

**SUPREME COURT OF INDIA**

Krishi Upaj Mandi Samiti, Narsinghpur

Vs.

Shiv Shakti Khansari Udyog

C.A.No.6186 of 2012

(G.S.Singhvi and H.L.Dattu,JJ.)

30.08.2012

**JUDGMENT**

**G.S.Singhvi,J.**

1. Leave granted.

2. The questions which arise for consideration in these appeals filed by the State of Madhya Pradesh and the Market Committees against the orders passed by the Division Benches of the Madhya Pradesh High Court are whether the provisions of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter described as, 'the Market Act') are applicable to the transactions involving the purchase of sugarcane by the factories operating in the market areas of the State and whether market fee can be levied on such transactions.

3. The contesting respondents are operating sugar factories in different market areas of the State and have been purchasing sugarcane from Cane Growers and Cane Growers' Co-operative Societies. Thus, they are covered by the general sweep of the Market Act because sugarcane is a notified agricultural produce and by virtue of Section 19, the Market Committees are empowered to levy market fee on the transactions involving purchase of sugarcane.

4. The respondents filed writ petitions for quashing the notices issued by the Market Committees requiring them to take licence under the Market Act and to pay market fee on the purchase of sugarcane, by asserting that the provisions of the Market Act are not applicable to the transactions which are exclusively governed by the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958 (for short, 'the Sugarcane Act') and the Sugarcane (Control) Order (for short, 'the Control Order') issued by the Central Government under Section 3 of the Essential Commodities Act, 1955 (for short, 'the EC Act').

5. The appellants contested the writ petitions and pleaded that there is no conflict between the Market Act on the one hand and the Sugarcane Act and the Control Order on the other because the two sets of legislations operate in different fields and in view of Section 19 of the Market Act, the respondents are bound to pay market fee on the purchase of sugarcane within the market areas.

6. The Division Bench of the High Court referred to the provisions of the Market Act, the Sugarcane Act and the Control Order and held that the transactions involving the sale and purchase of sugarcane are governed by Sections 12, 15, 16, 19, 20, 21 and 22 of the Sugarcane Act and Clauses (3), (4), (5), (5A) and (6) of the Control Order, which are in the nature of special legislations vis-à-vis the Market Act and, as such, market fee cannot be levied by the Market Committees. The reasons assigned by the High Court for arriving at this conclusion are contained in paragraph 17 of order dated 6.7.2006 passed in Writ Petition No. 391/1995 and batch, which is extracted below:

“17. Sub-section (1) of Section 36 quoted above clearly provides that all notified agricultural produce brought into the market for sale shall be brought into market yard/yards specified for such produce and shall not, subject to the provisions of sub-section (2), be sold at any other place outside such yard. Sub-section (3) of Section 36 further provides that the price of the notified agricultural produce brought into the market yard for sale shall be settled by tender bid or open auction system and no deduction shall be made from the agreed price on any account whatsoever. Sub-section (4) of Section 36 of the Market Act further provides that weighment or measurement of all the notified agricultural produce so purchased shall be done by a licensed weigh man in the market yard or any other place specified by the market committee for the purpose. Sub section (1) of Section 37 of the Market Act states that any person who buys notified agricultural produce in the market area shall execute an agreement in triplicate in such form as may be prescribed, in favour of the seller. Sub-section (2) of Section 37 provides for payment of price of agricultural produce brought in the market yard on the same day to the seller at the market yard and additional payment at the rate of one percent, per day of the total price of the agricultural produce payable to the seller within five days. These provisions of Sections 36 and 37 of the Market Act are in direct conflict with the provisions of Clauses (3), (4), (5), (5A) and (6) of the Control Order made by the Central Government under Section 3 of the Essential Commodities Act, 1955 discussed above. Similarly these provisions of the Market Act are in direct conflict with the provisions of Sections 12, 15, 16, 19, 20, 21 and 22 of the Sugarcane Act made by the State Legislature of Madhya Pradesh, discussed above. In view of such conflict, either, the aforesaid provisions of the Market Act apply to the transactions of buying

and selling of sugarcane between the occupiers of factories and the sugarcane growers or sugarcane growers cooperative societies, or the provisions of the Control Order made by the Central Government and the aforesaid provisions of the Sugarcane Act made by the State Government apply to such transactions of buying and selling between the occupiers or owners of sugar factories and the sugarcane growers or sugarcane growers cooperative societies. The Control Order made by the Central Government and the Sugarcane Act made by the State Legislature being a Special Order and Special Act relating to supply and purchase of sugarcane will apply to transactions of sale and purchase of sugarcane between the occupiers of the factory and the sugarcane growers or sugarcane growers cooperative societies and the provisions of the Market Act being a General Act with regard to agricultural produce will stand excluded and will not apply to such transactions of buying and selling of sugarcane between the occupiers of factories and the sugarcane growers or sugarcane growers cooperative societies.”

7. Shri Vivek Tankha, learned senior counsel appearing for the Market Committees and Shri B.S. Banthia, learned counsel appearing for the State argued that the object of the Sugarcane Act and the Control Order is to regulate the supply and purchase of sugarcane and to ensure that price determined by the competent authority is paid to the Cane Growers without delay, but these enactments have nothing to do with the levy of market fee on transactions involving the purchase of sugarcane by the factories within the market areas and the High Court committed serious error by declaring that the provisions of the Sugarcane Act and the Control Order would prevail vis-à-vis those contained in the Market Act. The learned counsel further argued that the ratio of the judgment in *Belsund Sugar Co. Ltd. v. State of Bihar*<sup>1</sup> on which reliance has been placed by the High Court, has no bearing on the interpretation of the provisions of the Sugarcane Act and the Market Act because there is significant difference between the Bihar Acts and the Madhya Pradesh Acts. Shri Tankha emphasized that the Market Act and the Sugarcane Act operate in different fields and even if there appears some conflict between the two enactments, the provisions contained in the Market Act would prevail because the Sugarcane Act does not provide for levy of market fee on the purchase of sugarcane by the factories. Learned senior counsel relied upon the judgment in *Krishi Upaj Mandi Samiti v. Orient Paper and Industries Ltd*<sup>2</sup> and argued that the sugarcane factories are liable to pay market fee on the purchase of sugarcane which takes place within the market areas because they are benefitted by the development works undertaken by the Market Committees and the Madhya Pradesh Agricultural Marketing Board. Shri Tankha also relied upon Article 254 of the Constitution and argued that even though the Control Order has been framed under a Central legislation, the provisions contained therein cannot override the Market Act which was enforced after receiving

Presidential assent. In support of this argument, Shri Tankha relied upon the judgments in *Basantlal Banarsilal v. Bansilal Dagdulal*<sup>3</sup> *Tika Ramji v. State of U.P*<sup>4</sup> *Kailash Nath v. State of U.P*<sup>5</sup> *Basantlal Banarsilal v. Bansilal Dagdulal*<sup>6</sup> *Janardan Pillai v. Union of India*<sup>7</sup> *M/s. Hoechst Pharmaceuticals Ltd. and others v. State of Bihar*<sup>8</sup> *Gram Panchayat of Village Jamalpur v. Malwinder Singh and others*<sup>9</sup> *Bharat Shivram Singh and others v. State of Gujarat and others*<sup>10</sup> *Krishi Upaj Mandi Samiti and others v. Orient Paper and Industries (supra)*, *P.N. Krishnalal v. Govt. of Kerala*<sup>11</sup> *H.S. Jayanna and others v. State of Karnataka*<sup>12</sup> *Kaiser-I-Hind Private Limited and another v. National Textile Corporation (Maharashtra North) Ltd. and others*<sup>13</sup> *Subhash Ramkumar Bind Alias Vakil and another v. State of Maharashtra*<sup>14</sup> *Dharappa v. Bijapur Co-operative Milk Producers Societies Union Limited*<sup>15</sup> and *Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Limited and others*<sup>16</sup>

8. Shri Jayant Bhushan and Shri A. K. Sanghi, Senior Advocates and Ms. Pragati Neekhra, learned counsel appearing for the respondents supported the impugned orders and argued that being a special legislation, which covers all aspects of the supply and purchase of sugarcane including the payment of price to Cane Growers, the Sugarcane Act will prevail over the Market Act, which generally empowers the market committees to levy market fee on the sale and purchase of notified agricultural produce. More so, because the procedure prescribed under Section 36 of the Market Act for the purchase of agricultural produce within the market yard or market proper is in direct conflict with the provisions of the Sugarcane Act which postulate the purchase of sugarcane by the factories at an identified place or at the factory gate. Learned senior counsel then argued that the sugar factories cannot be burdened with the liability of paying market fee on the purchase of sugarcane because the same is not taken into consideration while fixing the price of sugar under Clause 3 of the Control Order. Shri Bhushan submitted that the Court should not entertain the argument made by Shri Tankha with reference to Article 254 of the Constitution because no such argument was raised before the High Court and no document has been produced before this Court to show that Presidential assent was obtained for amendment in the Market Act with specific reference to the Sugarcane Act.

