

(1990) 03 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8012 of 1980

Chandra Prakash Agarwal and Co. and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-03-1990

Acts Referred:

British North America Act, 1867 — Section 91, 92
Central Excise Rules, 1944 — Rule 139, 152, 154, 174, 178
Constitution of Australia — Section 51
Constitution of India, 1950 — Article 141, 246, 246(1), 246(2), 246(3)
Essential Commodities Act, 1955 — Section 3, 3(1)
Government of India Act, 1935 — Section 100
National Highways Act, 1956 — Section 5
Tobacco Board Act, 1975 — Section 1, 13, 14, 2, 3
Uttar Pradesh Krishi Utpadan Mandi (Sanshodhan) Adhiniyam, 1970 — Section 6, 8
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17(3), 2

Citation : (1990) 1 AWC 699

Hon'ble Judges : S.D. Agarwala, J;B.L. Yadav, J;A.P. Misra, J

Bench : Full Bench

Advocate : Arun Kumar Gupta and B. N. Misra, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J. (for self, S.D. Agarwala and A.P. Mishra, JJ.)

1. Being of the opinion that there was conflict in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, and in State (Delhi Administration) Vs. Laxman Kumar and Others, , about the legislative powers of the Government of U.P. for levy and collection of fee u/s 17(iii) of the U.P. Krishi Utpadan Mandi Adhiniyam, (Act No. 25 of 1964), (for short the U.P. Act or Adhiniyam), by Market Committees, a Division Bench of this Court has referred this petition to the Larger Bench This is how this matter has come before us. After hearing the learned Counsel for the parties, the following questions emerge for our consideration:

(1) Whether the provisions of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 in respect of levy and collection of fee u/s 17(iii) of the Adhiniyam in so far as the same applies to tobacco was repugnant to the provisions of Tobacco Board Act, 1975 (Central Act No. 4 of 1975) ? If so, its effect; and

(2) Whether the law declared by a Constitution Bench or by a subsequent Division Bench of the Supreme Court is binding on the High Court Under Article 141 of the Constitution?

2. The factual matrix of the case may be set out in order to appreciate the questions and their answers. U.P. Krishi Utpadan Mandi Adhiniyam, 1964 was enforced on 4-4-1965. Section 2(a) defines the expression "agricultural produce" to mean all or any of products of agriculture, epiculture, cericulture, pisciculture and the animal husbandary and forest whether processed or not. The Adhiniyam applies to specified agricultural produce. Section 2(i) of the Adhiniyam defines the expression "specified agricultural produce" to mean agricultural produce specified in the notification u/s 6 or as modified u/s 8. The definition "agricultural produce" was substituted by U.P. Act No. 10 of 1970. The amended definition reads as under:

2(a) "agricultural produce" means such items of produce of agriculture, horticulture, epiculture, cericulture, pisciculture and animal husbandary and forest whether processed or not, as specified in the Schedule...

3. In the Schedule sub-category (5) of Category "A" mentions tobacco to be a specified agricultural produce u/s 6. In this view of the matter the Adhiniyam applies to tobacco, but for limited purposes of levy and collection of fee by the Market Committees only at a particular point when the same is brought in the market yard. The purpose of Adhiniyam or the intention is not to control the industry of tobacco as such.

4. The legislative power under Item 52 of List I of the Union List, is "Industries," the control of which by the Union, is declared by Parliament by law to be expedient in the public interest. The Parliament in 1975, enacted Tobacco Board Act, 1975, (Central Act No. 4 of 1975), (for short the Central Act), with an object to provide for the development of tobacco industries under the control of the Union of India. In brief the statement of objects and reasons of the Central Act may be stated as under:

India being third largest producer of tobacco including Virginia tobacco in the world. The Virginia tobacco is the most important variety grown in the country. For effectively regulating tobacco industry, particularly Virginia tobacco industry and for maintaining and improving exports and thereby augmenting countries' foreign exchange resources, it is absolutely necessary to take various measures right from the stage of its production. The production of tobacco, particularly Virginia tobacco has to be planned carefully to suit the specified need of the market by ensuring requisite standard of quality and the fluctuation in production and prices have to be maintained. It is also necessary that services and facilities

for research etc...should be extended to this important export oriented industry in an integrated manner. At present there is no central authority in India which can deal with various aspects of this industry in an integrated and effective manner. There are as many as five different independent organizations looking for or exercising control over movement, production etc. With this object the Act was enacted that it was expedient in public interest.

It may, however, be also stated that the finances of the Board would be, under the specified Act, consisting of fee collected by it, apart from other resources. The other important functions of the Board are to set up auction platform of its own or to function as auctioneer at such platforms.

Under Section 2 of the Central Act, the following declaration was made:

It is declared that it is expedient in the public interest that the Union should take in its control the tobacco industries.

