specify any entry in List I or List III subject to which the said entries would remain operative but restrict the scope of these entries by a general reference to the provisions contained in List I or List III. Therefore, in respect of all other entries in List II, the State Legislature enjoys the exclusive power to enact laws and consequently, if the State Act has been enacted under Entry 28 of List II, the State Act must be allowed to operate. The contention that Parliament enjoys superior legislative powers with regard to subject matters enumerated in List II, according to Mr. Ganguli, would hold good only in respect of those entries in List II which expressly provide that the subject matter thereof are subject to the matters dealt with in various entries in List I. But that principle cannot be extended to the subject matters covered by other entries in List II. Placing reliance on the provision of Section 100 of the Government of India Act, 1935 which corresponds to Article 246 of the Constitution which was interpreted by Sulaiman, J in Subrahmanyam Chettiyar vs. Muttuswamy Gounder, reported in 1940 FCR 188, which has been approved by the Constitution Bench in the case of KSEB vs. Indal, 1976(1) SCC 466, the counsel urged that the State Legislature enjoys exclusive legislative power under Article 246(3) to make laws with respect to the subject matter enumerated in Entry 28 of List II i.e. "Market and Fairs". This power has not been conditioned by any restrictions in so far as the distribution of legislative power between the Parliament and the State Legislature is concerned and consequently, this power cannot be curtailed or restricted by the exercise of legislative power of the Parliament with reference to any of the entries either in List I or List III. Mr. Ganguli further contends that the entry in three lists of the constitution are not powers but fields of legislation. The power to legislate is given by Article 246. The entries in different lists demarcate the area over which the appropriate legislature can operate. According to him, the concept of federal supremacy can not be invoked to deny the state legislature the power to make laws with respect to such subject matters, which are exclusively assigned to it under the State list. If a law made by the State Legislature is impugned on the ground of incompetency and on examination of the law, it is found that the law in substance is with respect to a matter in List II, then the law would be valid in its entirety. It is only in

case of a seeming conflict between the law made under any of the entries in List I and II, then the principle of federal supremacy could be invoked in view of the opening words in Article 246(1). So far as the meaning of the expression "industry" in Entry 52 of List I , the counsel urged that the said word must have the same meaning as would be ascribed to the word in Entry 24 of List II. So far as the raw materials are concerned, it has been held to be goods and would fall within the subject matter comprised in Entry 27 of List II. The products of the industry would also be comprised in Entry 27 of List II except that in the case of controlled industry, they would fall under Entry 33 of List III and only the process of manufacture and production would fall under Entry 24 of List II and if the concerned industry is a declared industry, then the process of manufacture and production would fall under Entry 52 of List I. It is, therefore, logical to hold that the activities relating to production and manufacture which would otherwise come within the purview of the expression "industry" in Entry 24 of List II becomes a subject matter of legislation under Entry 52 of List I, where the industry is a declared industry. Therefore, such legislative competence of the Parliament would not confer power in relation to raw materials which may be an integral part of the industrial process and thereby denuding the State Legislature of its power to make laws with respect to subject matters covered by either entries in List II. Mr. Ganguli contends that this Court has consistently taken the view that the subject matter of Entry 52 of List I pertains to manufacture and production activities and therefore, it would not be appropriate that the word "industry" should have a wider meaning so as to include also the raw materials within the same. With reference to the decisions of this Court in relation to law made by the Parliament, regulating the Mines and Minerals Development, Mr. Ganguli contends that the subject matter of entry 54 of List I is the same as in Entry 23 of List II and Entry 23 of List II further provides that it should be further subject to the provisions of List I with respect to regulation and development under the control of the Union. In such a case, therefore, once the Parliament makes a declaration in Section 2 of the Mines and Minerals Development and Regulation Act, then all aspects of Regulations and Minerals Development even including taxes on minerals are covered by the said declaration and, therefore, the State Legislature is denuded of its power to make laws with reference to the subject matter. This has been so held in Baij Nath Kedia vs. State of Bihar , 1969 (3) SCC 838, State of Orissa vs. M.A.Tulloch 1964(4) SCR 461, India Cement vs. State of Tamil Nadu, 1990(1) SCC 12 and Orissa Cement Ltd. vs. State of Orissa & Ors., 1991 Supp.(1) SCC 430. But the subject matter of Entry 52 of List I and the subject matter comprised in Entry 2 4 of List II both relate to Industry and entry 24 of List II is subject to Entry 7 and 52 of List I. The State legislature could not have made a law in exercise of power under Entry 24 of List II so as to make other entries redundant. According to Mr. Ganguli, the expression "Industry" cannot have a wider meaning. On the question of repugnancy, Mr. Ganguli contends that the said question arises only when both legislatures are competent to enact the respective laws and the two laws cover the same field. If the two laws are found to be operating in the same field and are also found to be inconsistent with each other, only then the law made by the Parliament would prevail. But that would apply only when the law made by the Parliament and State Legislature are both in respect of the same subject matter, enumerated in the concurrent list, as was held in Hoechest Pharmaceuticals 1983(4) SCC 45. Even in Deep Chand's case the two sets of laws made by the State Legislature and the Parliament with respect to the same subject matter enumerated in Entry 35 of List III, was under consideration and the Court was examining the question of repugnancy. But that will have no application to the question involved in the present case inasmuch as the State Act falls within the subject matter comprised under Entry 28

of List II in respect of which the State Legislature enjoys the exclusive power to make laws. On an analysis of the provisions of Tobacco Board Act and Section 31 thereof, Mr. Ganguli contends that the provisions of Tobacco Act would operate only in addition to other laws and, therefore that Act cannot be pressed into service to give an over-riding effect over other legislation including the Agricultural Produce Markets Act, which has been enacted by the competent State Legislature. According to the learned counsel the two Act over-lap only as regards sale and purchase of Tobacco within the notified area and if auction platform registered with Board are held within the market area, then the so called conflict in the two Acts can be easily avoided and both Acts would be allowed to operate. While Market Committee would be entitled to levy fees in respect of sale and purchase of tobacco in the market area for the services rendered including the entire infrastructure, the tobacco Board Act can yet levy fee as provided under Tobacco Board Act, which would be a separate fee for special services rendered by it, as determined by the Central Government under Section 14A and according to the learned counsel, this is the only harmonious construction which should be and ought to be made of the two provisions. According to Mr. Ganguli, the majority decisions in ITC case are in conflict with Tika Ram vs. State of U.P.1956 SCR 393, Calcutta Gas 1962 Supp. SCR 1, Kannan Devan Hills, 1972(2) SCC 218, Ganga Sugar 1980(1) SCC 223, B. Viswanathan 1991(3) SCC 358, and therefore, the said decisions must be held to be erroneous. In fact the minority view expressed by Justice Mukherjee, looking at the object of two Act, allowing both the Act to operate in their respective fields should be upheld. Mr. Ganguli contended that though the competence of the Parliament to make Tobacco Board Act covering the field exclusively within the competence of the State Legislature, had not been assailed in any of these writ petitions, but in view of the nature of controversy that has arisen and the arguments advanced in the case leaves no room for doubt that each of the parties including the Central Government as well as the Tobacco Board had the opportunity of placing its case and, therefore there should be no fetter on the power of the Court to decide the legislative competence of the Parliament in the case in hand.

Mr. Malhotra, the learned senior counsel, appearing for the Tobacco Board though initially proceeded with the arguments that both Acts could be reconciled but later on categorically submitted that the Central Legislation must prevail. According to him the Tobacco Industry got lifted from Entry 24 of List II to Entry 52 of List I and the same must be held to be a special Act dealing with tobacco industry right from the stage of growing till it is exported. This being a special Act and the Market and Fairs under Entry 28 being a general entry and Agriculture under Entry 14 of List II being a general entry, the special Act enacted by the parliament must prevail and there is no question of lack of competence of the Parliament to enact the law. In support of this contention reliance was placed on the Constitution Bench decision of this Curt in Belsund Sugar Company Limited 1999(9) SCC 620. Mr. Malhotra relied upon several decisions of the Federal Court and this Court and contended that entries in the schedule must be given its widest meaning and it would not be a correct approach to give a restricted meaning to the subject matter of legislation described in an Entry. In support of this contention, he placed reliance on the decision of the Federal Court in The United Provinces vs. Mst. Atiqa Begum & Ors. - 1940(2) Federal Court Reports 110, The First Additional Income- Tax Officer, Mysore vs. H.N.S. Iyengar -1962 Supp. SCR 1, Chaturbhai M. Patel vs. The Union of India & Ors. 1960(2) SCR 362, Navinchandra Mafatlal vs. The Commissioner of Income Tax, Bombay City - 1955(1) SCR 829 and Zaverbhai Amaidas vs. The State of Bombay

- 1955(1) SCR 799. The learned counsel also contended that it is a cardinal rule of interpretation that words in an entry should be given their ordinary, natural and grammatical meaning subject to the rider that legislative entries are required to be interpreted broadly and widely so as to give powers to the legislatures to enact the law with respect to the matters enumerated in the legislative entries. He places reliance on the decision of this Court in R.S. Rekhchand Mohota, 1997(6) SCC 12, Rai Ramkrishna & Ors. vs. The State of Bihar -1964(1) SCR 897 and Indian Aluminium Company & Others vs. State of Kerala & Ors. 1996(7) SCC 637. He also referred to the case of Harakchand Ratanchand Banthia 1969(2) SCC 166, which had been relied upon by Mr. Shanti Bhushan in his arguments. Mr. Malhotra contends that the majority decision in ITC case, therefore, must be held to be correct.

The learned Additional Solicitor General Mr. Trivedi appearing for the Attorney General of India placed before us the process of manufacture of tobacco and indicated how tobacco is grown commercially. To emphasise on the issue he contended that the tobacco industry having been notified to be a 'controlled industry' it will be a disaster if the Parliament is held to have no competence to make law in relation to growing of tobacco or processing of raw tobacco. According to the learned Additional Solicitor General the trade and commerce in product of controlled industry being covered by Entry 33 of List I, the legislative power of the State is subordinate to the power of the Parliament in respect of List III. He further contended that the constitution itself has specifically put down entries in List II in which the power is expressed in general terms but is made subject to the provisions of entries in either list I or list III. Consequently, no anomaly will arise in holding exclusive power with the Parliament in respect of the subject coming under any entry in List I. He further contended that Tobacco Board Act covers the entire field of tobacco industry and is within the competence of Parliament under Entry 52 of List I. Tikaramji was a case which concerned only with a part of the industry namely manufacture of sugar. The observations made in Tikaramji 1956 SCR 393 were in the background of that case, as in that case the Court was never concerned with the entire process as in the present case. According to the learned Additional Solicitor General, it was not necessary for the Court to examine the ambit of the expression "industry" in Entry 52 of List I. If the ordinary principle of construction of an entry in the legislative list is that the entry should be given wide meaning as has been held in several cases of this Court, there is no reason why on the basis of the said observations made in Tikaramji, the Court would give a limited meaning to the expression "industry" in Entry 24 of List II and Entry 52 of List I. With reference to the judgment of this Court in H.R. Banthia 1969(2) SCC 166, the learned Additional Solicitor General stated that for the purpose of that case, it was not necessary for the Court to make an attempt to define the expression "industry". The Court was merely concerned with the question whether manufacture of gold ornaments would be a process of systematic product, so as to fall within the expression "industry" in the appropriate legislative entry. The Court did come to that conclusion. The learned Additional Solicitor General also contended the case of Harakchand 1971(2) SCC 779 is in consonance with the principle of interpretation of an entry and should be applied to the case in hand. The learned Addl. Solicitor General contends that the Constitution being an organic document, has to be interpreted in its widest amplitude. According to the learned Addl. Solicitor General the majority decision in ITC case must be held to be the correct law. The counsel states that the validity of the Tobacco Board Act was also not under challenge in the ITC case which stood disposed of by the judgment of this Court since reported in 1985 (Supp.) SCC 476 and, therefore, it

would not be appropriate for this Court to examine the legislative competence of the Parliament in relation to the enactment of the Tobacco Board Act.

Though several counsel have raised contentions in different forms as indicated earlier, but essentially the following questions arise for our determination:-

1. Whether the Tobacco Board Act enacted by the Parliament under Entry 52 of List I can be held to be constitutionally valid and within the legislative competence of the Parliament, so far as the provisions contained in the same in relation to the growing of tobacco and sale of raw-materials, and this in turn would depend upon the question whether the word 'industry' used in Entry 52 of List I should be given a restricted meaning ;

2. Even if the Tobacco Board Act is held to be constitutionally valid and the Agricultural Produce Market Act is also held to be constitutionally valid and within the powers of the State Legislature, so far as purchase and sale of tobacco within the market area is concerned, whether both the Acts can be allowed to operate, as was held by the minority judgment in ITC case;

3. If there is a repugnancy between the two then whether the Central Act would prevail, as was held by the majority judgment in ITC case.

But before considering several elaborate arguments advanced on these issues, it may be noticed that the Constitution of India itself defines the political authority, locates the sources of political power and also indicates how the power has to be exercised setting out the limits on its own use. The rules relating to the distribution of legislative power by providing the legislative heads for the Parliament to make law in respect of subjects enumerated in List I, and similarly enumerating the subjects in List II with respect to which the State Legislature can frame law, in fact constitutes the heart of the federal scheme of the Constitution. But the Constitution Makers having found that the need for power sharing devices between the Central and the State must be subordinated to the imperatives of the State's security and stability propelled the thrust towards centralisation and by using non obstante clause under Article 246 the federal supermacy is achieved. Article 246 of the Constitution deals with the distribution of legislative powers as between the Union and the State Legislature, with reference to the different Lists in the 7th Schedule. The various entries in 3 Lists of the 7th Schedule are not powers of legislation but the fields of legislation. The entry in the List are legislative heads and are of enabling character. They are designed to define and limit the respective areas of legislative competence of the Union and the State Legislature. It is a well recognised principle that the language of Entry should be given a widest scope and each general word should be interpreted to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. The Entries in the Lists should be read together without giving a narrow or restricted meaning to any of them. Powers of the Union and the State Legislatures are both expressed in precise and in definite terms and, therefore, there can be no reason in such a case in giving broader interpretation to one rather than to the other. It is only when an apparent overlapping occurs the doctrine of 'pith and substance' has to be applied to find out the true nature of legislation and the Entry within which

it would fall. When different entries in the same List crop up for consideration the usual principle followed is that each particular entry should relate to a separate subject or group of subjects and every attempt should be made to harmonise different entries and to discard a construction which will render any of the entries ineffective.

Coming to the case in hand, the relevant entries which arise for our consideration are Entries 52 of List I, Entry 24 of List II and Entry 28 of List 2. Under Entry 52 of List 1 Tobacco Board Act has been enacted by Parliament and under Entry 28 of List II the Agricultural Produce Market Act has been framed by the State Legislature. Incidentally, also Entry 7 of List 1 and Entries 14 and 27 of List 2 crop up for consideration. It would, therefore, be appropriate to indicate those Entries hereunder :

> " LIST - I Entry 7 Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
>
> Entry 52 - Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
>
> LIST - II Entry 24 Industries subject to the provisions of (entries 7 and 52) of List I. Entry 27 Production, supply and distribution of goods subject to the provisions of entry 33 of List III; and Entry 28 Markets and fairs."

Though the State Legislature has power to make law in relation to any industry under Entry 24 of List II, but the said Entry itself being subject to the provisions of Entries 7 and 52 of List I, once Parliament makes a declaration by law identifying an industry, the control of which is taken over by the Union in the public interest, then the State Legislature is denuded of its competence to make any law in respect of that industry, notwithstanding its competence under Entry 24 of List II. The industry in question having been identified and necessary declaration to that effect being made in terms of Entry 52 of List I then over that subject the Parliament gets exclusive power to make laws under Article 246(1) of the Constitution. The Tobacco Board Act having been enacted by the Parliament under Article 246(1) of the Constitution and the law in question being referable to Entry 52 of List I, the moot question that arises for adjudication is, what is the extent and ambit of the expression 'industry' used in Entry

52. As has been stated earlier, the expression 'industry' has been used in Entry 24 of List II and Entry 7 and Entry 52 of List I. In deciding the legislative competence of the Parliament in enacting Tobacco Board Act and in making provision therein in relation to the growing of tobacco as well as sale of tobacco in the places specified therein, and on terms and conditions mentioned therein, the moot question is whether the word 'industry' would be given a wide meaning so as to bring within its ambit all that is necessary for the industry, including the raw material as well as the growing of the raw material, as contended by Mr. Shanti Bhushan, or a restricted meaning would be given to the same on the basis of the observations made by this Court in Tikaramji's case and followed in several other authorities, as contended by Mr. Dwivedi. In the majority judgment of this Court in ITC case (1985) Suppl. 1 SCR 145, the majority view expressed by Hon'ble Fazal Ali, J. came to hold that the Centre having taken over an industry under Entry 52 of List I and having passed the Act to regulate

the legislation, and the said legislation having covered the entire field, the State Legislatures ceases to have any jurisdiction to legislate in that field, and if it does so, then the State Legislation would be ultra vires of the powers of the State Legislature. Even the minority view expressed by Hon'ble Justice Sabyasachi Mukherjee also accepts the recognised principle of Parliamentary supermacy in the field of legislation engrafted in Article 246. The learned Judge also held that the words in a constitutional document conferring legislative powers should be construed most liberally and in their widest amplitude, following the judgment of this Court in Navin Chandra vs. CIT, Bombay (1955) 1 SCR 829. The minority view also was not to the effect that the Tobacco Board Act was beyond the legislative competence of the Parliament. On the other hand having held the Tobacco Board Act to be constitutionally valid and the Agricultural Market Act enacted by the State Legislature to be a valid piece of legislation, the learned Judge came to hold that the said Act essentially dealing with the object to regulate marketing of agricultural produce and the control of coffee (for tobacco) industry would not be defeated if the marketing of coffee (for tobacco) is done within the provisions of Marketing Act, the State Legislatures' power to make Marketing Act ought not to be denuded and one must avoid corroding the State's ambit of power of legislation which will ultimately lead to erosion of India being a union of States. The minority view appears to have been influenced by the fact that the States must have the power to raise and mobilise resources in their exclusive fields. Thus all the three learned judges did not doubt the competence of the Parliament to enact Tobacco Board Act. While the majority view was to the effect that the Marketing Act will not operate so far as dealing with the sale and purchase of tobacco within the market area, as the field is fully occupied by the Central Act, namely, the Tobacco Board Act, the minority view proceeded on a finding that both Acts can be permitted to operate in their respective sphere.

In the Constitution Bench decision of this Court in Harakchand Ratanchand Banthia & ors. etc. vs. Union of India and Ors., 1970(1) S.C.R. 479, the legislative competence of the Parliament under Entry 52 of List I came up for consideration, while dealing with validity of the provisions of the Gold Control Act, which Act included within its ambit the gold ornaments. One of the contention that had been advanced was that the goldsmith's work was handicraft, requiring application of skills and the art of making gold ornaments was not an 'industry' within the meaning of Entry 52 of List I. It had been contended on behalf of the Union Government that the legislative entry must be construed in a large and liberal sense and goldsmith's craft was an industry within the meaning of Entry 24 of List II as well as Entry 52 of List I and therefore, Parliament was competent to legislate in regard to the manufacture of gold ornaments. Having considered the relevant entries namely Entry 52 of List I and Entry 24 and 27 of List II, the Constitution Bench had observed that - "It is well established that the widest amplitude should be given to the language of the entries". The Court in that case did not think it necessary to attempt to define the expression "industry" precisely or to state exhaustively of its different aspects but considered the question whether the manufacture of gold ornaments by goldsmith in India falls within the connotation of the word "industry" in the appropriate legislative Entries. The Court unequivocally rejected the contention raised by Mr. Daphtary that if the process of production was to constitute "industry" a process of machinery or mechanical contrivance was essential, as in the opinion of the Court there is no reason why such a limitation should be imposed on the meaning of the word "industry" in the legislative lists. The Court also rejected the argument advanced on behalf of Mr. Palkhivala that manufacture of gold ornaments was not an industry because it required application of individual art and craftsmanship, as in the opinion of the Court

mere use of the skill or art is not a decisive factor and it was held that the said factor will not take the manufacture of gold ornaments out of the ambit of the relevant legislative entries. It is in this connection, the Court observed :

> "It is well settled that the entries in the three lists are only legislative heads or fields of legislation and they demarcate the area over which the appropriate legislature can operate. The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of subjects to the lists is not by way of scientific or logical definition but is a mere enumeration of broad and comprehensive categories."

The Court ultimately came to the conclusion that the manufacture of gold ornaments by goldsmith in India is a process of systematic production for trade or manufacture and so falls within the connotation of the word "industry" in the appropriate legislative Entries. At Page 490 of the aforesaid Judgment, while construing as to what is the meaning of the word "Industry" in Entry 52 of List I and Entry 24 of List II, it referred to the definition of "industry" in Shorter Oxford English Dictionary as well as the meaning of the said word in Webster's Third New International Dictionary and the contention raised on behalf of the applicant that if the word "industry" is construed in this wide sense, then Entry 27 of List II will lose all meanings and contents, was not accepted by the Court. It is, thus clear that the Court did apply the theory that widest amplitude and meaning should be given to the entries in the legislative lists. Further the contention of the applicant that the legislation in fact is a legislation under Entry 27 of List II, dealing with "Production, supply and distribution of goods" and being a special entry, the contents of Entry should be excluded from the expression "industry" in Entry 52, was not accepted and rejected.

In Chaturbhai M. Patel vs. Union of India, 1960(2) S.C.R. 362, a Constitution Bench of this Court was construing the Entries under the Government of India Act, 1935 and one of the contention raised in that case was Sections 6 and 8 of the Central Excise & Salt Act, 1944 and the Rules made thereunder were beyond the legislative competence of the central legislature. The relevant entries which came up for consideration in that case were Entry 45 of List I and Entries 27 and 29 of the State List, which are as under:-

> "45. Duties of Excise on Tobacco and other goods manufactured or produced in India except:-
>
> (a)alcoholic liquors for human consumption
>
> (b)opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs;

c medical and toilet preparations containing alcohol or any substance included in sub-

paragraph (b) of this entry.

