Sasa Musa Sugar Works and Others

Vs

State of Bihar and Others

Civil Appeals No. 7431 of 1994 With Nos. 9092-95, 7437-39, 743334, 7436, 8570, 9171-74 of 1994

(G. N. Ray, B. L. Hansaria JJ)

08.07.1996

JUDGMENT

G. N. RAY, J.—

1. These appeals and the special leave petition involve common question of law and they arise our of the common judgment dated 20-11994, passed by the Division Bench of the Patna High Court, By the impugned judgment, the Division Bench of the Patna High Court allowed in part the writ petitions filed by several sugar mills of Bihar challenging the validity of Sections 4-A and 4-B inserted by the Bihar Agricultural Produce Markets (Amendment) Act, 1993, Section 33-M as inserted by the Bihar Agricultural Produce Markets (Amendment) Act, 1992; Notification dated 31-8-1992 issued under Section 4 of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as "the Markets Act"), and also challenging the validity of imposition of market iee under the Markets Act in view of exemption of all the sugar mills in Bihar from the provision of Section 15 of the Markets Act under Notification dated 22-31976, The High Court on the basis of the respective contentions of the parties in the said writ petitions formulated the following points for the decision of the Court:

> (a) Whether sub-sections (1) and (2) of Section 4-A are valid or constitutional so far as prospective part of the same is concerned?
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> (b) If answer to (a) is in the affirmative, whether the said provisions are valid and constitutional so far as the retrospective part of the same is concerned?
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> (c) Whether Section 4-B is valid and constitutional?
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> (d) Whether Section 33-M of the Markets Act as introduced by the amendment of 1992 is valid and constitutional?
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> (e) Whether Rule 68(iii) of the Bihar Agricultural Produce Markets Rules (hereinafter referred to as "the Rules") as inserted by Notification No, 4 dated 30-11-1992 is valid?
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> (f) What is the effect of grant of exemption made under Section 15 of the Markets Act?
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> (g) What is the effect of Bihar Ordinance No. 8 of 1988 having lapsed so far as levy

of market fee is concerned?

(h) Whether a limited and restricred meaning can be given to the expression agricultural produce by excluding the industrial products produced by industry from the scope and ambit of the Markets Act?

(i) Is the Notification dated 31-8-1992 a valid notification under Section 4 of the Markets Act?

2. The High Court by the impugned judgment answered the said points formulated by it in the following manner:

(i) Neither sub-section (1) nor sub-section (2) of Section 4-A is valid or constitutional prospectively. Both the sub-sections are ultra vires Articles 14 and 19(1)(g) of the Constitution and not protected by Article 19(6) of the Constitution.

(ii) Even if it is assumed that prospective part of Section 4-A is valid, the retrospective part is ultra vires Articles 14 and 19(l)(g) of the Constitution.

(iii) Section 4-B is partly valid and partly invalid. Section 4-B can be divided into four parts. The first part of Section 4-B is invalid and cannot be given effect to. The second part is valid and can be given effect to. The third and fourth parts of Section 4-B are merely ancillary and consequential to the first and second parts.

(iv) Section 33-M of the Markers Act as sought to be introduced by the Amending Act of 1912 by replacing the amending ordinances is invalid and ultra vires the Constitution. The said legislation lacks legislative competence.

(v) Rule 68(iii) of the Rules is invalid in view of the invalidity of Section 33-M.

(vi) The grant of exemption made under Section 15 of the Markets Act so far as sugar is concerned, does not affect the applicability of the other provisions of the Act, rules and bye-laws, if they are otherwise valid and applicable.

(vii) Bihar Ordinance No. 8 of 1988 having lapsed, the rate of market fee provided under Section 27 of the Act before Ordinance No. 8 of 1988 was promulgated revived, The rate will be Re 1 and it will continue to be so until and unless it is modified according to law.

(viii) No limited or restricted meaning can be given to the expression "agricultural produce" by excluding industrial products from the ambit of the Markets Act.

(ix) In view of the decisions on various points formulated, no opinion need be expressed on the validity of Notification dated 31-8-1992 issued under Section 4 of the Markets Act.

3. For the purpose of appreciating the rival contentions of the parties, the following facts need be noted:

(i) On 6-8-1960, the Markets Act, 1960 (Act No. 16 of 1960) came into force and at

the time of enforcement of the said Act, sugar was one of the scheduled items in respect of which the provisions of the Markets Act were made applicable. On 22-3-1976, all sugar mills were exempted from the provisions of Section 15 of the Markets Act.

(ii) By Notification dated 2-5-1977 bearing No. S.O. 75, sugar and some other items were deleted from the Schedule under the Markets Act in exercise of the power under Section 39 of the Act.

(iii) On 21-5-1977, by another Notification bearing No. 857, issued in exercise of power under Section 39, the previous Notification dated 2- 51977 was cancelled.

(iv) Till 23-7-1976, four notifications were issued under Section 39 of the Markets Act by which various items like rice bran milk (only liquid milk) etc. were deleted from the Schedule under the Act.

(v) Section 27 of the Markets Act was amended by Bihar Ordinance No. 8 of 1988 by substituting the word "at the rate of rupee one". This Ordinance elapsed subsequently.

(vi) The Notification dated 21-5-1977 issued under Section 39 of the Markets Act cancelling the earlier Notification dated 2-5-1977 (by which sugar was deleted from the Schedule under the Markets Act) was challenged in a series of writ petitions filed before the Patna High Court. Such writ petitions were disposed of by a common judgment dated 30-3-1992. Such decision has been reported in Delhi Cloth and General Mills Co. Ltd. v. Agricultural Produce Market Committee[AIR 1993 Pat 43 : (1992) 2 Pat LJR 253]. The question raised before the Patna High Court in the said writ petitions was as to whether or not the cancellation of the earlier notification by the subsequent Notification dated 21-5-1977 had the effect of restoring the situations prevailing prior to 2-51977.

4. The High Court considered the following questions raised before it, namely,

(a) Whether or not the Notification dated 21-5-1977 cancelling the earlier Notification dated 2-5-1977 automatically restored the state of affairs which had existed prior to 2-5-1977; and, if it did so, then did it mean that sugar was automatically included in the Schedule under the Markets Act and became subjected to levy of market fee as "agricultural produce" in "the specified area" under the Act?

(b) Even if it is assumed that Notification dated 21-5-1977 validly cancelled the earlier Notification dated 2-5-1977 which resulted in the inclusion of sugar in the Schedule, was it necessary that procedure etc. contemplated by Sections 3 and 4 of the Act had to be applied afresh levying market fee?

5. The High Court, inter alia, held that Notification dated 21-5-1977, even though cancelled the earlier Notification dated 2-5-1977, did not tantamount to an automatic revival of sugar being an item in the Schedule. For including sugar as an item in the Schedule of the Markets Act, positive action of issuing separate notification adding sugar in the Schedule was necessary. The High Court also held that even if it was assumed that the effect of Notification dated 21-5-1977 was to add sugar in the Schedule of the Markets Act, such inclusion did not authorise imposition of market free

under Section 27 of the said Act because it was necessary to comply with the requirements under Sections 3 and 4 of the Markets Act before including any item in the Schedule of the Markets Act.

> (vii) The Bihar State Agricultural Marketing Board filed Special Leave Petition No, 9529 of 1992 before this Court impugning the said judgment passed by the High Court. Such special leave petition was admitted but no stay order was granted by this Court.
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> (viii) On 23-5-1992, Memo No. 3027 dated 12-5-1992 issued under Section 39 of the Markets Act adding sugar to the Schedule under the Markets Act, was published in the Bihar Extraordinary Gazette.
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> (ix) By Notification No. GSR 40 dated 30-11-1992 sub-rule (iii) of Rule 68 of the Rules framed under the Markets Act was inserted by which every market committee was required to transfer 20% of the total receipt to the State Fund.
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> (x) On 13-10-1992, an ordinance, known as Bihar Agricultural Produce Markets (Second Amendment) Ordinance, 1992, was promulgated, The said Ordinance being Ordinance No. 25 of 1992 was repealed on 3-2-1993 and in its place the Bihar Agricultural Produce Markets (Amendment) Act, 1993 was enacted, By the said Amending Act, Sections 4-A and 4-B were inserted in the Markets Act.
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> (xi) The Market Committees issued notices to the sugar mills in view of the amendment of the Act incorporating Sections 4-A and 4-B.