9. For deciding whether there is any conflict between the Sugarcane Act and the Control Order on the one hand and the Market Act on the other, it will be useful to notice the relevant statutory provisions:

10. The Sugarcane Act The Sugarcane Act was enacted by the State legislature in the backdrop of inadequate supply of sugarcane to the factories and the difficulties faced by the cultivators in selling their produce and getting the price. Section 2 of the Act contains definitions of various terms. Section 3 mandates the State Government to establish Sugarcane

Board for the State. In terms of Section 4, the Sugarcane Board is required to advise the State Government on matters pertaining to the regulation of supply and purchase of cane for sugar factories; the varieties of cane which are suitable for use in sugar factories; the maintenance of healthy relations between occupiers, managers of factories, Cane-growers' Co-operative Societies, Cane Development Council and purchasing agents and such other matters as may be prescribed. Section 5 provides for establishment of a Cane Development Council, whose functions are to consider and approve the programme for development of the zone; to advise regarding the ways and means for the execution of the development plan in all its essentials such as cane varieties, cane-seed, sowing programme, fertilizers and manures; to undertake the development of irrigation and other agricultural facilities in the zone; etc. Section 8 lays down that there shall be a fund at the disposal of the Council to meet the expenses required to be incurred for the discharge of duties and performance of its functions under the Act. The fund shall consist of the grants made by the Indian Central Sugarcane Committee and the State Government, sums received by the Council by way of commission under Section 21 and any other sum which may be credited to the fund under the general or special order of the State Government. Section 12 empowers the Cane Commissioner to call upon the occupier to furnish an estimate of the quantity of cane which will be required by the factory during the crushing season. The Cane Commissioner is obliged to examine every such estimate and publish the same with modification, if any. Section 13 casts a duty on the occupier to maintain a register of all such Cane Growers and Cane-Growers' Co-operative Societies which are required to sell cane to the factory. Section 14 empowers the State Government to make provision for survey of an area proposed to be reserved or assigned for supply of cane to a factory. Section 15 postulates declaration of reserved area and Section 16 provides for declaration of an assigned area. Under Section 19, the State Government has the power to issue an order for regulating the distribution, sale or purchase of cane in any reserved or assigned area and purchase of cane in any area other than the reserved or assigned area. Section 20 deals with the payment of price. Section 21 provides for payment, by the occupier, of a commission for every one maund of cane purchased by the factory. Section 22 gives power to the State Government to declare varieties of cane which are unsuitable for use in the factories. Chapter IV contains miscellaneous provisions including Section 30 under which the State Government is empowered to make rules for giving effect to the provisions of the Act. For the sake of reference, Sections 5, 6, 8, 15, 16, 19, 20 and 21 of the Sugarcane Act are reproduced below:

“5. The Cane Development Council-

(1) There shall be established, by notification for the reserved area of a factory a Cane Development Council which shall be a body corporate by the name of such area or such other name as the State Government may notify in this behalf having

perpetual succession, and subject to such restrictions or qualifications as may be imposed under this Act or any other enactment, vested with the capacity of suing and being sued in its corporate name, of acquiring, holding, administering and transferring property both movable and immovable, and of entering into contracts :

Provided that where the Cane Commissioner so directs, the Council may be established for a larger or smaller area than the reserved area of a factory.

(2) The area for which a Council is established shall be called a zone.

(3) to (6) xxxx xxxx xxxx

#### 6. Functions of the Council.-

“(1) Functions of the Council shall be—

a) to consider and approve the programme of development for the zone; b) to devise ways and means for the execution of the development plan in all its essentials such as cane varieties, cane-seed, sowing programme, fertilizers and manures;

c) To undertake the development of irrigation and other agricultural facilities in the zone;

d) To take necessary steps for the prevention and control of diseases and pests and to render all possible help in the soil extension work;

e) To impart technical training to cultivators in matters relating to the production of cane;

f) To administer the funds at its disposal for the execution of the development scheme subject to such conditions as may be prescribed; and

g) To perform other prescribed functions pertaining and conducive to the general development of the zone.

(2) The State Government may at any time direct the Cane Commissioner to convene a joint meeting of two or more councils. Every such meeting shall be presided over by such person as may be nominated in that behalf by the State Government. Council Fund.—

(1) There shall be a fund at the disposal of the Council to meet the charges in connection with the discharge of its duties and performance of its functions under this Act.

(2) The fund of the Council shall consist of—

- a) grants, if any, made by the Indian Central Sugarcane Committee;
- b) grants, if any, made by the State Government;
- c) sums received by the Council by way of commission under Section 21; and

d) any other sums which may be credited to it under the general or special orders of the State Government. Declaration of reserved area. - Without prejudice to any order under clause (d) of sub-section (2) of Section 19, the Cane Commissioner may, after consulting in the prescribed manner, the occupier and Cane-growers' Co-operative Society, if any, in any area to be reserved for a factory reserve such area for such factory and thereupon occupier thereof shall subject to provisions of Section 22 be liable to purchase all cane grown in such area which is offered for sale to the factory.

Declaration of assigned area.- Without prejudice to any order under clause (d) of sub-section (2) of Section 19, the Cane Commissioner may after consulting in the manner prescribed, the occupier and Cane-growers' Co-operative Society, if any, in any area to be assigned, assign such area for the purpose of the supply of cane to a factory in accordance with the provisions of Section 19 during any crushing season; and thereupon the occupier thereof shall subject to the provisions of Section 22 be liable to purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner. Regulation of purchase and supply of cane in the reserved and assigned areas.- (1) The State Government may, for maintaining supplies, by order regulate—

- (a) Distribution, sale or purchase of cane in any reserved or assigned area; and
- (b) Purchase of cane in any area other than a reserved or assigned area.

(2) Without prejudice to the generality of the foregoing powers such order may provide for—

(a) The quantity of cane to be supplied by each Cane-grower or Cane-growers' Co-operative Society in such area to the factory for which the area has been so reserved or assigned;

(b) The manner in which cane grown in the reserved area or the assigned area shall be purchased by the factory for which the area has been so reserved or assigned and the circumstances in which the cane grown by a cane-grower shall not be purchased except through a Cane-growers' Co-operative Society;

(c) The form and terms and conditions of the agreement to be executed by the occupier of the factory for which an area is reserved or assigned for the purchase of cane offered for sale:

(d) The circumstances under which permission may be granted—

(i) For the purchase of cane grown in reserved or assigned area by a purchasing agent or any person other than the factory for which area has been reserved or assigned; and

(ii) For the sale of cane grown in a reserved or assigned area to any other person or factory other than the factory for which the area is reserved or assigned;

(e) Such incidental and consequential matters as may appear to be necessary or desirable for this purpose. Payment of cane price.-

(1) The occupier shall make suitable provision to the satisfaction of the Collector for the payment of the price of cane.

(2) Upon the delivery of cane, the occupier shall, subject to the deductions specified in sub-section (2-a) be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith and where the supplies have been made through a purchasing agent, the purchasing agent shall similarly be liable in addition to the occupier.

(2-a) Where a Cane-grower or a Cane-growers' Co-operative Society, as the case may be, to whom price is payable under sub-section (1) has borrowed a loan for cane development from any agency notified by the State Government in this behalf, the occupier or the purchasing agent, as the case may be, shall be, on being authorised by that agency so to do, entitled to deduct from the price so payable, such amount as may be prescribed, towards the recovery of such loan and pay the same to the agency concerned forthwith.

(3) Where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fourteen days from the date of delivery he shall also pay interest at the rate of 14- 1/2 per cent, per annum from the said date of delivery upto the date of payment but the Cane Commissioner may, in any case, direct with the approval of the State Government that no interest shall be paid or be paid at such reduced rate as he may fix.

(4) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus

interest, if any, due from the occupier and the Collector, on receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue together with further interest up to the date of recovery.”

21. Commission on purchase of cane.-

(1) There shall be paid by the occupier a commission for every one maund of cane purchased by the factory—

(a) Where the purchase is made through a Cane-growers' Co- operative Society, the commission shall be payable to the Cane- growers' Co-operative Society and the Council in such proportion as the State Government may declare; and

(b) Where the purchase is made directly from the Cane- grower, the commission shall be payable to the Council.

(2) The commission payable under clauses (a) and (b) of sub-section (1) shall be at such rates as may be prescribed provided, however, that the rate fixed under clause (b) shall not exceed the rate at which the commission may be payable to the Council under clause (a).

(3) The provisions relating to payment, interest and recovery, including recovery as arrears of land revenue, applicable to price of cane shall mutatis mutandis apply to payment and recovery of commission under sub-section

(1).”

11. In exercise of the power vested in it under Section 30 of the Sugarcane Act, the State Government framed the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1959 (for short, ‘the Rules’). Rules 2(f), 35, 36, 40, 41 and 43, which have bearing on these appeals, read as under:

“2(f) ‘Purchasing Center’ means any place at which cane is purchased, delivered, weighed or paid for and includes such portion of the premises of the factory as is used for any of these purposes.

12. At any purchasing centre adequate facilities for weighment shall be provided to the satisfaction of the Cane Commissioner by the occupier of a factory to avoid congestion and undue delay in weighment. Cane carts and trucks shall not be kept waiting for more than ten hours without adequate reasons. Explanation.- A cart shall not be deemed to have been kept waiting unduly if the supplier of cane, having received instructions in writing to deliver cane

on a certain day, ignores such instructions or where the practice of issuing written instructions is in force, brings cane without receiving such instructions.