Item 27. Trade and commerce within the province; markets and fairs, money lending and money lenders."

Item 29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control."

A bare look at those Entries and on being compared with the Entries in list II of the Seventh Schedule of the Constitution of India, it appears that Entry 27 of the State List under the Government of India Act now comprises of Entries 26 and 28 of List II of the Seventh Schedule and Entry 29 of the State List in the Government of India Act is now combined in Entry 27 of the State List relating to production, supply and distribution of goods and also Entry 24 of List II namely development of Industries. In the aforesaid Constitution Bench decision, a passage from the judgment of the Federal Court reported in (1940) F.C.R. 188, 201 was quoted, which may be extracted hereunder:

> "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely interwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere."

The Constitution Bench approved the aforesaid Judgment of the Federal Court and referring to the judgment of this Court in the State of Rajasthan vs. G. Chawla [AIR 1959 SC 544], the Court held :

> "It is equally well-settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given."

The Court ultimately held that the Federal Legislature did have the competence to make provisions in Sections 6 and 8 of the Central Excise & Salt Act under Entry 45 of List I of the Government of India Act, 1935 and observed thus:

> "It is within the competence of the Central legislation to provide for matters which may otherwise fall within the competence of the Provincial legislature if they are necessarily incidental to effective legislation by the Central legislature on a subject of legislation expressly within its power."

This indicates that the Court has all along been construing a particular legislative Entry to give wide connotation possible and in that case, it was held while legislating upon an industry, Parliament would be entitled to legislate also on the raw materials of that industry which is an ancillary to the industry and there should not be any limitation in interpreting the expression "industry" to denude the power of the Parliament and thereby make the law ineffective. In the aforesaid judgment of this Court, it has been held:

> "Looking at the scheme of the Act, its object and purpose, its true nature and character and the pith and substance the conclusion is inevitable that the Act was

> within the legislative competence of the Central legislature and although there may be certain matters otherwise within the legislative competence of the provincial legislature they are necessarily incidental to effective legislation by the Central legislature. The various provisions of the Act and the Rules made thereunder were, in our opinion, essentially connected with the levying & collection of excise duty and in its true nature and character the Act remains one that falls under item 45 of List I and the incidental trenching upon the provincial field of items 27 or 29 would not affect its constitutionality because the extent of invasion of the provincial field may be a circumstance to determine the true pith and substance but once that question is determined the Act, in our opinion, would fall on the side of the Central field and not that of the provincial field."

In Synthetics and Chemicals Ltd. And Ors. vs. State of U.P. and Ors., 1990(1) SCC 109, it was held that the Constitution must not be construed in any narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power must be adopted. In the said case, after noticing the principle of construction in relation to a constitutional provision, providing division of power and jurisdiction in a federal constitutional scheme, it was held:

> "It is well settled that widest amplitude should be given to the language of the entries in three Lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list."

In Express Hotels Private Ltd. Vs. State of Gujarat and Anr., 1989 (3) SCC 677, the Court was no doubt interpreting some entries providing for taxes on luxuries but dealing with the general principles of an Entry in a legislative list, the Court held :

> "We are dealing with an entry in a Legislative List. The entries should not be read in a narrow or pedantic sense but must be given their fullest meaning and the widest amplitude and be held to extend to all ancillary and subsidiary matters, which can fairly and reasonably be said to be comprehended in them."

As has been stated earlier, even in his minority judgment in ITC case, Justice Mukherjee had observed:

> "It is well settled that the cardinal rule of interpretation is that the words should be read in their ordinary natural and grammatical meaning. But words in a constitutional document conferring legislative powers should also be construed most liberally and in their widest amplitude."

In view of the aforesaid rules of interpretation as well as the Constitution Bench decision referred to above, it is difficult for us to accept the contention of Mr. Dwivedi that the word "industry" in Entry 52 of List I should be given a restricted meaning, so as to exclude from its purview the subject of legislation coming within entry 27 or Entry 14 of List II. Bearing in mind the constitutional scheme of supremacy of Parliament, the normal rule of interpretation of an Entry in any of the list in the Seventh Schedule of the Constitution, the object of taking over the control of the tobacco industry by the Parliament, on making a declaration as required under Entry 52 of List I and on examining the different provisions of the Tobacco Board Act, we see no justification for giving a restricted meaning to the expression "industry" in Entry 52 of List I, nor do we find any justification in the contention of the counsel appearing for the States and also different Market Committees that the provisions contained in Tobacco Board Act dealing with the growing of tobacco as well as making provision for sale and purchase of tobacco, must be held to be beyond the legislative competence of the Parliament, as it does not come within the so-called narrow meaning of the expression "industry" on the ground that otherwise it would denude the State Legislature of its power to make law dealing with market under Entry 28, dealing with agriculture under Entry 14 and dealing with goods under Entry27 of List II. Such an approach of interpretation, in our considered opinion would be against the very scheme of the constitution and supremacy of the Parliament and such an approach towards interpreting the power sharing devices in relation to entries in List I and List II would be against the thrust towards centralisation. In our considered opinion, therefore, the word "industry" in Entry 52 of List I should not be given any restricted meaning and should be interpreted in a manner so as to enabling the Parliament to make law in relation to subject matter which is declared and whose control has been taken over to bring within its sweep any ancillary matter, which can be said to be reasonably included within the power and which may be incidental to the subject of legislation, so that the Parliament would be able to make an effective law. So construed and on examining different provisions of the Tobacco Board Act, we do not find any lack of legislative competence with the Parliament so as to enact any of the provisions contained in the said Act, the Act in question having been enacted by the Parliament on a declaration being made of taking over of the control of the Tobacco industry by the Union and the Act being intended for the development of the said industry.

The main prop of the argument advanced by Mr. Dwivedi is the decision of this Court in Tikaramji, which was followed in Calcutta Gas, Kanandevan and Ganga Sugar Corporation, all of which are Constitution Bench decisions. In Tikaramji, no doubt the Constitution Bench of this Court held that the raw materials which are integral part of the industrial process, cannot be included in the process of manufacture or production and thus "industry" within the meaning of Entry 52 of List I under which the Parliament makes a law, would not bring within its sweep the raw materials. The aforesaid observations had been made in connection with sugar industry and sugar-cane. According to Mr. Dwivedi, the majority decision in ITC case, cannot be sustained, since the earlier constitution Bench decision of this Court in Tikaramji, Calcutta Gas, Kanandevan and Ganga Sugar Corporation have not been noticed. Mr. Dwivedi's further contention is that a legislative Entry in any List should be so interpreted so as not to denude another entry in the same list or in any other list and, therefore, it is necessary to give a restricted meaning to the expression "industry" occurring in Entry 24 of List 2 as well as Entry 52 of List

1.According to Mr. Dwivedi, while examining the constitutionality of the Market Committee Act referable to Entries 26, 27 and 28 of List II vis- -vis the Sugar-cane Act referable to Entry 33 of List III in Belsund Sugar, this Court has held that the Market Committee Act should be subject to Sugarcane Act. Applying the same principle, it would be logical to hold that the raw tobacco, which would be a produce of agriculture and consequently a raw material for the tobacco industry would continue to be within the exclusive domain of the State legislature and the Parliament is incompetent to make any legislation in relation to either growing of tobacco or sale and purchase of tobacco. It would, therefore, be necessary to examine what really this Court in Tikaramji has held. At the outset, it may be noticed that in none of these cases, relied upon by Mr. Dwivedi, namely Tikaramji, Calcutta Gas, Kanandevan and Ganga Sugar, the competence of Parliament to make any law referable to Entry 52 of List I had not been questioned. In Tikaramji, the question for consideration was whether the Act passed by the State Legislature and notification issued thereunder is repugnant to the Parliament Act and notification issued thereunder. On examining the provisions of the State Act namely the Sugarcane Act, the Court held that the said law concerns solely with the regulation of supply and purchase of sugarcane and in no way trenched upon the jurisdiction of the Centre with regard to sugar and on scrutiny of Section 18-G of the Industries (Development and Regulation)Act, the Court held that the Act, more specifically Section 18-G did not cover sugarcane nor even the Parliament's intention to cover the entire field could be inferred. The Court was required to find out the meaning of the expression "any article or class of articles relatable to any scheduled industry" used in Section 18-G and it held that it did not refer to the raw materials but only to the finished products. The Court went into the object of the Central Act which was equitable distribution and availability of manufactured articles at fair prices. The argument that had been advanced in that case was that the Sugarcane Act enacted by the State Legislature though appears to be a legislation in regard to sugarcane required for use in sugar factory but in pith and substance and its true nature is a legislation in regard to sugar industry which had been declared under the Industries(Development and Regulation) Act and control of the industry has been taken over by the Union. Negativing that contention and on examining the contents of Entry 24 of List II and Entry 27 of the said List II, the Court observed that the controlled industries were relegated to Entry 52 of List I which was the exclusive province of Parliament leaving the other industries within Entry 24 of List II. In that case, the Court was not required to examine the content and scope of the expression "industry" in Entry 52 of List I and in fact the Court observed that it was concerned with as to whether the raw materials of an industry which form an integral part of the process are within the topic of "industry" which form the subject matter of Item 52 of List I. The Central legislation which was under consideration in that case as well as the notifications issued by the Central Government were held to have been enacted by the Parliament in exercise of the legislative power conferred upon it by Entry 33 of List III and was an exercise of concurrent jurisdiction and once the law is made by the Parliament in exercise of its concurrent jurisdiction, then it would not deprive the Provincial Legislatures of similar powers which they had under the Provincial Legislative List. It is important to notice the findings of the Court in that case :

> "It follows as a necessary corollary that even though sugar industry was a controlled industry, none of these Acts enacted by the Centre was in exercise of its jurisdiction under Entry 52 of List I."

Whatever observations the Court made on which Mr. Dwivedi placed strong reliance, therefore, cannot be made use of indicating the ambit and contents of the expression "industry" under Entry 52 of List I. When the Court observed that the term "industry" which would be capable of comprising three different aspects: (i) raw materials which are an integral part of the industrial process, (ii) the process of manufacture or production and (iii) the distribution of the products of the industry, and held that raw materials should be goods which would be comprised of Entry 27 of List II and the process of manufacture or production would be comprised in Entry 24 of List II, except where the industry was a controlled industry when it would fall under Entry 52 of List I, the Court was obviously not examining the contents of the expression "industry" under Entry 52 of List I and that is why the Court observed that the legislation which was enacted by the centre in regard to sugar and sugarcane could fall within Entry 52 of List I. When the legislation in question that was under consideration was held not to be legislation under Entry 52 of List I, the question of applying the ratio in the case of Tikaramji, in the context of Parliament's power to make a law under Entry 52 of List I and the content and scope of such law or the scope and content of the expression "industry" under Entry 52 of List I cannot have any application and consequently, on the basis of the judgment of this Court in Tikaramji, it cannot be contended that the expression "industry" in Entry 52 of List I must have a restricted meaning. It is further apparent from the conclusion of the Court in that case when it refused to import the pith and substance argument, holding that the same cannot be imported for the simple reason that both the centre as well as the State Legislatures were operating in the concurrent field and, therefore there was no question of any trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List I. In other words in Tikaramji, neither this Court was called upon to examine the content of the expression "industry" under Entry 52 of List I nor the relevant Central law which was under consideration had been enacted with reference to power under Entry 52 of List I. This being the position, we do not find much force in the submission of Mr. Dwivedi that the conclusion recorded by the majority view in ITC case is vitiated, as it had not noticed observations of the Constitution Bench decision in Tikaramji. In our opinion, it would be wholly inappropriate for this Court to apply the observations made in Tikaramji's case with regard to raw materials of "industry". The Court in Tikaramji's case having not been called upon to determine the question whether the expression "industry" in Entry 52 of List I should be given a restricted meaning at all is contended by Mr. Dwivedi, it would be wholly inappropriate to import the observations in Tikaramji for construing the ambit and content of the subject head of legislation "industry" under Entry 52 of List I. Since the Court was examining the provisions of Industries (Development and Regulation) Act, which regulated the manufacturing process until Section 18-G was brought in amendment in the year 1953 and the Industries(Development and Regulation) Act did not purport to regulate the trade and commerce in the raw materials namely sugarcane and the Court in fact was scrutinizing whether the State Act enacted by the State Legislature could be held to be repugnant to the Central Legislation, it found that there exist no repugnancy and the two Acts cover two different fields and would co- exist. In this view of the matter any observations or conclusion of the Court in Tikaramji will be of no assistance to us for arriving at a decision as to whether the term "industry" in Entry 52 of List I would have a restricted meaning or would have a wide meaning, which is the normal interpretation of every entry in the respective lists. In Calcutta Gas case, no doubt Tikaramji, had been followed and the Court was examining the two competing entries in list II itself of the Seventh Schedule of the Constitution namely Entry 24 and 25. While Entry 24 of List II is "industry", Entry 25 is 'Gas and Gas works' and the question, therefore was

whether law made by the State legislature on the subject head 'Gas and gas works' would prevail over a law made by the State legislature over the subject "industry" and the Court held that 'Gas and gas works' being a special subject head, law made thereunder would prevail over any law made under the general head "industries". It may be observed that in the Calcutta Gas case (1962 Supp. S.C.R.1) at page 17, it has been held "It is not necessary in this case to attempt to define the expression "industry" precisely or to state exhaustively all its ingredients." In view of the aforesaid observations, we fail to understand how this decision can be pressed into service for ascertaining the true import and content of the expression "industry" which is the subject head under consideration in the case in hand. Coming to the decision of this Court in Kanandevan Hills Produce vs. State of Kerala 1972(2) SCC 218, as has been stated earlier, it is the validity of State legislation namely Resumption of Lands Act, 1971, which was under challenge on the ground of lack of legislative competence of the State Legislature. The validity of the Act was upheld on a conclusion that the law was referable to the legislative head under Entry 18 of List II relating to land and legislative Entry 42 of List III relating to acquisition and requisitioning of property. It is in that context, it was observed that the power of the State legislature to make the law under the aforesaid two entries could not be denied merely on the ground that it had some effect on the industry, the control of which has been taken over under Entry 52 of List I. But the Court was careful to hold that the effect was not the same thing as subject matter. In other words, the subject matter of "industry" under Entry 52 of List I really was not under consideration. In paragraph 29 of the said judgment, referring to the case of Baijnath Kedia vs. State of Bihar, where the Court had construed Entry 23 of List I and Entry 52 of List I, it was observed that the scope of Entry 52 of the Union List is slightly different and once it is declared by Parliament by law to be expedient in public interest to control an industry, Parliament can legislate on that particular industry and the States would lose their power to legislate on that industry. Necessarily, therefore, if the law made by the Parliament in relation to a controlled industry, the control of which has been taken over by a declaration in the law, then there cannot be any limitation on the power of the Parliament to make any provision having a reasonable and direct nexus with the industry. But at the same time, the Parliament cannot make a law, which would have no connection at all with the concerned industry. This, in our opinion is what has been expressed in paragraph 29 of the aforesaid judgment, but by no stretch of imagination, the aforesaid judgment of the Court in Kanan Devan, can be construed to be an authority for interpreting the expression "industry" in Entry 52 of List I by giving it a restricted meaning, as contended by Mr. Dwivedi. In Kanan Devan, the petitioner therein had assailed the competence of the State Legislature to enact the legislation in question and had relied upon Tikaramji, which has been referred to in paragraph 30 of the judgment. But the Court in paragraph 33 holds that none of these cases assist the petitioners. In the aforesaid premises, we fail to understand how the decision in Kanan Devan will be of any assistance to the respondent State of Bihar in support of the contention that the Parliament had no legislative competence to enact the Tobacco Board Act under Entry 52 of List I, so as to include within the same the provisions relating to growth of tobacco as well as sale and purchase of raw tobacco within the market area. The observations of this Court in the Constitution Bench decision of Ganga Sugar Corpn. Case, 1980(1) SCC 223, on which Mr. Dwivedi strongly relied upon , though ex facie appears to be supporting the contention of the learned counsel for the State of Bihar, but a deeper scrutiny of the same would make it crystal clear that the said observation is of no consequence either in the matter of deciding the ambit of the expression "industry" in Entry 52 of List I or in deciding the legislative competence of Parliament to make law like the Tobacco Board

Act in relation to a controlled industry and making provision therein in respect of the growing of tobacco and purchase and sale of raw tobacco. In Ganga Sugar's case, the levy of purchase tax on sugar-cane purchased by a factory owner under Section 3 of the U.P. Sugarcane (Purchase Tax) Act, 1961, was under challenge on the ground that the legislation in question being in respect of a controlled industry, the power belongs exclusively to Parliament under Entry 52 of List I. The Court repelled this contention on the ground that Entry 54 in List II of the Seventh Schedule empowers the State to legislate for taxes on purchase of goods and therefore, it cannot be said to have invaded Entry 52 of List I. The Court posed the question as to whether the Purchase Tax Act is bad because it is a legislation with respect to a controlled industry namely the Sugar industry and answered the same in the negative, following the observations of the earlier Constitution Bench decision in Tikaramji's case. Thus the extreme argument that the State Legislature is incompetent to make any law with regard to a controlled industry, the control of which has been taken over by the Union Government by making a declaration, was negatived and it is in that context, the observations on which Mr. Dwivedi relied upon had been made. We are unable to accept the submission of Mr. Dwivedi to hold that the decision of this Court in Ganga Sugar, can be pressed into service for a contention that the Parliament had no legislative competence to make a legislation in respect of a controlled industry like tobacco and enacting the Tobacco Act and making provision therein in relation to growing of tobacco as well as sale and purchase of raw tobacco. In our considered opinion, this decision is of no assistance to support the contention of Mr. Dwivedi, appearing for the State of Bihar that the expression "industry" in Entry 52 of List I must be given a narrow meaning so as to include only the process of manufacture or production and nothing further. We also reiterate that in none of these aforesaid Constitution Bench decisions of this Court relied upon by Mr. Dwivedi, appearing for the State of Bihar, the true import and meaning of the expression "industry" under Entry 52 of List I was for consideration, nor the competence of the Parliament to make a legislation in respect of a controlled industry, so as to include within itself the provisions relating to the stage prior to manufacture or production was an issue and consequently these decisions will be of no assistance so as to strike down the provisions of the Tobacco Board Act, so far as the provisions contained therein relating to growing of tobacco/or sale and purchase of raw tobacco.

It is no doubt true that in Ishwari Khetan's case [1980(4) SCC 136], while construing Entry 52 of List I and the effect of the declaration made thereunder by the Parliament, the Court has relied upon also the legislation made under Entry 54 of List I, which was held to be in pari materia with Entry 52 of List I and the earlier decision of this Court in Baij Nath Kedia's case, has been followed, as contended by Mr. Shanti Bhushan, but we need not embark upon an inquiry in that respect, in view of our conclusion on the question as to what would be the ambit and extent of the expression "industry" occurring in Entry 52 of List I. In Ishwari Khetan's case, the Court was construing the scope and ambit of Entry 54 of List II and Entry 52 of List I and had observed that the State's power under Entry 24 of List II would get eroded only to the extent the control is assumed by the Union pursuant to a declaration made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion and subject to such erosion, on the remainder the State legislature will have power to legislate in respect of declared industry without in any way trenching upon the occupied field. Applying the aforesaid ratio to the case in hand and having examined the provisions of the Tobacco Board Act, the answer is irresistible that the State legislature is denuded of its power to make any law in relation to

growing of tobacco or sale and purchase of raw tobacco when such a provision has already been made in the Tobacco Board Act.

The two other decisions which require to be noticed by us are the case of Viswanathiah & Co. vs. State of Karnataka (1991) 3 SCC 358 and Belsund Sugar (1999) 9 SCC 620. So far as Viswanathiah's case is concerned, Mr. Dwivedi relied upon the observations made in paragraph 8 of the said judgment wherein the Court had observed :-

> "It is true that the Silk Board Act purports to control the raw silk industry in the territory of India. But, as pointed out by the High Court in the light of the earlier decisions of this Court therein referred to, the control of the industry vested in Parliament was only restricted to the aspect of production and manufacture of silk yarn or silk. It did not obviously take in the earlier stages of the industry, namely, the supply of raw materials."