6. It will be appropriate at this stage to refer to Sections 3, 4, 4- A, 4-B, 15, 33-M and 39 of the Markets Act:

> 3. Notification of intention of exercising control over purchase, sale, storage and processing of agricultural produce in specified area. -(1) Notwithstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare its intention of regulating the purchase, sale, storage and processing as such agricultural produce and in such area, as may be specified in the notification.
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> (2) A notification under sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than two months to be specified in the notification, shall be considered by the State Government.
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> 4. Declaration of market area. -(1) After the expiry of the period specified in the notification issued under Section 3 and, after considering such objections and suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notification, declare the area specified in the notification under Section 3 or any portion thereof to be a market area for the purposes of this Act, in respect of all or any of the kinds of agricultural produce specified in the notification under Section 3.
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> (2) On and after the date of publication of the notification under subsection (1), or such later date as may be specified therein, no municipality or other local authority,

or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the Official Gazette in this behalf set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Explanation.--A municipality or other local authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, establish or continue a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this section, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use, or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use.

(3) Subject to the provisions of Section 3, the State Government may at any time, by notification, exclude from a market area any area or any agricultural produce specified therein or include in any market area or agricultural produce included in a notification issued under sub-section (1).

(4) Nothing in this Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed.

4-A. Sections 3 and 4 not to apply to Section. 39.-(1) The provisions of Sections 3 and 4 shall not apply to the exercise of powers by the State Government under Section 39 to amend the Schedule by addition of any item of agricultural produce not specified therein.

(2) The State shall not order the deletion of any item in exercise of its power under Section 39 without giving an opportunity for hearing to the affected parties.

4-B. Validating of market fee levied and collected.-Notwithstanding any judgment, decree or order of any court to the contrary, any market fee levied and collected shall be deemed to be valid as if such levy and collection was made under the provisions of this Act as amended by this Act and Notification No. 730 dated 2-5-1977 shall be deemed never to have been issued and no suit or other legal proceedings shall be maintained or contained in any court for the refund of the fee collected under the provisions of this Act and no court shall entertain any proceedings challenging the fee merely on the ground that liability had ceased on the issuing of Notification No. 730, dated 2-5-1977.

15. Sale of agricultural produce. -(1) No agricultural produce, specified in notification under sub-section (1) of Section 4 shall be bought or sold by any person at any place in the market area other than the relevant principal market yard or sub-market yard or yards established therein except such quantity as may on this behalf be prescribed for retail sale or personal consumption.

(2) The sale and purchase of such agricultural produce in such area notwithstanding

anything contained in any law be made by means of open auction or tender system except in cases of such class or description of produce as may be exempted by the Board.

33-M. Every Market Committee shall out of its fund contribute to the State Government fund such percentage of its income derived from licence fees and market fees as may be prescribed by Rules from time to time by the State Government.

39. Power to amend the Schedule.--The State Government may, by notification, add to, amend or cancel any of the items of agricultural produce specified in the Schedule.

7. The reeasonings indicated by the High Court in deciding the vires of Sections 4-A and 4-B of the Markets Act as contained in the impugned judgment may be broadly indicated as hereunder:

(a) Notification dated 21-5-1977 cannot be treated as reintroduction of sugar in the Schedule without the requirement of Sections 3 and 4 of the Markets Act which are valid and operative having been complied with. Even if Section 24 of the Bihar General Clauses Act is treated as applicable, it will have the effect of adding sugar in the Schedule; but without a proper notification under Sections 3 and 4 of the Markets Act, the regulatory provisions for fee were not applicable merely because sugar was added in the Schedule.

(b) The validating/amending Act of 1993 introducing Sections 4-A and 4-B into the Markets Act after Section 4, could not have the effect of making the Act applicable to sugar under Notification dated 21-5-1977 in view of the fact that Sections 3 and 4 still remained integral and vital parts of the Markets Act and compliance of Sections 3 and 4 was essential.

(c) The scheme of the Markets Act is an integrated one and mere introduction of a commodity into the Schedule will not proprio vigore attract the provisions of the Act without following the provisions of Sections 3 and 4 of the Act.

(d) The validating/amending Act had merely the effect of making Sections 3 and 4 of the Act not applicable to action taken under Section 39 of the Act, but having regard to the continuance of Sections 3 and 4 of the Act, other provisions of the Act cannot be made applicable merely because of the reintroduction of sugar into the Schedule. To make the Act applicable to the items added by Notification dated 21-5-1977, there must have been a fresh notification under Sections 3 and 4 of the Act.

(e) Sections 3 and 4 of the Act constitute the core of the Act for the application of the provisions of the Act, which mandates fresh notification before the Act is made applicable to items included in the Schedule. After the commencement of the Act, introduction under Section 39 cannot achieve that purpose.

(f) A notification under Section 3(1) is not a mere notification introducing "agricultural produce" under the Schedule of the Act but the said notification is also concerned with prescribing the area within which the agricultural produce will have to be sold and purchased. Notification under Section 4 can be brought into existence

only after considering the objections presented under Sections 3 and 4 of the Act, pursuant to the notification issued under Section 3(1) of the Act. The introduction of a commodity into the Schedule of the Markets Act must be combined with notification under Section 4(1) of the said Act. The requirements under Sections 3 and 4 of the Act must be complied with together and they cannot be severed. It is only after issuance of notification under Section 4(1) of the Act that the fee leviable under the Act becomes payable.

(g) Section 27 of the Act is wholly dependent upon a notification under Section 4(1) of the Act because levy of market fee can be made only on agricultural produce bought or sold in the market at the specified rates. As Section 4(1) of the Markets Act still remains operative and has not been excluded, mere inclusion of a commodity under Section 39 of the Markets Act will not ipso facto attract other provisions of the Act.

(h) Sections 4-A and 4-B are invalid as they constitute two different procedures, namely, the procedure for items which are added subsequent to the commencement of the Act and the procedure which has to be followed in the case of the items already included in the Schedule. There cannot be two separate procedures for the items existing prior to 6-8-1960 and those which are added subsequently. Accordingly, the provisions for non-application of Sections 3 and 4 of the Markets Act by Section 4-A(1) of the Act, are arbitrary, without intelligible basis and have the effect of destroying the scheme of the Markets Act. Any contention that Sections 3 and 4 of the Markets Act will not apply to an item which is added in the Schedule will make a mockery of the entire Act. Section 4-A purports to destroy the entire fabric of the Act. Therefore, Section 4-A(1) of the Act has to be struck down to keep the other provisions of the Act alive.

(i) Sections 4-A and 4-B introduced by the Amending Act violate Articles 14 and 19(1)(g) of the Constitution. The said Sections 4-A and 4-B create two separate classes for the application of the Act, one for those who would be traders in the area concerned and the other for the market committee.

(j) Section 4-B is partly valid and partly invalid. The said section has four parts out of which the first part is invalid and cannot be given effect to. The second part is valid and can be given effect to. The other two parts of Section 4-B are merely ancillary and consequential to the first and second parts.

The High Court has also held that Notification dated 31-8-1992, issued under Section 4 of the Markets Act in continuation of the Memo No. 3028 issued by the State Government of Bihar under Section 3 of the Markets Act declaring its intention of regulating the purchase and processing of items mentioned in the Schedule was bad and inoperative.

8. Against the impugned decision of the Patna High Court, Bihar State Agricultural Marketing Board, State of Bihar and several sugar mills have preferred appeals before this Court. It appears that each of the appellants is aggrieved by one part or the other of the impugned decision of the High Court. Mr Venugopal, Senior Advocate, Mr Gopal Subramanium, Senior Advocate, Mr A. K. Ganguly, Senior Advocate and Mr Raja Ram Agarwala, Senior Advocate, have made submissions for the Sugar Mills. Mr A. K. Sen, Senior Advocate has argued for the Bihar State Agricultural

Marketing Board and Mr S. B. Sanyal, Senior Advocate has made submissions for the State of Bihar at the hearing of these appeals. As the arguments advanced by the learned counsel for the sugar mills are more or less on the same strain, instead of noting the arguments of each of the learned counsel appearing for the respective sugar mills separately, it is proposed to deal with the submissions made on behalf of the sugar mills jointly in order to avoid repetitions.