13. The occupier of a factory shall —

“(a) provide, metalled approaches from the public roads to the parking ground at the factory premises, from the parking ground to the cane carrier of factory, and metalled exits from the cane carrier to public roads, up to such distances as may be directed by the Cane Commissioner and keep the same in a proper state of repairs;

(b) provide to the satisfaction of the Cane Commissioner reasonable space with metalled tracks separated by railings or walls and properly lighted, for parking of carts waiting for weighing and keep the same in a proper state of hygienic cleanliness;

(c) provide shelter and drinking water facilities for both cartmen and bullocks at the factory gate and drinking water facilities at all purchasing centres as directed by the Cane Commissioner; and

(d) Provide such other facilities as may be directed by the Cane Commissioner from time to time.

14. Payments of the price of cane shall be made on the recorded weight of the cane at the purchasing centre. The price shall be calculated to the nearest Naya Paisa.

15. Payments for cane shall be made only to the Cane-grower or his representative duly authorised by him in writing to receive payment or to a Cane-Growers' Co-operative Society.

16. The occupier of a factory or a purchasing agent shall not make any deduction from the amount due for cane sold to him by a Cane-grower or Cane-grower's Co-operative Society: Provide that recovery of the dues of a Cane-growers' Co-operative Society may be made by deduction from the price payable for cane.”

17. The Control Order

18. In exercise of the power vested in it under Section 3 of the EC Act, the Central Government framed the Control Order, the relevant provisions of which are reproduced below:

“2(g) ‘price’ means the price or the minimum price fixed by the Central Government, from time to time, for sugarcane delivered—

(i) To a sugar factory at the gate of the factory or at a sugarcane purchasing centre;

(ii) To a khandsari unit; Minimum price of sugarcane payable by producer of sugar.—(1) The Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the Official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to—

- (a) The cost of production of sugarcane;
- (b) The return to the grower from alternative crops and the general trend of prices of agricultural commodities;
- (c) The availability of sugar to the consumer at a fair price;
- (d) The price at which sugar produced from sugarcane is sold by producers of sugar; and
- (e) The recovery of sugar from sugarcane:

Provided that the Central Government or, with the approval of the Central Government, the State Government, may, in such circumstances and subject to such conditions as specified in Clause 3-A, allow a suitable rebate in the price so fixed.

Explanation-

- (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane.
- (2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1).
- (3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' co-operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' cooperative society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the bank account of the seller or the co-operative society, as the case may be.

(3-A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane growers' society, the society shall pass on the interest to the cane growers concerned after deducting administrative charges, if any, permitted by the rules of the said society.

(4) to (6) xxxx xxxx xxxx

(7) In case, the price of the sugarcane remains unpaid on the last day of the sugar year in which cane supply was made to the factory on account of the suppliers of cane not coming forward with their claims therefor or for any other reason it shall be deposited by the producer of sugar with the Collector of the district in which the factory is situated, within three months of the close of the sugar year. The Collector shall pay, out of the amount so deposited, all claims, considered payable by him and preferred before him within three years of the close of the sugar year in which the cane was supplied to the factory. The amount still remaining undisbursed with the Collector, after meeting the claims from the suppliers, shall be credited by him to the Consolidated Fund of the State, immediately after the expiry of the time limit of 3 years within which claims therefor could be preferred by the suppliers. The State Government shall, as far as possible, utilise such amounts, for development of sugarcane in the State.”

19. The Market Act. Initially, the State Legislature had enacted the Madhya Pradesh Agricultural Markets Act, 1960. After noticing certain defects in the scheme of that Act and with a view to ensure efficient functioning of the Market Committees which would benefit agriculturists and traders, a committee of the members of the State Legislature was formed in 1965. The recommendation made by the Committee for enactment of a new legislation was accepted by the State Government. Accordingly, the Market Act was enacted for better regulation of buying and selling of agricultural produce and for the establishment and proper administration of markets of agricultural produce in the State. The relevant provisions of the Market Act read as under:

“2. Definitions.- (1) In this Act, unless the context otherwise requires,

(a)“Agricultural produce” means all produce of agriculture, horticulture, animal husbandry, apiculture, pisciculture, or forest as specified in the Schedule;

(b)To (f) xxxx xxxx xxxx

- (g) “Market” means a market established under Section 4;
- (h) “Market area” means the area for which a market is established under Section 4;
- (i) “Market committee” means a committee constituted under Section 11;
- (j) xxxx xxxx xxxx
- (k) “Market proper” in relation to a market yard means an area declared to be a market proper under clause (b) of sub-section (2) of Section 5;
- (1) Market yard or sub-market yard in relation to a market area means a specified place declared to be a market yard or sub-market yard under clause
- (a) Of sub-section (2) of Section 5;
- (m) To (p) xxxx xxxx xxxx.”

20. Notification of intention of regulating marketing of notified agricultural produce in specified area.—

“(1) Upon a representation made by local authority or by the growers of any agricultural produce within the area for which a market is proposed to be established or otherwise, the State Government may, by notification, and in such other manner as may be prescribed, declare its intention to establish a market for regulating the purchase and sale of agricultural produce in such area as may be specified in the notification.

(2) A notification under sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than one month to be specified in the notification shall be considered by the State Government.”

21. Establishment of market and of regulation of marketing of notified agricultural produce therein.- 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 making such inquiry, if any, as may be necessary, the State Government may, by another notification, establish a market for the area specified in the notification under Section 3 or any portion thereof for the purpose of this Act in respect of the agricultural produce specified in the Schedule and the market so established shall be known by the name as may be specified in that notification. Market yard and market proper.-

“(1) In every market area,—

(1) There shall be a market yard; and

(ii) There may be more than one sub-market yards;

(b) For every market yard or sub-market yard there shall be a market proper.

(2) The State Government shall, as soon as may be, after the issue of notification under Section 4, by notification,—

(a) declare any specified place including any structure, enclosure, open place, or locality in the market area to be a market yard or sub-market yard, as the case may be; and

(b) Declare in relation to such market yard or sub-market yard as the case may be, any specified area in the market area to be a market proper.

## 22. Establishment of Market Committee and its incorporation.-

(1) For every market area, there shall be a Market Committee having jurisdiction over the entire market area.

(2) Every Market Committee shall be a body corporate by the name specified in the notification under Section 4. It shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall subject to such restrictions as are imposed by or under this Act, be competent to contract and to acquire, hold, lease, sell or otherwise transfer any property and to do all other things necessary for the purposes of this Act:

“Provided that no immovable property shall be acquired without the prior permission of the Managing Director in writing;

Provided further that no immovable property shall be transferred by way of sale, lease or otherwise in a manner other than the manner prescribed in the rules made by the State Government for the purpose.

(3) Notwithstanding anything contained in any enactment for the time being in force, every Market Committee shall, for all purposes, be deemed to be a local authority.

Power to levy market fee.- (1) Every Market Committee shall levy market fee,—

(1) On the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area; and

(ii) On the notified agricultural produce whether brought from within the State or from outside the State into the market areas and used for processing;

at such rates as may be fixed by the State Government from time to time subject to a minimum rate of fifty paise and a maximum of two rupees for every one hundred rupees of the price in the manner prescribed:

Provided that no Market Committee other than the one in whose market area the notified agricultural produce is brought for sale or processing by an agriculturist or trader, as the case may be, for the first time shall levy such market fee.

(2) The market fees shall be payable by the buyer of the notified agricultural produce and shall not be deducted from the price payable to the seller:

Provided that where the buyer of a notified agricultural produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area:

Provided further that in case of commercial transaction between traders in the market area, the market fees shall be collected and paid by the seller:

Provided also that no fees shall be levied upto 31st March, 1990 on such agricultural produce as may be specified by the State Government by notification in this behalf if such produce has been sold outside the market

yard or sub-market yard by an agriculturist to a co-operative society of which he is a member:

Provided also that for the agricultural produce brought in the market area for commercial transaction or for processing the market fee shall be deposited by the buyer or processor as the case may be, in the Market Committee office within fourteen days if the buyer or processor has not submitted the permit issued under sub-section (6) of Section. (3) to (5) xxxx xxxx xxxx (6) No notified agricultural produce shall be removed out of the market yard, market proper or the market area as the case may be, except in accordance with a permit issued by the Market Committee, in such form and in such manner as may be prescribed by the bye-laws:

Provided that if any person removes or transports the processed product of notified agricultural produce from the market yard, market proper or the market area, as the

case may be, such person shall carry with him the bill or cash memorandum issued under Section 43 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995). (7) xxxx xxxx xxxx

23. Regulation of persons operating in market area.-No person shall, in respect of any notified agricultural produce, operate in the market area as commission agent, trader, broker, weighman, hammal, surveyor, warehouseman, owner or occupier of processing or pressing factories or such other market functionary except in accordance with the provisions of this Act and the rules and bye-laws made there under.

“(2) to (5) xxxx xxxx xxxx Law Information Center.”

24. Power to grant licences.- (1) Every person specified in Section 31 who desires to operate in the market area shall apply to the Market Committee for grant of a licence or renewal thereof in such manner and within such period as may be prescribed by bye-laws.

25. Sale of notified agricultural produce in markets.-

(1) All notified agricultural produce brought into the market proper for sale shall, subject to the provisions of sub-section (2), be sold in the market yard/yards specified for such produce or at such other place as provided in the bye-laws:

Provided that it shall not be necessary to bring agricultural produce under contract farming, in the market yard and it shall be sold at any other place to the person agreed to purchase the same under agreement.

(2) Such notified agricultural produce as may be purchased by the licensed traders from outside the market area in the course of commercial transaction may be brought and sold anywhere in market area in accordance with the provisions of the bye-laws.