According to Mr. Dwivedi this decision lends support to his contention that the Industry in Entry 52 of List I will have to be given a restricted meaning, and as such, it would not cover either the growing of tobacco or dealing with sale and purchase of raw tobacco. As has been held by us earlier, the power of the State Legislature gets denuded to the extent the Central Legislation occupies the field in respect of the controlled industry, the control of which has been taken over by the Parliament on a declaration being made. If after taking over the control of the industry in exercise of its legislative competence under Entry 52 of List I, the Parliament while making a law did not make any provision in relation to the supply of raw material, then merely because the control of the industry has been taken over, the State's power to make legislation in relation to the supply of raw-material would not get denuded. But that does not mean that the Parliament cannot make any law in relation to any other aspect other than the aspect of production and manufacture of the industry. In other words, the contention of Mr. Dwivedi that the Parliament's competence to make any law in respect of the legislative head 'industry' in Entry 52 of List I would entitle the Parliament to make a law only with respect to the production and manufacture and not any earlier stage cannot be accepted to be correct, and the aforesaid decision of this Court cannot be held to have laid down the law in that way. So far as Belsund Sugar Company's case is concerned, the question for consideration was, whether the provisions of the Bihar Agricultural Produce Markets Act would at all be applicable for levy of market fee in respect of sale and purchase of sugar cane, in view of the special provisions contained in the Bihar Sugar cane Regulation of Supply and Purchase Act, 1981. The Market Committee Act was also a State Legislation purported to have been enacted under Entries 26, 27 and 28 of List II. The Sugar cane Regulation of Supply and Purchase Act purported to be a legislation enacted in Entry 33 of List III. The Court held that in view of the special Act dealing with sale and purchase of sugar cane the general Act, namely, the Market Committee Act will have no application at all, and therefore, the levy of market fee by the Market Committee was held to be invalid. On examining different provisions of the two Acts the Court also held that there consists direct conflict between the two Acts and that conflict could be avoided only if it is held that the Market Act being a general Act covering all types of the agricultural produce and the Sugar Cane Act, which also deals with an agricultural produce like sugar, being 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.This decision, in our considered opinion is not an authority for the proposition that the expression 'industry' in Entry 52 of List I should be given a restricted meaning, as contended by Mr. Dwivedi. In that case also the extreme contention that there exists possibility of issuance of control order by the Central Government would denude the State Legislature of its authority to make a law in respect of any matter coming under any of the Entries in List II was not accepted. But at the same time it is difficult for us to construe the aforesaid decision of having laid down a ratio that in dealing with a Central Legislation in relation to a controlled industry, the control of which has been taken over by a declaration made by law, enacted by Parliament would not clothe the Central Legislature to make any law other than production or manufacture of the industry in question. Belsund Sugar (supra) by no stretch of imagination can be construed to have even remotely held that the word 'industry' ought to receive a restricted meaning.The said decision, therefore does not support the contention of Mr. Dwivedi, appearing for the State of Bihar as well as for the State of Karnataka. Mr. Shanti Bhushan, learned senior counsel, no doubt argued with vehemence that the principle enunciated in Hingir-Rampur Coal Co. Ltd. & Ors. vs. The State of Orissa & Ors. (1961) 2 SCR 537, Belsund Sugar (1970) 2 SCR 100 and State of Orissa vs. M.A. Tulloch & Co. (1964) 4 SCR 461, should equally apply to the case in hand while interpreting the scope and extent of the legislative competence of the Parliament under Entry 52 of List I, but we do not think it necessary to apply the ratio in the aforesaid three cases, inasmuch as in all those cases the Court was considering the competing power of the State legislature under Entry 23 of List II and the power of the Central legislature under Entry 54 of List I. Both the Entries are on the subject 'Regulation of Mines and Minerals Development'. Entry 23 of List 2 itself is subject to the provisions of List I with respect to the Regulation and Development under control of the Union, and necessarily therefore, when Union takes over the control of the Mines and Minerals Development by legislation under Entry 54 of List I the State Legislature would be denuded to make any law in relation to the Mines and Minerals Development under Entry 23 of List II. But in the case in hand, we are concerned with the legislation made by the Parliament under Entry 52 of List I which is the Tobacco Board Act and the legislation made by the State legislature under Entry 28 or any other ancillary Entry like Entry 14 or Entry 27 of List II, namely the Bihar Agricultural Produce Market Act. In such a case the focus for consideration of the Court would be as to what is the scope and content of Entry 52 of List I and once it is held that the expression 'industry' cannot be given any restricted meaning and the law enacted by the Parliament, the Tobacco Board Act, is held to be intra vires then the State legislation, namely, the Bihar Agricultural Produce Market Act, so far as it deals with the commodity tobacco will go out of the general sweep of all agricultural produce notified under the State Act, as the provisions in respect thereof have been made by the Central legislation and by application of Article 246 of the Constitution the Central Act would prevail.

Mr. Dwivedi placed reliance on the Full Bench decision of Allahabad High Court in SIEL's case (supra), but in view of our conclusions already arrived at, the aforesaid Full Bench decision must be held not to have been correctly decided. It is also difficult for us to accept the submission of Dr. Singhvi, learned senior counsel appearing for the Market Committee of Monghyr, that if the subject head of legislation in List II is not subject to the corresponding Entry in List I then the power of State Legislature to legislate with regard to that matter is paramount and supreme, and therefore,

the Market Committee Act being relatable to Entries 14 and 28 of List II, which are not subject to any of the Entries of List I, the Market Committee Act must be allowed to prevail. In our considered opinion, the aforesaid approach to consider the validity of a law made by the Parliament or a law made by the State legislature is not a correct approach. The Entries merely being the subject head of the legislation and the power to make law having emanated from Article 246, if a particular law made by Parliament comes within the legislative competence of the Parliament with reference to any of the Entries in List I then the State legislature would not have the competence to make law with respect to that subject with reference to some other Entries in List II. It is of course true, that Courts while examining the competing legislations would make an attempt and see whether both the legislations could operate, and that question we will deal later. But the contention that Entries 14 and 28 of List II not being subject to any Entry under List I and the Market Committee Act being relatable to Entries 14 and 28 of List II the same should be allowed to operate notwithstanding the wide meaning to the word 'industry' in Entry 52 of List I and the Parliament has already taken over the control of the industry and has made law in that respect. In the context of our conclusions on the question of the import and extent of expression 'industry' in Entry 52 of List I it is not necessary to examine the other contentions of Dr. Singhvi that whether the theory of occupied field is relevant only in case of law made with reference to Entries in List III. We are also not persuaded to agree with the submission of Dr. Singhvi that the Market Committee Act can still be operative and the Market fee could be levied by the Market Committee under the State Act for services provided by it on the principle of quid pro quo even if the Court comes to the conclusion that the Tobacco Board Act is a valid piece of legislation enacted by the Parliament and that Act also has made necessary provision for growing of tobacco as well as purchase and sale of tobacco. We are also unable to sustain the argument of Mr. Sanghi, learned senior counsel appearing for Krishi Mandi in the Madhya Pradesh batch of appeals, that the enquiry in the case should be whether the State legislature had the legislative competence to enact the Market Committee Act under 28 of List II. His other submission on the question that there is no irreconciable clash between the two Acts and the meaning of Section 31 of Tobacco Board Act will be considered while considering the different provisions of the two Acts. Mr. Ganguli, learned senior counsel appearing for the Tamil Nadu Agricultural Marketing Board also submitted in the same manner as Dr. Singhvi and relied upon Article 246(3) of the Constitution. But in our considered opinion Article 246(1) itself being notwithstanding anything in clauses 2 and 3 of the said Article the submission of Mr. Ganguli is devoid of any force. The elaborate submissions of Mr. Ganguli in relation to the decisions of this Court in Baij Nath Kedia, M.A. Tulloch, India Cement and Orissa Cement, all of which dealt with mining legislations are not necessary to be dealt with inasmuch as we have not relied upon the principles enunciated in those decisions, even though Mr. Shanti Bhushan pressed those decisions in support of his contention.

In the aforesaid premises, we are of the considered opinion that the Tobacco Board Act enacted by the Parliament under Entry 52 of List I is constitutionally valid and all the provisions therein, including the provisions relating to growing of Tobacco and sale and purchase of tobacco are within the legislative competence of the Parliament. We are also further of the opinion that the word 'industry' in Entry 52 of List I cannot be given a restricted meaning, particularly when a conspectus of all the decisions interpreting Entry in any of the Lists of the Constitution including the minority view of Mukherjee, J. in ITC case is to the effect that the Entries in the List should be given liberal

and generous construction and it is well accepted cardinal rule of interpretation that the words in constitutional document, conferring legislative powers should be construed most liberally and in their widest amplitude.

Coming to the second question, it is no doubt true as a matter of principle of construction that in the event there are two competing legislations, one by the Parliament and one by the State, the Court would make an endeavour if both the legislations could be allowed to be operated upon. But on examining the provisions of the two Acts, if it is found that the Central legislation and the State legislation come in collision with each, then question of allowing both of them to operate would not arise. In such an event, the Central legislation would prevail, provided the said legislation is otherwise constitutionally valid namely the Parliament had the legislative competence to enact the legislation in question. From the aforesaid stand point, if we examine the different provisions of the Tobacco Board Act, more particularly Sections 3, 8 and 32 and the provisions of the Agricultural Produce Markets Act, more particularly Section 4(2) thereof as well as Section 15, which is said to be the heart and soul of the Markets Act in Belsund's case, the conclusion is irresistible that the two Acts come in direct collision with each other and it is difficult to reconcile the provisions of both the Acts. Necessarily, therefore, the Tobacco Board Act having been enacted by the Parliament and making all provisions in relation to the tobacco industry including the provisions for growing of tobacco as well as sale and purchase of raw tobacco, in accordance with the procedure prescribed under the said Act, the provisions of the Agricultural Produce Markets Act, entitling the Market Committee to levy fee for sale and purchase of raw tobacco within the market area will not be operative, so far as the produce 'tobacco' is concerned. In other words, Central Act would prevail and would govern the entire gamut of tobacco industry. It is also important to bear in mind that when parliament decides to take over the control of a particular industry in the interest of the said industry as well as in the national interest, the control should be effective and should be in such a manner that the desired object can be achieved. Necessarily therefore, legislation ought to be made providing control over the growing of tobacco as well as on its sale and purchase, which alone would subserve the very purpose for which the control of the industry has been taken over by the Parliament. In this view of the matter, we hold that the Tobacco Board Act and the Agricultural Produce Markets Act, collide with each other and cannot be allowed to be operated simultaneously. Necessarily, therefore, the Tobacco Board Act would prevail and the Agricultural Produce Markets Act, so far as it relates to levy of fee for sale and purchase of tobacco within the market area must be held to go out of the purview of the said Act.

Coming to the third question posed by us in view of the inconsistency and repugnancy between the two Acts, as already stated, it is the Central Act that would prevail and in our opinion, the majority judgment in the ITC case has been correctly decided, though the reasons for the same given by us may be slightly different than the reasons which persuaded the learned Judges to have the conclusion in the ITC case.

In view of our conclusion on the three issues, the impugned judgment of the Patna High Court, remitting the matter to the Market Committee for passing a fresh assessment order is set aside and it is held that the sale and purchase of tobacco within the market area of any Market Committee would not be subjected to the provisions of the Bihar Agricultural Produce Markets Act. Civil Appeal

No. 6453 of 2001 is accordingly allowed.

Civil Appeal No. 3872 of 1990, filed by the Krishi Utpadan Mandi Samiti against the Division Bench Judgment of Allahabad High Court stands dismissed.

We also set aside the Full Bench decision of the Allahabad High Court and the appeal filed by the Tobacco Merchants' Association, assailing the legality of the Full Bench decision of the Allahabad High Court is allowed. Similarly, the Judgment of the Division Bench of the High Court of Madras, which follows the majority view of this Court in ITC case, is upheld and the appeals filed by the State of Tamil Nadu as well as the Tamil Nadu Agricultural Marketing Board are dismissed.

Civil Writ Petition filed by the Jayalakshmi Tobacco Company under Article 32, registered as Civil Writ Petition No. 8614 of 1982, challenging the validity of the provisions of Karnataka Agricultural Produce Marketing (Regulation) Act, stands disposed of and the said Act, enacted by the State legislation of Karnataka must be held to be invalid, so far as the provisions authorising levy of fee on sale and purchase of tobacco within the market area is concerned.

The twelve appeals filed against the Judgment of Madhya Pradesh High Court are dismissed and the Judgment of the Division Bench of Madhya Pradesh High Court is upheld.

In different appeals arising out of the judgment of the Madhya Pradesh High Court, interim stay had been granted by different Benches on 27.4.88, 2.5.88, 17.8.88 and 5.10.88. By these orders, the Court had stayed the operation of the judgment, without any condition. All these orders stood modified by order dated 27.2.89, when the Court passed the following order:

> ".. There will be no recovery of arrears due. There will also be no stay of the refund collected if any. The amount collected may be refunded within four months from this date. In future there will be no stay of recovery of market-fee found due and payable from the date of the High Court's judgment. It is, however, made clear that if the parties have filed objection against the levy, the objection shall be disposed of in accordance with law before the recovery is restored. In case, ultimately if the respondents succeed then the amount collected will be refunded by the appellants along with the interest @ 12% per annum. In case the appellants succeed then the respondents undertake to pay the arrears of market-fee along with the interest @ 12% per annum from the date of the payment."

Now that the judgment of the High Court is being upheld and the appeals are being dismissed, the question for consideration would be as to whether the said order of stay dated 27.2.1989 should be modified or the order should be allowed to operate and the collected market-fee would be required to be refunded with interest @ 12% per annum in accordance with the order dated 27.2.1989. Having regard to the facts and circumstances and the resources of the Market Committee, we think it appropriate to modify the said order dated 27.2.1989 and direct that the Market-fee already collected from the sale and purchase of tobacco within the market area by the Mandi Samiti, need not be refunded. But at the same time, the Market Committee will not be entitled to collect the

same, even for any past period, if the same has not already been collected.

Y.K Sabharwal, J.

The issue in these matters is about the validity and applicability of Bihar Agricultural Produce Markets Act, 1960 and the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, to the extent these State legislations deal with sale of tobacco in market areas with particular reference to the levy thereupon of market fee, after enactment of Tobacco Board Act, 1975-a parliamentary legislation. The same is the issue in respect of similar State legislations passed by State Legislatures of Uttar Pradesh and Madhya Pradesh. These issues were subject matter of decision in ITC Ltd. and Ors. v. State of Karnataka and Ors. [1985 Supp. SCC 476].

We are required to determine whether ITC's case is correctly decided or not. That is a decision rendered by a three Judge. Bench. The majority decided in favour of ITC. Later a Bench of two Judge expressed tentative view that the decision in ITC's case requires reconsideration. Thus, these matters are before this Bench.

The arguments on behalf of the appellants contending that ITC has been correctly decided have been led by Mr. Shanti Bhushan followed and supported by other learned counsel appearing for Union of India and the Tobacco Board. On behalf of the State of Bihar and other parties contending the ITC has not been correctly decided, the arguments were led by Mr R.K. Dwivedi followed and supported by other learned counsel appearing for other States and Market Committees.

The answer to the question--Whether ITC is correctly decided or not depends upon the scope of Entry 52 in Union List of the Seventh Schedule of the Constitution of India with particular reference to the meaning of the expression 'Industries' in the said entry as also in Entry 24 of the State List of the Seventh Schedule of the Constitution.

In ITC's case the majority held that the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 are repugnant to the parliamentary legislation, the Tobacco Board Act, 1975 and, therefore, tobacco is liable to be removed from the Schedule of that enactment. Expressing the minority view, Sabyasachi Mukharji, J held that the State legislation and the Tobacco Board Act, 1975 can co-exist.

The first question to be determined is can State legislation and Tobacco Board Act co-exist in respect of sale of Tobacco in the market areas within the framework of Agricultural Produce Marketing Acts - the State legislations under consideration? If our answer to this question is that the two legislations can co-exist, in that event it may not be necessary to go into the aspect of legislative competence. If, however, our answer is that the State legislations and the parliamentary legislation are incapable of reconciliation and the two cannot co-exist, in that case, the next question that would require determination will be about the validity of the State legislations.

In the proposed judgment, Hon'ble Mr. Justice Pattanaik has come to the conclusion that the Agricultural Produce Markets Act and the Tobacco Board Act are in direct collision with each other and cannot be allowed to be operated simultaneously.

The State legislations and parliamentary legislations cannot co-exist is apparent from various provisions of the two legislations. To illustrate in this regard, reference may be made on one hand to Section 4(2) of Bihar Act and similar provision in other State legislations and on the other to the provisions of Section 13 of the Tobacco Board Act in States wherein this section has been enforced and also to Section 8(2)(cc). Reference can also be made to Rule 32 of the Tobacco Board Rules, 1976 framed in exercise of powers conferred by Section 32 of the Tobacco Board Act regarding purchase of Virginia tobacco in comparison to Section 15 of Bihar Act requiring the agricultural produce, which tobacco is, to be brought to the market yard and sold by means of an auction or tender to the highest bidder. The power of the Tobacco Board to purchase from growers as provided in Rule 32 cannot co-exist with sale by auction or tender. Even in regard the price and manner of payment, licensing and auction procedure under two legislations and Rules made thereunder show that they cannot co-exist. In this regard reference can also be made to the Tobacco Board (Auction) Rules, 1984 and Tobacco Board (Auction) Regulation, 1984. It is evident that the compliance with the provisions of one would involve non-compliance of the provisions of the other. The provisions of the two legislations have been referred to in the judgment of Brother Pattanaik, J. I am in respectful agreement with the opinion of Justice Pattanaik that the two cannot operate and co-exist simultaneously. In this view, the question about the legislative competence of the State Legislatures will have to be examined.

In ITC's case , two learned judge have held the State legislation to be invalid. The power of State Legislature per se to legislate in respect of sale of tobacco in market areas and levy of market fee, in view of Article 246(3) read with Entries 14, 28 and 66 of the State List, is not in dispute. The dispute has, however, arisen as according to ITC, on declaration as contemplated by Entry 52 of the Union List having been made by the Parliament in Section 2 of the Tobacco Board Act, 1975, and as a result of various provisions in that Act, the field of sale of tobacco which is said to be integral part of tobacco industry has been transferred from Entry 24 of the State List to Entry 52 of the Union List -- Entry 24 being subject to the provisions of Entries 7 and 52 of the Union List. The contention is that in this view, the State Legislature is deprived of competence to legislate in the field of sale of tobacco in market area and levy market fee. Under these circumstances, the competence of the State Legislature to legislate in regard to sale of tobacco would depend upon the answer to the question whether under Entry 52 of the Union List, the Parliament is competent or not to legislate in respect of sale of raw tobacco. If the answer to the question is that the Parliament is competent, in that eventually, the State legislation will have to be invalidated for want of legislative competence. The answer to the question would, however, depend upon the scope of the expression 'Industries' as deployed in Entry 52 of the Union List and Entry 24 of the State List. If we find that the expression ' Industries' is wide enough to include the raw material of the industry and the Parliament is, thus competent to enact law under Entry 52 of the Union List, in respect of raw material, the Parliament having supremacy as provided in Article 246(1), the parliamentary legislation, namely, the Tobacco Board Act would hold the field and the State legislation invalidated. The dispute in this case is not about parliamentary supremacy as none has doubted it in view of Article 246(1) of the Constitution

but is whether Parliament has competence at all to legislate in respect of raw tobacco or it falls within the competence of State. If we hold that while legislating in the field of industry as provided in Entry 52 of the Union List, the Parliament is not competent to legislate in respect of the field anterior to industry, i.e. its raw material and can legislate only in respect of the process of manufacture or production, in that eventuality, the State legislation will have to be held to be constitutional, intra vires and applicable.

In the proposed judgment, Justice Pattanaik has held that the word 'industry' in Entry 52 of the Union List cannot be given restricted meaning so as to exclude from its purview the subject of legislation coming within Entry 27 or Entry 14 of List II and thus, the parliamentary legislation, namely, the Tobacco Board Act, 1975 is constitutionally valid and consequently, the State legislations entitling the Market Committee to levy fee for sale and purchase of raw tobacco within the market area will not be operative so far as the produce of tobacco is concerned and that the majority judgment in the ITC's case is correctly decided. I express my respectful dissent with the view expressed by Justice Pattanaik on this aspect and thus this separate judgment.

The Parliament and Assemblies draw power to legislate from the provisions of the Constitution of India. We are concerned here with Article 246. Article 246(1) of the Constitution provides that notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule. The said List is referred to in the Constitution as the 'Union List'.

Entry 52 in the Union List is Industries, the control of which by the Union is declared by Parliament by law to be expedient int he public interest'. In respect of field covered by this Entry, the parliament has enacted the Tobacco Board Act, 1975. Section 2 of the Tobacco Board Act contains the declaration that it is expedient in the public interest that the Union should take under its control the Tobacco industry.

Article 246(2) provides that notwithstanding anything in Clause (3), Parliament and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule. The said List is referred to in the Constitution as the "Concurrent List".

Article 246(3) provides that subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule. The said List is referred to in the Constitution as the "State List".

In exercise of power under Article 246(3), various State Legislature have enacted Agricultural Produce Marketing Acts for regulating sale and purchase of the agricultural produce and levying market fee within the framework of those Acts which, inter alia, permit levy and collection of market fee. The tobacco under the Acts in question has been notified as an agricultural produce.

In ITC's case , by majority, it was held that the Tobacco industry having been taken over by the Central Government under Entry 52 of the Union List by enactment of Tobacco Board Act, the State

Legislature ceases to have any jurisdiction to legislate for that filed and therefore, the provisions of the Karnataka Agricultural Produce and Marketing Act entitling the market committee to levy market fee in respect of sale and purchase of Tobacco within the market area collide with Tobacco Board Act. Thus, the State Act so far as it relates to Tobacco was struck down. The minority view was that both the State and the Central Act can operate in their respective fields and there is no repugnancy if both the acts are considered in the light of their respective true nature and character.

The majority judgment in ITC's case for the view that it took principally relied upon the two Constitution Bench decisions of this Court in State of Orissa v. M.A. Tulloch and Co. [(1962) 4 SCR 461] and Baijnath Kadio v. State of Bihar and Ors. Referring to these two decisions, the opinion expressed was that these cases are direct authority on the question at issue, viz., if the Central Act and the State Act collide, the inevitable consequence would have to be that the Central Act will prevail over the State Act and later will have to yield and that the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 are repugnant to the Tobacco Board Act, 1975 and, therefore, tobacco is liable to be removed from the schedule of the said Act.

The minority view, however, was that there is nothing in the State Act or in the Rules which indicate that it is inconsistent with or cannot be operated along with the marketing regulations and both the Acts can operate in their respective fields and there is no repugnancy if both the Acts are considered in the light of their true nature and character.

In ITC's case the challenge was to the constitutional validity of the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act, 1980. By the amending Act, tobacco was enumerated as an agricultural produce for the purposes of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. The High Court was of the view that the Tobacco Board Act did not cover the marketing o tobacco in its entirety but only covered a part of the area of the topic of marketing of tobacco and that the two legislations, namely, the Tobacco Board Act, 1975 and the Karnataka Agricultural Produce Marketing (Regulation) Act, can co-exist and operate cumulatively. The further view expressed by the High Court was that any intention of the superior legislature to cover the whole field to make a comprehensive law with regard to marketing of tobacco was not manifest in the legislation.