5. In order to appreciate sequence of events some more facts may be noticed. U.P. Government issued a notification on 9th September, 1975 in exercise of its powers u/s 8 of Adhiniyam with a view to modify the list of agricultural produce within the meaning of Section 8 and definition of agricultural produce u/s 2(a) of the Adhiniyam adding "tobacco" as an item of agricultural produce for the purposes of Section 9 with effect from 10th October 1975. The Secretary of Mandi Samiti in pursuance of provisions of Section 9(2) of Adhiniyam directed the Petitioners of writ petition No. 11668 of 1975, Nisar Ahmad and Ors. v. Krishi Utpadan Mandi Samiti and Ors. to obtain licence from Samiti and to comply with the provisions of Adhiniyam and Rules framed there under. That direction was challenged by Nisar Ahmad and Ors. and two writ petitions were filed, in which similar points were urged that as manufacture and sale of tobacco was regulated by Central Act i.e. Central Excise and Salt Act 1944, State Legislature has no legislative competence to regulate sale and purchase of tobacco and the provisions of Adhiniyam were repugnant to Central Excise and Salt Act. Those petitions came up for hearing before a Division Bench of this Court, (comprising of Hon"ble K.N. Singh and Hon"ble N.D. Ojha, JJ. as their lordships then were) and were dismissed on 9-11-1976 holding that the provisions of Adhiniyam were not repugnant to Central Excise and Salt Act nor the Adhiniyam was beyond the legislative competence of U.P. State Legislature. Records of these petitions have been summoned and perused by us. Prior to that, involving similar rather same questions, Writ Petition No. 2287 of 1971 (Hindu Muslim Trading Company and 37 others v. Krishi Utpadan Mandi Kayamganj and others) was filed in this Court before Single Judge which was dismissed on 1-1-1974. That judgment was challenged in Special Appeal No. 83 of 1974 which was dismissed by the Division Bench of this Court (consisting of Hon"ble Satish Chandra and Hon"ble H.N. Seth, JJ. as their lordships then were) by the judgment dated 6-11-1974. The Division Bench considering the arguments in detail affirmed the judgment of Single Judge holding that U.P. Legislature has legislative competence to legislate the Adhiniyam and the provisions of Adhiniyam were not repugnant to the

Central Excise and Salt Act, 1944. In that special appeal also the submissions of learned Counsel for the Appellants were that the provisions of Adhiniyam were in conflict and rather repugnant to the provisions of Central Excise and Salt Act hence in view of the provisions of Article 254 the Adhiniyam would be void as trade in tobacco stands regulated by the Rules 33 to 35, 39, 42, 139, 152, 154, 174 and 178 of the Rules framed under Central Excise and Salt Act, where detailed procedure for sale of tobacco has been laid down and the tobacco cannot be sold in the manner specified under Rule 76 of the Niyamawali.

6. Against those decisions and some other decisions of this Court, writ petitions and Special Leave Petitions were filed in Supreme Court. All those matters were consolidated and were decided by a Constitution Bench (in Ram Chandra Kailash Kumar Co. v. State of U.P. 1980 SC 1124 (Supra) (Presided over by Hon"ble Y.V. Chandrachud, C.J. and other members of Bench were Hon"ble V.R. Krishna Iyer, Hon"ble N.L. Untawalia, Hon"ble P.N. Singhal and Hon"ble A.D. Koshal, JJ.). In these writ petitions and civil appeals a number of questions pertaining to power of Mandi Samiti in respect of levy and collection of fee by Market Committees came up for consideration. All the submissions of learned Counsel for the Appellants and Petitioners were repelled with the following observations (vide Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, :

In order to enable the Market Committees in their attempt to implement the law as far as possible and to save their attempt from being thwarted by any unnecessary litigation we allowed the parties to advance a full throated argument in this Court including some of the points which were not argued in the High Court or in support of which foundations of fact were lacking. In this judgment our endeavour will be to formulate the points of law and decide them as far as practicable so that in future the business of the Market committees may be conducted in the light of this judgment leaving no scope for unnecessary litigation. Of course even in our judgment at places it would be indicated, and even apart from that, some genuine and factual disputes may crop up which in the first instance may be decided by the Market Committees.

7. In State (Delhi Administration) Vs. Laxman Kumar and Others, , a Bench consisting of Hon"ble A.S. Murtaza Fazal Ali, Hon"ble A. Varadarajan and Hon"ble Sabyasachi Mukharji, JJ. (as his lordship then was) held that once the Central Government has taken over the Tobacco Industry in view of the legislative power under entry 52 of list I of 7th Schedule by making declaration by Parliament that the law was expedient in public interest, in that event State Legislature ceases to have any legislative competence to legislate in that field and if it does so, that legislation would be ultra vires the powers of the State Legislature. Therefore, the State of Karnataka had no jurisdiction to levy or enhance market fee in respect of tobacco in exercise of powers u/s 62(2) of Karnataka Act. because that directly collides with the Tobacco Board Act, 1975 (for short Central Act). Accordingly Karnataka Agricultural Produce (Marketing and Regulation) Act 1966

(for short Karnataka Act) was struck down which has taken in itself the power to levy market fee on tobacco or its products. Even if the products may be sold in the markets in Karnataka or near about the same place situated in that State, the power to levy fees will not belong to that State, it will remain with Centre which would regulate the sale and purchase of tobacco.

8. Seeking support from the aforesaid observations in *I.T.C. Ltd. v. State of Karnataka* (Supra) learned Counsel for the Petitioners has urged that the State of U.P. has no legislative competence under entry 28, (twenty eight). "Markets and Fairs" read with entry 66 (Fees in respect of any of the matters in this list but not including fees taken in Court) of list 2-State List of 7th Schedule, to legislate U.P. Act (particularly the provisions for levy and collection of fee u/s 17(3) of U.P. Act), even though the obvious impression could be gathered that the State of U.P. has legislative competence to legislate U.P. Act or to make provisions for levy and collection of fee u/s 17(3).

9. It may be stated that out of present Petitioners several had already filed writ petitions referred above which came up for hearing in Special Appeal No. 83 of 1974 before a Division Bench of this Court as indicated above. Those Petitioners namely Hindu Muslim Trading Co. through Sri Harischandra Agarwal is Petitioner No. 5 in present petition. He was Petitioner No. 1 in writ petition No. 2287 of 1973 in which Special Appeal No. 83 of 1974 was filed and out of that S.C. Appeal No. 104 of 1975 was filed which was disposed of in *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, . Similarly some Petitioner, namely Bengali Lal is Petitioner No. 6 in present petition and he was Petitioner No. 24 in the earlier petition.