(3) The price of the notified agricultural produce brought into the market yard for sale shall be settled by tender bid or open auction system and no deduction shall be made from the agreed price on any account whatsoever:

Provided that in the market yard the price of such notified agricultural produce of which support price has been declared by the State Government, shall not be settled below the price so declared and no bid shall be permitted to start, in the market yard, below the rate so fixed.

(4) Weighment or measurement of all the notified agricultural produce so purchased shall be done by such person and by such procedure as may be provided in the bye-laws or any other place specified by the Market Committee for the purpose:

Provided that the weighment, measurement or counting as the case may be, of Plantain, Papaya or any other perishable agricultural produce as may be specified by the State Government, by notification, shall be done by a licensed weighman in the place where such produce has been grown.”

## 26. Conditions of buying and selling.-

“(1) Any person who buys notified agricultural produce in the market area shall execute an agreement in triplicate in such form as may be prescribed, in favour of the seller. One copy of the agreement shall be kept by the buyer, one copy shall be supplied to the seller and the remaining copy shall be kept in the record of the Market Committee.

(2) (a) The price of the agricultural produce bought in the market yard shall be paid on the same day to the seller at the market yard;

(b) In the case purchaser does not make payment under clause (a), he shall be liable to make additional payment at the rate of one percent per day of the total price of the agricultural produce payable to the seller within five days;

(c) In case the purchaser does not make payment with additional payment to the seller under clauses (a) and (b) above within five days from the day of such purchase, his licence shall be deemed to have been cancelled on the sixth day and he or his relative shall not be granted any licence under this Act for a period of one year from the date of such cancellation. Explanation.- For the purpose of this clause relative means the relative as specified in the explanation in clause (a) of subsection (1) of Section 11.

(3) No wholesale transaction of notified agricultural produce shall be entered into directly by licensed traders with producers of such produce except in the market yards or such other place as provided in the bye-laws.

(4) to (5) xxxx xxxx xxxx.”

## 27. Market Committee Fund.-

“(1) All moneys received by a Market Committee shall be paid into a fund to be called, “The Market Committee Fund” and all expenditure incurred by the Market Committee under or for the purposes of this Act shall be defrayed out of the said fund.

Any surplus remaining with the Market Committee after such expenditure has been met, shall be invested in such manner as may be prescribed:

(2) xxxx xxxx xxxx Law Information Center Provided that all such sums of money received by the Market Committee as security deposit, contributions to Provident Fund or for payment in respect of any notified agricultural produce, or charges payable to weighman, hammal and other functionaries shall not form part of Market Committee Fund but shall be accounted for separately.

28. Application of Market Committee Fund.- Subject to the provisions of Section 38, the Market Committee Fund may be expended for the following purposes only, namely,-

- “i) The acquisition of a site or sites for the market yards;
- ii) The maintenance and improvement of the market yards;
- (iii) The construction and repairs of buildings necessary for the purposes of the market and for convenience or safety of the persons using the market yard;
- (iv) The maintenance of standard weights and measures;
- (v) xxxx xxxx xxxx
- (vi) the payment of interest on the loans that may be raised for the purpose of the market and provisions of sinking fund in respect of such loans;
- (vii) The collection and dissemination of information relating to crops statistics and marketing of agricultural produce;
- (viii) (a) xxxx xxxx xxxx
- (b) xxxx xxxx xxxx
- (c) Contribution to State Marketing Development Fund;
- (d) Meeting any expenditure for carrying out order of the State Government and any other work entrusted to Market Committee under any other Act;
- (e) Contribution to any scheme for increasing agricultural production and scientific storage;
- (f) For development of market area in the manner prescribed;

(g) To educate or promote and undertake sale of agricultural inputs, for increasing production, with the prior sanction of Managing Director;

(gg) to undertake development of Haat Bazars for marketing of agricultural produce;

(h) xxxx xxxx xxxx

(ix) Any other purpose whereon the expenditure of the Market Committee Fund is in the public interest, subject to the prior sanction of the State Government.”

29. State Marketing Development Fund.-(1) Every Market Committee shall pay on the 10th day of every month to the Board at such percentage of its gross receipts comprising of licence fees and market fees as the State Government may, by notification, declare from time to time. The amount so paid and collected shall be called Madhya Pradesh State Marketing Development Fund. (2)to (7) xxxx xxxx xxxx.”

30. Purposes for which Madhya Pradesh State Marketing Development Fund shall be expended.- The Madhya Pradesh State Marketing Development Fund shall be utilised by the Board for the following purposes, namely,-

“(i) Market survey and research, grading and standardization of agricultural produce and other allied subjects;

(ii) Propaganda and publicity and extension services on the matters relating to general improvement of conditions of buying and selling of agricultural produces;

(iii) (a) construction of minimum infrastructure as prescribed by the Board in the market yard or sub-market yard established for the first time and for giving grant to the extent of two lakh rupees to defray the establishment expenses;

(b) Giving aid to financially weak Market Committees the State in the form of loans and or grants;

(c) loans to any Market Committee for development of market yard and/or sub-market yard, construction of cold storage, go down or warehouses, distribution of plant protection equipments and other purpose as may be considered desirable;

(iv) Acquisition or constructions or hiring by lease or otherwise of buildings or land for performing the duties of the Board;

(v) xxxx xxxx xxxx

(vi) xxxx xxxx xxxx

- (vii) Better control of Market Committee;
- (viii) xxxx xxxx xxxx
- (ix) Imparting education in regulated marketing of agricultural produce;
- (x) Training the agriculturists, officers and staff of the Market Committees;
- (x-a) provision of technical assistance to the Market Committees in the preparation of site plans and estimates of construction and in the preparation of project reports or master plans for development of market yard;
- (x-b) xxxx xxxx xxxx
- (x-c) marketing the sale of agricultural inputs for increasing agricultural production in the market areas;
- (x-d) development of Haat Bazars for marketing of agricultural produce and construction of infrastructure for facilitating the flow of notified agricultural produce in the market area;
- (x-e) xxxx xxxx xxxx
- (x-f) xxxx xxxx xxxx
- (x-g) development of testing and communication infrastructure relevant to agriculture and allied sectors.
- (xi) Any other purposes of general interest to regulate marketing of agricultural produce.”

#### Analysis

31. The primary object of the Sugarcane Act is to ensure adequate supply of cane to the factories and timely payment of price to the cultivators. The Act contains comprehensive provisions for making available sugarcane to the factories and protection of the rights of Cane Growers to get adequate remuneration for their labour. Under Section 15, the Commissioner is empowered to declare any area to be reserved for any particular factory and once such declaration is made, the occupier of the factory is bound to purchase cane grown in that area which is offered for sale to the factory. Likewise, under Section 16, the Commissioner can make a declaration that any area shall be an assigned area for the purpose of supply of cane to a factory and, in that event, the factory is required to purchase the specified quantity of cane grown in that area. For achieving the object of maintaining

supplies, the State Government can pass an order under Section 19 for regulating distribution, sale or purchase of cane in any reserved or assigned area; and purchase of cane in any area other than a reserved or assigned area. In such an order, the State Government can specify the quantity of cane to be supplied by each Cane Grower or Cane-Growers' Co-operative Society to the factory for which the particular area has been reserved or assigned, the manner of purchase by the factory, details of the sale agreements and grant of permission for sale and purchase. Section 20 mandates that payment for the cane shall be made by the occupier immediately upon delivery and only such deductions as authorised in lieu of loans can be made. The Development Council established under Section 5(1) has been assigned various functions enumerated in Section 6 for ensuring proper development of the zone. The Development Council is required to devise ways and means for the execution of the development plan which includes cane varieties, cane-seed, sowing programme, fertilizer and manure; development of irrigation and other agricultural facilities; prevention and control of diseases and pests, soil extension work and training to cultivators in matters relating to the production of sugarcane. One of the components of the fund required for the Council is the commission received by it under Section 21 from the occupiers of the factory for every maund of cane purchased. The rules framed under Section 30 of the Sugarcane Act help in achieving the objectives of the Act. Rule 35 mandates the occupier to provide facilities for weighment at the purchasing centre so that there is no congestion and undue delay in weighment. Rule 36 requires that the occupier should provide metalled approaches and exits to the parking area in the factory and shelter and drinking water at the purchasing centres. Rules 40, 41 and 43 ensure payment of the price of cane by the occupier to the factory or the purchasing agent without any deduction.

32. The Control Order deals with the fixation of minimum price of sugarcane to Cane Growers or Cane Growers' Co-operative Societies. Clause 3(1) of the Control Order empowers the Central Government to fix the minimum price of sugarcane to be paid by the producers of sugar or their agents for the sugarcane purchased by them. For this purpose, the Central Government is required to take into account the cost of production of sugarcane; return to the grower from alternative crop and the general trend of prices of agricultural commodities; the availability of sugar to the consumers at a fair price; the price at which sugar is sold by producers of sugar; and the recovery of sugar from sugarcane. Clause 3(2) mandates that no person shall sell or agree to sell sugarcane and no producer or his agent shall purchase or agree to purchase sugarcane at a price lower than the minimum price. Clauses 3(3) and (3-A) mandate payment of the price of cane within 14 days from the date of delivery and levy interest at the rate of 15% per annum for the period of delay beyond 14 days.