The contention canvassed before this Court in ITC's case was that in view of the Central Act, the State Legislature was not competent to bring into fold of the State Act, the tobacco, the matter being covered by Entry 52 of the Union List of Seventh Schedule of the Constitution of India. The precise question in ITC's case was as to whether in respect of marketing of tobacco, the State Government was entitled to legislate or whether in view of the fact that there was a declaration under Entry 52 of the Union List, the State Legislature had no competence to legislate on tobacco and as such the impugned legislation was ultra vires.

In the minority opinion, Mukharji, J. noticed that the karnataka Agricultural Produce Marketing (Regulation) Act, 1966 deals with the subject of market in Entry 28 read with Entry 66 of List II and that it had to be borne in mind that Entry 28 is not subject to withdrawal to List I by Parliament. The State Act is not on a subject in List III nor is the Central Act a law relating to any subject in List

III. It was concluded that, therefore, there cannot be any question of repugnancy. The nature and character of the Acts, namely, Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 and the Central Act was noticed and it was held that it is fully manifest that both the Acts can operate in their respective fields. Further in the minority opinion it was observed that while giving due weight to Centre's supremacy in the matter of legislation, the States' legitimate sphere of legislation should not be unnecessarily whittled down because that would be unwarranted by the spirit and basic purpose of the constitutional division of powers-not merely allocation of power by the Constitution but invasion by parliamentary legislations. While it is true that in the spheres very carefully delineated the Parliament has supremacy over State Legislatures, supremacy in the sense that in those fields, parliamentary legislation would hold the field and not the State legislation -but to denude the State Legislature of its power to legislate where the legislation in question in pith and substance i.e. in its true nature and character, belongs to the State field, one should be chary to denude the State of its powers to legislate and mobilize resources - because that would be destructive of the spirit and purpose of India being a Union of States. States must have power to raise and mobilize resources in their exclusive fields. The Marketing Act is essentially an Act to regulate the marketing of agricultural produce. Justice Mukharji said that "it must, therefore, be held that the State Act should prevail. One should avoid corroding the State's ambit of powers of legislation which will ultimately lead to erosion of India being a Union of State.".

The majority opinion was expressed by Justice S. Murtaza Fazal Ali with whom Justice A. Varadarajan concurred. In the majority opinion after noticing the crucial point for determination i.e. whether the Karnataka State had any jurisdiction to encroach upon the limits of Entry 52 of the Union List, relying inter ali upon the decisions in the cases of Tulloch, Baijnath Kadio , it was concluded that once the Centre takes over an industry under Entry 52 of List I of the Seventh Schedule and passes an Act to regulate the legislation, the State Legislature ceases to have any jurisdiction to legislate in that field and if it does so, that legislation would be ultra vires the powers of the State Legislature. It was further observed that acceptance of the minority opinion would rob the Central Act of its entire content and essential import by handing over he power of legislation to the State Government which per se had been taken over by the Parliament under Article 246 by enacting the Tobacco Board Act, 1975. In the majority opinion reliance was placed on the following passage of Baijnath Kadio's case as extracted at page 174 as under.

> "It is open to Parliament to declare that it is expedient in the public interest that the control should rest in Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessary be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. This proposition is also self-evident that no attempt was rightly made to contradict it."

The majority opinion has not noticed the Constitution Bench's decision in the case of Ch. Tika Ramji and Ors. etc. v. The State of Uttar Pradesh and Ors. [(1956) SCR 393] and Ors. decisions on the

scope o Entry 52 but relying upon M.A. Tulloch and Baijnath Kedio held that when declaration under Entry 52 of List I in respect of public interest is made and the extent laid down the subject of legislation to the extent laid down becomes an exclusive subject of legislation by the Parliament and any legislation by the State after such declaration trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. Thus it was held that the Government of Karnataka had no jurisdiction to levy and market fee on tobacco because the State Act to that extent collides with the Central Act of 1975.

The decision in the cases of Baijnath Kadio and Tulloch have also been relied upon by Mr. Shanti Bhushan. Reliance has also been placed by learned counsel on The Hingir-Rampur Coal Co. Ltd. and Ors. v. State of Orissa and Ors. It was contended by Mr. Shanti Bhushan that in law and in principle there would be no difference in respect of a case dealing with the scope of Entry 52 of the Union List or a case dealing with the scope of Entry 54 of that List. The submission of learned counsel is that for the purpose of interpretation both these entries have been equated by this Court and reliance in this regard is place don Ishwari Khetan Sugar Mills (P) Ltd. and Ors. v. State of Uttar Pradesh and Ors.

On behalf of the State Governments and the Agricultural Produce marketing Committees strong reliance has been placed on Tika Ramji's case. What is the ratio of these decisions, we will now examine.

Before considering the aforenoted decisions, it would be appropriate to make it clear that in these matters it has to be kept in view that this Court is not examining a case where the field of legislation is on concurrent list to which Article 246(2) applies. This Court is also not considering the case of an incidental trenching of field by one or the other legislature. The Court is concerned with the question of legislative competence. We are examining a case where what has been questioned is the legality of legislation is respect of a field on the State List to which Article 246(3) applies. The validity and applicability of the State legislations in respect of a field of legislation on State List has come under a cloud on account of a legislation passed by the Parliament in respect of field of legislation under Entry 52 of the Union List, namely, the Tobacco Board Act, 1975. It is on account of this legislation containing declaration as contemplated by Entry 52 of the Union List that doubts have arisen about the validity and applicability of State legislation about the sale of agricultural produce of tobacco in market areas and levy thereupon of market fee which aspect are on field of legislation on the State List (Entries 14, 27, 28 and 66). Entry 24 of the State List is subject to Entries 7 and 52 of List I. We are not concerned in these matter with Entry 7. The question here is as to the effect of transfer of field of legislation under Entry 24 of the State List to the Union List (Entry 52), on other fields in the State List, namely, fields of legislation under Entries 14, 27, 28 and 66 and what is fact can be transferred.

Baijnath Kadio was a case which considered the validity of the State legislation on the ground of being beyond the State legislative power n view of the declaration by the Parliament in Mines and Minerals (Regulation and Development) Act. 1957 and contemplated by Entry 54 of List I of the Seventh Schedule to the Constitution. Section 2 of the Central legislation declared that it is

expedient in the public interest that the Union should take under its control the Regulation of mines and the development of minerals to the extent provided therein.

Entry 54 of the Union List speaks both of regulation of mines and minerals development and Entry 23 of the State List is subject to Entry 54. It was held that it was open to the Parliament to declare that it is expedient in the public interest that the control should rest with the Central Government. To what extent such a declaration can go is for the Parliament to determine and this must be commensurate with public interest. Once this declaration is made and that extent laid down the subject of legislation to the extent laid down becomes an exclusive subject for the legislation by the Parliament. Any legislation by the State after such declaration trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. For its view the Constitution Bench followed earlier Constitution Bench decisions in the cases of Hingir and Tulloch . These two cases also dealt with the scope of Entry 54 of List I viz-a-viz Entry 23 of List II. The majority opinion in ITC as already noticed, followed Baijnath Kadio and extracted in its judgment the passage as aforesaid.

A significant aspect to take note of is that Tika Ramji's case has not been considered in Hingir's case . The reason for it seems to be that one set of cases consider the scope of Entry 54 viz-a-viz Entry 23 and to that category belong the cases of Hingir, Tulloch and Baijnath Kadio . The other set of cases consider the scope of Entry 52 of Union List viz-a-viz Entry 24 of the State List and to that category belong the cases of Tika Ramji and other cases following Tika Ramji .

Relying upon Ishwari Khetan's case Mr. Shanti Bhushan contends that Entry 52 has been equated with Entry 54 of the Union List.

Both sides have relied upon the case of Ishwari Khetan . Let us examine that case. In Ishwari Khetan's case the contention urged was that the Parliament has made the Industrial (Development and Regulation) Act, 1951 (for short, 'the IDR Act') in Entry 52 List I declaring control of sugar industry and that industry goes out of Entry 24 of List II and, therefore, State Legislature is denuded of legislative powers in respect of sugar industry and impugned legislation was with respect to acquisition of sugar undertaking is sugar industry. The Attorney General and contended that the power to acquire property was derived from Entry 42 of List III. Ishwari Khetan's case involved the determination or scope of Entry 52 of List I and Entry 24 of List II only. The scope of these entries with respect to Entries 26 and 27 of List II and Entry 33 of List III did not fall for consideration. Further in paragraphs 7, 8 and 11 of Ishwari Khetan's case the Constitution Bench repeatedly pointed out that a declaration in Entry 52 of List I denudes the power of State Legislature to legislate under Entry 24 List II only. It was noticed that the sugar was a declared industry. The question posed was that "is it, however, correct to say that once a declaration is made as envisaged by Entry 52 List I, that industry as a whole is taken out of Entry 24 of List II"? The answer given by the Constitutional Bench was that it is not correct to say that once a declaration is made in respect of an industry that industry as a whole is taken our of Entry 24 List II. It was said that the industry as a legislative head is found itself placed in Entry 24 of List II. The State Legislature can be denied legislative power under Entry 24 to the extent Parliament makes declaration under Entry 52 and by such declaration, Parliament acquired power to legislate only in respect of those industries in

respect of which declaration is made and to that extent as manifested by legislation incorporating the declaration and not more. The Bench further said that the legislative power of the State under Entry 24 List II is eroded only to the extent the control is assumed by the Union pursuant to the declaration and the State Legislature which is otherwise competent to deal with industry under Entry 24 List II can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in List II and List III and this power cannot be denied to the State. The extent of parliamentary legislation was seen only to determine how much is taken out from Entry 24 List II and not for the purposes of laying down any principle that the Parliamentary legislation has to be seen to determine the extent of control and the denudation of the power of the State Legislature to the extent the control is laid down by the Parliament. Further it was held that despite the parliamentary legislation the State Legislature can deal with industry in exercise of other powers in different entries in List II and List III and that power cannot be denied to the State In this case the Court was examining whether the law of acquisition of sugar undertaking was referable to Entry 24 List II or Entry 42 List III. It was concluded that the acquisition of the property was referable to Entry 42 List III. The scope of the industry did not fall for examination in Ishwari Khetan's case . There is no discussion on the interpretation of expression 'industry' and that probably is the reason why Tika Ramji's case has not been referred to. The reliance on Baijnath Kadio's case in Ishwari Khetan's case was to show the denudation of States' power being limited to the extent of control. While Baijnath Kadio's case dealt with Entry 23 List II, Ishwari Khetan's case dealt with Entry 24 List II. The subject matter of the other entries was not in issue in this decision. The structure in Entry 54 of List I was not equated with that of Entry 52 List I as contended by Mr. Shanti Bhushan. This decision does not adopt the mines and minerals cases for the purposes of considering the scope of Entry 52 of List I. In our view, the cases of mines and minerals are not of much assistance while examining the scope of Entry 52 of List I. In State of A.P. and Ors. v. Mcdowell & Co. and Ors. also it was held that the ambit and scope of a constitutional entry cannot be determined with reference to a parliamentary enactment. If it is otherwise, it would result in the Parliament enacting and/or amending an enactment thereby controlling the ambit and scope of the constitutional provision. That cannot be the law. The power to legislate with which we are concerned in contained in Article 246. The fields are demarcated in the various entries. On reading both, it has to be decided whether the concerned legislature is competent to legislate when its validity is questioned. The ambit and scope of an entry cannot be determined with reference to a parliamentary enactment.

Tika Ramji's case is required to be examined in some detail since that has been a bone of serious and elaborate submissions. In that case, the challenge by the Sugarcane growers hailing from several villages of State of U.P. was to the validity of the UP Sugarcane (Regulation of Supply and Purchase) Act, 1953 and notifications issued thereunder. A short history of legislation enacted by the Centre as well as the province of U.P. in regard to Sugar and Sugarcane was noticed.

It was noticed that on 8th April, 1932, the Central Legislature passed the Sugarcane Industry (Protection) Act, 1932. As a result of this Act, there was a rapid rise in number of sugar factories as also a large expansion in the cultivation of sugarcane. To regulate the price at which sugarcane intended to be used in the manufacture of sugar might be purchased by or for the factories, the Central Legislature enacted on 1st May, 1934 the Sugarcane Act, 1934. The fixing of minimum price for the purchase of sugarcane intended for use in any factory in any controlled area was left to the

Provincial Governments which were empowered to make rules for the purpose of carrying into effect the objects of the Act including the organisation of growers of sugarcane into Co-operative Societies for the sale of sugarcane to factories.

With the coming into operation of the Government of India Act, 1935, there was distribution of legislative power between the Dominion Legislature and the Provincial Legislatures and agriculture (Entry No. 20), trade and commerce within the Province (Entry No. 27) and production, supply and distribution of goods, development of industries subject to the provision in List I with respect to development of certain industries under Dominion control (Entry No. 29) were included in List II, namely, the Provincial Legislative List. Entry No. 34 in List I was "Development of industries where development under Dominion control is declared to be in the public interest".

The result of above distribution of legislative power was that the entire subject matter of the Sugarcane Act, 1934 was left with the Provincial legislative list. It was left that this Act was not sufficiently comprehensive for dealing with the problems of sugar industry. Therefore, it was found necessary to replace it so as to provide for better organisation of cane supplies to sugar factories. The U.P. Legislature accordingly enacted on 10th February, 1938, the U.P. Sugar Factories Control Act, 1938 to provide for licensing of the sugar factories and for regulating the supply of sugarcane intended for use in such factories and the price at which it may be purchased and for other incidental matters and repealed the Sugarcane Act, 1934. The 1938 Act was to remain in force initially upto 30th June, 1947 but the period was extended to 30th June, 1952 and then to 30th June, 1952.

On intervention of Section World War, a proclamation of emergency was issued by the Governor General under Section 102 of the Government of India Act, 1935. The Dominion Legislature acquired the power to make laws for the Provinces with respect to any of the matters enumerated in the Provincial Legislative List. The proclamation of emergency was to operate until revoked by a subsequent proclamation and the laws made by the Dominion Legislature were to have effect until the expiration of period of six months after the proclamation had ceased to operate. The Defence of India Act and the Rules made thereunder occupied the filed. Sugar was made a controlled commodity in the year 1942 and its production and distribution as well as the fixation of sugar prices were regulated by the Sugar Controller thereafter. The proclamation of emergency was revoked on 1st April, 1946 and the laws made by Dominion Legislature in the field of the Provincial Legislative List were to cease to have effect after 30th September, 1946. On 26th March, 1946, the British Parliament enacted the India (Central Government and Legislature) Act, 1946, Section 2(1)(a) whereof provided that notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the period mentioned in Section 4 thereof have powers to make laws with respect to the following matters:

> "(a) trade and commerce (whether or not within a Province) in, and the production, supply and distribution of, cotton and woollen textiles, paper (including newsprint), foodstuffs (including edible oil seeds and oils), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica,..."

Acting under the power reserved to it under the aforesaid Section 2(1)

(a), the Central Legislature enacted on 19th November, 1946, the Essential Supplies (Temporary Powers) Act, 1946 to provide for the continuance during the limited period of powers to control production, supply and distribution of, and trade and commerce in, certain commodities. The Governor General issued a Notification on 3rd March, 1947 the effect whereof was to continue the Act till 31st March, 1948. On 18th July, 1947, however, Indian Independence Act was passed under which the Governor General passed an order which substituted the words "Dominion Legislature" for "Both Houses of Parliament" in the proviso to Section 4 of India (Central Government and Legislature) Act, 1946 and also introduced a new Section 4(a) by way of adoption providing that the powers of the Dominion Legislature shall be exercised by the Constituent Assembly. By passing of the Resolution by the Constituent Assembly, the life of the Act was extended and later on Constitution coming into force, the Parliament was invested with power under Article 369 for a period of five years to make laws with respect to the following matters as if they were enumerated in the Concurrent List.

> "(a) trade and commerce within a State in, and the production, supply and distribution of,.... foodstuffs (including edible oil seeds and oil),....' The life of the Act was accordingly extended from time to time upto 26th January, 1955 by Acts passed by Parliament.

Food crops under the aforesaid 1946 Act were defined as including corps of sugarcane.

The Central Government in exercise of powers conferred upon it by Section 3 of the 1946 Act, promulgated the Sugar and Gur Control Order, 1950, inter alia, empowering it to prohibit or restrict the export of sugarcane from any area; to direct that no gur or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the licence issued in this behalf. There was also power to fix minimum price in exercise whereof the Central Government from time to time issued notifications fixing the minimum price to be paid by the producers of sugar for sugarcane purchased by them.

On 31st October, 1951, Parliament enacted the Industries (Development and Regulation) Act, 1951 to provide for the development and regulation of certain industries. By Section 2 of the Act, it was declared that it was expedient in the public interest that the Union should take in its control the industries specified in the First Schedule. That Schedule included the industry engaged in the manufacture or production of Sugar.

The U.P. Legislature enacted the impugned Act. The object of this enactment was stated to be as follows:

> "With the promulgation of the Industries (Development and Regulation) Act, 1951 with effect from 8th May, 1952, the regulation of the sugar industry has become exclusively as Central subject. The State Government are now only concerned with the supply of sugarcane to the sugar factories. The Bill is being introduced in order to

> provide for a rational distribution of sugarcane to factories, or its development on organized scientific lines to protect the interests of the cane growers and the industry and to put the new Act permanently on the Statute Book."

In exercise of the rule making power conferred by the impugned Act, the U.P. Government made rules and also promulgated the U.P. Sugarcane Supply and Purchase Order, 1954. All these related to the supplies and purchase of sugarcane in U.P. Challenging vires of the State Act one of the submissions made in Tika Ramji's case before the Constitution Bench was:

> "(1) That the State of U.P. had no power to enact the impugned Act as the Act is with respect to the subject of industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest within the meaning of Entry 52 of List I and is, therefore, within the exclusive province of Parliament. The impugned Act is, therefore, ultra vires the powers of the State Legislature and is a colourable exercise of legislative power by the State."

It was urged that the word 'industry' was a word of very wide import and included not only the process of manufacture or production but also of things which were necessarily incidental to it, viz., the raw materials for the industry as also the products of that industry and would, therefore, include within its connotation the production, the supply and distribution of raw materials for that industry which meant sugarcane i n relation to sugar industry and, therefore, insofar as the impugned Act purported to legislate in regard to sugarcane which was a necessary ingredient in the production of sugar, it was a colourable exercise of legislative power by the State, ostensibly operating in its own filed within Entry 27 of List II but really trespassing upon the field of Entry 52 of List I. True, the challenge was to the vires of the State legislation and not to the parliamentary legislation but at the same time the entire basis of challenge was that in respect of the sugarcane, only Parliament had the power to legislate on account of the filed being covered under Entry 52 of List I, the Sugar industry having been included in that Entry and the connotation of industry being very wide to include in it raw material, i.e., sugarcane as well. Thus, the exclusive power of Parliament to legislate was urged as the main ground to seek invalidation of the State legislation -- the filed of sugarcane not being available to the State Legislature to legislate.

In view of the controversy as aforesaid, the fact that the validity of the parliamentary legislation was not in issue in Tika Ramji's case, does not in any manner, affect the ratio of that decision. The point for determination in that case was substantially the same as in the present case, namely, the scope of the expression 'industries' in Entry 52 of List I and Entry 24 of List II. There also the point was to adopt a narrow or wide interpretation of the expression 'industry'. Further, the fact that it was a case of a manufacturing industry under IDR Act also does not affect the ratio of the case. The interpretation placed in Tika Ramji's case cannot be confined to industry falling under IDR Act alone. There is neither any express or implied indication in that decision to limit the interpretation nor there is any valid reason to so limit it.

Like Tika Ramji's case, in these matters, the challenge is to the State legislations on the ground that in view of Entry 52 of List I, on enactment of Tobacco Board Act, 1975, the State Legislature loses

competence to legislate in respect of sale of tobacco and, therefore, the existing State legislations will have no applicability and, thus, the legislations in respect of marketing under Entry 28 of List II would have no applicability insofar as it concerns the agricultural produce 'tobacco'.

The opposite contention is that under Entry 14 of the State List the State is competent to legislate in respect of agricultural produce and tobacco is an agricultural produce; setting up of markets in respect of this produce under Entry 28 and levying thereupon the fee under Entry 66 and subject to Entry 33 of List III production, supply and distribution of goods (Entry 27) are all State subjects and that under Entry 52 of List I, the Parliament's competence is only to legislate in respect of industry which would not include in its ambit the raw material of the industry and that the process of sale of agricultural produce of tobacco in markets and levying thereupon market fee can never be part of industrial process which is only manufacture and production. The contention of Mr. Dwivedi is that State's activity in question is not an industrial activity and, therefore, it is outside the ambit of Entry 24 of State List and Entry 52 of the Union List.

In Tika Ramji's case, the precise argument to challenge the State enactment was that the expression 'industries' should be construed as including not only the process of manufacture or production but also activities antecedents thereto such as acquisition of raw material and subsequent thereto such as disposal of the finished products of that industry. It was urged in that case that the process of acquiring raw materials was an integral part of the industrial process and was, therefore, included in the connotation of the word 'industry' and when the Central Legislature was invested with the power to legislate in regard to sugar industry on account of declaration as postulated by Entry 52 of List I, that legislative power included also the power to legislate in regard to the raw material of the sugar industry, that is sugarcane, and the production, supply and distribution of sugarcane was, by reason of its being the necessary ingredient in the process of manufacture or production of sugar, within the legislative competence of the Central Legislature.

The petitioners in Tika Ramji's case in support of the wide construction to be placed upon the expression 'industry' also relied upon various decisions interpreting the said term in relation to the Industrial Disputes Act. Dealing with those cases in Tika Ramji's case this Court said:

> "What we are concerned with here is not the wide construction to be put on the term 'industry' as such but whether the raw materials of an industry which form an integral part of the process are within the topic of 'industry' which forms the subject matter of item 52 of List I as ancillary or subsidiary matters which can fairly or reasonably be said to be comprehended in that topic and whether the Central Legislature while legislating upon sugar industry could, acting within the sphere of Entry 52 of List I, as well legislate upon sugarcane."