10. In order to appreciate the submissions of learned Counsel for the Petitioners it is necessary to examine the nature of relevant entries under List I & List II of seventh schedule. The Central Act was enacted under entry 52 of List I i.e. industry, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, whereas U.P. Legislature enacted U.P. Act under the legislative power in List II under entry 28 (twenty eight) (Markets and Fairs) and entry 66 (sixty six) Fees in respect of any of the matters in this list (but not including fees taken in any Court). According to the learned Counsel for the Petitioners in view of the provisions of Article 246 read with Article 254(1) of the Constitution of India as the Parliament has exclusive powers to make laws in view of entry 52 of List I, Union List of seventh schedule in respect of "Industry" the control of which by the Union is declared by Parliament by law to be expedient in the public interest, State legislature has no legislative competence to enact U.P. Act purporting to under entry 28 (twenty-eight) read with entry 66 (sixty-six), List II of the State list of Seventh Schedule.

11. Learned Counsel for the Respondents, Mandi Samiti on the other hand has urged that State Legislature has enacted the U.P. Act in view of legislative powers under entry 28 (twenty-eight) read with entry 66 of List II, the State List. It was further urged that the object of U.P. Act No. 25 of 1984 (U.P. Act/

Adhiniyam) was not to deal with the Tobacco Industry as such rather it was to provide for regulation of sale and purchase of agricultural produce and for the establishment of superintendence and control of markets thereof in U.P. The object and reasons of U.P. Act, in U.P. Gazette extract dated 4th August 1964 were as follows:

The present chaotic state of affairs as obtaining in agricultural produce markets is an acknowledged fact. There are innumerable charges, levies and exactions which the agricultural producer is required to pay without having any say in the proper utilisation of the amount so paid by him. In matters of dispute between the seller and the buyer, the former is generally put at a disadvantage by being given arbitrary awards. The producer is also denied a large part of his produce by manipulation and defective use of weights and scales in the market. The Government of India and the various committees and commissions appointed to study the condition of agricultural markets in the country have also been inviting the attention of the State Government from time to time towards improving the conditions of these markets. The proposal to enact a marketing legislation was first taken up in 1938 the proposed measure to regulate the markets in this State has been designed with a view to achieve the objective in the following directions:

- (i) to reduce the multiple trade charges, levies and exactions charged at present from the producer-sellers;
- (ii) to provide for the verification of accurate weights and scales and see that the producer seller is not denied his legitimate due;
- (iii) to establish market committees in which the agricultural producer will have his due representation;
- (iv) to ensure that the agricultural producer has his say in the utilisation of market funds for the improvement of the market as a whole;
- (v) to provide for fair settlement of disputes relating to the sale of agricultural produce;
- (vi) to provide amenities to the producer-seller in the market;
- (vii) to stop inequitable and unauthorised charges and levies from the producer-seller; and
- (ix) to make adequate arrangements for market intelligence with a view to posting the agricultural producer with the latest position in respect of the markets dealing with his produce.

12. In view of aforesaid statement of object and reasons, it was manifest that U.P. Act was enacted with a view to reduce the multiple trade charges, levies and exactions charged at present from the producer-sellers and to establish market committees in which the agricultural producer will have his due representation and to provide amenities to the producer-seller in the market and to arrange for

better storage facilities and to stop inequitable and unauthorised charges and levies from the producer-seller. In this view of the matter it is clear that the object of U.P. Act is not to control the industry nor to legislate in respect of tobacco at every stage but to a limited extent in the market where the producer seller brings the tobacco and for that purpose the object is to render corresponding service and, provide amenities to the producer-seller. After that stage when the tobacco is brought in the market the U.P. State has nothing to do and thereafter entire control may be of the Central Government particularly with reference to the tobacco industry.

13. Learned Counsel for the Respondents further urged that the entry 28 read with entry 66 of List (ii) (Second) of seventh schedule were sufficient to entitle the State Legislature to enact the U.P. Act. As the entries are "markets and fair," and levy of fee is not in conflict nor there was any repugnancy in the U.P. Act as both operate in different field of operation and there is no question of overlapping.

14. The provisions of Article 254(1) of the Constitution so far as it is relevant for our purposes is set out below:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States:-(i) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void.

15. The aforesaid provisions may be read along with the provisions of Article 246 (1), (2) and (3) of the Constitution which are set out below:

246. Subject matter of laws made by Parliament and by the Legislatures of States:

(1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in Clause (3) Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to Clause (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

16. In brief Parliament has full and exclusive powers to legislate with respect to the matters in list 1 and List 3 of Seventh Schedule and similarly State Legislature has full and exclusive powers to legislate with respect to the matters in List 2 and also List 3, of Seventh Schedule. The provisions Under Article 246 are not new rather they are similar to the provisions of Section 100 of the Government of India Act 1935. As a matter of fact the Lists I, II and III of the Seventh Schedule are designed to delimit the respective areas of legislative competence of the Parliament and State Legislature. The power to legislate has been conferred by Article 246 and other similar provisions. The entries do not impose any restriction either positive or implied, on the legislative power of the Union and the State.

17. In respect of conflict with respect to the legislative powers List I has priority over the Lists III and II and List III has priority over List II but priority of Central Legislature does not prevent State Legislature from Dealing with any matter which may incidentally affect any item in its list but the dominant position of Central Legislature with regard to the matters in List I and III is thus established. This is just a literal interpretation. It may inevitably happen from time to time that legislation though purporting to deal with a subject in one list, touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. The Judicial Committee has therefore, ruled whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character. See Sir Maurice Gwyer C.J.'s observations in *Prafulla Kumar v. Bank of Commerce, Khulna* (Lord Proter) Privy Council AIR 1947 SC 28.