33. The Market Act was enacted to regulate the transactions involving the sale and purchase of agricultural produce with the aim of preventing exploitation of the agriculturists and the establishment and proper administration of markets of agricultural produce in the State. Section 4 read with Section 3 provides for the establishment of a market for the area specified in the notification issued under Section 3 for regulating the purchase and sale of agricultural produce in such area. Once a market is established for the particular area, the prohibition contained in Section 6(a) and (b) against the setting up, establishment, continuance or use of any place in the market area for the marketing of any notified agricultural produce comes into play and no person can use any place in the market area for the marketing of the notified agricultural produce or operate in the market area as a market functionary. Proviso to this section carves out certain exceptions regarding the sale or purchase of agricultural produce not exceeding four quintals at a time for domestic consumption, etc. Section 5(1)(a) read with Section 5(2) lays down that in every market area there shall be a market yard and there may be more than one sub-market yards. Section 5(1)(b) read with Section 5(2) declares that for every market yard or sub-market yard there shall be a market proper. In terms of Section 7(1), a Market Committee is required to be established for every market area. Section 7(2) declares that every Market Committee shall be a body corporate. Section 7(3) contains a deeming provision by which every Market Committee is treated as a local authority. Section 17 specifies the powers and duties of a Market Committee. Section 19(1) casts a duty upon every Market Committee to levy market fee on the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area and on the notified agricultural produce whether brought from within the State or from outside the State into the market area and used for processing. Under Section 19(2), the market fee is payable by the buyer of such produce and is not to be deducted from the price payable to the seller. It is only if the buyer of the produce cannot be identified that all fees are payable by the seller or by the person who brought the produce for sale in the market area, provided further that in case of a commercial transaction between traders in the market area, the market fees are to be collected and paid by the seller. Section 19(6) provides that no notified agricultural produce shall be removed out of the market yard, market proper or the market area except in accordance with a permit issued by the Market Committee. Section 32 empowers the Market Committee to grant licence to any person who desires to operate in the market area. Section 36(1) provides that all notified produce brought into the market proper for sale shall be sold in the market yard/yards specified for such produce. Proviso to this Section, which was added by MP Act No. 15 of 2003, carves out an exception in respect of agricultural produce under contract farming and lays down that it shall not be necessary to bring such produce in the market yard and it can be sold at any other place to the person who has agreed to purchase the same under an agreement. Section 36(2) carves out another exception and lays down that the produce purchased from outside the market area by licenced

traders in the course of a commercial transaction may be bought and sold anywhere in the market area in accordance with the bye-laws. Section 36(3) lays down that the price of the notified agricultural produce brought into the market yard for sale shall be settled by tender bid or open auction system and no deduction shall be made from the agreed price on any account whatsoever. Proviso to this sub-section lays down that where support price of any notified agricultural produce has been declared by the State Government, the price shall not be settled below the support price and no bid shall be permitted below such price. Section 36(4) provides for weighment or measurement of the notified agricultural produce purchased under other sub-sections of this section. Section 37(1) mandates execution of an agreement by any person who buys agricultural produce in the market area. In terms of Section 37(2)(a), the price of the agricultural produce bought in the market yard is required to be paid on the same day to the seller at the market yard. If the purchaser fails to make payment in accordance with Section 37(2)(a), then he has to make additional payment at the rate of 1% per day of the total price of the agricultural produce. In case of further delay of more than 5 days, his licence stands cancelled with a bar on grant of further licence to him or his relative. Section 38(1) provides that all monies received by a Market Committee including market fee shall be paid into “the Market Committee Fund”, which is to be utilized for the purposes specified in Section 39 which include, the acquisition of a site or sites for the market yards; the maintenance and improvement of the market yards; the construction and repairs of buildings of the market; the maintenance of standard weights and measures; contribution to any scheme for increasing agricultural production and scientific storage; development of market area in the manner prescribed and development of Haat Bazars for agricultural produce. In terms of Section 43(1), every Market Committee is required to pay to the State Agricultural Marketing Board a specified percentage of its gross receipts comprising of licence fee or market fee, as may be notified by the State Government. This amount is called Madhya Pradesh State Marketing Development Fund and is to be used for the purposes specified in Section 44, which include, market survey and research, grading and standardization of agricultural produce and other allied subjects; construction of minimum infrastructure in the market yard or sub-market yard established for the first time; grant of loan to Market Committees for development of market yard/sub-market yard; construction of cold storage, godown or warehouses, distribution of plant protection equipments; acquisition or construction or hiring by lease or otherwise of buildings or land for the Board; imparting education in regulated marketing of agricultural produce; training the agriculturists, officers and staff of the Market Committees; provision of technical assistance to the Market Committees in the preparation of site plans and estimates of construction and in the preparation of project reports/master plan for development of market yard; development of Haat Bazars for marketing of agricultural produce; construction of infrastructure for facilitating the flow of notified agricultural produce in the market area; and development of

testing and communication infrastructure relevant to agricultural and allied sectors.

34. The above analysis of the provisions of the Sugarcane Act and the Control Order along with the Market Act brings to fore the conflict between the three statutes insofar as they relate to the transactions involving sale of sugarcane by Cane Growers / Cane Growers' Co-operative Societies to the occupiers of factories. While the Sugarcane Act and the Rules framed thereunder constitute a complete code for regulating the supply of sugarcane by Cane Growers and Cane Growers' Co-operative Societies to the occupiers of the factories at the purchasing centres established and maintained by them and payment of price without delay, the Market Act regulates sale and purchase of notified agricultural produce in the market yards specified for the particular produce or at other places provided in the bye-laws and mandates that the price of the notified agricultural produce should be settled by tender bid or open auction system. (Sugarcane was included in the Schedule w.e.f. 7.6.1979 by M.P.Act No.18/1997). The Control Order not only lays down the mechanism for determination of the minimum price of sugarcane payable by the producers of sugar or their agents for the sugarcane purchased by them, but also prescribes the mode of payment of the price. The Sugarcane Act and the Rules framed thereunder also prescribe the mode of payment of the price by the occupier of the factory. Likewise, the Market Act contains provisions for payment of the price of the notified agricultural produce brought into the market yard for sale. It is thus evident that so far as sugarcane is concerned, there is direct conflict between the provisions of the Sugarcane Act and the Market Act both, in matters relating to sale and purchase of sugarcane, and, payment of price. Likewise, there is conflict between the Control Order and the Market Act in the matter of determination of price of the sugarcane and mode of payment.

35. The argument of Shri Tankha and Shri Banthia that the Sugarcane Act and the Control Order are silent on the issue of levy of market fee on transactions involving the purchase of sugarcane by the factories within the market areas and, therefore, the provisions contained in Sections 19 and 36 of the Market Act would prevail and the High Court committed an error by applying the ratio of the judgment in *Belsund Sugar Co. Ltd. v. State of Bihar* (supra) sounds attractive, but we have not felt persuaded to agree with them because the Sugarcane Act is a special statute enacted for regulating the supply and purchase of sugarcane to the factories and covers the entire spectrum of the transactions involving sale and purchase of sugarcane. The Sugarcane Act and the Rules framed thereunder cast a duty on the occupier of the factory to provide amenities and facilities for supply of cane at the purchasing centres from factory premises and pay the price of cane without any tangible delay. The occupier is also obliged to pay commission under Section 21 which becomes part of the Council Fund and is utilised for overall development of the production of sugarcane by providing better varieties of seeds, fertilizers and manures, devising appropriate sowing programme,

improving irrigation and other facilities and taking steps for prevention and control of diseases and pesticides. The Council Fund is also to be invested for imparting technical training to cultivators in matters relating to the production of cane. The mechanism for fixing the minimum price of cane is contained in Clause 3 of the Control Order and the mode of payment of the price is contained both in the Sugarcane Act and the Control Order. The Market Act contains a comprehensive mechanism for establishment of market area and Market Committee having jurisdiction over such area, market yard/sub-market yard and market proper. Section 19 which obligates every Market Committee to levy market fee, which is payable by the producer on the sale of notified agricultural produce finds place in Chapter IV (Conduct of Business and Powers and Duties of Market Committee). Proviso to sub-section (2) thereof also postulates payment / collection of market fee from the seller in certain contingencies. The sale of notified agricultural produce in the markets is governed by Section 36 which finds place in Chapter VI of the Market Act (Regulation of Trading). That section mandates that all notified agricultural produce brought into the market proper for sale shall be sold in the market yard/yards specified for such produce or at such other places as provided in the bye-laws. Sub-section (3) of Section 36 contains the mechanism for determination of price on notified agricultural produce brought for sale into the market yard by tender bid or open auction. Section 37(2) provides for payment of price of the agricultural produce on the same day but only in relation to the produce bought in the market yard. These provisions are irreconcilable with those contained in Section 19 read with Sections 15 and 16 of the Sugarcane Act and Clause 3 of the Control Order. Sections 38 and 43 of the Market Act talk of 'Market Committee Fund' and 'State Marketing Development Fund' which are to be used for overall development of market areas. The benefit of development of market areas and other activities undertaken by the Market Committees and the State Marketing Board is available to all the agriculturists who sell their produce in the market yards/sub-market yards and buyers of such produce in accordance with Section 36 of the Market Act and no special facility is provided to the Cane Growers and the occupiers of the factories who purchase sugarcane at the purchasing centres or within the factory premises. Rather, the Development Council constituted under Section 5 of the Sugarcane Act is required to spend funds, which include the commission paid by the occupier for every maund of cane purchased by the factory on overall development of the zone and take measures for improvement of the production of sugarcane by ensuring supply of quality seeds, fertilizer and manure to the Cane Growers and improving the soil quality and irrigation facilities. Therefore, even though the Market Act is a subsequent legislation and one of its objectives is to regulate buying and selling of agricultural produce including sugarcane, the general provisions contained therein cannot prevail over the Sugarcane Act and the Control Order, which are special legislations exclusively dealing with issues relating to increase in the production of sugarcane, supply of sugarcane by Cane Growers/Cane Growers Cooperative Societies to the factories from any

reserved or assigned area or otherwise and payment of the price of cane by the occupier of the factory.