9. Mr A. K. Sen, the learned Senior Advocate, appearing for the Bihar State Agricultural Marketing Board, has submitted that the disputes involved in the writ petitions and determined by the High Court had their genesis in Notification dated 2-5-1977 issued under the Markets Act. That notification deleted sugar, inter alia, as an item in the Schedule of the Act being Item No. XII thereof and also other items in the Schedule which were already in the Schedule at the commencement of the Act. The power to delete is conferred by Section 39 of the Act whereby the State Government has been given the power to amend or cancel any of the items specified in the Schedule to the Act. Mr Sen has submitted that this power to amend or cancel is not controlled by Sections 3 and 4 of the Markets Act as the Act from the very beginning (sic). Notification dated 2-51977 was, however, cancelled or rescinded by a fresh Notification dated 21-51977. There was no notification under Section 39 of the Act including sugar in the Schedule nor was any notification issued under Sections 3 and 4 of the Markets Act in relation to sugar. Mr Sen has further submitted that the Patna High Court in writ petition in the case of DCM v. Agricultural Produce Market Committee[AIR 1993 Pat 43 : (1992) 2 Pat LIR 253] accepted the contention that Section 24 of the Bihar and Orissa General Clauses Act did not have the effect of having the original position, before deletion of sugar from the Schedule, restored. The High Court held that sugar having been deleted by Notification dated 2-5-1977 from the Schedule, subsequent Notification of 21-5-1977 did not have the effect of reintroducing sugar as one of the items of the agricultural produce. Even if Notification dated 21-5-1977 is treated as reintroducing sugar as an agricultural produce within the meaning of the Act, that by itself, would not make the Act applicable to sugar unless there was a fresh notification under Sections 3 and 4 of the Markets Act. Therefore, the fees levied and claimed by the Marketing Committee concerned could not be sustained.

10. Mr Sen has submitted that if the judgment of the High Court was correct, then this defect could only be cured by fresh legislation and not by a fresh notification under Section 39 of the Markets Act. Though the State Government of Bihar and the Marketing Committee had appealed against the judgment of the High Court by filing a special leave petition against the same before this Court, the appeal has not been heard yet. Hence, the position flowing from the judgment of the High Court has to be rectified. The State Government, therefore, exercised its power of promulgating ordinance under Article 213 of the Constitution by introducing Sections 4-A and 4-B in the Markets Act. Such ordinance was later on replaced by an Amending Act. Mr Sen has also submitted that the contentions which were accepted by the High Court in the DCM case and also in the present case are based on the hypothesis that Section 39 of the Act can have no effect without the aid of notifications under Sections 3 and 4. Such a premise, according to Mr Sen, is incorrect. Mr Sen submitted that Section 4(2) read with Section 15 of the Markets Act only prevents any municipality or local authority or any private person from establishing or continuing or allowing to set up or continuing a place for the purchase, sale, store or processing of any such agricultural produce notified under Section 4(2), except in accordance with the provisions of this Act. Mr Sen has submitted that Section 39 is the instrumentality by which a produce is brought into the Schedule, where such produce was not in the Schedule. It is only when a produce finds its place in the Schedule, that its control under the Market Act by notifications under Sections 3 and 4 of the Act becomes relevant and possible. Before Sections 3 and 4 of the Act can be applied, the produce concerned must be in the Schedule, as defined in Section 2(1)(a) of the Markets Act. The first step

is to look to the Schedule to find out what produces can be controlled. Control under the Act is not in vacuum but is in respect of the scheduled produces, through the mechanism of Sections 3 and 4 for controlling them.

11. Mr Sen has submitted that Section 15 of the Act provides one of the teeth for Section 4 read with Section 3 of the Act. It prescribes that all goods specified in the notification under Section 4(1) of the Act shall pass through the principal market yard or yards, as the case may be, and shall not be sold or purchased at any other place within the market proper and sales and purchases of such agricultural produce in such yards, shall be made by means of open auction.

12. Mr Sen has contended that the effect of the amendment of Section 15(2) of the Act is that if a scheduled agricultural produce is subjected to control by notification under Section 4(1), the subsequent steps under Sections 5, 6, 16 etc. come into force, But before steps under Sections 3 and 4 are taken, the produce concerned must be in the Schedule. It may be in the Schedule originally or it may be included by a subsequent notification under Section 39, which alone provides the machinery for such subsequent inclusion. According to Mr Sen, it is an error to argue that Sections 3 and 4 of the Markets Act must be used for such introduction, and not Section 39. Mr Sen has submitted that Section 15 is confined only to such produce which is included in the notification under Section 4(1) of the Act; and this is not applicable to produce which was originally in the Schedule or is brought in the Schedule by a notification under Section 39 of the Act. Mr Sen has also submitted that without such notification under Section 4(1) of the Markets Act, the sellers and buyers of a produce in the Schedule originally or subsequently introduced by notification under Section 39 of the Act, would not suffer from the disability under Section 15(1) of the Markets Act and such produce would also not be bound by the felts of Sections 4 and 15 of the Act and the same can be sold in any place in the market area or outside and such sale and purchase would not be subject to the other provisions of the Act providing for control or levy of fees and matters connected therewith as provided under Sections 27-A and 27-B of the Act. It is only after the notification under Section 4, that the control of the Act visits the scheduled produce(s). The control does not come by the inclusion of a produce propio vigore. In other words, Section 39 of the Act, without the aid of a notification under Section 4(1) of the Act, would not attract the restrictions and control of the Act imposed by Sections 4, 5 and 15 and the traders will be allowed to buy and sell goods anywhere in the market area or outside.

13. It has also been contended by Mr Sen that Section 39 is an independent provision and is not subject to the provisions of Sections 3 and 4 of the Markets Act. The Original Act did not contain Section 4(2) of the Act. It only came in 1974 by Amending Act 60 of 1980. It only provides for declaration of a market area for goods notified under Section 4(1) of the Markets Act and the restrictions under Section 15 of the Act are applicable only to such goods; for any other goods, including the goods originally in the Schedule, the Act provides no such restrictions. According to Mr Sen, Sections 5 and 18 and the Rules imposing various restrictions and also levy of fee under Section 27 of the Markets Act apply to all goods including goods notified under Section 4(1) of the Markets Act.

14. It is further contended by Mr Sen that even if it is assumed that Section 39 alone cannot add to the Schedule without the aid of Sections 3 and 4, the infirmity is cured by the amending/validation Act by introducing Sections 4-A and 4-B. Mr Sen has submitted that Section 4-A frees Section 39 from the fetters of Section 4 and Section 15 of the Act. Hence, even if there are fetters, exercise of the power under Section 39 will be protected by Section 4-A of the Amending Act because the fetters imposed by Section 4(2) of the Act would be inapplicable in the matter of exercise of power

by the State Government under Section 39 of the Markets Act. The exercise of the power under Section 39 is only for inclusion or alteration of the Schedule. Mr Sen has also submitted that Sections 4(1) and 4(2) of the Markets Act are to be read together and they are not severable. Section 4-B of the Amending Act protects the levy and collection of fee in the past by enacting that such levy and collection are to be deemed valid and that Notification dated 2-5-1977 shall be deemed never to have been issued. According to Mr Sen, the effect of Section 4-B is that Notification dated 2-51977 will be non est from the beginning, Therefore, no question of reintroducing new goods into the Schedule arises in this case because sugar had always been in the Schedule.