This Court said that if the legislation with regard to sugarcane came within the exclusive province of the Central Legislature under Entry 52 of List I, the enactment passed by the Provincial Legislature would be ultra vires. It was said :

> "If both the Central Legislature and the Provincial Legislature were entitled to legislate in regard to this subject of production, supply and distribution of sugarcane, there would arise no question of legislative competence of the Provincial Legislature in the matter of having enacted the impugned Act. The conflict, if any, arose by reason of the interpretation which was sought to be put on the two Entries, Entry 52 of List I and Entry 27 of List II put in juxtaposition with each other. It was suggested that Item 52 of List I comprised not only legislation in regard to sugar industry but also in regard to sugarcane which was an essential ingredient of the industrial process of the manufacture or production of sugar and was, therefore, ancillary to it and was covered within the topic. If legislation with regard to sugarcane thus came within the exclusive province of the Central Legislature, the Provincial Legislature was not entitled to legislate upon the same by having resort to Entry 27 of List II and the impugned Act."

Dealing with the argument of wide import of the expression 'industries' in Tika Ramji's case it was held that 'industry' in its wide sense of the term would be capable of comprising three different aspects :

> (1) raw materials which are an integral part of the industrial process, (2) the process of manufactures or production, and (3) the distribution of the products of the industry. After noticing these different aspects of the term 'industry', it was held that "the raw materials would be goods which would be comprised in Entry 27 of List II". In respect of the second category of process of manufacture or production and the third aspect of distribution of the product of the industry, the Court held :
>
> "The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 of List III."

The Court further held that "In no event could the legislation in regard to sugar and sugarcane be thus included within Entry 52 of List I".

Thus, rejecting the contention that the expression 'industries' in Entry 52 of List I is wide enough to take into its compass the power to legislate in respect of raw material said to be an integral part of the industrial process, the Court repelled the plea of the State Act being ultra vires, the same being covered by the subject of sugar industry control whereof have been declared by the Parliament by law to be expedient in the public interest under the exclusive domain of Parliament.

In The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal and Ors, the challenge was to the constitutional validity of the Oriental Gas Company Act, 1960. One of the ground of challenge was that the West Bengal Legislature was not competent to make a law regulating the gas industry in view of declaration as contemplated by Entry 52 of List I having being made by the

Parliament in IDR Act -- Entry 24 being subject to the provisions of Entry 52 of List I. It was contended that Entry 25 of List II (Gas & Gas Works) must be confined to matters other than those covered by Entry 24 of the same List.

On the facts of the case and in view of the conclusions of the Constitution Bench on other aspect, it was not considered necessary to attempt to define the expression 'industry' precisely or the State exhaustively all its ingredients but following Tika Ramji's case, it was assumed that the expression 'industry' means only production or manufacture. In Calcutta Gas, which considers Entry 52 of List I and Entry 24 of List II, the Bench said that ordinarily 'industry' is in the field of the State legislation and in all the entries it must be given the same meaning and cited with approval Tika Ramji's case in the following words:

> "In Tika Ramji v. State of Uttar Pradesh, the expression 'industries' is defined to mean the process of manufacture or production and does not include the raw materials used in the industry or the distribution of the products of the industry. It was contended that the word 'industry' was a word of wide import and should be construed as including not only the process of manufacture or production but also activities antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry. But that contention was not accepted."

Mr. Shanti Bhushan, however, contends that once field is covered by Entry 52 by issue of requisite declaration and the Parliament has actually covered the field by enacting a legislation, with regard to that extent the industry including all facets of such an industry -- whether it is the raw materials or the products of that industry, the State Legislature will have no power to legislate. The contention is that the expression 'industries' in Entry 52 of the Union List comprises in it all its aspects commencing from procurement of raw material and upto disposal of final product of that industry and not only the process of manufacture or production. The submission of learned counsel is that if the expression 'industries' in the entries under consideration is not given such interpretation, it would denude the Parliament of real object of control of such industry in public interest which is of paramount importance. As against this, the contention of the other side is that the acceptance of the viewpoint propounded by Mr. Shanti Bhushan would mean denuding the State Legislature the power to legislate in respect of fields covered under various entries under the State List which are not made subject to any other entry and that the acceptance of contention of Mr. Shanti Bhushan would have the effect of rewriting the Constitution. I agree. The intention of the Constitution makers was not to make Entries 14, 27, 28 and 66 subject to Entry 52 of the Union List. The acceptance of viewpoint propounded by Mr. Shanti Bhushan will have that effect. Therefore, the expression 'industries' cannot be interpreted in the manner suggested.

True, the parliamentary legislation has supremacy as provided under Article 246(1) and (2). This is of relevance when field of legislation is on concurrent list. While maintaining parliamentary supremacy, one cannot give go by to the federalism which has been held to be a basic feature of the Constitution (See S.R. Bommai v. Union of India.

The Constitution of India deserves to be interpreted, language permitting, in a manner that it does not whittle down the powers of State Legislature and preserves the federalism while also upholding the central supremacy as contemplated by some of its articles.

In this background, let us also briefly notice the constitutional history and structural inter-relationship in respect of relevant entries as they existed in Government of India Act, 1935 and as they now exist in the Seventh Schedule. Entries 27 and 29 on the State List in the Government of India Act, 1935 were as under:

> "Item 27. Trade and commerce within the province; markets and fairs; money lending and money lenders.
>
> Item 29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control."

Now, in Seventh Schedule part of Entry 27 is in Entry 26 of the State List; Markets and fairs is Entry 28 of List II; Money lending and money lenders (Entry 30 List II); Production, supply and distribution of gods subject to the provisions to Entry 33 of List III (Entry 27 List II); Industries subject to the provisions of Entries 7 and 52 of List I (Entry 24, List II). It would, thus, be seen that under 1935 Act, both production, supply and distribution of goods as well as development of industries were subject to the provisions of List I as provided in Entry 29. Our Constitution makers, however, bifurcated Entry 29 into two parts. Industries were put in Entry 24 of List II subject to the provisions of Entries 7 and 52 of List I. The production, supply and distribution of goods was put in Entry 27 of List II and made subject to Entry 33 of List III. The acceptance of the argument of Mr. Shanti Bhushan would mean that no object was sought to be achieved by such a bifurcation. It is clear that two entries have been separated. One made subject to the provisions of Entry 33 of List III and the other subject to the provisions of Entries 7 and 52 of List I. Therefore, to interpret the expression 'industry' to include in it the aspect of raw material would mean that by the same analogy the subject matter of production,supply and distribution of goods should also be included therein and in fact that was the argument of Mr. Shanti Bhushan. Would the acceptance of that argument not negate the will of the Constitution makers. I think it would. Therefore, the argument cannot be accepted. The same argument would equally apply to Entry 14 of List II in respect of agriculture which is not subject to any List. It would so become if we accept the contention of Mr. Shanti Bhushan. Further, earlier when the Parliament felt the need to control raw material, it included "raw jute and raw cotton" in Entry 33, List III by Constitution Third Amendment Act, 1954. Even Article 369 indicates that agricultural raw material is in the State List for it refers to raw cotton, cotton seed and edible oil seeds and seeks to temporarily place it, by fiction, in the concurrent list to enable Parliament to make laws. The expression 'industries' in Entry 24, List II or Entry 52, List I, cannot be interpreted in a manner that would make other entries of List II of the Seventh Schedule subject to Union control, which in fact they are not. Wherever it was intended to be made subject to such control, whether of List I or that of List III, it was said so. A perusal of List II shows that whenever a particular entry was intended to be made subject to an entry in List III, it has been so stated specifically. Therefore, an interpretation which tends to have the effect of making a particular entry

subject to any other entry, though not so stated in the entry, deserves to be avoided unless that be the only possible interpretation. We do not think that such an interpretation on the entries in question, namely, Entry 52 of the Union List and Entry 24 of the State List deserves to be placed.

The principles of interpretation are well settled. There is no doubt that the entries in the lists in the Seventh Schedule do not provide competence or power to legislate on the legislature for which the source of power is contained in Article 246 of the Constitution. In deciding question of legislative competence, it has to be kept in view that the Constitution is not required to be considered with a narrow or pedantic approach. It is not to be construed as a mere law but as a machinery by which laws are made. The interpretation should be broad and liberal. The entries only demarcate the legislative field of respective legislature and do not confer legislative power as such and if it is found that some of the entries overlap or in conflict with the other, an attempt to reconcile such entries and bring about a harmonious construction is the duty of the court. When, however, reconciliation is not possible, as here, then the court will have to examine the entries in relation to legislative power in the Constitution.

The subject matter of the issue here is about the interpretation of Entry 52 in List I of the Seventh Schedule. It requires the Parliament to make a declaration by law identifying an industry, the control of which by the Union is expedient in the public interest. Under the said entry only an 'industry' can be declared as an industry, the control whereof by the Union is regarded as expedient in public interest. It is, therefore, implicit that if an activity cannot be regarded as industry, Entry 52 will have no applicability to that activity. The question is about the concept of 'industry' in Entry 52 of List I. As already stated, the entries in the Legislative List have to be construed in the widest sense cannot be disputed but it has also to be borne in mind that such construction should not make other entries totally redundant. The meaning of the word 'industry' in various dictionaries reliance on which was placed by Mr. Shanti Bhushan, is not of any assistance while considering the constitutional meaning of the said term. There may not be any embargo to limitation on the power of the Parliament to enact the law in respect of activities other than manufacturing activities but that power is non- existence in Entry 52 of List I. It may be elsewhere. Reference in this regard can be made to Entry 33 of List III including in its ambit food stuff and certain raw materials. Tobacco, however, is admittedly not a food stuff.

The validity of certain other acts such as the Cardomom Act, 1965, The Central Silk Board Act, 1958, The Coffee Act, 1942, The Rubber Act, 1947, The Tea Act, 1953, The Coir Industry Act, 1953 and the Coconut Development Board Act, 1979 reference whereof was made by Mr. Shanti Bhushan need not be examined for purposes of considering the legislative competence of the impugned State legislations. The legislative competence of Parliament to legislate these statutes is not in issue before this Court and, therefore, we do not think it necessary to examine the question of legislative competence only from academic view point insofar as these legislations are concerned. However, prima facie, there is no substance in the apprehension expressed by Mr. Shanti Bhushan that narrow approach of the concept of 'industry' would make these acts beyond the legislative competence of the Parliament and make them ultra vires. As, when and it these acts are challenged, the question of legislative competence would be examined. Further, it may be noted that two out of the aforesaid legislations, namely, the Coffee Act, 1942 and The Rubber Act, 1947 are

pre-Constitution enactments made under the Government of India Act, 1935 where the entries were different. Item 29 of List II of the said Act has already been reproduced above. In respect of the Coir Industry Act, on examination of the provisions contained therein, it may be possible to urge that the statute deals with the process of manufacturing and does not seek to control plantation and preservation of the coconut trees or the production of the coconut. The Central Silk Board Act has been dealt with by this Court in the case of B. Vishwanathiah & Co. and Ors. v. State of Karnataka and Ors. and I fail to appreciate how upholding the validity of the Agricultural Produce Marketing Acts would effect the validity of this enactment. In respect of Cardomom Act, it appears that the said Act is being applied for export purposes and it does not cover soil preparation of seed-lings. Regarding Coconut Development Act, it does not envisage setting up of auction platform and controlling marketing as in the present case. That enactment primarily deals with the field pertaining to recommendation for improving marketing, providing financial assistance for adoption of modern technology and for assisting growers to get incentive prices. This Court, however, need not examine in detail the aspect of legislative competence in regard to these enactments since, as already said, that is not the matter in issue here and it would suffice to indicate, as above, only the prima facie view to dispel the apprehension expressed by Mr. Shanti Bhushan.

Harakchand Ratanchand Banthia and Ors. v. Union of India and Ors. has been strongly relied upon by Mr. Shanti Bhushan to support the contention of wide interpretation of the expression 'industry'. The main question therein was about the legislative competence of the Parliament to enact the Gold (Control) Act, 1968. The said Act defines Gold to mean Gold, including its alloy (whether virgine, melted or re-melted, wrought or unwrought), in any shape or form, of a purity of not less than nine carats and including primary gold, article and ornament [Section 2(j)]. Clause (r) of Section 2 defines 'primary gold' to mean gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires. Challenging the constitutional validity of the Gold (Control) Act, the contention urged was that the goldsmiths was a handicraft requiring application of skill and the art of making ornament was not an industry within the meaning of Entry 52 of List I of the Seventh Schedule of the Constitution. The Constitution Bench noticed the established principles that the widest aptitude should be taken of all the entries and the duty of the court to reconcile the entries and bring about a harmonious construction in case some entries in different list or in the same list may overlap or may appear to be in direct conflict with each other. In the present case, however, there is no question of any overlapping and in regard to conflict and harmonious construction, it is Mr. Shanti Bhushan's own submission that the two legislations to the extent this Court is concerned, cannot co-exist.

Reliance has been placed by Mr. Shanti Bhushan on the following passage from Banthia's case:

> "But we are satisfied in the present case that the manufacture of gold ornaments by goldsmiths in India is a 'process of systematic production'for trade or manufacture and so falls within the connotation of the word'industry' in the appropriate legislative entries. It follows, therefore,that in enacting the impugned Act Parliament was validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List III."

The contention of learned counsel is that in Harakchand Ratanchand Banthia's case, the process of systematic production for trade or manufacture has been held to fall within the connotation of the word 'industry' in the appropriate Legislative Entry and the argument that if the word 'industry' is construed in the wide sense, Entry 27 of List II will lose all meaning and content was rejected. The submission is that the same approach deserves to be adopted in the present case as well. The above approach was adopted after finding the activity to be manufacture or production and, therefore, falling within the connotation of 'industry'. In Banthia's case, the Constitution Bench, in fact, cited with the approval Tika Ramji's case and referred thereto as under:

> "In Tika Ramji v. State of Uttar Pradesh the expression 'industry' was defined to mean the process of manufacture or production and did not include raw materials used in the industry or the distribution of the products of the industry."

In Banthia's case, the Court was considering the validity of the Act, the object whereof was to control production, manufacture, supply, distribution, use and possession of, and business in, gold, ornaments and articles of gold and for matters connected therewith or incidental thereto. There is no provision in the Gold (Control) Act, 1968 regulating the manner in which the primary gold would be extracted from the earth. The Act does not concern itself with the extraction of primary gold. The question therein was as to whether the work of goldsmiths was a handicraft requiring application of skill and whether the art of making gold ornaments was not in 'industry' within the meaning of Entry 52, List I. In that case, the question was not whether dealing with the raw material of industry would come or not, within the concept of industry'. Further, the Court observed that it is not necessary to attempt to define the expression 'industry' precisely or to state exhaustively all its different aspects. On the facts of the case, the Constitution Bench held that the process or systematic production of gold ornament by goldsmiths for trade or manufacture falls within the connotation of the word 'industry' in the appropriate Legislative Entry. The decision in Tika Ramji's case was not departed from. In fact it was referred to. An attempt to adopt the definition of the word 'industry' in the Industrial Disputes Act was repelled. The contention accepted was that the manufacture of gold ornament was an 'industry' within the meaning of Entry 52, List I. This decision is not of any assistance for determining whether sale of tobacco process can come within the of the tobacco industry so as to fall within the ambit of the word 'industry' in Entry 52 of List I and Entry 24 of List II. The observation in Banthia's case that Entry 27 of List II was a general entry made in the context of manufacture of gold ornaments by goldsmiths falling within the ambit of the word 'industry' as contained in Entry 24 of List II and Entry 52 of List I. Banthia's case does not express any opinion on the scope of the word 'industry' in Entry 52 of List I and Tika Ramji's case still holds the field when it says that the expression 'industry' would mean the process of manufacture or production and would not include any raw material used in an industry or the distribution of the products of industry.

Mr. Shanti Bhushan has also placed reliance on another decision of the Constitution Bench in the case of Chaturbhai M. Patel v. The Union of India and Ors. in particular, to the observations made therein by Sir Maurice Gwyer, Chief Justice in Subramanyan Chettiar v. Muthuswamy Goundan [1940 FCR 188] which have been cited in Patel's case. The said observations read thus:

> "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere."

Reliance was also placed on the observations of Justice Hidayatullah in State of Rajasthan v. G. Chawla & Anr. as cited with approval in the case of Chaturbhai M. Patel.

Those observations are:

> "It is equally well-settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given."

We have no difficulty in accepting the aforesaid observations made by Sir Maurice Gwyer, Chief Justice and Hidayatullah, J (as the then was) but it has to be borne in mind that the question for determination in Chaturbhai M. Patel's case was regarding true nature and character or the pith and substance of the impugned Act, namely, Sections 6, 8, 9 and 10 of the Central Excuse and Salt Act, 1944 and Rules 140 to 148, 150, 171 to 181, 215 and 226 of the Central Excise Rules, the constitutional validity whereof was under challenge. The Constitution Bench was considering the constitutional validity of a fiscal measure to levy and realise duty on tobacco. The contention was that Section 6 and 8 of the impugned Act and rules made thereunder were beyond the legislative Competence of the Central Legislature under the Government of India Act, 1935. The Court was examining the question whether the impugned Act is a law with respect to matters enumerated in item 45 of List I under the 1935 Act or to the matters enumerated in Items 27 and 29 of List II. Entries 27 and 29 have already been reproduced above. They dealt with the power of the State to legislate in respect of trade and commerce, markets and fairs, money lending and money-lenders. Item 29 dealt with power to legislate in respect of production, supply and distribution of goods, development of industries, subject to the provisions in List I with respect to the development of certain industries under the Federal control. The question was whether the impugned Act in pith and substance relate to duties of excise on tobacco as contained in Item 45 or it falls within the boundaries of Items 27 and 29 of the Provincial List. Referring to the decision of the Federal Court, it was held that in the interpretation of the scope of these items, widest possible amplitude must be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can be fairly said to be comprehended in it. On examination of the provisions of the Central Excise Act, the Court came to the conclusion that various provisions of the Act and the Rules were essentially connected with the levying and collection of the excise duty and in its true nature and character the Act remains one that falls under Item 45 of List I and the incidental trenching upon the provisional field of Items 27 or 29 would not affect the constitutionality because the extent of invasion of the provisional field may be a circumstance to determine the true pith and substance but once that question is determined, the Act would fall on the side of central field and not that of the Provincial field. It is, thus, evident that since in pith and substance the matter pertained to

excise duty, it fell under Item 45 of List I and the non-tax entries in Item 27 or 29 could not be invoked. In the Constitution also, Entry 84 relates to duty of excise on tobacco and other goods manufactured or produced in India.

Referring to the argument of the petitioner based on Rule 181 which dealt with revocation and suspension of licenses and empowered the licencing department to revoke or suspend a licence under certain circumstances and the argument that it was the field under the province of the provincial legislature, the Court said that this rule may have an indirect effect of depriving an owner of a bonded warehouse from the privilege of keeping such a warehouse but that does not mean that the object of the Act is not imposition, collection or realization of duty of excise. The rule was held to be "a mean of making the realization of duty effective and necessarily incidental to effectual legislation for collection of duties". In the present case, there is no question of any incidental trenching. It cannot be said that the law relating to sale of tobacco in market area is incidental to law regarding tobacco as enacted by Tobacco Board Act. The decision in Chaturbal M. Patel's case, in our opinion, has no relevance for the present purpose and so also the decision in the case of State Bank of India v. Yasangi Venkateswara Rao. The question squarely involved here is about the interpretation of the expression 'industry' within the meaning of Entry 52 of List I and Entry 24 of List II.

In Ganga Sugar Corporation Ltd. v. State of U.P. and Ors. the constitutional validity of U.P. Sugarcane Purchase Act was challenged on the ground that it invades Entry 52 of List I with respect to sugar industry which is a controlled industry under the IDR Act, 1951. The question raised therein was this : "is the legislation ultra vires because the State enters the forbidden ground by enacting on controlled industry"? It was undisputed that sugar industry was a controlled industry within the meaning of Entry 52 of List I of the Seventh Schedule and, therefore, the legislative power of Parliament covered enactments with respect to industries having regard to Article 246(1) of the Constitution. The Court said that if the impugned Act invades Entry 52, it must be repulsed by the Court. The Court, however, expressed surprise at the argument of invalidity of the Act despite the decision of the Constitution Bench in Tika Ramji's case. The Court said that the Constitution Bench decision must be accepted as final unless the subject be of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that it is wiser to be ultimately right rather than to be consistently wrong. It said that the pronouncement by the Constitution Benches should not be treated so cavalierly as to be revised frequently. Recalling the words of Chief Justice Roberts of the U.S. Supreme Court in Smith v. Alwright [(321 US 649 at 669] "that adjudications of the Court were rapidly gravitating "into the same class as a restricted railroad ticket, good for this day and train only". That part of Tika Ramji's case was referred which dealt with the contention regarding the word 'industry' being of wide import and included not merely manufacture but also the raw material for the industry and rejection of this contention. Paragraphs 31, 31a and 32 deal with Tika Ramji's case and rejection of the argument as to whether raw material of an industry which form an integral part of the process are within the topic of 'industry' which forms the subject matter of Item 52 of List I. The Bench said:

> "The edifice of exclusive parliamentary jurisdiction so built stood on shifting sands. The semantic sweep of Entry 52 did not come in the way of the State legislature

> making laws on subjects within its sphere and not directly going to the heart of the industry itself."