18. The expression "with respect to" Under Article 246 and similar other provisions of the Constitution indicate the ambit of the powers of the respective Legislatures to legislate as such to subject matters comprised in the various entries included in the 3 (three) Lists, of Seventh Schedule. In fact this expression, we may say, has been borrowed from Section 51 of the Australian Constitution. Similarly expression "in relation to" is to be found in Section 91 of the British North America Act. The expressions "with respect to" etc. also occurred in Government of India Act 1935 and the same was explained in the following way by Federal Court:

In view of the large number of items in the three lists, it is almost impossible to prevent a certain amount of overlapping. Absolutely sharp and distinct lines of demarcation are not always possible. Rigid and inflexible watertight compartments cannot be ensured A hard and fast rule of exclusion derived from the strict literal language of Section 100 may therefore be quite impracticable and unworkable. To avoid such difficulties the Imperial Parliament has thought fit to use the expression "with respect to" which obviously means that looking at the legislation as a whole, it must substantially be with respect to matters in one

list or the other. A remote connection is not enough. See AIR 1941 47 (Federal Court) .

19. We may have some elementary rules of interpretation of our Constitution. It needs no emphasis that our Constitution is a fundamental law and at the same time it is a living document, consequently the Court. 89-Rep-1990 is not called upon to interpret it in a narrow and pendentic sense. In fact a broad and liberal spirit must inspire those who are called upon to interpret provisions of the Constitution. Constitutional provisions at the same times, either the entries in the First, Second or Third Lists are to be interpreted, as it exists and not as it ought to be. It is also to be kept in view that many difficulties which are faced today either by one State or the other or in different forms, were not foreseen by the framers of the Constitution. It is better to state that while applying the provisions of the Constitution, the actual problem requires judicial statesmanship.

20. It was observed by Lord Wright in *James v. Commonwealth of Australia* 1936 AC 578, at page 614 that the rules which apply to interpretation of other statutes, equally applies to the interpretation of constitutional enactment. While referring to the observations of Australian High Court in *Attorney General for the State of New South Wales v. Brewery Employees Union etc*, (1908) (6) CLR 469, it was observed that the words of the Constitution must be interpreted on the same principles as any other statute and these principles compel us to consider the nature and scope of these provisions. Those provisions must be interpreted broadly bearing in mind in appropriate cases that (like our Supreme Court) their Supreme Court is nice balance of jurisdiction. (See observations of Gwyer C.J. in *re Central Provinces and Bearer Sales of Motor Sprit and Lubrication Taxation Act*, 1938 AIR 1939 Federal Court I at page 4. These observations have further been considered by Hon"ble Sabyasachi Mukherji J., the present Hon"ble the Chief Justice of India (as his Lordship then was), in a recent Division Bench case in *M/s. Good Year India Ltd. v. State of Haryana*, Judgments Today 1989 (4) SC 229. In para 17 of the judgment as reported in Judgments Today at page 244, reference to these cases was considered and it was stated that it is well to treat that in pursuance to the expression of the Constitution as to whether particular provisions of a particular Act are within the competence of the State Legislature, one has to bear in mind that the Constitution is to be construed not in a narrow or pedentic sense, nor it has to be considered as a mere law, and that the Constitution has the greatest claim to be considered broadly and liberally.

21. While speaking for the Constitution Bench, Hon"ble Sabyasachi Mukherji J. (the present Hon"ble Chief Justice of India) (as his Lordship then was), in *India Cement Ltd. etc. v. State of Tamil Nadu*, Judgments Today, 1989 (4) SC 190 observed that the Courts are enjoined to gather the meaning of the Constitution from the language used and one should interpret the words of the Constitution on the same principles as one applies to an ordinary law. But these very principles of interpretation compel one to take care of the language and scope of the Act which requires interpretation and also the fact that it is the Constitution

that requires interpretation.

22. Some impeccable principles for interpretation of an Article of the Constitution were pointed out by Hon''ble Bhagwati J. in Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, as follows:

The words used in a statute cannot be read in isolation : their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. And when I use the word "context" I mean it in its widest sense "as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia and the mischief which-the statute was intended to remedy" The context is of the greatest importance in the interpretation of the words used in a statute.

23. Oft quoted principles of interpretation of the Constitution as pointed out by Hon''ble Oliver Wendell Holmes in Gompers v. United States 233 US 604, 610 may be set out:

The provisions of the Constitution are not mathematical formulas having their essence in their form, they are organic living institutions transplanted from English soil. Their significance is vital, not formal. It is to be gathered not simply by taking the words and a Dictionary, but by considering their origin and the line of their growth.

24. We have already quoted the provisions of Article 254(1) of the Constitution, a sound construction of which would indicate that the repugnancy arises only when the enactments made by the Parliament and those made by the State Legislature occupy the same field with respect to one of the matters enumerated in the concurrent List and there is direct conflict between the two. It is only when these two conditions precedent are fulfilled only in that event it could be said that the State law will, to the extent of repugnancy become void. Article 254(1) even though was referred in respect of repugnancy between the Tobacco Board Act 1975 and U.P. Krishi Mandi Adhiniyam 1964, we are afraid, the provisions of Article 254(1) of the Constitution cannot be attracted in such matters. In the present case we are concerned with the alleged overlapping between entry 52, "Industries" the control of which by the Union is declared by Parliament by law to be expedient in the public interest, List I-Union List and Entry 28 "Markets and Fair" and Entry 66, "Fees in respect of any of the matters in this List but not including the fees taken in any Court of list II, State List. The provisions of Article 254(1) cannot be made applicable to such alleged repugnancy on account of assumed overlapping (between relevant entries in List I and List II) in case both the laws, one made under entry 52 of List I and the other under Entry 28 and 66 of List II operate on two separate and distinct fields and both are capable of being obeyed. In the present case also Entry 28, "Markets and Fairs" is entirely different and distinct having apparently nothing to do with the Entry 52 "Industry." As the fee is imposed u/s 17(3) of Adhiniyam in respect of any of the matters of List II has to be imposed under Entry 66 hence Article 254(1) shall

have no application over the same rather such cases can be considered Under Article 246 read with Article 298 and other relevant provisions.