15. Mr Sen has further submitted that the amending/validation Act gives protection (a) to levies and collections of fee made already and (b) to keep the items existing in the Schedule prior to 2-5-1977 in the Schedule without any necessity of following the provisions of Sections 3 and 4 of the Markets Act. Mr Sen has further submitted that it is a fallacy to contend that Sections 3 and 4 were not amended. It should be noted that Section 4-A of the Act gives effect to amendments under Section 39 to the Schedule without complying with the provisions of Sections 3 and 4 of the Act, so that as from the commencement of the Act, the items added under Section 39 of the Act form part of the Schedule as originally enacted or modified. Mr Sen has further contended that the intention of the State Legislature is clear. It wanted to include the goods brought into Schedule under Section 39 of the Act without the conditions of Sections 3 and 4 of the Act being notified. The exercise of the power under Section 39 is freed from the conditions imposed by Sections 3 and 4 of the Markets Act. Therefore, Section 24 of the Bihar General Clauses Act will apply, as the intention of the legislature in enacting Sections 4-A and 4-B of the Act is clearly to include the items deleted on 2-5-1977 by giving effect to the Notification of 21-5-1977, notwithstanding the non- compliance of the conditions in Sections 3 and 4 of the Act. Mr Sen has also submitted that the legislature itself has made the classification of agricultural produces and has specified them in the Schedule. Thereafter, it has left to the State to alter the Schedule under Section 39 of the Act. The classification for the purpose of selecting scheduled produces and control are left entirely to the State Government under Sections 3 and 4 of the Markets Act, so that the classification for the purpose of control is made by the State Government according to the procedure laid down under Sections 3 and 4 of the Act. The only condition is that the State Government has to intend to declare its intention to control such agricultural produce for such area as may be specified in the relevant notifications. Exercise of the power under Section 4 is conditioned by Section 3(2) of the Act read with Section 4(1) of the Act. This dichotomy follows the pattern of many economic enactments like the Essential Commodities Act, 1955, where certain essential commodities are specified by Section 3(a) and then the addition of other essential commodities is left to the Central Government by a notified order. The power under Section 2(a)(xi) is not conditioned by any prior right of hearing or objections but is left to the judgment of the Central Government only. The power of control under the Essential Commodities Act, is also given to the Central Government under Section 3 of the Act and leaves it to be performed on the opinion of the Central Government that such control was needed for maintaining or increasing supplies of the commodities concerned or for securing their equitable distribution.

16. Mr Sen has also submitted that the law is now well settled that a classification under any law may be made by the law itself or the law may leave it to some other authority to devise the classification for the purpose of achieving the objects of the Act. When such a classification is left to an authority other than the legislature, the law may provide conditions for the exercise of such classification or leave it again to the judgment of the authority concerned. In support of this contention, Mr Sen has referred to the decision of this Court in Ram Krishna Dalmia v. Justice S. R. Tendolkar.[1959 SCR 279 : AIR 1958 SC 538] Mr Sen has submitted that various actions of the authorities, other than the legislature, exercised under such delegated power like fixing of price of

mustard oil or other essential commodities have been upheld on the ground that the delegates knew the need and the reasons for the exercise of such powers. In this connection, Mr Sen has referred to the decision of this Court in Prag Ice and Oil Mills v. Union of India,[(1978) 3 SCC 459 : (1978)3 SCR 293].

17. Mr Sen has submitted that the Markets Act adopts different procedures for control and regulation and the setting up and running of regulated markets which have been found to be the principal objects of the Act. But machinery of control imposed under the Act rests on several provisions. The first step is to select the item of control by specifying the goods in the Schedule. The power of altering the Schedule is given to the State Government under Section 39 of the Markets Act, like the power of the Central Government to specify essential commodities under Section 2(a) of the Essential Commodities Act other than those specified by the legislature. It has been contended by Mr Sen that this is a case where the first step of classification is performed by the legislature itself leaving it to the State to add or alter the field of control by deleting or adding to or amending the Schedule under Section 39 of the Markets Act. There is no condition for hearing etc. for the purpose of such a function in pari materia with the Essential Commodities Act. Then, when the area of control is circumscribed by the items in the Schedule, the actual control part of it including selection of scheduled goods to be controlled, the market area where the control will operate and where the controlled produce will have to be sold, are left to the judgment of the State Government, subject to the statutory conditions imposed by Sections 3(1) and 4(1) of the Markets Act. Mr Sen has submitted that once the notifications under Sections 3 and 4 of the Act have been made specifying the goods to be controlled and the areas where the control will operate, other provisions of control contained in Section 5 onwards including the levy of fee under Section 27 of the Act and the provisions under Sections 39, 42, 48, 52, 53 and the Rules framed under the Act, spring into operation. The selection of the goods for control i,e. the broad field of the Act is done by the legislature itself with a further power given to the State Government to alter the boundaries and the contents of the field. For defining the field of control, no procedure for hearing the objections has been prescribed by the statute nor is it feasible to do so. It must be left to the judgment of the legislature and the State Government concerned. But for the purpose of bringing the control into operation and for opening the gate for the stream of control to flow, a procedure is prescribed in Sections 3 and 4 of the Markets Act.

18. Mr Sen has contended that it has not been alleged in the writ petitions nor has it been found in the judgment under appeal that by following the procedure of Sections 3 and 4 of the Markets Act agricultural produce has been included in the Schedule. In fact, ever since control of sugar was imposed by fixing the market areas concerned, the Act has been operating for controlling sales of sugar and the purchases have been levied with fee and regulated by other provisions of control. Mr Sen has further submitted that it is not argued nor is it possible to argue that that notification under Section 39 had to take the aid of Sections 3 and 4 of the Markets Act. The deletion of sugar by the first notification had the effect of shrinking the field of control of the original Schedule. It should better be appreciated that it was not a deletion under Section 4(1) of the Act and therefore it was sought to be done without following the procedure prescribed in Sections 3 and 4 of the Act.

19. Mr Sen has contended that there was no challenge from the writ petitioners against the exclusion of sugar from the Schedule by the Notification of 2-5-1977 made under Section 39 of the Markets Act on the ground that which exclusion was made without taking recourse to the procedure presction in Sections 3 and 4 of the Markets Act. The reason is obvious. Section 3 would apply in case of inclusion or exclusion of the produce or markets which have been brought under control already under Section 4(1) of the Act. Section 4(3) does not contemplate inclusion or exclusion of

the Schedule under Section 39 of the Act, but makes Section 3 applicable only to inclusion and exclusion of the produces or the areas of the market concerned which have been notified for control in a specified market by the State Government. Mr Sen has submitted that on a parity of reasoning there cannot be any complaint against the Notification of 21-5-1977 under Section 39 of the Act or under Section 24 of the Bihar General Clauses Act rescinding the earlier notification. The step for control having been taken by the delegated authority and control having been imposed already on sugar, any exclusion of the control of sugar would have to follow the procedure of Section 3 of the Act. That not having been done, the State Government was entitled to cancel the Notification of 2-5-1977.

20. Mr Sen has contended that the High Court was wrong in holding that such notification could nullify the control imposed earlier on sugar as a scheduled commodity and it needed reintroduction of control of sugar by following the procedure of Sections 3 and 4 of the Markets Act. Mr Sen has submitted that inclusion and deletion from the Schedule of a commodity under Section 39 of the Markets Act are functionally different from imposing control of produces already in the Schedule under Sections 3 and 4 of the Markets Act.

The Schedule fixes the contents of the field from which the items covered therein are intended to be selected for control. But a notification under Section 4(1) of the Act fixes the area of the control and the commodity to be controlled within that area. The latter can only be altered by following the procedure under Sections 3 and 4 of the Act.

