

CASE NO.:
Appeal (civil) 6453 of 2001

PETITIONER:
I. T. C. LIMITED

Vs.

RESPONDENT:
AGRICULTURAL PRODUCE MARKET COMMITTEE & ORS.

DATE OF JUDGMENT: 24/01/2002

BENCH:
CJI & G.B. Pattanaik

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.

JUDGMENT

PATTANAIAK, 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 Id. 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 squarely 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 Farukhabad, 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 Bantia & 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 legislature 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 Industry 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 referable 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 Constitution 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 Excise 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 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" 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 709 and *Tikaramji* (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-À-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 ancillary 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 I 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 dealt with 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 24 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 *Hoechst 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 Court 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. Rekhandani 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 supremacy 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;
Â© 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 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."

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 Entry 27 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-à-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 trenching 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. Negating 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 irreconcilable 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.

.....C.J. I.

.....J.
(G.B. PATTANAİK)

January 24, 2002.

JUDIS