25. In *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, where the question was about the constitutional validity of Section 5(1) and (3) of Bihar Finance Act 1981 which provides for levy of surcharge on manufacturers and producers of drugs, whose turnover exceeds 5 lacs in a year at a uniform rate of 10 percentum of the tax payable by them, whereas the field of price fixation of essential commodities in general, and drugs and formulations in particular is an occupied field by virtue of various control orders issued by the Central Government from time to time under Sub-section (1) of Section 3 of the Essential Commodities Act 1955, which allows the manufacturer or producer of goods to pass on the tax liability to the consumer and therefore the State Legislature of Bihar had no legislative competence to enact Sub-section (3) of Section 5 of the Act. After considering relevant case law their lordships of Supreme Court held that the question of repugnancy arises only when both the legislatures are competent to legislate in the same field i.e. with respect to one of the matters enumerated in the Concurrent List. Sub-section (3) of Section 5 of the Act and para 21 of the Control Order issued by the Central Government under Sub-section (1) of Section 3 of the Essential Commodities Act, operate on two separate and distinct fields and both are capable of being obeyed. There is no question of any clash between the two laws and the question of repugnancy does not come into play.

26. In AIR 1941 47 (Federal Court) , Gwyer C.J. reiterated that the principles laid down by the Judicial Committee in a long series of decisions for the interpretation of the two sections of the British North America Act must be accepted as a guide for the interpretation of Section 100 of Government of India Act 1935. The following observations may be noticed:

The Federal Legislature has full and exclusive power to legislate with respect to matters in List I, and has also power to legislate with respect to matters in List III. A Provincial Legislature (State Legislature under the Constitution) has exclusive power to legislate with respect to List II, minus matters falling in List I or List III; has concurrent power to legislate with respect to matters falling in List III, minus matters falling in List I The dominant position of the Central Legislature with regard to matters in List I and List HI is thus established. But the rigor of the literal interpretation is relaxed by the use of the words "with respect to" which as already pointed out only signify "pith and substance" and do not forbid a mere incidental encroachment.

It was further observed as follows:

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of

statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purposes of determining whether it is legislation with respect to matters in this list or in that.

27. It is pertinent to refer "Australian Constitution" by Nicholas (2nd Edition page 303) dealing with the inconsistency or repugnancy as follows:

1. There may be inconsistency in the actual terms of the competing statutes;
2. Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and
3. Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter.

28. In *Attorney General of Ontario v. Attorney General of Canada* (1896) AC 348 and *City of Montreal v. Montreal Street Railway* (1912) AC 333, Privy Council observed as follows:

There must be a real conflict between the two Acts, that is, the two enactments "must" come into collision or come into conflict over a field of jurisdiction common to both.

29. In *National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others*, , the question was as to whether the Industrial Disputes Act (14 of 1947) and Rajasthan Shops and Commercial Establishments Act 1958 tread on the same field and are not inconsistent or repugnant to each other. Both these Acts deal with the rights of the workman or employee to get redressal and damages in case of dismissal or discharge. Their Lordships of Supreme Court (under para 14 at page 333 and 334) ruled that one of the occasions where inconsistency or repugnancy arose was when on the same subject matter, one law would be repugnant to the other. Therefore, in order to raise a question of repugnancy two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other. These are the two conditions which are required to be fulfilled. These are cumulative conditions. Therefore, these laws must tread on the same field and these must be repugnant or inconsistent with each other. In that case it was held that there was a good deal of justification to hold that these laws the Industrial Disputes Act and the Rajasthan Act tread not on the same field even though both laws deal with the rights of dismissed workman or employee. But these two laws are not inconsistent or repugnant to each other.

30. The cardinal rules of interpretation of specific provisions of Constitution particularly the interpretation of different entries in the 3 Lists of seventh schedule have been pointed out in para 67 at page 295 of *Synthetics and*

Chemicals Ltd. and Others Vs. State of U.P. and Others, No. 22-24 November 15, Part as follows:

It is well to remember that the meaning of the expressions used in the Constitution must be found from the language used. We should interpret the words of the Constitution on the same principle of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. It has also to be borne in mind that where division of powers and jurisdiction in a federal Constitution is the scheme, it is desirable to read the Constitution in harmonious way. It is also necessary that in deciding whether any particular enactment is within the purview of one Legislature or the other, it is the pith and substance of the legislation in question that has to be looked into. It is well-settled that the various entries in the three lists of the Indian Constitution are not powers but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution are legislative heads or fields of legislation. These demarcate the area over which the appropriate legislatures can operate. It is well-settled that widest amplitude should be given to the language of the three entries but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then comes the duty of the Court to find the true intent and purpose and to examine the particular provision and problem in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list. It has to be interpreted that the Constitution must be interpreted as an organic document in the light of the experience gathered. In the constitutional scheme of division of powers under the legislative lists, there are separate entries pertaining to taxation and other laws. The aforesaid principles are fairly well-settled by various decisions of this Court and other Courts.