21. With regard to challenge under Article 14 of the Constitution, Mr Sen has submitted that the High Court has held that the Amending Act has created two different procedures -- one for the items which were introduced or reintroduced by Section 39 of the Markets Act without the fetters of Sections 3 and 4 of the Markets Act read with Section 15 of the Markets Act and the other for the articles which are introduced or reintroduced under Sections 3 and 4 of the Markets Act which gives a right of hearing and making objections against inclusion of an item not in the Schedule. Mr Sen has submitted that this reasoning with respect is not correct. According to Mr Sen, the amendment only cancels or rescinds the Notification of 2-5-1977 and preserves the status quo as on that date including sugar in the Schedule as it was before. If the deleting notification is made non est, then there is no question of any introduction by following the procedure of Sections 3 and 4 of the Markets Act. Mr Sen has also submitted that it should be borne in mind that Section 39 of the Markets Act is not subordinate to Sections 3 and 4 of the Act and it can exist independently. Only for the purpose of bringing in the restriction under Section 15 of the Act, aid from Sections 3 and 4 of the Markets Act is necessary. Once an item is included in the Schedule under Section 39 of the Markets Act, it will be subjected to all the provisions of the Act, excepting Section 15, which is confined to items dealt with under Sections 3 and 4 of the Markets Act. As from the date of the Amending Act, there will be no difference of procedure for the exercise of power under Sections 3 and 4 and for the exercise of power under Section 39 of the Act, following of the provisions of Sections 3 and 4 of the Markets Act is not necessary. Mr Sen has submitted that the legislature is competent to say that some of the provisions would not be subject to some other provisions. New Sections 4-A and 4-B are now parts of the Act and these new provisions are to be construed harmoniously with Sections 3 and 4 read with Section 15 of the Act. Mr Sen has submitted that it must be presumed that the exercise of the powers under Section 39, as under Sections 3 and 4, will be made reasonably and not arbitrarily and indiscrimnately. In exercising the powers under Section 3 of the Markets Act, all that is necessary is a declaration of intention to include a particular article in a particular market and then followed by hearing. In the case of Section 39, the power is only freed from the duty to hear objections. Mr Sen has submitted that in almost all fiscal legislations

like the Sales Tax Act, the Excise Act, the Customs Act, the right of hearing is not a necessary condition for the regulation and levy under the said enactments. A simple notification is enough to include an item even by a delegated power which has been considered to be legislative in character. So long as the main provision delegating the power does not suffer from any bias, the delegated authority can validly exercise the power. Mr Sen has submitted that the legislature may very well be of the view that for including certain items in Sections 3 and 4 of the Act benefit of hearing is necessary.

22. Mr Sen has also submitted that the challenge under Article 19 of the Constitution is very weak as it is founded on the ground that Sections 3 and 4 still continue to operate and that Sections 4-A and 4-B were not proper validating provisions as the legislature had no power to enact the same with retrospective effect. Mr Sen has submitted that it is only where the previous law is subjected to certain infirmities, that a validation enactment comes to protect it. It is true that the legislature would not be competent to validate the provisions which are not within its legislative competence; but this question cannot arise here as the legislature was fully competent to legislate on the subject. The Act is for the public benefit and for the protection of agricultural producers from middlemen and brokers, so also for the regulation of quality and weight and for providing facilities in the markets and the market areas concerned with the aid of the fees collected. Mr Sen has, therefore, submitted that challenge under Article 19(1)(g) of the Constitution is without any basis and must fail.

23. Mr Sen has therefore submitted that the impugned decision of the High Court should be set aside and the appeals preferred by the Bihar Agricultural State Marketing Board should be allowed and the appeals preferred by the sugar mills should be dismissed by upholding the validity of the Notification dated 21-5-1977, so too vires of Sections 4-A, 4-B and Section 33-M.

24. The arguments advanced by the respective counsel appearing for various sugar mills may be summarised as follows:

> (1) The title to the Markets Act itself delineates its scope, which is to provide for better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State and for matters connected therewith, In the Statement of Objects and Reasons of the Markets Act, it has been indicated that the Act is aimed to coadtitute regulated markets so as to secure to the cultivator better prices, fair weighment and freedom from illegal deductions, a fair deal for the agriculturists provides good incentive for the agriculturists to adopt improved agricultural programme etc. The main objects of the Markets Act are to create market area and markets with a view to ensuring constitution of market committees fully representatives of growers, traders, local authorities and Government for supervising the working of regulated markets and regulation of market charges and prohibition of realisation charges etc.
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> (II)(a) When the State Government decides to exercise its control over the purchase, sale, storage or processing of any agricultural produce in a specified area, it can do so only by issuing a notification declaring its intention to that effect and by inviting objections or suggestions within a period of not less than two months. The State Government is required to consider such objections or suggestions.
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> (b) Any inclusion of an item in the Schedule to the Markets Act under. Section 39

does not bring about any control or regulation of sale, purchase, storage or processing of such produce. In order to regulate and bring the produce under control, it is necessary that intention to regulate a produce is to be notified. When is it finally decided after hearing objections to the notification under Section 4(1) is to be issued declaring the area specified in the notification issued under Section 3 or any portion thereof to be market area for the purpose of the Markets Act in respect of any of the agricultural produce. Sub- section (2) of Section 4 provides that after the date of publication of notification under sub-Section (1) of Section 4 or such later date its may be specified therein, no municipality, local authority or other person shall within the area notified in the Official Gazette set up, establish or continue any place for the purpose of sale, purchase, storage or processing of any agricultural produce so notified, except in accordance with the provisions of Markets Act, the Rules and bye-laws. Sub-section (5) of Section 4 provides that subject to the provisions of Section 3, the State Government may, at any time, by notification, exclude from a market area or any area of any agricultural produce specified therein or include in any market area or any area or agricultural produce.

(c) It is thus clear that the scheme of the Act is that after it is determined legislatively as to what are the agricultural produces within the meaning of the Act and which are provided in the Schedule to the Act, the second stage of contemplated exercise of control of regulation can be undertaken by following the procedure laid down under Sections 3 and 4 read together. It is quite apparent that until declaration under Section 4 is notified by the State Government, the question of any regulation and control of sale, purchase, storage or processing of any agricultural produce mentioned in the Schedule to the Act does not arise at all.

(III) The Markets Act presents an integrated scheme and Section 39 of the Act cannot be read in isolation of Other provisions of the Act. It is a settled rule of construction that the provisions of the Act should be read as a whole so as to determine the scope and effect of each of them. The provisions of the Act should be harmoniously construed so as to allow each Of the provisions to have full effect. No particular provision should be ab construed as would render other provisions ineffective or redundant, Moreover, the provisions are to be so construed as would subserve the basic scheme and object of the legislation.

(IV) The amending/validation Act introducing Section 4-A and Section 4-B fails to revive control of any agricultural produce, even if it is included in the Schedule under Section 39 of the Act, until and unless the provision of Sections 3 and 4 of the Act read with Section 15 are complied with. Section 4-A and Section 4-B are invalid. Section 4-A contains two subsections. Sub-section (1) of Section 4-A, insofar as it dispenses with the requirement of complying with the provisions of Sections 3 and 4 before market fee can be validly levied on an agricultural produce, is bad and void for being repugnant to the scheme of the Act. It is also bad and void for truncating valuable rights given to citizens and others under Sections 3 and 4. Sub- section (1) of Section 4-A also obliterates the concept of market area which is the sole basis of operating the Act and for imposing the levy. As a result of sub-section (1) of Section 4-A, the basis of the Act gets transmuted from an Act levying a fee to an Act imposing tax. Sub-section (2) of Section 4-A is also bad because it renders invalid the notifications for deletion of items issued by the State Government, which have

been acted upon by the citizens and all concerned. The introduction of sub-section (2) of Section 4-A retrospectively with effect from 6-8-1960 would lead to invalidation of notifications by which items have been deleted and enable the market committee to impose a fee and to collect the fee in respect of items which have been deleted, the same is bad inasmuch as it undoes the certainty with which citizens had acted upon issuance of notification under Section 39 of the Act deleting items from the Schedule.

Section 4-A(2) is also bad inasmuch as the legislature has provided an opportunity for hearing at the stage of deletion of the items from the Schedule and not at the stage of addition of the items. Since the process of addition and deletion are both legislative acts, unless a rational basis exists to differentiate the circumstance when an item is being deleted from the Schedule, non-affording of opportunity to the members of the general public when an item is being added to the Schedule, is per se discriminatory and as such void.