36. Though, there is no significant difference in the Control Order and the Market Act insofar as the mode of payment of the price of sugarcane is concerned, but the mechanism enshrined in the two statutes for determination of price is vastly different. The Control Order envisages fixation of the minimum price of sugarcane by the Central Government after considering the factors enumerated in Clause 3 and consulting such authorities, bodies or associations as it may think fit and the producer of sugar is bound to pay at least that price to Cane Growers/Cane Growers Cooperative Societies. As against this, the Market Act postulates determination of the price of the notified agricultural produce (sugarcane is only one of such produce) brought into the market yard for sale under Section 36(3) by tender bid or open auction. In that exercise, the State Government/the concerned Market Committee does not have any role to play. Of course, such price cannot be less than the support price declared by the State Government. This difference also indicates that the Control Order is a special legislation vis-à-vis the Market Act.

37. We shall now deal with two of the many judgments relied upon by the learned counsel for the parties. In *Belsund Sugar Co. Ltd v. State of Bihar* (supra), the Constitution Bench considered the legality of levy of market fee under the Bihar Agricultural Produce Markets Act, 1960 on the transactions relating to sale and purchase of sugarcane by the sugar factories. The Constitution Bench first considered Entries 26, 27, 28 and 33 of List II of the Seventh Schedule of the Constitution and observed:

“In the first instance, we shall deal with the transactions of purchase of sugarcane by the sugar factories functioning in the market areas falling within the jurisdiction of respective Market Committees constituted under the Market Act. The Market Act has been enacted by the Bihar Legislature as per the legislative power vested in it by Entries 26, 27 and 28 of List II of the Seventh Schedule of the Constitution. These entries read as under:

“26. Trade and commerce within the State subject to the provisions of Entry 33 of List III. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III. Markets and fairs.”

38. It becomes at once clear that if location of markets and fairs simpliciter and the management and maintenance thereof are only contemplated by the Market Act, then they would fall squarely within the topic of legislative power envisaged by Entry 28 of List II. However, the Market Act, as we will presently show, deals with supply and distribution of goods as well as trade and commerce therein as it seeks to regulate the sale and purchase of

agricultural produce to be carried on in the specified markets under the Act. To that extent the provisions of Entry 33 of List III override the legislative powers of the State Legislature in connection with legislations dealing with trade and commerce in, and the production, supply and distribution of, goods. Once we turn to Entry 33 of the Concurrent List, we find that on the topic of trade and commerce in, and the production, supply and distribution of, goods enumerated therein at sub-clause (b), we find listed items of foodstuffs, including edible oilseeds and oils. Thus to the extent to which the Market Act seeks to regulate the transactions of sale and purchase of sugarcane and sugar which are foodstuffs and trade and commerce therein, it has to be held that the Market Act being enacted under the topics of legislative powers under Entries 26, 27 and 28 of List II will be subject to any other legislation under Entry 33 of the Concurrent List. As it will be seen hereinafter, the Bihar Legislature itself has enacted the Sugarcane Act in exercise of its legislative powers under Entry 33 of the Concurrent List and, therefore, the field covered by the Sugarcane Act would obviously remain exclusively governed by the Sugarcane Act and to the extent the latter Act carves out an independent field for its operation, the sweep of the general field covered by the Market Act which covers all types of agricultural produce, would pro tanto get excluded qua sugarcane and the products prepared out of it.”

39. The Constitution Bench then took cognizance of the fact that the Bihar Sugarcane Act, 1981 was a later enactment, referred to the provisions of that Act and proceeded to observe:

“The aforesaid provisions of the Sugarcane Act leave no room for doubt that the Bihar Legislature in its wisdom has enacted a special machinery for regulating the purchase and sale of sugarcane to be supplied to sugar factories for manufacturing sugar out of the sugarcane produced for them in the reserved area. The relevant provisions of the Act project a well-knit and exhaustive machinery for regulating the production, purchase and sale of sugarcane for being supplied as appropriate raw material to the factories manufacturing sugar and molasses out of them. The aforesaid provisions, therefore, clearly indicate that the need for regulating the purchase, sale, storage and processing of sugarcane, being an “agricultural produce”, is completely met by the comprehensive machinery provided by the Sugarcane Act enacted by the very same legislature which enacted the general Act being the Market Act. Once that conclusion is reached, it becomes obvious that the Market Act which is an enabling Act empowering the State authorities to extend the regulatory net of the said Act to notified agricultural produce as per Section 3(1) will get its general sweep curtailed to the extent the special Act being the Sugarcane Act enacted by the very same legislature carves out a special field and provides special machinery for regulating the purchase and sale of the specified “agricultural produce”, namely, sugarcane. It has

also to be kept in view that the very heart of the Market Act is Section 15 of the Act which reads as under:

“Sale of agricultural produce.-

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

(2) The sale and purchase of such agricultural produce in such areas shall 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.”

40. It is this section which enables the Market Committee concerned to monitor and regulate the sale and purchase of the agricultural commodity which is covered by the protective umbrella of the Act. Once such an agricultural produce is brought for sale in the market yard or sub-market yard, the sale is to be effected by auction or by inviting tenders. Such a scheme is in direct conflict with the scheme of the Sugarcane Act wherein there is no question of a sugar factory being called upon to enter into a public auction for purchasing sugarcane which is specially earmarked for it out of the reserved area. In fact, the provisions of the Sugarcane Act and the provisions of the Market Act, especially Section 15 read with Section 3(1), cannot harmoniously coexist.”

After further discussion, the Court observed:

“It must, therefore, be held that the entire machinery of the Market Act cannot apply to the transactions of purchase of sugarcane by the appellant Sugar Factories as they are fully covered by the special provisions of the Sugarcane Act. It is also necessary to note that if both these Acts are treated to be simultaneously applying to cover sale and purchase of sugarcane, the possibility of a clear conflict of decisions of officers and authorities acting under the Sugarcane Act on the one hand and the Market Act on the other would arise. These authorities acting under both the State Acts, dealing with the same subject-matter and covering the same transactions may come to independent diverse conclusions and none of them being subordinate to the other may create a situation wherein there may be a head-on collision between the decisions and the orders of these authorities acting on their own in the hierarchy of the respective statutory provisions. For example, the Marketing Inspector may find that weightment

of sugarcane was not proper at a given point of time, while the Cane Officer may find to the contrary. In the hierarchy of proceedings under the Market Act the Market Committee may take one decision with respect to the same subject-matter, for which the Collector exercising appellate powers under the Sugarcane Act may take a contrary decision. This would create an irreconcilable conflict of decisions with consequential confusion. So far as the buyers and sellers of “agricultural produce — sugarcane” are concerned, it is of no avail to contend as submitted by learned counsel for the respondents that for avoiding such conflicts, Section 15 is dispensed with by the State in exercise of its power under Section 42 of the Market Act, whether such an exemption can be granted by the State under Section 42 or not is not a relevant consideration for deciding the moot question whether the statutory scheme of the Market Act can harmoniously coexist with the statutory scheme of the Sugarcane Act as enacted by the very same legislature. It is possible to visualise that the State authorities may not exercise powers under Section 42 of the Act. In such an eventuality, the Sugarcane Act would not countenance a public auction of sugarcane to be supplied by the cane-grower to the earmarked factory for which sugarcane is grown in the reserved area. On the other hand, the Market Act would require the very same sugarcane to be brought to the market yard for being sold at the public auction to the highest bidder who may not be the sugar factory itself. Thus what is reserved for the sugar factory by way of raw material by the Sugarcane Act would get dereserved by the sweep of Section 15 of the Market Act. To avoid such a head-on conflict, it has to be held that the Market Act is a general Act covering all types of agricultural produce listed in the Schedule to the Act, but out of the listed items if any of the “agricultural produce” like sugarcane is made the subject-matter of a special enactment laying down an independent exclusive machinery for regulating sale, purchase and storage of such a commodity under a special Act, then the special Act would prevail over the general Act for that commodity and by necessary implication will take the said commodity out of the sweep of the general Act. Therefore, learned counsel for the appellants are right when they submit that because of the Sugarcane Act the regulation of sale and purchase of sugarcane has to be carried out exclusively under the Sugarcane Act and the said transactions would be out of the general sweep of the Market Act. None of its machinery would be available to regulate these transactions.”

41. The Constitution Bench also considered the provisions of the Control Order and observed:

“It has to be appreciated that the aforesaid provisions of the Sugarcane (Control) Order operate in the same field in which the Bihar legislative enactment, namely, the

Sugarcane Act operates and both of them are complementary to each other. When taken together, they wholly occupy the field of regulation of price of sugarcane and also the mode and manner in which sugarcane has to be supplied and distributed to the earmarked sugar factories and thus lay down a comprehensive scheme of regulating purchase and sale of sugarcane to be supplied by sugarcane-growers to the earmarked sugar factories. It is, however, true that a comprehensive procedure or machinery for enforcing these provisions is found in greater detail in the Sugarcane Act of the Bihar Legislature. But on a combined operation of both these provisions, it becomes at once clear that the general provisions of the Market Act so far as the regulation of sale and purchase of sugarcane is concerned get obviously excluded and superseded by these special provisions.”