The submission of Mr. Shanti Bhushan, who appeared in Ganga Sugar Corporation's case also, to reconsider Tika Ramji's case was rejected. The Court said:

> "Tika Ramji notwithstanding, the contention was advanced by Shri Shanti Bhushan that 'industry' was a pervasive expression, ambient enough to embrace raw materials used for the industry and so, sugar industry, as a topic of legislation, vested in Parliament exclusive power to legislate on sugar-cane supplies to sugar factories, and pursuing this expansionist logic, any taxation on supplies of cane to mills would be legislation on sugar industry. Ergo the Purchase Tax Act was a usurpation by the U.P. legislature breaching the dykes of Article 246(1) read with Entry 52 of List I. He expanded on the theme by urging that any legislation which affected sugar industry by taxing its raw materials was one with respect to that industry. The Tika Ramji ratio is diametrically opposed to this reasoning and a ruling which has stood the field so long has been followed by another Constitution Bench as late as 1973 in the Kannan Devan Hills Co. v. State of Kerala and its force of logic has our deferential assent and cannot be brushed aside by a mere appeal for reconsideration. Shri Shanti Bhushan candidly conceded that if Tika Ramji were good law, his submission was still-born. We agree."

The Court further held that:

> " 'industry' as a legislative topic is of large and liberal import; true.But what peripherally affects cannot be confused with what goes to the heart. An acquisition of land for sugar mills or of sugar mills may affect the industry but is not an action in the legislative field forbidden for the States (See the Kannan Devan Hills Produce Company Ltd. case. Sales Tax on raw materials going to a factory may affect the costing process of the manufacture but is not legislation on industrial process or allied matters affect topics reserved for Parliament a situation of reductio ad absurdem may be reached."

(emphasis supplied is ours) The effect of acceptance of the submission of Mr. Shanti Bhushan may also denude the State of its power to legislate even in respect of sales tax on tobacco. Such a contention was specifically rejected in Ganga Sugar Corporation's case.

In the Kannan Devan Hills Produce v. The State of Kerala and Anr. challenge was laid to the constitutional validity of Kannan Devan Hills (Resumption of Lands) Act, 1971 for want of legislative competence of the State. The contention urged was that Sections 4 and 5 of the impugned Act are a law with respect of Entry 52 of List I of the Seventh Schedule as these provisions regulate the carrying on of tea industry, within the competence of the Parliament, by controlling the land for tea plantation. It was urged that if the effect of legislation is to control the working of the tea plantation, the legislation must be regarded as legislation with respect to Entry 52 List I. Tika Ramji's case was

cited with approval. Repelling the contention, it was held that the State had legislative competence to legislate on Entry 18, List II and Entry 42, List III and this power cannot be denied on the ground that it has some effect on industry controlled under Entry 52, List I. The Constitution Bench further said that if a State Act, otherwise valid, has effect on a matter in List I, it does not cease to be a legislation with respect to an Entry in List II or List III. It said that effect is not the same thing as subject matter. The object of Sections 4 and 5 seems to be to enable the State to acquire all lands which do not fall within the categories (a), (b) and (c) of Section 4(1). These provisions are really incidental to the exercise of the power of acquisition. The State cannot be denied the power to ascertain what land should be acquired by it in the public interest.

In B. Viswanathiah & Co. and Ors. v. State of Karnataka and Ors. the challenge was to the validity of the provisions of Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) Act, 1959 (Act 5 of 1960). The contention urged on behalf of the petitioners in that case was that any legislation in respect of silk industry can be enacted only by the Parliament and the State Legislature is incompetent to legislate on the matter because Section 2 of the Central Silk Board Act enacted a declaration in terms of Entry 52, List I. The effect of it was to remove the silk industry from the purview of the State Legislature powers thus, rendering the State Legislature incompetent to legislate on that topic. The High Court repelled the challenge relying upon the decision of this Court in Tika Ramji, Ganga Sugar Corporation Ltd., Harakchand Ratanchand Banthia Kannan Devan Hills Produce Company's cases. After noticing that the High Court on the basis of series of decisions of this Court regarding scope of Entry 52 of List I in the Seventh Schedule of the Constitution had repelled the challenge, this Court expressed full agreement with the views of the High Court. It was held that the control of industry vested in Parliament was restricted to the aspect of production and manufacture of silk yarn or silk. It did not obviously take in the earlier stage of industry, namely, the supply of raw materials. For instance, even in regard to the silk industry, the reeling, production, development and distribution of silkworm seeds and cocoons was regulated by the State Act. These items can be perhaps legitimately described as raw materials of the silk industry. The control being vested in Parliament under Entry 52 of silk industry did not affect the control over these raw materials. It was held that the control, supply and distribution of the goods produced by the industry was the third aspect of industry which falls outside the purview of the control postulated under Entry 52. In other words, though the production and manufacture of raw silk cannot be legislated upon by the State Legislature in view of the provisions of the Central Act and the declaration in Section 2 thereof, that declaration does not in any way limit the powers of the State Legislature to legislate in respect of goods produced by the silk industry. This Court said that "To interpret Entry 52 otherwise would render Entry 33 in List III of the Seventh Schedule to the Constitution otiose and meaningless". The same would be the position in the present case.

The acceptance of the argument of Mr. Shanti Bhushan would make various Entries in the State List otiose and meaningless and subject to Entry 52 of List I despite the fact that the entries are not so worded.

In Indian Aluminium Company Ltd. and Anr. v. Karnataka Electricity Board and Ors. challenging the amending Act by the State, the contention urged before the High Court was that:

> "Aluminium industry is scheduled industry under the control of the Government of India as declared by Industries Development and Regulation Act and hence falls under Entry 52 of List I of VIIth Schedule of the Constitution. Therefore, the policy of Government of India amounts to direction issued to the State Government which they are bound to obey. Consequently the agreement of 1976 is an agreement protected by a law coming under Entry 52 of List I, terms of which cannot be varied by a law enacted by a State by virtue of the power conferred by the Concurrent List (List III of VIIth Schedule). The amending Act should be construed in such a way as not to impinge on or detract from the law, statutory order or constitutional direction of the Central Government, otherwise the said amending Act will lack legislative competence."

The High Court relying upon the decision in Tika Ramji's case, where the concept of industry as a topic of legislation was explained, repelled the aforesaid contention. The decision and reasoning given by the High Court upholding the vires of the amending Act relating to the concept of industry as explained in Tika Ramji's case were upheld by this Court.

In Shriram Industrial Enterprises Ltd. v. The Union of India and Ors. a Full Bench of Allahabad High Court examined the validity of U.P. Sheera Niyantran Adhiniyam, 1964 (U.P. Act No. XXIV of 1964) on the question of the competence of the State Legislature. Its validity had been challenged by the Sugar Industry. It was urged that by virtue of Section 18G of the IDR Act, the State Legislature stood denuded of power to legislate regulating supply, distribution and supplies of molasses -- a product of sugar industry and was consequently incompetent to enact Sections 7, 8 and 10 of the aforesaid State Act. The Full Bench tracing the history of legislation leading to framing of the Constitution held that if the argument about denuding of power of State Legislature is accepted, most of the entries in Lists II and III would be meaningless. Once the Parliament makes a declaration under Entry 52 of List I, for instance, Entries 20, 21, 22, 23 and 24 would be redundant. The High Court said that neither it was the intention of the framers of the Constitution nor the said contention is born out from the perusal of Entry 52 and the other Entries of Lists II and III of the Seventh Schedule. Noticing various decisions of this Court, the High Court concluded as under:

> "Applying the principles propounded by the apex Court in the cases mentioned above, it is apparent that the State Legislature is competent to make law in respect of the subject industries under Entry 24 of the List II subject to Entries 7 and 52 of List I of the Seventh Schedule and is further competent to enact law on the subject "trade and commerce within the State and Production, supply and distribution of goods," under Entry 26 and Entry 27 of List II subject to Entry 33 of List III of Seventh Schedule of the Constitution. But on declaration under Entry 52 of List I by Parliament in respect of the industries the control of which by the Union is by law held to be expedient in the public interest, three consequences flow. Firstly, on declaration by Parliament in respect of controlled industries the power of State Legislature to legislate under Entry 24 of List II shifts of Entry 52 of List I to the extent of control provided in the Act. The second result which follows upon declaration is that the power to enact law by State Legislature under Entry 26 and

> Entry 27 of the List II of Seventh Schedule becomes part of Entry 33 of List III which is a concurrent list. Third consequence that follows on declaration is that he products of the controlled industries would fell within Entry 33 of List III.The controversy before me, if examined seeing the constitutional debate, history of legislation, structure and design of the relevant entries and also keeping in view the basic structure of the Constitution, the only irresistible conclusion is that Section 18G of the IDR Act is referable to Entry 33 of List III of the Seventh Schedule. Since the power to enact in respect of production, supply and distribution of the products of the controlled industries being a concurrent subject, the U.P.Legislature is competent to enact the Adhiniyam of 1964."

The structure and scope of Entry 54 of the Union List and Entry 23 of the State List and their inter-relationship is substantially different from the scope and structure of Entry 24 of the State List and Entry 52 of the Union List. The Entry relating to of mines and minerals has in it both the industry of mines and its product minerals and, therefore, on a declaration both miens and minerals get embedded in Entry 54 of the Union List. Therefore, it has been consistently held by this Court, that by declaration under Entry 54, the Parliament evinces an intention to occupy the whole field.

In my view the Full Bench rightly held that the cases relating to miens and minerals relied upon in support of the challenge to the State legislation were of no assistance. The Full Bench decision was approved by this Court in SIEL Ltd. and Ors. v. Union of India and Ors.

In Belsund Sugar Co. Ltd. v. State of Bihar and Ors. the Constitution Bench examined the question regarding the legality of levy of market fee under the provisions of Bihar Agricultural Produce Markets Act, 1960 pertaining to various commodities including sugarcane, sugar and molasses, wheat and tea. The Court first dealt with the transaction 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. It noticed that the Market Act had been enacted by the Bihar Legislature as per the legislative power vested in it by Entries 26, 27 and 28 of List II of the Seventh Schedule of the Constitution. The Court, however, noticed that the Market Act dealt with supply and distribution of the goods as well as the 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 Court said, 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. 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, the Constitution Bench said that it has to be held that the Market Act being enacted under the topic 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. The contention of Mr. Dwivedi being that as admittedly the tobacco is not foodstuff and does not fall under Entry 33 of List III, like the amendment to the Constitution made in 1953, the Parliament by further amendment of the Constitution can, if so advised, place tobacco -- raw material of the industry - in Entry 33 of List III and, thus, confer on itself the competence to legislate in respect to tobacco, need not be examined by this Court as being unnecessary. We may, however, note that the Constitution

Bench, after noticing various provisions of the Act and the Rules, came to the conclusion that the need for regulating the purchase, sales, storage and processing of sugarcane, being an agricultural produce, is completely met by the comprehensive machinery provided by the Sugarcane Act enacted by the same very legislature which enacted the general Act being the Market Act.

In Belsund Sugar Co. Ltd. one of the contentions urged was that under the IDR Act, in public interest, Union of India had taken over the control of the wheat industry as specified in the First Schedule to the Act and consequently and transaction of purchase and sale of the product of that industry cannot be regulated by the State Act. The Constitution Bench noticed that the Parliament in exercise of its legislative power under Entry 52 of List I of the Seventh Schedule had enacted the IDR Act and flour industry is listed as one of the scheduled industries under the caption "Food-processing Industries". The Bench said that the production of wheat as a raw material or its sale is not covered by the said Act and, consequently, so far as wheat as 'agricultural produce' is concerned, it is outside the sweep of the IDR Act. The question still remained whether the sale of flour or any other product out of wheat can be said to be covered by the sweep of the IDR Act. It was noticed that the Central Government had not promulgated any statutory order under Section 18G covering the field. The Court rejected the contention that mere existence of a statutory provision in the Act enabling the Central Government to issue such order would be sufficient to occupy the field contemplated by the provision. while examining the decision in Hingir-Rampur Coal Company's case on which reliance was placed by the appellants, the Constitution Bench held that 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 the minerals development by taking them under the control of the Union in Public interest. Thus, all aspects of the mining industry would be covered by the general sweep of such a declaration. But it was noticed that the IDR Act was enacted under Entry 52. It was held that the scheme of Entry 54 of the Union List read with Entry 23 of the State List was entirely different from the scheme of Entry 52 of List I read with Entry 24 of List II with which the Court was concerned in that case. On conjoint reading of these two entries, the ratio of the decision in Hingir-Rampur Coal Company's case, it was held, cannot be effectively pressed into service.

As already noticed, the majority decision in ITC case for the view it took had placed reliance on Baijnath Kadio which followed Hingir-Rampur Coal Company's case.

Further in Belsund Sugar Company, the Constitution Bench cited with approval the decision in SEIL case and reiterated that merely because industry is controlled by a declaration under Section 2 of the IDR Act enacted by Entry 52 of the Union List, the State Legislature would not be denied of its power to regulate the products of such an industry by exercise of its legislative power under the State List. It would be useful to extract para 119 of Belsund Sugar Company's case as under:

> "However, so far as the IDR 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 the 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 into service by Shri Ranjit Kumar for supporting his contention. In this contention, we may usefully refer to a decision of this Court in SIEL Ltd. where 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 Hingir Rampur Coal Co. Ltd. and taken the view that merely because an industry is controlled by a declaration under Section 2 of the IDR 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 this legislative powers under Entry 24 of the State List. In that case the question was whether the 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 IDR Act imposing restrictions on the sale of molasses and fixing the maximum price of molasses. Answering the question in the 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 a statutory order promulgated under Section 18-G of the IDR Act, it cannot be said that the field for regulation of sale and purchase of products of the flour industry like atta, maida, suji, bran, etc. would remain outside the domain of the State Legislature."

(emphasis supplied is ours) The principles aforesaid would equally apply to Entries 14, 27, 28 and 66 of List II. It may further be noticed that in para 170 of Belsund Sugar Company's case , the Constitution Bench reiterates the view expressed in Tika Ramji's case as also in SIEL's case affirming Full Bench of the Allahabad High Court in M/s. Shriram Industrial Enterprises (supra).

In view of the above, I see no compelling reason either on account of any binding precedent in the form of a earlier Constitution Bench judgment, history and background of the framing of the Constitution or the words used in various Entries or the language of any Article in the Constitution of India, to take a view which will result in denuding the power of State Legislatures to legislate not

in respect of field of legislation under Entry 24 but field of legislation covered by other entries on State List on making of declaration under Entry 52 of the Union List. The Constitution Bench judgment in the case of Tika Ramji and other decisions following it confine the field of legislation of industries to 'the process of manufacture or production' and not to 'raw materials' which may be integral part of industrial process or to the 'distribution of the product of the industry'.

In view of the aforesaid, I conclude as under:

1. The State legislations and the Tobacco Board Act, 1975 to the extent of sale of tobacco in market area cannot co-exist.

2. The State Legislatures are competent to enact legislations providing for sale of agricultural produce of tobacco in market area and for levy and collection of market fee on that produce.

3. The Parliament is not competent to pass legislation in respect of goods enumerated in aforesaid conclusion No. 2 while legislating in the field of legislation covered by Entry 52 of the Union List under which the Parliament can legislate only in respect of industries, namely, 'the process of manufacture of production' as held in Tika Ramji's case. The activity regarding sale of raw tobacco as provided in the Tobacco Board Act cannot be regarded as 'industry'.

4. ITC's case [1985 Supp. SCC 476] is not correctly decided.

Leave in special leave petitions granted. For the aforesaid reasons, the State legislations are held to be valid pieces of legislation. The appeals and the writ petition are disposed of accordingly. Parties to bear their own costs.

Brijesh Kumar, J.

I have the privilege of going through the judgments, separately prepared by my esteemed colleagues Brother G.B. Pattanaik, Brother Y.K. Sabharwal, and Mrs. Ruma Pal, J.J. In all the three judgments, the facts as well as the relevant provisions of the law and the decisions on the subject have been very elaborately and lucidly discussed. Hence, it would not be necessary to go into those matters all again. The main question, however, which has been considered is as to whether the case ITC Ltd.

versus State of Karnataka 1985 Supp. 1 S.C.R. 145 has been correctly decided or not. In the above cited case, it has been held that once Tobacco Industry, in the public interest, was declared as such under Entry 52 of List 1 of VIIth Schedule of the Constitution, the State Legislatures ceased to be competent to legislate on the subject viz. Tobacco Industry, in conflict with the laws made by the Parliament, namely, the Tobacco Board Act 1975. The State Act of Karnataka levying market fee on sale of tobacco in the market area was thus held to be invalid. The whole legislative field in relation to the subject of tobacco including its sale as an agricultural produce was held to have vested in the

Parliament. While holding so reliance was placed on the decisions of this Court reported in State of Orissa versus M.A. Tullock & Co. 1964 (4) SCR 461 and Baij Nath Kedia versus State of Bihar and others 1969 (3) SCC 838. Mr. Justice Mukherjee, however took a diffeerent view holding that both Acts namely the Tobacco Board Act 1975 and the Karnataka Agricultural Produce Market Act could operate together without offending each other. Therefore, the other question for consideration before this Bench has been as to whether provisions of the two Acts viz. Tobacco Board Act and State Act could operate together or not.

Different States namely Bihar, U.P., Tamil Nadu and others have similar State Legislations levying market fee on sale of agricultural produce including Tobacco. The same question arose for consideration in respect of these States as well, in one way or the other.

Brother Pattanaik, in his judgment has found that the ITC Case (supra) has been correctly decided, though reasons for holding so were slightly different than the reasons on the basis of which the judgment was rendered in the ITC case. It has been further held that once Parliament takes over the control of a particular industry in the interest of the said industry as well as in the national interest, the control should be effective and should be in such a manner that the desired object can be achieved. Therefore, whole legislative field was open to the Parliament to legislate on the subject of tobacco industry including growing of tobacco as well as its sale and purchase. It has also been held that in any case, entrenching into the legislative field of an entry in the other list on a matter which may be ancillary or incidental thereto, would not invalidate the legislation. On the other question it has been found that the two Acts namely Tobacco Board Act 1975 and the State Agricultural Produce Marketing Act cannot operate simultaneously.

Brother Sabharwal, J., has broadly held that the decision in Tika Ramji versus State of UP (1956) SCR 393 holds good for the purposes of meaning to be assigned to the expression `industry' occurring in Entry 52 of List I. The pre-

manufacture activity relating to growing and sale of tobacco cannot be subject matter of legislation by the Parliament by virtue of declaration of tobacco industry under Entry 52 of List I of the VIIth Schedule. The power of State legislation to legislate on the subject in the List II of the VIIth Schedule e.g. Entry 14, 28 etc. remains unaffected. It has also been held that the State Act and the Central Act cannot operate simultaneously whereas Hon'ble Ruma Pal J. has also found that power of the State Legislature to make laws relating to tobacco as agricultural produce, its sale and levy of market fee was not affected since it cannot be said to be covered by the expression "industry" in Entry 52 of List-I of the VIIth Schedule. The I.T.C. case (supra) has been held to be wrongly decided. It has however been held that the Tobacco Board Act 1975 and the State Act can simultaneously operate without offending each other. In case it may not be possible, the provisions of Markets Act and not the Tobacco Act would prevail.

As noticed earlier the majority view in the ITC Case (supra) has been upheld in the judgment of Brother Pattanaik, on slightly different reasoning and the decisions of this Court in M.A. Tullock and Baij Nath Kedia (Supra) dealing with legislation on Mining and relied upon in the majority judgment of ITC case (supra) have been found to be not relevant for the decision. It is true, while

legislating on any subject covered under an entry of any list, there can always be a possibility of entrenching upon or touching the field of legislation of another entry of the same List or another List for matters which may be incidental or ancillary thereto. In such eventuality, inter alia, broad and liberal interpretation of an entry in the list may certainly be required. An absolute or watertight compartmentalization of heads of subject for legislation may not be possible but at the same time entrenching into the field of another entry cannot mean its total sweeping off even though it may be in the exclusive List of heads of subjects for legislation by the other Legislature. As in the present case the relevant heads of subject in List II, other than entry 24, cannot be made to practically disappear from List II and assumed to have crossed over in totality to List I by virtue of declaration of Tobacco Industry under entry 52 of List I, in the guise of touching or entrenching upon the subjects of the list II.

I therefore, append my full agreement with the conclusions and judgment of Brother Sabharwal J. on all points.

RUMA PAL, J.

I regret my inability to concur with the conclusion reached by my learned Brother, Pattanaik J, that because of the enactment of the Tobacco Board Act, 1975 by Parliament, the State Act viz., the Bihar Agricultural Produce Markets Act, 1960 in so far as it relates to levy of fee on the sale and purchase of tobacco, is invalid.

That the legislative power of Parliament in certain areas is paramount under the Constitution is not in dispute. What is in dispute is the limits of those areas as judicially defined. Broadly speaking Parliamentary paramountcy is provided for under Articles 246 and 254 of the Constitution. The first three clauses of Article 246 of the Constitution relate to the demarcation of legislative powers between the Parliament and the State Legislatures. Under clause (1), notwithstanding anything contained in clauses (2) and (3), Parliament has been given the exclusive power to make laws with respect to any of the matters enumerated in List I or the Union List in the Seventh Schedule. Clause (2) empowers the Parliament, and State Legislatures subject to the power of Parliament under sub-clause (1), to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule described in the Constitution as the 'Concurrent List' notwithstanding anything contained in sub-clause (3). Under clause (3) the State Legislatures have been given exclusive powers to make laws in respect of matters enumerated in List II in the Seventh Schedule described as the 'State List' but subject to clauses (1) and (2). The three lists while enumerating in detail the legislative subjects carefully distribute the areas of legislative authority between Parliament (List I) and the State (List II). The supremacy of Parliament has been provided for by the non obstante clause in Article 246 (1) and the words 'subject to' in Art.246 (2) and (3). Therefore, under Article 246 (1) if any of the entries in the three Lists overlap, the entry in List I will prevail. Additionally some of the entries in the State List have been made expressly subject to the power of Parliament to legislate either under List I or under List III. Entries in the Lists of the Seventh Schedule have been liberally interpreted, nevertheless Courts have been wary of upsetting this balance by a process of interpretation so as to deprive any entry of its content and reduce it to 'useless lumber'. The use of the word 'exclusive' in

Clause (3) denotes that within the legislative fields contained in List II, the State Legislatures exercise authority as plenary and ample as Parliament.