31. In *Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others*, of the report, Venkatramiah J. as the learned Chief Justice then was, held that no tax can be levied in the guise of a fee. It was held at page 158 of the report as follows:

As observed in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, , in list II of the Seventh Schedule to the Constitution Entries 1 to 44 form one group mentioning the subjects on which the States can legislate and entries 45 to 63 in that list form another group dealing with taxes that may be levied by States. Entry 64 refers to offences against laws with respect to any of the matters in List II and Entry 65 refers to jurisdiction of Courts. Entry 66 empowers the State to levy fees in respect of any of the matters in List II

32. Now it is to be ascertained as to whether the levy and collection of fee u/s 17(iii) of the U.P. Act in so far as the same applies to tobacco, was repugnant to

the provisions of Tobacco Board Act, 1975. In fact the Central Act was enacted by the Parliament in 1975 under Entry 52 of List I of the Union List of Seventh Schedule under the "Industries", the control of which by the Union was declared by the Parliament by law to be expedient in public interest. The objects and reasons of the Central Act have already been indicated earlier that this country happens to be the largest producer of tobacco including Virginia tobacco which was the most important variety grown in the country, and in order to regulate the tobacco industry, particularly Virginia tobacco, and for maintaining and improving the export and thereby augmenting the foreign exchange resources, it became necessary to take various measures from the stage of its production. There was no single authority in this country to deal with various aspects of these industries in an integrated and effective manner. Consequently the Central Act was enacted with a view to effectively regulate the tobacco industries, particularly the Virginia tobacco. But what is to be emphasised is that the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 as considered in State (Delhi Administration) Vs. Laxman Kumar and Others, contains different provisions and also the Central Act was with different objects and reasons covering entirely the different field, namely the industry. The salient features of the Central Act may be noticed. Section 1 indicates short title of the Act, Section 2 deals with the declaration as to the expediency of control by the Union, Section 3 is the definition clause, Section 4 provides the establishment and constitution of the Board indicating that it shall be a body corporate by the name aforesaid having perpetual succession and common seal etc. Section 5 deals with salary and allowances and other conditions of service of Chairman, Section 8 defines functions of the Board, Section 8(2-A) provides for regulating the production and curing of Virginia tobacco, and Section 8(2-B) deals with different functions, namely keeping a constant watch etc. from the Central Government about the minimum price which may be fixed for the purpose of export of Virginia tobacco, propagating information useful to the growers, dealers and exporters operating Virginia tobacco when the same is considered necessary and expedient for protecting the interest of growers and disposal of the same in India or abroad, permitting the grading of tobacco at the level of growers, sponsoring, assisting or coordinating economic research for the promotion of tobacco industries. Chapter III deals with regulation of production and disposal of Virginia tobacco, Chapter IV deals with regulation of Finance, Accounts & Audit. Under Chapter V, Section 20 provides power to prohibit or control, the import and export of tobacco and tobacco products, either generally or in specified class of cases. Section 30 provides that if the Central Government is satisfied that the circumstances have arisen rendering it necessary that certain restrictions imposed by this Act ceased to be imposed and in that event it shall be notified in the official Gazette and the same restrictions in that event shall be suspended.

The statutory provision of Section 31 is set out below:

31. Application of other laws not barred:-

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

33. In fact, Entry 28 of List 11-the State List of Seventh Schedule entitles the State to legislate in respect of markets and fairs and Entry 66 entitles the State to legislate in respect of fees in respect of any of the matters under this List (but not including fee taken in any Court). In the present case it was a legislation in respect of markets and the sale of tobacco by grower within the market area. It may be ascertained as to whether the provisions of U.P. Act, which was enacted under Entry 28 and 66 of List II, was repugnant and beyond the Legislative competence of State of U.P. We are conscious that we are interpreting the Entries and the provisions of the Constitution., which is, in fact, the mechanism under which laws are to be enacted and not only the Act which declares what law is to be. As a matter of fact, we are also conscious that a broad and liberal spirit should inspire those whose duty is to interpret the Constitution and the provisions Of the Constitution have not to be considered in a narrow and pedantic sense, rather that construction has to be adopted which is beneficial to the widest possible amplitude of its powers. The Entries under each List must be considered in a more liberal way and each Entry must be given a liberal and widest possible interpretation. No efforts must be made to narrow and whittle down the scope.

34. The different provisions of various List have not to be narrowly construed, rather the entries must be construed in a more liberal way and each entry deserves widest possible interpretation. We have to keep in mind the federal nature of our Constitution where different States and the Union have to operate in different demarcated fields of legislation as pointed out in List I-Union List, List II-State List and List III-Concurrent List, and if there is any minimal or nominal collision or conflict, the same has to be avoided by applying the pith and substance theory of interpretation. In other words such construction has to be made in a harmonious way so as to allow different States (State of U.P. in present case) to legislate in respect of powers conferred on it under the Constitution, in List II-State List and List 3-Concurrent List, so that State may perform the high duties assigned to it in a welfare State like ours. We need not interpret the entries in a pedantic way rather it has to be interpreted in a more liberal way and our approach has to be perceptive and creative rather than purely grammatical. The object of Adhiniyam has been pointed out to be to reduce the multiple trade charges, to provide for the verification of accurate weights, to establish market committees in which the agricultural producer will have his due representation, to provide amenities to the producer-seller in the market, to stop inequitable and unauthorised charges and levies from the producer-seller, to make adequate arrangements for market intelligence with a view to posting the agricultural producer with the latest position in respect of the markets dealings with his produce and to provide fair settlement of disputes relating to the sale of agricultural produce. In this way it is just with a view to improve the condition of sale of tobacco in the market so that the producers may

have their say in the matter. In the instant case U.P. State has enacted the Adhiniyam in respect of the markets and imposition of levy and collection fee under Item 66 of List-II, State List and fee in respect of any of the matters in this list but not including fee taken in any Court, can be imposed. In the present case fee has been imposed u/s 17(III) of the Adhiniyam on the tobacco brought in the market. Under similar circumstances, in *Synthetics & Chemicals Ltd. etc. v. State of U.P.* Judgments Today 1989 (4) SC 267 Para 86 (d) p. 300, it has been held by Constitution Bench of Supreme Court that even though State cannot impose tax duties in respect of items covered under item 52, List I-Union List but certainly in case State is rendering services, it may charge fees quid pro quo. In the instant case also State has imposed fee u/s 17(III) of the Adhiniyam in lieu of the services rendered and convenience and facilities provided to the growers and sellers of the tobacco. The State has nothing to do with the Industry of tobacco as such as indicated under Item 52 of List I The legislation under Item 52 of List I, (Central Act in the present case) has different field of operation. State of U.P. is imposing fee u/s 17(III) of the Adhiniyam just on principles of quid pro quo and not for operating any privilege and it is not in the nature of a tax. Section 31 of Central Act indicates that the provisions of this Act shall be in addition to and not in derogation of any law for the time being enforced. The Adhiniyam was a law for the time being enforced when Central Act was enacted. Hence even intendment of the Central Act could not be assumed that if there was any other provision of any other law in respect of any other matter pertaining to tobacco that shall be inconsistent or in collision with the Central Act.