42. In *H.S. Jayanna v. State of Karnataka* (supra), the appellants had challenged the levy of market fee on rice by the Marketing Committees constituted under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 on the ground that the provisions of the Act are repugnant to those contained in the Karnataka Rice Procurement (Levy) Order, 1984 framed under the Essential Commodities Act. The learned Single Judge allowed the writ petitions filed by the appellants but his order was reversed by the Division Bench. Before this Court, reliance was placed on the judgment in *Belsund Sugar Co. Ltd. v. State of Bihar* (supra) in support of the argument that the provisions of the State Act were inconsistent with those contained in the Control Order. The two Judge Bench extensively referred to the findings and conclusions recorded in *Belsund Sugar Co. Ltd.* case (supra) and proceeded to observe:

“We have no hesitation in concluding that the entire field of regulating the purchase and sale of paddy or the rice produced out of paddy is not covered under the Control Order. The provisions of the Marketing Act do not trench up the field covered by the Control Order. There is no inconsistency between the Control Order and the Marketing Act. They do not cover the same field and therefore the question of any inconsistency, repugnancy or the Marketing Act being ineffectual in terms of Section 6 of the Essential Commodities Act in view of the Control Order issued under Section 3 of the Essential Commodities Act would not arise. The Control Order deals with the compulsory acquisition of 1/3rd of rice of each variety produced by a miller at a purchase price fixed by the Government. It requires the miller to supply to the Government or its purchase agent and deliver the procured rice at a notified place. It does not deal with the sale and purchase of the remaining 2/3rd rice except that the miller is not permitted to remove the stock of rice from the mill premises without delivery of rice to the Government or its purchase agent and without obtaining a release certificate required to be taken under clause 8 of the said Order. It does not

deal with the marketing or the facilities to be provided to the grower, seller and purchaser of paddy in the market area or to the seller or purchaser of rice. The Control Order is thus limited in operation. The Marketing Act provides for the regulation of marketing of agricultural produce (which rice is) and the establishment and administration of markets for agricultural produce and matters connected therewith in the State of Karnataka. The Marketing Act deals with the entire gamut of marketing of agricultural produce starting from the establishment of the Market Committees, markets, declaration of market area, market yard, market sub-yard, regulation of marketing of specified agricultural produce therein and for obtaining a licence under the Act, the process of appointing/electing the Market Committees, the powers and duties of the Market Committee [Section 63(1)], the facilities to be provided by the Market Committee [Section 63(2)] and the levy of market fee (Section 65). The Marketing Act does not deal with any of the provisions made in the Control Order. The Control Order and the Marketing Act do deal with the same subject but do not cover the same field. There is no conflict between them. They do not occupy the same field.” (emphasis supplied)

43. In our view, the above extracted observations do not help the appellants. Rather, they support the conclusion recorded by us that the entire field of the sale and purchase of sugarcane is covered by the Sugarcane Act and the Control Order, which are special legislations and the provisions contained in the Market Act, which generally deal with sale and purchase of agricultural produce specified in the Schedule cannot be invoked for compelling the occupier of a factory engaged in the manufacture of sugar to take licence under Section 31 read with Section 32 and pay market fee in terms of Section 19 thereof because the same are in direct conflict with the provisions contained in the Sugarcane Act and the Control Order.

44. The argument of the learned senior counsel appearing for the appellants that the provisions of the Control Order cannot prevail over the Market Act because the same was enforced after receiving Presidential assent merits rejection. The reasons for this conclusion of ours are:

“(i) In the counter filed before the High Court, no such plea was raised and no document was produced to show that the Market Act was reserved for Presidential Assent on the ground that the provisions contained therein are in conflict with those contained in the Control Order.

(ii) It was not argued before the High Court that the President had been apprised of the conflict between the Control Order and the Market Act and he accorded assent after considering this fact.

(iii) It also deserves to be mentioned that during the course of hearing, this Court had after taking cognizance of the aforesaid argument, directed Shri B. S. Banthia, learned counsel for the State of Madhya Pradesh to produce the record to show as to in what context the Market Act was reserved for Presidential assent. After the judgment was reserved, Shri Banthia handed over an envelope containing File No. 17/62/73-Judicial of the Ministry of Home Affairs, perusal of which reveals that the request of the State Government for Presidential assent was processed by the Ministry of Home Affairs. In the first instance, the Departments of Agriculture, Food and Internal Trade as also the Planning Commission were asked to offer their comments. The Department of Agriculture conveyed no-objection but wanted its suggestions to be incorporated in the Bill. The others did not offer any comment. Thereafter, the Joint Secretary (Home) recorded a note that the suggestions given by the Agriculture Department will be sent to the State Government for consideration. He also prepared the following summary for consideration of the President:

“Summary

45. The Madhya Pradesh Krishi Upaj Mandi Vidheyak, 1972. The Madhya Pradesh Agricultural Produce Markets Act, 1960 has been in force in the State since October, 1960. During the operation of the Act for the last twelve years, the number of agricultural market committees has risen from 87 to 230. The working of the Act has revealed certain shortcomings and it was considered desirable by the State Government to review the Act in order to ensure efficient working of the market committees to the best advantage of the agriculturists as well as traders. A committee was constituted by the State Government for the purpose and the committee recommended revision of the Act of 1960. Hence the State Government have got passed the present Bill.

“2. The salient feature of the Bill are as follows:

(i) Establishment of markets for the specified areas and of regulation of marketing of notified agricultural produce therein.

(ii) Establishment of market committee for every market area and constitution of State Marketing Service to secure efficient administration of market committees.

(iii) Constitution of the Madhya Pradesh State Agricultural Marketing Board at the State level to coordinate the work of market committees in the State and to advise the State Government.

(iv) Election of Chairman of market committee from amongst the representatives of agriculturists.

(v) Provision for deterrent punishment for resorting to trade malpractices by market functionaries in the market area.

46. Having regard to the provisions of article 31(3), 254(2) and 304 of the Constitution of India, the Governor of Madhya Pradesh has reserved the Bill for the consideration and assent of the President.

47. The Department of Agriculture, Department of Food, Planning Commission and the Department of Internal Trade who were consulted have no objection to the assent of the President being given to the Bill. The Department of Agriculture have, however, suggested that the details of the composition of the State Marketing Board, which have not been given in the Bill, should be specified in the Bill. This suggestion will be communicated to the State Government. The Ministry of Law who were consulted do not see any objection to the assent of the President being given to the Bill from the legal and constitutional point of view. Accordingly, if the Minister approves, the Bill may be recommended to the President for his assent. (Sd/- ) (P.P. Nayyar)

Joint Secretary.”

48. From the summary reproduced hereinabove, it is clear that the State Government had not reserved the Market Act for Presidential assent on the ground of any repugnancy between the provisions of that Act and the Control Order. As a matter of fact, the State Government could not have even thought of any repugnancy between these statutes because at the relevant time, sugarcane was not treated as an agricultural produce and was not included in the Schedule appended to the Market Act.

49. The nature and scope of Presidential assent under Article 254(2) of the Constitution was considered by the Constitution Bench in *Gram Panchayat of Village Jamalpur v. Malwinder Singh*(supra). In that case, it was argued that the President’s assent to Section 3(a) of the Punjab Village Common Lands (Regulation) Act, 1953 would give it precedence over the Administration of Evacuee Property Act, 1950, which was enacted by Parliament. The Constitution Bench held that the assent of the President under Article 254(2) of the Constitution is not an empty formality and the President has to be apprised of the reason why his assent was being sought. The Constitution Bench further held that if the assent is sought

for a specific purpose, the efficacy of assent would be limited to that purpose and cannot be extended beyond it. The relevant observations made on this issue are contained in Para 12, which is extracted below:

“12. The Punjab Act of 1953 was reserved for consideration of the President and received his assent on December 26, 1953. Prima facie, by reason of the assent of the President, the Punjab Act would prevail in the State of Punjab over the Act of the Parliament and the Panchayats would be at liberty to deal with the Shamlat-deh lands according to the relevant Rules or bye-laws governing the matter, including the evacuee interest therein. But, there is a complication of some nicety arising out of the fact that the Punjab Act was reserved for the assent of the President, though for the specific and limited purpose of Articles 31 and 31-A of the Constitution. Article 31, which was deleted by the Constitution (Forty-fourth Amendment) Act, 1978 provided for compulsory acquisition of property. Clause (3) of that article provided that, no law referred to in clause (2), made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. Article 31-A confers protection upon laws falling within clauses (a) to (e) of that article, provided that such laws, if made by a State Legislature, have received the assent of the President. Clause (a) of Article 31-A comprehends laws of agrarian reform. Since the Punjab Act of 1953 extinguished all private interests in Shamlat-deh lands and vested those lands in the Village Panchayats and since, the Act was a measure of agrarian reform, it was reserved for the consideration of the President. The judgment of the High Court shows that the hearing of the writ petitions was adjourned to enable the State Government to place material before the Court showing the purpose for which the Punjab Act of 1953 was forwarded to the President for his assent. The record shows, and it was not disputed either before us or in the High Court, that the Act was not reserved for the assent of the President on the ground that it was repugnant to an earlier Act passed by the Parliament, namely, the Central Act of 1950. In these circumstances, we agree with the High Court that the Punjab Act of 1953 cannot be said to have been reserved for the assent of the President within the meaning of clause (2) of Article 254 of the Constitution insofar as its repugnancy with the Central Act of 1950 is concerned. The assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President is sought to the Law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. Not

only was the President not apprised in the instant case that his assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but, his assent was sought for a different, specific purpose altogether. Therefore, that assent cannot avail the State Government for the purpose of according precedence to the law made by the State Legislature, namely, the Punjab Act of 1953, over the law made by the Parliament, even within the jurisdiction of the State.”(emphasis supplied)