Sub-sections (1) and (2) of Section 4-A cannot co-exist with Sections 3 and 4 of the statute. The continuance of Sections 3 and 4 after the Amending Act is entirely futile and these sections have been reduced to a dead letter. Such cannot be the scheme of the Act. Particularly, when Sections 3 and 4 have always been adverted to by this Hon'ble Court while analysing the scheme of the provisions of the Act both in relation to the declaration of a market area and also the declaration of a principal market/sub-market yard and while adjudging the validity of imposition of fee.

Section 4-A by obliterating the right to object conferred under Section 3 introduces an unnecessary hardship and exposes the entire scheme of the Act to a charge of unreasonableness. The substantial nature of the objections of the appellant as depicted in the objections filed would indicate that they had a right at least to set forth the grievances for consideration by the State Government.

Section 4-B of the Act is a consequential provision. Section 4-B is a validating provision proceeding on the basis of curing the defects pointed exit by the Division Bench of the High Court in the DCM case' through the medium of Section 4-A and consequently validating all collections as if the same was authorised by the Amending Act and also removing the impediments of any judgment by a court to the contrary. It is, therefore, submitted that Section 4-B containing the words: "as if such levy and collection was made under the provisions of this Act as amended by this Act ..." (emphasis supplied) indicate that Section 4-B cannot have any existence independent of its own. The effect of the judgment of the Division Bench in striling down Section 4-A entirely and upholding the fiction contained in Section 4-B would lead to an anomalous result that without curing the defects, a judgment can be overruled by the legislature by a simple process of amendment. It is well settled that a mere attempt to overrule the decision of the courts by amending the law is not sufficient and would itself be an encroachment on the judicial power of the State. It is only upon the defects pointed out by the judgment being cured in a proper manner that validation enactments can be upheld.

The legal fiction in Section 4-B must stand the test of reasonableness. The fiction occurring in Section 4-B is consequential to the removal of defects pointed out by the

Division Bench in the judgment dated 30-3-1992 and cannot be divorced from the same. Section 4-B is inseverable for the purpose of either interpreting the provisions or for the purpose of considering its validity.

The Notification of 31-8-1992 is bird and illegal because the objections raised by the appellants have not been considered. On the basis of the pleadings submitted by the parties, the High Court ought to have answered the questions relating to the validity of the Notification dated 31-8-1992 in the affirmative. It is also contended that no satisfactory material has been placed by the Marketing Board before the Court to suggest that the objections were considered in a serious manner as is expected of statutory authority under Section 3 of the Act.

(V) It is well settled that the provisions of an Act have to be read as a whole in order to give effect to a purposive interpretation of the Act. Viewed from this cardinal principle of construction, it is evident that the purpose of the Act to regulate activities in relation to specified agricultural produce in a market area is being defeated by the Amending Act. Viewed from this principle of statutory interpretation, Sections 4-A and 4-B of the Amending Act are bad, as being contrary to the scheme of the Act. In this connection, reference has been made to the decision of this Court in Commr. of Commercial Taxes v. R. S. Jhaver.[(1968) 1 SCR 148 : AIR 1968 SC 59 : 66 ITR 664].

(VI) Legislation relating to imposition of a restriction under the provisions of the various Marketing Regulation Acts have always been viewed in an integrated manner by this Court. In support of such contention, reference has been made to the decision in M.C.V.S. Arunachala Nadar v. State of Madras.[1959 Supp (1) SCR 92 : AIR 1959 SC 300] Considering the scheme of the Madras Commercial Crops Act, 1953, which is in pari materia with the provisions of the Markets Act, it was observed by this Court in Nadar case' that "under Section 3, the State Government issues a notification declaring their intention to exercise control over the purchase and sale of such commercial crop in a particular area and calls for objections and suggestions to be made within a prescribed time. After the objections are received, the State Government considers them and declares the areas to be specified in the notification or any portion thereof to be a notified area for the purpose of the Act in respect of commercial crop or crops specified in the notification."

(VII) In this connection reference has also been made to the decision of this Court in Lakhan Lal v. State of Bihar.[(1968) 3 SCR 534 : AIR 1968 SC 1408] In Lakhan Lal case,[(1968) 3 SCR 534 : AIR 1968 SC 300] this Court had noted that power under Section 4(1) should be exercised reasorbly. It is contended that the intention of the judgment is that the reasonableness of the exercise of the power under Section 4(1) is amenable to judicial review. By dispensing with Sections 3 and 4, the Markets Act has become plainly vulnerable.

(VIII) Referring to Kewal Krishan Puri case,[Kewal Krishan Purl v. State of Punjah, (1980) 1 SCC 416] it is contended that for a fee to be valid, levy must be imposed on the agricultural produce bought or sold by licensees in a notified market area and must also be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for that

purpose. If the requirement of regulatory control as envisaged in Sections 3 and 4 are sought to be dispensed with by the aid of Sections 4-A and 4-B, the imposition of levy of market fee loses its character as fee and it essentially partakes the character of tax. Such imposition of tax suffers from legislative incompetence,

(IX) A valid law must cure the defects pointed out in the judgment of a court and unless it does so effectively, the validation statute would be liable to be struck down. Mere amendment to overrule or annul a decision of courts is not permissible inasmuch as the same amounts to encroachment on the judicial power of the State. In this connection, reliance has been made on the decision of this Court in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality [(1969) 2 SCC 283] (SCC at pp. 286-87, para 4), Municipal Corpn, of the City of Ahmedabad v. New Shrock Spg. and Wvg. Co. Ltd.[(1970) 2 SCC 280] (SCC at pp. 285-287, paras 6, 7 and 8), Madan Mohan Parhak v. Union of India[(1978) 2 SCC 50 : 1978 SCC (L&S) 103] (SCC at pp. 65, 67) and Cauvery Water Disputes Tribunal case[Cauvery Water Disputes Tribunal, Re, 1993 Supp (1) SCC 96 (II)] (SCC p, 142).

(X) A validating law must also be reasonable. The validating law must satisfy the requirement of the Constitution after taking into account the accrued and acquired rights of the parties today. In this connection, reference has been made to the decision in State of Gujarat v, Roman Lal Keshav Lal Soni[(1983) 2 SCC 33 : 1983 SCC (L&S) 231] (para 52 at pp. 61-63),

(XI) Whilst it is true that Sections 3 and 4 do not influence the exercise of power under Section 39 of the Markets Act and are not therefore, condition precedent, yet once an item is added to the Schedule, it would be operative in a market area through the process of Sections 3 and 4. Section 39 contemplates a positive act of addition or alteration. While amendment to the Schedule may be effected by deletion of an item in the Schedule, yet addition can be effected only by a positive act of insertion. Rescission of a notification deleting the items will not lead to or tantamount to addition of the item in the Schedule.

The Notifications of 2-5-1977 and 21-5-1977 are referable to Section 39, The Notification dated 21-5-1977 expressly rescinds notification issued under Section 39 on 2-5-1977. Hence, this notification is referable to Section 39 and not Section 4(3). For exercise of power under Section 4(3), the procedure under Section 3 is to be followed.

25. On the basis of the aforesaid submissions, it has been contended by the learned counsel appearing for various sugar mills that sugar having been deleted from the Schedule by the Notification of 2-5-1977, its inclusion could have been made only by taking integrated actions as contemplated under Sections 3 and 4 of the Markets Act; and any attempt to include sugar in the Schedule for imposition of levy either by amending/validating Act or by purporting to rescind the Notification dated 2-5-1977 by Notification dated 21-5-1977 is illegal, arbitrary, unreasonable and repugnant to the scheme of the Act. The impugned decision of the High Court, therefore, should be modified by allowing the writ petitions by declaring Sections 4-A, 4-B and 33-M of the Markets Act as ultra vires and void and also declaring that at present no imposition of levy on sugar under the Markets Act is permissible.