35. Even some of the Petitioners have already filed some writ petitions in this Court as indicated above and some others filed special appeals which were dismissed by this Court. They filed Special Leave Petitions in Supreme Court and some of them preferred Writ Petitions and all of them were disposed of by a Constitution Bench in *Ram Chandra Kailash Kumar & Co. v. State of U.P.* 1980 SC 1124, in which Constitution Bench ruled that States can impose fee. Even though a different view was taken by a Division Bench of Supreme Court in *I.T.C. Ltd. v. State of Karnataka* (Supra).

36. In *International Tourist Corporation and Others Vs. State of Haryana and Others*, , and *International Tourist Corporation and Others Vs. State of Haryana and Others*, , the dispute was about the legislative competence claimed by the Parliament by resort to the residuary power, under Entry 97 of List I of Seventh Schedule and the legislative competence of the State of Haryana in enacting Haryana Passengers and Goods Taxation Act (for short Haryana Act). The question was, whether Haryana Act was invalid and unconstitutional and the State of Haryana has no legislative competence for enacting the same. The taxation was under entry 56 of List II, State List. The enactment of Haryana Act was in respect of goods and passengers carried not by roads of State Government but by national high ways which was covered under entry 23, Highways declared by or under law made by Parliament to be national highways, under List I, Union List of Seventh Schedule. But their lordships of Supreme

Court ruled under para 7 that a legislative power vested under Parliament (may be residuary power) cannot be so expansively interpreted so as to whittle down the power of state legislature. That might affect and jeopardise the very federal principle. The federal nature of the constitution demands that an interpretation which would allow the exercise of legislative power by Parliament pursuant to the residuary powers vested in it to trench upon State legislation and which would thereby destroy or belittle State autonomy, must be rejected.

37. In the aforesaid case *International Tourist Corporation v. State of Haryana* reliance was placed on the following observations in *Attorney General for Ontario v. Attorney General for the Dominion* 1896 AC 346:

....the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in Section 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance and ought not to trench upon Provincial legislation with respect to any of the classes of subjects enumerated in Section 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by Section 91 would in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the Provinces.

38. Even though Haryana Act was intended to impose passengers and goods tax in respect of highways declared by or under law made by Parliament to be national highways but nevertheless their lordships ruled considering a number of entries in List I and II.

39. In para 10 on page 780 of AIR 1981 SC 774 (supra) their lordships considered that even though national highways is the responsibility of the Union Government u/s 5 of National Highways Act but Section 51 of that Act empowers Central Government to direct that any function in relation to the development and maintenance of a National Highway shai also be exercisable by the concerned State Government. Therefore the State Government is not altogether devoid of responsibility in the matter of development and maintenance of a national highway though the primary responsibility is that of the Union Government. It was further considered that apart from this, other facilities provided by the State Government along all highways including national highways, such as lighting traffic control, amenities for passengers, halting places for buses and trucks are available for use by every one including those traveling along the national highways. It cannot therefore, be said that the State Government confers no benefits and renders no service in connection with traffic moving along national highways and is, therefore, not entitled to levy a compensatory and regulatory tax on passengers and goods carried on national highways.

40. Keeping in view aforesaid principles particularly principles in respect of interpretation of different entries in Lists I and II of Seventh Schedule, those

entries have not to be interpreted in a narrow and pedantic sense, rather such constructions has to be adopted which is beneficial to the widest possible amplitude of its powers. The Entries under each List must be considered in a more liberal way and each Entry must be given a liberal and widest possible interpretation. We are conscious that we have to make sincere efforts so that the scope of these entries in respective Lists is not whittled down rather different entries have to be reconciled so that they may operate in different field in a federal constitution like ours. The necessity is to avoid collision. There is no dispute that entry 52 "Industries" in List I of Seventh Schedule deals with the "Industries" the control of which by the Union was declared by the Parliament by law to be expedient in public interest. Some of the entries in List II, for example item 13, of List II, is subject to certain entries in List I. Entry 17 of List II deals with the legislative powers of water supply, irrigation and canal but it is subject to the provisions of Entry 56 of List I But Entry 28 (Markets and Fairs) in List II, State List is not subject to any Entry in List I or List III. Entry 66 of List II deals in respect of any matters in this List, but not including any fees taken in any Court, is also not subject to any entry under any List but certainly it would not deal in respect of fee taken in any Court.

41. In the present case the provision was for levy and collection of fee u/s 17(III) of the U.P. Act or Adhiniyam but this imposition of fee was not in respect of any industry. It was consistent with the object of the Adhiniyam which has been indicated above, as published in U.P. Gazette extraordinary, dated 4th August 1964 i.e. there were chaotic state of affairs as obtaining in agricultural produce in markets were an acknowledged fact. There were innumerable charges which the agricultural producer was required to pay without having any say in the proper utilisation of the amount so paid by him. In matters of dispute between the seller and the buyer the former was generally put at a disadvantage by being given arbitrary awards. The producer was also denied a large part of his produce by manipulation and defective use of weights and scales in the market. In order to avoid these defects and inconveniences to the sellers and the producers U.P. Act or Adhiniyam was enacted which was in one sense with a view to facilitate and not to create collision with the legislative powers of the Union under Entry 52, Entry 28 "Markets and Fairs" read with Entry 66 of List II of State List do not deal in any way with the object of the Central Act or in respect of any industry covered by Entry 52 of List I.