50. The proposition laid down in *Gram Panchayat of Village Jamalpur v. Malwinder Singh* (supra) was considered by another Constitution Bench in *Kaiser- I-Hind Pvt. Ltd. v. National Textile Corporation (Maharashtra North) Ltd.* (supra). Speaking for the majority of the Court, Shah, J. observed:

“In view of the aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State Legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of the Concurrent List and that it contains provision or provisions repugnant to the law made by Parliament or existing law. Further, the words “reserved for consideration” would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by Parliament and the necessity of having such a law, in the facts and circumstances of the matter, which is repugnant to a law enacted by Parliament prevailing in a State. The word “consideration” would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word “assent” in clause (2), which implies knowledge of the President to the repugnancy between the State law and the earlier law made by Parliament on the same subject-matter and the reasons for grant of such assent. The word “assent” would mean in the context as an expressed agreement of mind to what is proposed by the State.” (emphasis supplied) Shah, J. then referred to various meanings of the word “assent” and observed:

“Applying the aforesaid meaning of the word “assent” and from the phraseology used in clause (2), the object of Article 254(2) appears that even though the law made by Parliament would have supremacy, after considering the situation prevailing in the State and after considering the repugnancy between the State legislation and the earlier law made by Parliament, the President may give his assent to the law made by the State Legislature. This would require application of mind to both the laws and the repugnancy as well as the peculiar requirement of the State to have such a law, which

is repugnant to the law made by Parliament. The word “assent” is used purposefully indicating affirmative action of the proposal made by the State for having law repugnant to the earlier law made by Parliament. It would amount to accepting or conceding and concurring to the demand made by the State for such law. This cannot be done without consideration of the relevant material. Hence, the phrase used is “reserved for consideration”, which under the Constitution cannot be an idle formality but would require serious consideration on the material placed before the President. The “consideration” could only be to the proposal made by the State.

51. It is true that the President's assent as notified in the Act nowhere mentions that assent was obtained qua repugnancy between the State legislation and specified certain law or laws of Parliament. But from this, it also cannot be inferred that as the President has given assent, all earlier law/laws on the subject would not prevail in the State. As discussed above before grant of the assent, consideration of the reasons for having such law is necessary and the consideration would mean consideration of the proposal made by the State for the law enacted despite it being repugnant to the earlier law made by Parliament on the same subject. If the proposal made by the State is limited qua the repugnancy of the State law and law or laws specified in the said proposal, then it cannot be said that the assent was granted qua the repugnancy between the State law and other laws for which no assent was sought for. Take for illustration — that a particular provision, namely, Section 3 of the State law is repugnant to enactment A made by Parliament; other provision, namely, Section 4 is repugnant to some provisions of enactment B made by Parliament and Sections 5 and 6 are repugnant to some provisions of enactment C and the State submits proposal seeking “assent” mentioning repugnancy between the State law and provisions of enactments A and B without mentioning anything with regard to enactment C. In this set of circumstances, if the assent of the President is obtained, the State law with regard to enactments A and B would prevail but with regard to C, there is no proposal and hence there is no “consideration” or “assent”. Proposal by the State pointing out repugnancy between the State law and of the law enacted by Parliament is a sine qua non for “consideration” and “assent”. If there is no proposal, no question of “consideration” or “assent” arises. For finding out whether “assent” given by the President is restricted or unrestricted, the letter written or the proposal made by the State Government for obtaining “assent” is required to be looked into.”

52. In his concurring judgment, Doraiswamy Raju, J. made the following observations:

“The assent of the President envisaged under Article 254(2) is neither an idle or empty formality, nor an automatic event, necessitated or to be given for the mere asking, in whatever form or manner and whether specific, vague, general or indefinite — in the terms sought for to claim that once sought and obtained as well as published,

a curtain or veil is drawn, to preclude any probe or contention for consideration that what was sought and obtained was not really what should and ought to have been, to claim the protection envisaged under clause (2) in respect of a particular State law vis-à-vis or with reference to any particular or specified law on the same subject made by Parliament or an existing law, in force. The repugnancy envisaged under clause (1) or enabled under clause (2) to get excepted from under the protective coverage of the assent obtained from the President, is such that there is a legislation or legislative provision(s), covering and operating on the same field or identical subject-matter made by both the Union and the State, both of them being competent to enact in respect of the same subject- matter or legislative field, but the legislation by Parliament has come to occupy the entire field. Necessarily, in the quasi-federal structure adopted for the nation, predominance is given to the law made by Parliament and in such circumstances only the State law which secured the assent of the President under clause (2) of Article 254 comes to be protected, subject of course to the powers of Parliament under the proviso to the said clause. Therefore, the President has to be apprised of the reasons at least as to why his assent is being sought, the need or necessity and the justification or otherwise for claiming predominance for the State law concerned. This itself would postulate an obligation, inherent in the scheme underlying as well as the very purpose and object of seeking the assent under clause (2) of Article 254, to enumerate or specify and illustrate the particular Central law or provision with reference to which the predominance is desired. The absence of any standardized or stipulated form in which it is to be sought for, should not detract the State concerned, to disown its obligation to be precise and specific in the extent of protection sought having regard to the serious consequences which thereby inevitably follow i.e. the substitution of the Union law in force by the State law, in the territorial limits of the State concerned, with drastic alteration or change in the rights of citizen, which it may, thereby bring about.

53. The mere forwarding of a copy of the Bill may obviate, if at all, only the need to refer to each one of the provisions therein in detail in the requisition sent or the letter forwarding it, but not obliterate the necessity to point out specifically the particular Central law or provisions with reference to which, the predominance is claimed or purported to be claimed. The deliberate use of the word “consideration” in clause (2) of Article 254, in my view, not only connotes that there should be an active application of mind, but also postulates a deliberate and careful thought process before taking a decision to accord or not to accord the assent sought for. If the object of referring the State law for consideration is to have the repugnancy resolved by securing predominance to the State law, the President has to necessarily consider the nature and extent of repugnancy, the feasibility, practicalities and

desirabilities involved therein, though may not be obliged to write a judgment in the same manner, the courts of law do, before arriving at a conclusion to grant or refuse to grant or even grant partially, if the repugnancy is with reference to more than one law in force made by Parliament. Protection cannot be claimed for the State law, when questioned before courts, taking cover under the assent, merely asserting that it was in general form, irrespective of the actual fact whether the State claimed for such protection against a specific law or the attention of the President was invited to at least an apprehended repugnancy vis-à-vis the particular Central law. In the teeth of innumerable Central laws enacted and in force on concurrent subjects enumerated in List III of the Seventh Schedule to the Constitution, and the hoard of provisions contained therein, artificial assumptions based on some supposed knowledge of all those provisions and the presumed regularity of official acts, cannot be blown out of proportion, to do away with an essential exercise, to make the “assent” meaningful, as if they are empty formalities, except at the risk of rendering Article 254 itself a dead letter or merely otiose. The significant and serious alteration in or modification of the rights of parties, both individuals or institutions resulting from the “assent” cannot be overlooked or lightly brushed aside as of no significance, whatsoever. In a federal structure, peculiar to the one adopted by our Constitution it would become necessary for the President to be apprised of the reason as to why and for what special reason or object and purpose, predominance for the State law over the Central law is sought, deviating from the law in force made by Parliament for the entire country, including that part of the State.” (emphasis supplied)

54. In view of the aforesaid judgments of the Constitution Benches, we hold that Article 254(2) of the Constitution is not available to the appellants for seeking a declaration that the Market Act would prevail over the Control Order and that transactions involving the purchase of sugarcane by the factories operating in the market areas would be governed by the provisions contained in the Market Act. As a corollary, we hold that the High Court did not commit any error by quashing the notices issued by appellant - Market Committees to the respondents requiring them to take licence under the Market Act and pay market fee on the purchase of sugarcane from Cane Growers/Cane Growers Cooperative Societies.

55. In the result, the appeals are dismissed. The parties are left to bear their own costs.

*Judgment Referred*

<sup>1</sup>(1999) 9 SCC 0620

<sup>2</sup>(1995) 1 SCC 0655

<sup>3</sup>AIR 1955 Bom. 0035

<sup>4</sup>AIR 1956 SC 0676

<sup>5</sup>AIR 1957 SC 0790

*6*AIR 1961 SC 0823  
*7*(1981) 2 SCC0045  
*8*1983 (4) SCC 0045  
*9*1985 (3) SCC 0661  
*10*(1986) 4 SCC 0051  
*11*1995 (Supp.) 2 SCC 0187  
*12*(2002) 4 SCC 0125  
*13*(2002) 8 SCC 0182  
*14*(2003) 1 SCC 0506  
*15*(2007) 9 SCC 0109  
*16*(2009) 5 SCC 0342