26. Mr S. B. Sanyal, the learned Senior Advocate appearing for the State of Bihar, has adopted the

arguments advanced by Mr A. K. Sen insofar as the validity of Sections 4-A and 4-B of the Markets Act and validity of imposition of levy on sugar are concerned. Mr Sanyal has submitted that by the impugned judgment, the High Court has struck down Section 33-M requiring contribution to the State fund certain percentage of income derived from licence fees as may be prescribed. Mr Sanyal has submitted that Rule 68 of the Bihar Agricultural Produce Market Rules, 1975 was consequently amended and sub-rule (iii) of Rule 68 provides that the Market Committee will pay, as contribution to the State Government, 10% to 20% of its total income out of the market fee on a graded basis. The principal attack on the validity of Section 33- M before the High Court was on the ground that no fee can be raised for general purposes of the State because in that case such realisation will amount to tax and in that event it will alter the entire scheme of the Act. Mr Sanyal has submitted that Section 33-M was introduced in the Markets Act with the object to defray the cost, grant, loan etc. which the State Government had provided and is providing to the Marketing Board and different Market Committees from time to time.

27. Mr Sanyal has submitted that substantial finance may be necessary in future for further expanding the activities of Marketing Board and for advancing the object of the Markets Act. He has submitted that at the hearing of the writ petitions before the Patna High Court, the State of Bihar specifically submitted that the amount which would be collected under Section 33-M would be spent exclusively for rendering services to the agricultural markets constituted under the Act and for the purposes of the Markets Act.

28. Mr Sanyal has further submitted that in view of the financial crunch ? which the State Government was facing, it was not possible for the State to perform and discharge the responsibilities and duties cast on the State Government under the various provisions of the Markets Act, so also to translate into action the improvement scheme which the Government proposes to introduce for advancing the object of the Act. In order to protect the interests of the agriculturists which is the prominent object of the Markets Act, the State Government proposes to introduce measures for raising the agricultural produce of the growers and to secure them fair return of their produce in order to increase their holding capacity so that they are not required to sell their entire stock in the harvest season when the price is very low. The produce of the agriculturists brought in the market areas or yards is to be stored in the government godowns and pledged to the Government so that on such pledging the agriculturists will get certain amount of money against the goods pledged to meet the immediate need and to enable them to sell their produce at a later point of time when the standard price will prevail in the market. The State Government has already taken the steps for the implementation of such scheme and the government order has been issued to that effect. Mr Sanyal has submitted that although it is for the Market Committee to establish market in the market area and to maintain market yard and sub-market yard as per the directions of the State Government, but for implementing such objects, the Market Committee is authorised to obtain loan from the State Government as envisaged under Section 28 of the Markets Act. The Marketing Board which exercises the power of superintendence over the Market Committees can also obtain loan from the State Government for Marketing Development Fund as envisaged under Section 33-C(3) of the Markets Act. Mr Sanyal has submitted that the State Government from time to time has paid substantial amount to the Marketing Board from 1972 to 71991 running into several crores of rupees. The State Government is also guarantor to repay the loan in case of default by the Board in making payment to the financial institutions. As a matter of fact, the State Government stands as a guarantor for the grant of loan for 14 million dollars by the World Bank to carry out the objects of the Markets Act. Mr Sanyal has also submitted that crores of rupees have been funded by the State Government for acquisition of lands for different market areas. Such fact is revealed in Letter No. 1066 dated 26-2-1993 written by the Secretary, Bihar State Marketing Board to Under Secretary,

Department of Agriculture, Government of Bihar. As on account of financial crunch, the State Government felt difficulty in releasing more funds for carrying out the object of the Act, it felt the necessity that out of the realisation made under the Act, a certain percentage should be handed over to the State Government so that such an amount is ploughed back as and when necessary. Mr Sanyal has submitted that the State Government fully undertakes that the money which will be made available to it under Section 33-M will not be spent for the general expenditure of the State Government and such amount will be exclusively spent for the purposes as envisaged in the Act. In such view of the matter, it cannot be reasonably contended that the realisation to be made under Section 33-M loses the essential characteristic of fee, namely, quid pro quo consistent with the scheme of the Markets Act.

29. Mr Sanyal has submitted that it has been decided by this/Court in Mahant Sri Jagannath Ramanuj Das v. State of Orissa[1954 SCR 1046 : AIR 1954 SC 400] that annual contribution taken from the religious institutions for meeting the expenses of the Commissioner of Hindu Religious Endowments for due administration of the affairs of religious institutions, do not lose the character of fees so long it is not merged in general revenue of the State for general public purpose. Mr Sanyal has submitted that similar view has also been expressed in the later decision of this Court in Chief Commr. v. Delhi Cloth and General Mills Co, Ltd,[(1978) 2 SCC 367 : 1978 SCC (Tax) 108 : (1978) 3 SCR 657] and in Municipal Corpn. of Delhi v. Mohd. Yasin.[(1983) 3 SCC 229 : 1983 SCC (Tax) 154: (1983) 2 SCR 999] Mr Sanyal has submitted that the High Court has wrongly understood the import of Section 33-M and aims and objects for introducing the same. These have only indicated that in view of the financial situation of the State, it needed fund by way of contribution of certain percentage out of market fees and licence fees, but it was nowhere stated in the aims and objects that such fund was needed by way of general revenue of the State for general public purpose. Mr Sanyal has submitted that even if the objects for introducing Section 33-M may not be happily worded, the State Government has made its position very clear that the entire amount to be made available under Section 33-M to the State Government of Bihar will be ploughed back for advancing the objects under the Markets Act and no part of such collection will be utilised for general public purpose. Mr Sanyal has, therefore, submitted that in the aforesaid facts, there is no need to strike down Section 33-M and the decision of the High Court in that regard must be set aside.

30. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that unless agricultural produce is included in the Schedule to the Markets Act, the provisions of the Act have no application to such produce. An agricultural produce may find its place in the Schedule to the Markets Act as originally included by the legislature, or it may subsequently be added to the Schedule under Section 39 of the Act. Section 39 is the only provision in the Act which authorises the State Government to add any item to the Schedule of the Act or delete any item therefrom. Section 39 being an independent provision, it does not require sustenance from other sections. It operates on its own strength.

31. The power of altering the Schedule by addition or deletion so as to determine the area of control and the goods to be controlled other than those specified in the Schedule has been delegated by the legislature to the State Government in the same manner as the power has been delegated to the Central Government under Section 2(a) of the Essential Commodities Act to specify essential commodities other than those specified by the legislature itself.

32. For drawing up the field of control by specifying agricultural produce in the Schedule so that

control in respect of the same under other provisions of the Act is made, no hearing has been prescribed by the statute. In our view, such hearing is not contemplated because it may not always be feasible or even desirable to give hearing for determining which produce is to be included in the Schedule, The wisdom in selecting the field of control by including the produce in the Schedule was exercised initially by the legislature and thereafter such wisdom has been left to the discretion of the delegated authority namely the State Government. It may be noted here that such hearing in the matter of selecting the field of control by adding items is also not contemplated in the Essential Commodities Act.

33. Mr Sen, in our view, has rightly contended that when the field of control is circumscribed by the items in the Schedule, the actual control part of it including the goods to be controlled, the market area where the control will operate and where the controlled products will have to be sold are left to the judgment of the State Government subject to the statutory conditions imposed by Section 3(1) and Section 4(1) of the Markets Act. Once the notification under Sections 3 and 4 are issued specifying the goods to be controlled and the areas where the control will operate, the other provisions of control contained in Section 5 onwards including the levy of fee under Section 27 of the Markets Act spring into action.

34. It is nobody's case nor has it been found as a fact in the impugned judgment that sugar was not in the Schedule and the same was not brought under control by following the procedure of Sections 3 and 4 of the Act. As a matter of fact, ever since control on sugar was imposed by fixing the market areas, the Markets Act had been operating for controlling sale of sugar and purchase has been levied with fee.

35. In exercise of power under Section 39 of the Markets Act, a Notification was issued on 2-5-1977 deleting sugar from the Schedule. Admittedly, the said notification under Section 39 was issued without following the procedure of Sections 3 and 4 of the Markets Act. As a result of the said notification, sugar was deleted from the Schedule and such deletion had the effect of shrinking the field of control of the original Schedule.