> "The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis- -vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States".

Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List. Conversely, the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment. This principle commonly known as the doctrine of pith and substance, does not amount to an extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail. To return to the subject of Parliamentary supremacy. The second facet of the supremacy of Parliament is to be found in Article 254 (1) which provides:

> Article 254: "Inconsistency between laws made by Parliament and laws made by the Legislatures of States (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."
>
> In other words where in due exercise of legislative powers in the Concurrent List there is an irreconcilable conflict in the legislations enacted, the Central Legislation will prevail. The doctrine of repugnancy has been developed in this context. [See: M/s Hoechst Pharmaceuticals Ltd. V. State of Bihar 1983 (4) SCC45, 89 ; Deep Chand v. The State of Uttar Pradesh [1959] Supp. SCR 8]. The controversy, in this case, is to be resolved keeping these broad principles in mind.
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> The immediate question before us is whether the Tobacco Board Act, 1975 debars the States from levying market fee in respect of tobacco. In the several matters argued and heard, the main protagonists were the tobacco traders and dealers on the one hand who argue that the States cannot levy market fee on tobacco, and the Market Committees on the other who contend to the contrary. The Union of India and the

Tobacco Board have supported the former while the State Governments the latter. The details of the several matters which were heard by us have been noted in the opinion of Pattanaik, J. A galaxy of counsel have made submissions in support of the opposing camps. For the purpose of convenience and coherence, the diverse arguments have been clubbed together and those contending against the States competence are referred to compendiously as the appellants and their opponents as ' the respondents'. One further clarification is necessary. As the order referring the issue to this Court was passed in an appeal relating to the Bihar Agricultural Markets Act, 1960, although several other states have enacted substantially similar statutes, I will treat the Bihar Statute as representative and refer to the provisions of that Act for deciding the issues.

The Bihar Agricultural Produce Markets Act, 1960 (referred to hereafter as the Markets Act) was enacted by the State of Bihar and is ostensibly referable to Entry 28 of List II which gives the State Legislature the exclusive power to legislate on "Markets and Fairs" read with Entry 66 of List II according to which the State Legislature may also levy fees in respect of any matter in List II except Court fees. It is true that in Belsund Sugar Company vs. State of Bihar the Court proceeded on the basis that the Markets Act had been enacted by the Bihar Legislature not only under the legislative power vested in it by Entry 28 but also under Entries 26 and 27 of List II of the Seventh Schedule of the Constitution but in that case, there does not appear to have been any controversy raised on this point. Entries 26 and 27 of List II 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."

It has also been argued by the respondents that the State Act is also referable to Entry 14 of List II which describes the permissible subject matter of legislation by States as:

14: Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

Except for Entries 26 and 27 of List II, each of the other entries comes within the exclusive legislative domain of the States.

The Tobacco Board Act, 1975, on the other hand, is claimed by the appellants to be relatable solely to Entry 52 of List I which enables Parliament to legislate on "industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". According to the appellants, the Markets Act seeks to regulate, inter-alia, the sale of various kinds of agricultural produce including

tobacco. They contend that the provisions of the Markets Act could not be applied to tobacco because the Tobacco Act was enacted by Parliament under Entry 52 of List I to control and regulate everything relating to the tobacco industry from the growth of tobacco to its processing, storing, sale, manufacture, export and import.

It had been initially argued by the appellants that once a declaration is made in terms of Entry 52 of the Union List, the industry in respect of which the declaration is made and the entire process relating thereto becomes part of the legislative head itself and within the exclusive domain of the Parliament, and the State legislature becomes incompetent to enact any provision with regard to that industry. The submission was somewhat watered down in the reply. It was conceded that the argument was an extreme one and that the true principle was that one has to examine the actual extent of coverage by the Central enactment. The next submission was that the word 'industry' in Entry 52 of List I will have to be given a wide meaning. Passages from the Encyclopaedia Britannica were referred to, to contend that an 'industry' could be primary, secondary or tertiary. Primary industries would include agriculture, forestry, fishing, mining and the extraction of minerals etc. A secondary industry would be a manufacturing industry where raw materials supplied by primary industries are processed to manufacture consumer and non- consumer goods. A tertiary industry would be one where services were rendered such as banking, insurance, transportation, information etc. This was contrasted with the meaning of the word as defined in the Industries, Development and Regulation Act, 1951 which only deals with manufacturing industries. According to the appellants, this Court in Harakchand Ratanchand Banthia & Ors. V. Union of India 1970 (1) SCR 479 1971 SC 479 not only accepted the wide definition of industries but also specifically held that the word 'industry' in Entry 52 would also comprise production, supply and distribution of goods referred to in Entry 27 of List II. It was, therefore, contended that the provisions of the Tobacco Act were clearly within the exclusive competence of Parliament and within the field covered in Entry 52 of List I. As a corollary to this argument, it was contended that Parliament could also legislate with regard to the raw materials supplied to a declared industry in keeping with the principle of 'pith and substance'. The next submission was that even if the State Government retained the competence to legislate on tobacco, it could not enact any statutory provisions which would be repugnant to the Central Act. The provisions of the Tobacco Act and the Markets Act were referred to in some detail to contend that they could not possibly co-exist and therefore the Central Act would have to prevail. It was submitted that in the circumstances the provisions of the Markets Act with respect to tobacco were repugnant to the provisions of the Tobacco Act and that by virtue of the provisions of Article 254(1) of the Constitution, the law made by Parliament was to prevail and the law made by the Legislatures of the State to the extent of the repugnancy with the Central Act, is void. The respondents on the other hand contended that the Tobacco Act did not and could not occupy the entire legislative field relating to tobacco. According to them, despite the declaration in Section 2 of the Tobacco Act under Entry 52 of List I, the word 'industry' in the context of the

Tobacco Act could not include anything more than processing and manufacturing of tobacco. Reliance was placed primarily on the decision of the Constitution Bench in Tika Ramji & Ors. Vs. State of U.P. & Others 1956 SCR

393.

It was further submitted on behalf of the respondents that the question of repugnancy between the Markets Act and the Tobacco Act would not arise since Parliament was not competent to enact provisions in respect of a legislative field specifically provided for in List II. It was submitted that the legislative field under Entry 52 of List I was derived from Entry 24 of List II and Entry 24 did not cover the legislative fields otherwise specially provided for in List II. It was stated that Entry 28 could not be rendered redundant by the Central Government's legislation on commodities sold at markets and fairs by issuing a declaration under Entry 52 of List I. It was also submitted that there may be provisions in the Tobacco Act which may incidentally trench on the State's competence and as long as States have not legislated on that topic, the Tobacco Act may prevail. It was submitted that even if the Markets Act were enacted under Entries 26 and 27 of List II nevertheless this would not make the Market Act invalid as far as tobacco was concerned. It was further submitted that although Entries 26 and 27 in the State List were subject to the provisions of Entry 33 of the Concurrent List, there was no provision in Entry 33 of the Concurrent List which covered tobacco. It was submitted that the issue of repugnancy did not arise because Article 254(1) only relates to repugnancy in actual legislations in respect of entries in the Concurrent List. According to the respondents, assuming that Parliament was competent to legislate in respect of tobacco, there was in fact no repugnancy between the Markets Act and the Tobacco Act as the Tobacco Act did not cover post auction sales. In any event, there could be no conflict between the Markets Act and the Central Act in Bihar particularly having regard to the fact that Section 13, 13A and 14A of the Tobacco Act had not been made operative in Bihar. Reliance has been placed upon the absence of a non-obstante clause in the Tobacco Act and the presence of Section 31 in that Act which, according to the respondents, makes it clear that the Tobacco Act was to be read as being in addition to and not in derogation of any other law. Therefore according to the respondents, even if tobacco were solely within the exclusive field of legislation by Parliament, the State Legislature could recover fees for services rendered in respect of markets where tobacco may be sold.

To begin with, I do not think that this Bench should at all go into the question of the validity of the Tobacco Board Act, 1975 (referred to briefly hereafter as the 'Tobacco Act) even though the issue was argued at some length by the main protagonists before us. The dispute which originally gave rise to this set of appeals is limited to the question whether the Market Committees have the authority to levy market fee under the Markets Act on the sale of tobacco and whether the provisions in the Markets Act granting Market Committees such right are repugnant to the provisions of the Tobacco Act and are therefore, unconstitutional. What has been placed before this Bench for its consideration is the correctness of the earlier decision in ITC Ltd & Others v. State of Karnataka 1985 (Suppl.) SCC 476. The question raised in that case was whether the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 relating to the levy of market fee on tobacco were repugnant to the Tobacco Act. The majority held that it was. The minority view was that both Acts could co-exist. But the validity of the Tobacco Act itself was never in dispute. No doubt, the

States have been given notice but the focus of the arguments has been on the levy of fees on the marketing of tobacco. As the Tobacco Act covers a much larger field, a pronouncement on the validity of all the provisions dealing with a variety of activities under the Act would not be appropriate as it would perhaps pre-empt a decision on aspects other than the marketing of tobacco without hearing those who might be interested in the outcome of a decision on those provisions.

The starting point in any controversy dealing with apparently conflicting legislative jurisdictions is to see whether the conflict can be fairly reconciled by reading the entries to which the legislations are referable, together and "by interpreting and, where necessary, modifying the language of the one by that of the other". It is only when such resolution is not possible that the Courts should be called upon to decide the question of legislative competence. This principle has been stressed in a number of cases by the Privy Council, the Federal Court and more recently by this Court. [See: The Central Provinces and Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938", 'Governor-General in Council v. Province of Madras' , State of Bombay v. F.N. Balsara AIR 1951 SC 818, 822, Accountant & Secretarial Services Pvt. Ltd. V. Union of India AIR 1988 SC 1708; Fatehchand v. State of Maharashtra: AIR 1977 SC 1825, 1827: Calcutta Gas Company (Proprietary) Ltd. V. State of West Bengal AIR 1962 SC 1044).

Similarly, when there is an apparent conflict between two statutes enacted in valid exercise of legislative powers under the Concurrent List, reconciliation must be attempted. Only when the differences are irreconcilable should the Courts resort to striking down a piece of legislation.[See: The Kannan Devan Hills Produce v. The State of Kerala:

(1972) 2 SCC 218' M/s. Hoechst Pharmaceuticals Ltd. v.

State of Bihar: (1983) 4 SCC 45] In my view, if therefore, the issue raised in this case can be resolved by limiting our consideration to the question of conflict, if any, between the two entries in the seventh schedule of the Constitution to which the Tobacco Act and the Market Act are respectively relatable and between the provisions of the two statutes which have a bearing on the marketing of tobacco, it is unnecessary to stray into those areas which may not be necessary for the disposal of these appeals. The discussion in this opinion is therefore limited to the scope of the two entries and the allegedly conflicting provisions of the two Acts with which we are concerned. The controversy in this case to a large extent turns on the meaning of the word "industry" as used in the three legislative lists. Now the power to legislate in respect of all industries has been given under Entry 24 of List II to the State Legislatures subject to Entries 7 and 52 of List I. Entries 7 and 52 of List I allow Parliament to legislate in respect of particular 'industries' namely such industries which are declared by Parliament by law to be necessary for the defence or for the prosecution of war (Entry 7) and industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest (Entry 52). Trade and commerce in, and the production supply and distribution of the products of such controlled industry have been provided for in Entry 33 of the Concurrent List wherein both Parliament and the State Legislatures are competent to legislate. A Constitution Bench of this Court in The Calcutta Gas Company (Prop.) Ltd. V. the State of West Bengal has held that the expression 'industry' in all the three lists must be given the same meaning and that since ordinarily industry is in the field of State Legislation the word must be construed in the context of the other

entries in List II in such a manner so that no entry in List II is deprived of its content. In other words, the meaning of the word 'industry' is to be determined with reference to Entry 24 of List II where the power to legislate generally in respect of industries has been provided. Entries 7 and 52 are entries which specify particular industries out of this general pool. The meaning of the word 'industry' in these two entries, therefore, must necessarily be derived from the meaning which may be ascribed to the word in Entry 24 of List II.

The seminal decision on this process of interpretation for arriving at the definition of 'industry' is Ch. Tika Ramji & Others V. State of Uttar Pradesh & Ors. in which a Constitution Bench unanimously held:

> "Industry in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 26 of List II. The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 of List III."

The underlying rationale of Tika Ramji's definition of the word 'industry' is that the Constitution having expressly provided for particular fields of legislation in the three Lists, each field must be given a meaning. Entry 24 of List II cannot be read so as to subsume within itself the other entries in List II. It must be given a meaning which allows the other entries to survive and be defined to that extent with reference to what it is not.

Thus in Calcutta Gas it was held that the word 'industry' in entry 24 of List II and 7 and 52 of List I did not include gas and gas works which was in terms provided for in Entry 25. The argument in that case was that the State was incompetent to enact the Oriental Gas Company Act, 1960 under Entry 25 of List II because Parliament had passed the Industries (Development & Regulation) Act, 1951 by virtue of Entry 52 of List I. The Central Act in that case had under Section 2 declared that it was expedient in the public interest that the Union should take under its control inter-alia industries of " 'fuel gas' (coal gas, natural gas and the like)". For the purpose of promoting and regulating these industries, the Central Act enabled the Central Government to investigate into the affairs of an undertaking, to regulate its production, supply and distribution, and, if necessary to take over the management of the undertaking. The Court said that if the word 'industry' in Entry 24 of List II and, therefore, 52 of List I were interpreted to include 'gas and gas works' which were expressly covered by entry 25 List II, entry 25 may become redundant and it would amount to attributing to the authors of the Constitution "ineptitude, want of precision and tautology". As a result, the challenge to the State Act was negatived and the Central Act, insofar as it purported to deal with the gas industry, was held to be beyond the legislative competence of Parliament.

Again in B. Viswanathiah and Company and others V. State of Karnataka 1991 (3) SCC 358, writ petitions were filed challenging the validity of the provisions of the Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) Act, 1959 (Act 5 of 1960). It was contended that the impugned provisions lacked legislative competence after the enactment by Parliament of the Central Silk Boards Act (Act 61 of 1948) which contained a declaration as contemplated under Entry 52 of List I. The Court held, following Tika Ramji, that the "control of the industry vested in Parliament was only restricted to the aspect of production and manufacture of silk yarn or silk. It did not obviously take in the earlier stages of the industry, namely, the supply of raw materials".

It was also held:

> "though the production and manufacture of raw silk cannot be legislated upon by the State legislature in view of the provisions of the Central Act and the declaration in Section 2 thereof, that declaration and Entry 52 does not in any way limit the powers of the State legislature to legislate in respect of the goods produced by the silk industry. To interpret Entry 52 otherwise would render Entry 33 in List III of the Seventh Schedule to the Constitution otiose and meaningless".

This process of defining 'industry' in Entry 24 of List II and consequently Entry 52 of List I, by eliminating from its scope the fields specifically provided for in List II or List III has been consistently followed. For example in State of A.P. v. Mc Dowell & Co: 1996 3 SCC 709 it was said:

> " Parliament cannot take over the control of industries engaged in the production and manufacture of intoxicating liquors by making a declaration under Entry 52 of List I, since the said Entry governs only Entry 24 in List II but not Entry 8 in List II."

In Kanan Devan Hill Produce v. State of Kerala 1972 (2) SCC 218 it was held that a declaration under Entry 52 of the Union List in respect of the tea industry did not debar the States from legislating to acquire land under tea cultivation under Entry 18 of List II and Entry 42 of List III.

A Constitution Bench in Ganga Sugar Corporation Ltd. vs. State of Uttar Pradesh and others 1980 (1) SCC 223 upheld the power of States to impose purchase tax on sugarcane under Item 54 in the State List despite central legislation under Entry 52 of List I in respect of the sugar industry.

Another Constitution Bench in Fateh Chand v. State of Maharashtra : AIR 1977 SC 1825 had to decide the constitutional tug-of-war between the Maharashtra Debt Relief Act, 1976 on the one hand and the Gold Control Act on the other. It was contended that the Debt Act was void insofar as it dealt with "gold loans" because Parliament had occupied the field under Entry 52 of List I. It was also urged that there was inconsistency between the Debt Act and the Gold Control Act and that the Debt Act could not be given effect to to the extent of such inconsistency. The Court noted that the Debt Act came squarely within Entry 33 of List II namely "money-lending and money-lenders; relief of agricultural indebtedness" and it was held that despite the fact that the Gold Act was referable to Entry 52 of List I:

> ". This does not mean that other entries in the State List become impotent even regarding 'gold'. The State Legislature can make laws regarding money-lending even where gold is involved under Entry 30, List II, even as it can regulate 'gambling in gold' under Entry 34, impose sales tax on gold sales under Entry 54 regulate by municipal laws under Entry 5 and by trade restrictions under Entry 26, the type of buildings for gold shops and the kind of receipts for purchase or sale of precious metal. To multiply instances is easy, but the core of the matter is that where under its power Parliament has made a law which overrides an entry in the State List, that area is abstracted from the State List. Nothing more."

It is unnecessary to multiply instances of the numerous decisions which have followed the logic of Tika Ramji and accepted its conclusion that for the purposes of Entry 24 of List II and consequently Entry 52 of List I, 'industry' means "manufacture or production" and nothing more. It is sufficient to note that Tika Ramji's definition of industry has been affirmed and applied recently by a Constitution Bench in Belsund Sugar Company v. State of Bihar (supra) and is still good law. Harak Chand Banthia's case does not strike a discordant note.

Harakchand Ratanchand Banthia & Ors. v. Union Of India: 1970 1 SCR 479, has been cited by the appellants in support of the proposition that the negative test laid down in Tika Ramji and developed in Calcutta Gas does not apply to define the scope of Entry 52 of List I vis-a-viz Entry 27 of List II. The submission is unacceptable.In Banthia's case the constitutional validity of the Gold (Control) Act, 1968 enacted by Parliament was questioned. Gold had been declared to be a 'controlled' industry under Entry 52 of List I by the Industries (Development & Regulation) Act, 1951. One of the challenges raised was that the activity sought to be controlled by the Gold Act, was not an industry and did not come within the purview of Parliament under Entry 52 of List I. The passage particularly relied upon by the appellants is quoted:

> "The question to be considered is what is the meaning of the word "industry" in Entry 52 of List I, Entry 24 of List II and Entry 33 of List III.
>
> Whatever may be its connotation it must bear the same meaning in all these entries which are so interconnected that conflicting or different meanings given to them would snap the connection. In the Shorter Oxford English Dictionary the word "industry" is defined as " a particular branch of productive labour; a trade or manufacture." According to Webster's Third New International Dictionary (1961 edn.) the word "industry" means "(a) systematic labour especially for the creation of value; (b) a department or branch of a craft, art, business or manufacture, a division of productive and profit making labour especially one that employs a large personnel and capital especially in manufacturing; (c) a group of productive or profit making enterprises or organisations that have a similar technological structure of production and that produce or supply technically substitutable goods, services or sources of income." It was said that if the word "industries" is construed in this wide sense, Entry 27 of List II will lose all meaning and content. It is not possible to accept this contention for, Entry 27 is a general Entry and it is a well-

recognised canon of construction that a general power should not be so interpreted as to nullify a particular power conferred by the same instrument. In Tika Ramji v.State of Uttar Pradesh 1956 SCR 393 the expression "industry" was defined to mean the process of manufacture or production and did not include raw materials used in the industry or the distribution of the products of the industry. It was contended that the word "industry" was a word of wide import and should be construed as including not only the process of manufacture or production but also activities antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry.

But this contention was not accepted.

It was contended by Mr. Daphtary that if the process of production was to constitute "industry" a process of machinery or mechanical contrivance was essential. But we see no reason why such a limitation should be imposed on the meaning of the word "industry" in the legislative lists.

Similarly it was argued by Mr. Palkhivala that the manufacture of gold ornaments was not an industry because it required application of individual art and craftsmanship and aesthetic skill. But mere use of skill or art is not a decisive factor and will not take the manufacture of gold ornaments out of the ambit of the relevant legislative entries. It is well settled that the entries in the three lists are only legislative heads or fields of legislation and they demarcate the area over which the appropriate legislature can operate. The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of subjects to the lists is not by way of scientific or logical definition but is a mere enumeration of broad and comprehensive categories.

It is not, however, necessary for the purpose of this case to attempt to define the expression "industry"

precisely or to state exhaustively all its different aspects. But we are satisfied in the present case that the manufacture of gold ornaments by goldsmiths in India is a "process of systematic production" for trade or manufacture and so falls within the connotation of the word "industry" in the appropriate legislative entries. It follows, therefore, that in enacting the impugned Act Parliament was validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List III."

(Emphasis mine) The decision cannot be read as whittling down or deviating from the reasoning or the definition of the word industry in Tika Ramji. It does not seek to do so. Indeed the Court re-affirmed the definition of industry in Tika Ramji. The observation relating to Entry 27 of List II must be understood in relation to the language of the entry which reads:

> "Production, supply and distribution of goods subject to the provisions of Entry 33 of List III."

This provides for States to generally legislate on production, supply and distribution of goods. Entry 33 of List III deals particularly with the production, supply and distribution of the products of industries where the control of such industry by the Union is declared by law to be expedient in the public interest under Entries 7 or 52 of List I. It would not have been necessary to have especially provided for trade and commerce in, and the production, supply and distribution of the products of a controlled industry in Entry 33 of List III, had the word 'industry' in Entries 7 and 52 of List I covered the field. Similarly had the word 'industry' in Entry 24 of List II been sufficient, why have a separate head under Entry 27 of the same list dealing with the production supply and distribution of goods unless we concede that the framers of the Constitution were guilty of 'ineptitude, want of precision and tantology'? The concept of a 'general' and 'particular' term is necessarily relative depending upon the context in which the term is considered. Entry 27 of List II is certainly a general entry but only in relation to Entry 33 of List III which deals with trade, commerce etc. in particular kinds of products namely the products of a controlled industry. Finally, it is clear from the passage quoted, that Banthia held that the Gold Act was legislatively competent under Entry 52 of List I because it dealt with the process of manufacture or production of gold i.e., it was within the sweep of industry as defined in Tika Ramji.