36. It may be noted here that the invalidity of the deletion of sugar on the basis of the said Notification dated 2-5-1977 is not alleged by the sugar mills. As a matter of fact, they accept that by the said notification sugar stood deleted from the Schedule. But when such deletion is sought to be negatived by issuing Notification dated 21-5- 1977 rescinding the earlier Notification dated 2-5-1977, challenge as to the validity of the later notification was made by filing writ petitions before the High Court. In the judgment in DCM case[AIR 1993 Pat 43 : (1992) 1 Pat LJR 253] such notification dated 21-5-1977 rescinding earlier notification has been held invalid by the High Court on the ground that once control has been effected in respect of a scheduled goods by following provision under Sections 3 and 4, reintroduction of an item in the Schedule is not permissible without following the provisions of Sections 3 and 4. In our view, such decision cannot be sustained for the reasons indicated hereafter. Inclusion or deletion of an item in selecting the field of control is to be made in exercise of power under Section 39 of the Markets Act and State Government is clothed with such power which can be exercised without any aid of the provisions of Sections 3 and 4 of the Act. It should also be noted that since deletion of sugar from the Schedule was made in exercise of power under Section 39, and such deletion was not a deletion under Section 4(1) of the Act, the procedure prescribed in Sections 3 and 4 of the Act, was not required to be followed. Section 4(3) does not contemplate inclusion or exclusion of prodrice under Section 39 of the Act but is applicable only to the inclusion or exclusion of any area from the area of market or any produce specified therein as have t been notified for control in a specified market already by notification

issued under Sections 3 and 4 of the Act.

37. Since the decision in DCM case[AIR 1993 Pat 43 : (1992) 2 PAt LJR 253] that by the Notification of 21-5-1977 rescinding the earlier Notification of 2-5-1977 was invalid and the said subsequent notification had not the effect of introducing sugar in the Schedule for want of compliance of Sections 3 and 4 was binding on the State Government, although appeal before this Court against the judgment was pending, the State Government intended to remove the hurdles or fetters in deleting or including items under Section 39 without following the provisions of Sections 3 and 4 by introducing Sections 4-A and 4-B by the validating/amending Act of 1993.

38. Sub-section (1) of Section 4-A makes Sections 3 and 4 of the Act non-applicable in the matter of exercise of the powers by the State Government under Section 39 of the Act to amend the Schedule by addition of any item of agricultural produce not specified therein. Sub-section (2) of Section 4-A provides that the State shall not order the deletion of any of the items without giving an opportunity for hearing to the affected parties. It is apparent that the legislature has given a chance of hearing to the parties to be affected if deletion of an item already included in the Schedule is to be effected. But for addition of an item of agricultural produce in the Schedule in the exercise of power under Section 39, no hearing has been contemplated.

39. In our view, sub-section (2) of Section 4-A has for the first time circumscribed the power of deletion of a scheduled item in exercise of power under Section 39 of the Act without affording any hearing to the party aggrieved. It has already been indicated that Section 39 is the only provision in the Markets Act which has delegated the authority to the State Government to modify the Schedule either by adding or by deleting any agricultural produce. Before the introduction of Section 4-A by the Amending Act, even for deletion in exercise of power under Section 39, no hearing was necessary.

40. The legislature is quite competent to make provision for hearing only in case of deletion of a scheduled item without making such provision for inclusion of an item in the Schedule. Whether an item deserves to be included in the Schedule so that control under the Act may be brought in respect of such item, is a matter of decision of the State Government according to its perception to the felt need for such inclusion. But when the State Government has felt the need of inclusion in the Schedule but later on intends to change its mind by deleting the item from the Schedule, the legislature in its wisdom has thought it fit that before deletion, a second thought is desirable by noting the objections that might be given by a party aggrieved. In our view, both the sub-sections of Section 4-A are within the legislative competence and are also informed by reasons. In the aforesaid facts, there is no occasion to hold that Section 4-A is ultra vires. In our view, the High Court has laboured under an erroneous view that power under Section 39 cannot be exercised without the aid of Sections 3 and 4 of the Act and in view of such misconception about the power and authority under Section 39, the impugned decision has been made by holding Section 4-A as ultra vires.

41. Even if it is held that the decision in DCM case,[AIR 1993 Pat 43 : (1992) 2 Pat LJR 253] though erroneous, was binding inter partes, the requirement of following the procedure under Sections 3 and 4 of the Act in the matter of inclusion or deletion of an agricultural produce as held in DCM case' by the High Court, has been expressly removed by introducing Section 4-A. In our view, the amending/validation Act does not intend to overrule or annul any decision of the Court, but the Amending Act has brought in a change in the requirement of following the procedure under Sections 3 and 4 of the Act while amending the Schedule under Section 39 of the Act. Hence, the basis of the decision in DCM case' has undergone a legislative change. Therefore, Section 4-A does

not suffer from encroachment of judicial power of the State.

42. Section 4-A does not offend Article 14 of the Constitution. In view of Section 4-A of the Act, any exercise of power under Section 39 of the Act is to be uniformly exercised in accordance with Section 4-A of the Markets Act. In our view, no objection as to the validity of Section 4-A can bb raised on the ground that different procedures for inclusion and deletion of an item for the purpose of exercising power under Section 39 and powers under Sections 3 and 4 of the Act have been provided for in the Act. Exercise of power under Section 39 is altogether a different exercise from the exercise of power under Sections 3 and 4. Even if it is assumed that the exercise of power under Section 39 in the matter of inclusion and deletion of an agricultural produce overlaps or comes in conflict with the exercise of power under Sections 3 and 4, the legislature by incorporating Section 4-A has given overriding power to Section 39, subject to the limitation under Section 4-A(2). Viewed from this perspective, Sections 3 and 4 stand modified on account of Section 39 read with Section 4-A of the Markets Act.

43. First part of Section 4-B contemplates validation of market fee levied and collected by treating such levy and collection under the Act as amended. Second part of Section 4-B legislatively annuls the Notification dated 2-5-1977. The other parts relate to consequential actions flowing from the first two parts. Levy of market fee was held invalid for an item like sugar which was excluded from the Schedule by Notification dated 2-5-1977 on the ground that once deleted from the Schedule, its reintroduction can take effect only after complying with Sections 3 and 4 of the Act. It should be noted that in view of Section 4-A, which has been inserted in the Markets Act by specifically indicating in Section 2 of the Amending Act that the said section "shall always be deemed to have been inserted", deletion of an item and subsequent inclusion of the same under Section 39 is to be made in accordance with Section 39 read with Section 4-A. Sub-section (2) of Section 4-A makes it imperative that deletion can be made after hearing objection. Hence, even if Notification dated 21-5-1977 purporting to rescind the Notification dated 2-5-1977, by which sugar was deleted from the Schedule, is held invalid for the reasons indicated by the High Court, such deletion stands invalidated under sub-section (2) of Section 4-A. Hence, declaration of annulment of Notification dated 2-5-1977 flows from Section 4-A(2). The result is that sugar must be deemed to be always in the Schedule in respect of which controls have been operative. Both the parts of Section 4-B therefore, do not suffer from any infirmity, even otherwise. If deletion is non est, annulment of Notification dated 2-5-1977 is a matter of course. Similarly, levy and realiedtion of market fee on the items which were included in the Schedule, but exclusion of which was of no consequence, cannot be held invalid. In a sense, the first two parts of Section 4-B are declaration of the consequence of invalidation of deletion notification. We, therefore, find no difficulty in upholding the vires of both Sections 4-A and 4-B of the Markets Act.

44. Section 33-M cannot also be held ultra vires in spite of the fact that the object for inclusion of Section 33-M in the Act is not happily worded. It has been categorically stated by the State Government that the collections to be made by the State Government under Section 33-M of the Markets Act are not to be utilised for general purposes but the entire collections are to be ploughed back for achieving the purposes under the Act. In that view of the matter, it cannot be reasonably contended that the imposition has lost the character of fee and it partakes the character of tax.

45. In the result, (a) Sections 4-A and 4-B are held valid by declaring that Sections 4-A and 4-B are intra vires and (b) Section 33-M is also valid. Further,, the imposition of market fee and collection of such levy in respect of sugar are legal and valid.

46. The appeals and SLP are accordingly disposed of without any order as to costs.