The appellants' submission that Tika Ramji narrowly construed the word because the decision was rendered in the context of the Industrial (Development & Regulation) Act, 1951 proceeds on a mis-appreciation of the decision. Merely because Tika Ramji found that the particular Central enactment under consideration was under Entry 33 of List III and not Entry 52 of List I does not limit or detract from its authoritative pronouncement on the scope of Entry 52 of List I. The finding in fact formed the basis of the conclusion that the provisions of the Central Act in question did not fall within Entry 52 of List-I. What was construed was the ambit of Entry 52 of List I and the range of a declaration under that entry. That the declaration was contained in the Industries (Development and Regulation) Act, 1951 was inconsequential and could not colour the scope of the entry itself. It is significant that Banthia's case, which according to the appellants accepted a wider meaning of 'industry', was also a case in which the relevant declaration under Entry 52 of List I was under the Industries (Development and Regulation) Act.

Banthia's case has been considered and explained in the subsequent decision of the Constitution Bench in M/s Fatehchand Himmatlal and Others V. State of Maharashtra 1977 (2) SCC 670. With specific reference to Banthia's case, the Court held:

> "..We see nothing in that decision which contradicts the position that while the Gold Control Act fell within Entry 52 of List I the State List was not totally suspended for that reason for purposes of legislating on subjects which fell within that List, but incidentally referred also to gold transactions."

To add to the persuasive force of their arguments, the appellants then put forward what can only be described an argument of alarm. It was contended that if a narrow view of industry were taken, then

despite a declaration by Parliament under Entry 7 of List I that an industry was necessary for the purpose of defence of the country or for the prosecution of war, Parliament would not be competent to legislate on the supply of raw materials or distribution of the finished product. Such an argument is hardly relevant to a question of construction. In any case it overlooks the superior powers of Parliament under Entry 33 of List III and the overriding powers of Parliament during a national emergency including those under Articles 249, 250, 251 and 252.

To sum up: the word 'Industry' for the purposes of Entry 52 of List I has been firmly confined by Tika Ramji to the process of manufacture or production only. Subsequent decisions including those of other Constitution Benches have re-affirmed that Tika Ramji's case authoritatively defined the word 'industry'- to mean the process of manufacture or production and that it does not include the raw materials used in the industry or the distribution of the products of the industry. Given the constitutional framework, and the weight of judicial authority it is not possible to accept an argument canvassing a wider meaning of the word 'industry'. Whatever the word may mean in any other context, it must be understood in the Constitutional context as meaning 'manufacture or production'.

Applying the negative test as evolved in Tika Ramji in this case it would follow that the word 'industry' in Entry 24 of List II and consequently Entry 52 of List I does not and cannot be read to include Entries 28 and 66 of List II which have been expressly marked out as fields within the State's exclusive legislative powers. As noted earlier Entry 28 deals with markets and fairs and Entry 66 with the right to levy fees in respect of, in the present context, markets and fairs. Entry 52 of List I does not override Entry 28 in List II nor has Entry 28 in List II been made subject to Entry 52 unlike Entry 24 of List II. This Court in Belsund Sugar (supra) has also accepted the argument that Entry 28 of List II operated in its own and cannot be affected by any legislation pertaining to industry as found in Entry 52 of List I. If 'industry' does not include 'markets and fairs' it is important to define what markets and fairs connote. 'Market' may strictly be defined as "the meeting or congregating together of people for the purchase and sale of provisions or livestock, publicly exposed, at a fixed time and place" . A 'fair' has been judicially defined as meaning 'a periodical concourse of buyers and sellers in a place generally for sale and purchase. at times or on occasion ordained by custom . The distinction between markets and fairs appears to lie in the periodicity viz. while a market may be a regular or permanent place of business, a fair is an intermittent one. At common law, fairs and markets were also franchises or rights to hold a concourse of buyers and sellers to dispose of the commodities in respect of which the franchise is given. This included the right to levy a toll or sum payable by the buyer upon sales of articles in a market. The sense in which the word has been used in Entry 28 appears to cover not only such right but the market place itself including the 'concourse of buyers and sellers' and the regulation of all these.

The word "Markets" has also found place in Entry 48 of List 1 which reads "Stock Exchanges and future markets". A Constitution Bench of this Court in Waverly Jute Mills Co. Ltd. vs- Raymon & Co. (India) Private Ltd. [1963] 3 SCR 209 rejected the submission that the word "markets" must be restricted to "a place set apart for the meeting of the general public of buyers and sellers, freely open to any such to assemble together, where any seller may expose his goods for sale and any buyer may purchase".

It was held that :

> "Market no doubt ordinarily means a place where business is being transacted. That was probably all that it meant at a time when trade was not developed and when transactions took place at specified places. But with the development of commerce, bargains came to be concluded more often than not through correspondence and the connotation of the work 'market' underwent a corresponding expansion.
>
> In modern parlance the work 'market' has come to mean business as well as the place where business is carried on."

The question then is does the Markets Act fall within this definition of the word 'markets'? The establishment of regulated markets had long been recognized as an imperative requirement of any ordered plan of agricultural development in this country. The objects and reasons for enacting the Bihar Markets Act, 1960 has been stated as: properly organising markets of agricultural and allied commodities to ensure that the agriculturist gets a fair share of the price paid by the consumer for his produce by attempting to do away or rigidly controlling the middle man. What was originally a source of private profit in common law, has by virtue of the Markets Act become a matter of municipal concern namely, setting up of regulated markets for the marketing of agricultural produce.

The provisions of the Markets Act are briefly noted. The Markets Act provides for the issuance of a notification under Section 3 by the State Government declaring its intention of regulating the purchase, sale, storage, processing of specified agricultural produce in that area. "Agricultural produce" has been defined in Section 2 (6) as:

> " all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, Forest, Sericulture, Pisciculture, and includes livestocks or poultry as specified in the Schedule."

Tobacco has been mentioned at Item XI in the Schedule. Under Section 4 the State Government declares the area specified as a market area for the purpose of the Markets Act. From the date of the declaration, under Section 4 no person or authority can establish or continue or be allowed to set up any place for the purchase, sale, stores or processing of any notified agricultural produce except in accordance with the provisions of the Markets Act. Under Section 5 the State Government may declare by notification any building or locality in any market area to be the principal market yard. Sections 6 to 15 and 17 to 27-A deal with the setting up of Market Committees, their constitution and functions. These Market Committees are subject to the superintendence and control of the Bihar Agricultural Marketing Board set up under Section 33A of the Markets Act.

Section 15 prohibits notified agricultural produce from being bought or sold by any person at any place in the market area other than the relevant principal market yard or sub- market yard or yards established therein unless it is for retail sale, personal consumption or exempted by the Marketing Board under Section 15(1) or (2). The mode of purchase and sale specified under Section 15(2) is by

means of open auction or tender system. Sub-section (2) of Section 18 specifically authorises the Market Committee to issue licences to persons engaged in the processing, storage or processing of agricultural produce to operate in the market area and also to control and regulate the admission of persons into the market yard or the sub-market yards and to prosecute persons trading without a valid licence. Section 27 empowers the Market Committee to levy and collect market fee from the buyer on the agricultural produce bought or sold in the market area at specified rates. The remaining sections of the Markets Act are omitted from consideration as they are not at all relevant. We are really concerned with Section 15 and more particularly Section 27. The setting up of markets areas, markets yards and regulating use of the facilities within such area or yards by levy of market fee is a matter of local interest and would be covered by Entry 28 of List II and thus within the legislative competence of the State. If any portion of the market area or the market yards is used for the sale or purchase of tobacco, that too will be within the State's competence. To hold to the contrary would be to ignore the exclusive powers of the States to legislate in respect of markets and fairs under Entries 28 and 66 of List II. The Markets Act does not seek to regulate either the "manufacture or production" of tobacco (assuming that agricultural produce can be manufactured) and thus does not impinge upon the Tobacco Act in so far as it is at all relatable to Entry 52 of List I. All the provisions of the Markets Act, in my view, are clearly relatable to Entry 28 of List II given the scope of the entry as discussed earlier. The State in the circumstances, was not incompetent to incidentally also legislate with regard to tobacco and "the semantic sweep of Entry 52 did not come in the way of the State Legislature making laws on subjects within its sphere and not directly going to the heart of the industry itself". In my opinion therefore Sections 15 and 27 of the Markets Act in pith and substance are relatable to Entries 28 and 66 of List II and have been competently enacted by the State. Incidentally it is nobody's case that the fee charged under Section 27 does not represent a quid pro quo for the services rendered and facilities afforded in the market area. It follows that Parliament is incompetent to legislate for the setting up or regulation of 'markets and fairs' within the meaning of the phrase in entry 28 of List II, even in respect of tobacco. It may of course incidentally trespass into the States legislative field, provided (1) the trespass is an inseparable part of the provisions validly passed and (2) the State has not already fully occupied its field with conflicting statutory provisions. Let us consider the scope of the Tobacco Act. The Statement of Objects and Reasons of the Tobacco Act shows that the enactment was necessary in view of the fact that India is the third largest producer of tobacco in the world, the sixth largest among the tobacco exporting countries and the second largest exporter of virginia tobacco. The manifest intention of Parliament was to take measures to ensure that the tobacco particularly virginia tobacco met the demands of the markets in India and abroad both qualitatively and quantitatively. The Act which extends to the whole of India has however not been brought entirely into force in all the States. Chapter I contains the first three Sections. Section 1, sub-section (3) provides for the Act coming into force on such dates as the Central Government may, by notification in the Official Gazette, appoint; provided that different dates may be appointed for different provisions for the Act and for different States or different parts thereof. Section 2 contains the necessary declaration in terms of Entry 52 List I in relation to the tobacco industry.

Chapter II of the Act consists of Sections 4 to 8 and deals with the establishment and functions of the Tobacco Board. Section 8 (1) casts a 'duty on the Board to promote the development of the tobacco industry'. Sub-section (2) prescribes some specific measures which may be taken by the

Board. Those which are of relevance are noted:

> "8(2) (a)
>
> (b) keeping a constant watch on the virginia tobacco market both in India and abroad, and ensuring that the growers get a fair and remunerative price for the same and that these are no wide fluctuations in the prices of the commodity;
>
> (c) maintenance and improvement of existing markets, and development of new markets outside India for Indian virginia tobacco and its products and devising of marketing strategy in consonance with demand for the commodity outside India, including group marketing under limited brand names;
>
> (cc) establishment by the Board of auction platform with the previous approval of the Central Government for the sale of virginia tobacco by registered grower or curers and functioning of the Board as an auctioneer at auction platform established by or registered with it subject to such conditions as may be specified by the Central Government.
>
> (e) regulating in other respects virginia tobacco marketing in India and export of virginia tobacco having due regard to the interests of growers, manufacturers and dealers and the nation;

.

(g) purchasing virginia tobacco from growers when the same is considered necessary or expedient for protecting the interests of the growers and disposal of the same in India or abroad as and when considered appropriate;

..."

Sections 10 to 15 are in Chapter III which deals with Regulation of Production and Disposal of Tobacco, for registration/licensing not only of the growers including nursery growers(Section 10, 10-A) but also curers (Section

11), processors and manufacturers (Section 11-A), graders and storers (11-B), and exporters, dealers, packers or auctioneers (Section 12).

Of particular relevance are Sections 13 and 13A which provide for virginia tobacco to be sold at registered auction platforms or auction platforms established by the Board, and places a duty on registered dealers and exporters to purchase tobacco only at such auction platforms. However, in those States in which Section 13 is not in force, under Section 13B dealers purchasing virginia tobacco must pay the full price for the whole quantity and are restricted from taking recourse to any such practice which may be specified as unfair by the Board.

Section 14 deals with the forms for registration and Section 15 with the power of inspection to ascertain whether the particulars in the forms are correct. Apart from these sections, according to the appellants, Section 14-A in particular occupies the field with respect to levy of fees on the sale of tobacco. It reads:

> "14-A(1) Where virginia tobacco is sold at any auction platform established by the Board under this Act, it shall be competent for the Board or for any officer of the Board authorised by it in this behalf to levy fees, for the services rendered by the Board in relation to such sale, at such rate not exceeding two percent of the value of such tobacco as the Central Government may from time to time, by notification in the Official Gazette, specify;
>
> (2) The fees levied under sub-

section (1) shall be collected by the Board or such officer equally from the seller of the Virginia tobacco and the purchaser of such tobacco, in such manner as may be prescribed."

The contents of Chapter IV and V of the Act need not detain us as they deal with aspects far removed from the Markets Act. Of the last Chapter viz. Chapter VI, two Sections are noteworthy viz. Section 30(1) which allows the Central Government to suspend provisions of the Act in respect of certain territories and Section 31 which reads:

> 31. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

The object of the Tobacco Act is to keep a control on the quality and quantity of tobacco grown in the country with an eye on the international markets. The location of domestic markets for sale of tobacco can hardly be described as a necessary concomitant to the achievement of this object. Assuming it is, fairly read, it is possible to reconcile the allegedly conflicting provisions of the two statutes by a reasonable and practical construction of their provisions. The use of the word "markets" and marketing in the Tobacco Act, including Section 8, does not mean a market in the sense the word has been used in the Markets Act. It is obvious from phrases such as 'the Virginia Tobacco market", 'development of new markets outside India' etc. that the word has been used in the sense of 'sale as controlled by supply and demand; especially a demand for a commodity or service" - in this case tobacco. The Tobacco Act is not concerned so much with the 'where' but with the 'how', the tobacco is disposed of. Even when the Tobacco Act speaks of setting up of auction platforms it does not indeed it could not say where the auction platforms are to be set up.

Since States are exclusively competent to decide on the location of markets, the authorities under the Tobacco Act would have to comply with the municipal laws and set up the auction platforms only within the permissible areas. If the facilities afforded under the Market Act are utilised, the facilities will have to be paid for and the authorities appointed to levy and collect fees for the purpose under the Markets Act would be competent to do so. If further facilities are offered at the Auction Platforms under the Tobacco Act, fees may be levied under Section 14-A of that Act. The

right to levy fees under the two acts therefore may not necessarily conflict, the levy not being in the alternative but additional. Assuming this is not possible and there is any conflict, the provisions of the Markets Act and not the Tobacco Act would prevail.

Even if Sections 15 and 27 of the Markets Act are not referable to Entries 28 and 66 of List II and are referable to Entries 26 and 27 of List II nevertheless these Sections of the Markets Act do not trespass on turf reserved by Parliament under Entry 52 of List I? State legislation on the supply and distribution of goods as well as trade and commerce therein which are relatable to Entries 26 and 27, is only subject to the Central enactment if any under Entry 33 of the Concurrent List and not Entry 52 of List I. Furthermore, whether or not any portion of the Tobacco Act relates to an "industry' within the meaning of Entry 52 List I, following the logic of Tika Ramji at least those provisions relating to the disposal of tobacco are not so relatable. The declaration under Entry 52 List I does not cover these provisions and the States were free to legislate under Entries 26 and 27 of List II on tobacco. I do not propose to decide whether the provisions of the Tobacco Act dealing with the sale of tobacco may be sustained with reference to Entry 33 of List III. It is an unnecessary exercise because the appellants did not argue this, and also because, as I have said earlier, the Constitutional validity of the provisions of the Tobacco Act has not been referred to this Bench for scrutiny.

Assuming that Chapter III of the Tobacco Act are covered by Entry 52 of List I, nevertheless the Parliament did not intend to invalidate any portion of the Markets Act. It has consciously clarified by Section 31 that it does not intend to occupy the entire field and has 'made space' for the State legislation and made it clear that the provisions of the Central Act shall be in addition to and not in derogation of any other law. The Section assumes greater significance since most of the Markets Acts were in place when the Tobacco Act was enacted. There are two ways in which such a saving clause as is contained in Section 31 of the Tobacco Act may be understood. There is the way which found favour with this Court in M. Karunanidhi vs. Union of India : 1979 (3) SCC 431 which held that such a section clearly evinced the intention of the dominant legislature leaving "no room for any argument that the State Act was in any way repugnant to the Central Act". There is the other way of reading such a section in the dominant legislation as incorporating or taking under its legislative umbrella the allegedly conflicting provisions of the subservient statute. Either way, the express words in Section 31 coupled with the duty of Courts to reconcile and uphold legislation, if possible, can only result in upholding the constitutional validity of the Market fee imposed by the State.

A further compelling circumstance to uphold the levy of market fee is the fact that several provisions of Chapter III of the Tobacco Act particularly those dealing with the setting up of auction platforms namely Sections 13 and 13A, and Section 14 A relating to the levy of fees on the sale of tobacco have not been brought into operation in any State in India except for the State of Karnataka. I have already stated the reasons why the provisions relating to sale of tobacco in the Tobacco Act do not come within the definition of 'industry' and are not covered by the declaration under Entry 52 of List I. But granting for the sake of argument that the sale of tobacco comes within the definition of industry until the Central Government chooses to actually occupy the field by effective legislation, it would remain open for the State Legislature to cover that field under Entry 24 of List II. It is difficult to adopt an interpretation which would debar the States from the right to provide for the sale of

tobacco only within market Areas and levy market fees although Parliament does not now and may never seek to bring Sections 13, 13A and 14A into operation in those States. This view finds support in the pronouncement of a Constitution Bench in Ishwari Khetan Sugar Mills (P) Ltd. v. State of Uttar Pradesh (supra) when it was construing the impact of a declaration under Entry 52 of List I, it was said that legislation for assuming control containing the declaration under entry 52 of List I must spell out the limit of control so assumed by the declaration. Therefore, the degree and extent of control that would be acquired by Parliament pursuant to the declaration would necessarily depend upon the legislation enacted spelling out the degree of control assumed. In Belsund Sugar (supra), one of the controversies raised related to a conflict between the provisions of the Markets Act and the Tea Act, 1953. There too, the Tea Act envisaged that an order might be passed under Section 30 relating to the sale and purchase of tea. The contention that the mere possibility of issuance of such a control order under Section 30 of the Tea Act was sufficient to oust the State Legislature from the field, was negatived in the following words:

> "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."

Therefore, even if one were to concede that there is a conflict between the provision in the Markets Act prohibiting sale of tobacco otherwise than in a market area and the setting up of auction platforms under the Tobacco Act, and between the States power to levy market fee under the Markets Act and the levy of fee on the sale of tobacco under the Tobacco Act, at least in those States where Sections 13, 13A and 14A of the Tobacco Act are not operative, the provisions of the Markets Act must prevail.

It now remains for me to answer the question which was referred to this Bench, namely whether ITC Ltd. V. State of Karnataka (Supra) has been rightly decided. The majority opinion on the issue of legislative competence of the State Legislature was delivered by Fazal Ali, J. In striking down that part of the Karnataka Markets Act which provided for the power to levy market fee on tobacco and its products, the opinion was based on six premises, each of which do not appear to be in consonance with the law.

First The Court proceeded on the basis that the Tobacco Act was wholly and solely relatable to Entry 52 of List 1. I have already given my reasons for holding that the Tobacco Act in so far as it deals with the disposal of tobacco is not within Entry 52 of List I. Second Article 246(4) was relied on to hold that Parliament had overriding power "to legislate in exceptional cases in matters appearing in the State List". Article 246(4) has no manner of application to the present dispute. It reads :

> "(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

The Sub-Article only deals with the power of Parliament to make laws in respect of Union Territories even in respect of matters enumerated in the State List. Third It was held to be "well settled that where two Acts, one passed by the Parliament and the other by State Legislature collide and there was no question of harmonizing them, then the Central Legislation must prevail". What is well settled is that if the Parliament and the State Legislature enact conflicting legislation in respect of the same subject matter under an Entry in the Concurrent List then only will the Central Legislation prevail. In other cases it will be a question of whether the conflicting legislation is referable to an exclusive entry under the State List or the Union List, after the determination of which, the dominant legislation will prevail.

Fourth It was said that if the minority view (expressed by Mukharji-J) were accepted, it would "amount to robbing the 1975 Act of its entire content and essential import by handing over the power of legislation to the State Government which per se has been taken over by the Parliament under Article 246 by the 1975 Act". Mukharji-J had in fact followed Tika Ramji and held correctly that the Tobacco Act and Markets Act operated in their respective fields and that there was no repugnancy if both the Acts were considered in the light of their respective true nature and character. Tika Ramji and the other Constitution Bench decisions following it were not even referred to by the majority..

Fifth- In determining the impact of Entry 52 of List I vis a viz entry 28 of List II, the majority relied on decisions dealing with Entry 54 of List I, and Entry 23 of List II. The scope of the entries are different and I agree with the view expressed in the opinion of my learned Brother Pattanaik, J that the decisions relied upon by the majority viz the Hingir Rampur Coal Co. Ltd. v. State of Orissa; AIR 1961 SC 459, Baijnath Kedia v. State of Bihar: 1969 (3) SCC 838; Bharat Cooking Coal Ltd. v. State of Bihar 1990 4 SCC 557 and State of Orissa v. M.A. Tullock & Co. : 1964 (4) SCR 461 are inapposite.

The final premise on which the majority based their view that the States could not levy any market fee on Tobacco, was that since the assent of the President was not taken, the Karnataka Markets Act 1980, was wholly incompetent. The view proceeds on a misinterpretation of Article 254(2), which in any event has no application to this case. Article 254(2) provides :

> "(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State."

The language is clear. It only deals with the question of supremacy and not competence. In respect of conflicting legislation under the Concurrent List, if the State Legislation has received the assent of

the President, it will prevail over the Central Legislation in that State. The Article does not provide that State Legislation without the assent of the President is incompetent.

In the circumstances I would hold that ITC vs. State of Karnataka (Supra) was wrongly decided and would for the reasons discussed uphold the competence of the State Legislatures to levy market fee on tobacco.