42. The U.P. Act or Adhiniyam was enacted under the legislative powers conferred under Entry 28 and the fee has been imposed under Entry 66 of List 2-State List. This in any way does not lead to any collision with the legislative powers of Union of India which can legislate in exercise of Its powers under Entry 52 of List I-Union List. U.P. Act or the Adhiniyam was enacted under Entry 28 (Markets and Fairs) of List II-State List, just with a view to provide facilities and render services so that the producer of tobacco may not be required to pay innumerable charges without having any say in the matter and with a view to protect the producer of tobacco by manipulation and defective use of ways and

also with a view to render so many other services to producer and sellers.

43. It may again be stated that U.P. Act or the Adhiniyam does not deal with tobacco industry rather it imposes and collects fee in exercise of powers u/s 17(iii). It has nothing to do with the industry and no collision is created with the Central Act and no tax is imposed on the tobacco in any processed form. U.P. Act or the Adhiniyam deals with the raw tobacco as it is brought in the market and provides for collection of fee in lieu of the services rendered quite on the principle of quid pro quo.

44. Their lordships of Supreme Court in a number of decisions, cited above, held that even if there is a Central legislation nevertheless in case services are rendered by the State, there can be State legislation for imposing or collecting fee and that would not run counter to Central Act. The field of legislation by Union is "Industry" whereas the legislative field of the U.P. State was tobacco in raw form as the same was brought to the market. In the present case there could be no collision or repugnancy as Union cannot legislate in respect of "Markets and Fairs" and the State of U.P. cannot legislate in respect of "tobacco industry".

45. In *Synthetics & Chemicals Ltd. v. State of U.P.* JT 1989 4 SC 22 to 26 page 263, Constitution Bench of Supreme Court ruled that even though in respect of industrial alcohol State of U.P. has no power to legislate but nevertheless in case State is rendering any service, it may charge fees based on quid pro quo. (See para 86 page 300).

46. In *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, their lordships of Supreme Court ruled that Section 5(1) and (3) of Bihar Finance Act 1981 was in no way repugnant to Section 3 of Essential Commodities Act 1955 as both operate in different fields.

47. Similarly in *International Tourist Corporation and Others Vs. State of Haryana and Others*, where State of Haryana was imposing passengers and goods tax carried not by the roads of State Government but by National Highways and the question arose as to whether Haryana Act was invalid and unconstitutional as the State of Haryana has no legislative competence to legislate in respect of Highways which were declared by or under law made by Parliament to be National Highways but nevertheless as the State was contributing for development of National Highways to some extent hence State was not altogether devoid of responsibility in the matter though the primary responsibility was that of the Central Government. Haryana Act was held to be valid and constitutional as the same was enacted with a view to render facilities to the passengers travelling through National Highways. These facilities were in the form of lighting, traffic control, amenities for passengers, halting places for buses and trucks etc.

48. In the present case also there is no doubt that U.P. Act was enacted with a view to render services and in lieu thereof it was charging fee based on quid pro

quo In our opinion, U.P. Legislature has legislative competence to enact U.P. Act or Anhiniyam and it has also power to impose levy and collect fee as it renders innumerable services to the growers or sellers of tobacco.

49. Reverting to the second question it is noticeable that prior to the decision of the Constitution bench in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, , Writ Petition No. 2287 of 1971 (Hindu Muslim Trading Company and 37 others v. Krishi Utpadan Mandi Kayam-ganj was filed in this Court involving vires of the U.P. Act or Adhiniyam and was dismissed on 1-1-74, which was challenged in Special Appeal No. 83 of 1974 which was dismissed by the Division Bench of this Court on 6-11-74 upholding the decision of learned Single Judge, by holding that the State of U.P. has legislative competence to enact U.P. Act or Adhiniyam and there was no repugnancy. Another Writ Petition No. 11668 of 1975, Nisar Ahmad v. U.P. Krishi Utpadan Mandi Samiti the similar point about vires of U.P. Act or Adhiniyam were urged, but the petition was dismissed on 9-11-76 by a Division Bench of this Court upholding the validity of U.P. Act. These decisions were challenged before the Supreme Court where some fresh petitions were also filed. Before the Supreme Court some of the present Petitioners were parties. In all these matters the vires of the U.P. Act or Adhiniyam were involved. The Constitution Bench taking into consideration all the points and taking into consideration a very broad view of the matter, ruled that the State of U.P. or Market Committees can levy and collect fee in view of the powers u/s 17(iii) of the U.P. Act. Under these circumstances the decision of the Constitution Bench has concluded the matter and the present Petitioners cannot wriggle out of the same.

50. When the Supreme Court decided the case of Ram Chandra Kailash Kumar & Co. v. State of U.P. (Supra), the Tobacco Board Act, 1975 was very much on the statute book. But nevertheless it was held that the Market Committee has got power to levy and collect fee u/s 17(iii) of the Act. Further the provisions of U.P. Act and the Adhiniyam are different from the Act which was under consideration in State (Delhi Administration) Vs. Laxman Kumar and Others, . Section 13 providing the Virginia tobacco to be sold at registered auction platforms and Section 14 providing power to levy fee, have not been enforced in U.P. Section 31 of the Tobacco Board Act, 1975 provides that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force. In view of our discussions herein above, we are of the opinion that the U.P. Act or Adhiniyam are not in conflict with the Central Act, rather the same is supplementary and complimentary.

51. Under Article 141 of the Constitution the law declared by the Supreme Court is binding on all Courts and tribunals, hence no Court or tribunal can take contrary view to the view taken by the Supreme Court in the Constitution Bench case. There are string of authorities that even though assuming that some of the points might not have been taken into account by the Supreme Court in the earlier decision by a larger bench than the view taken in the smaller Bench

decision, nevertheless the decision rendered, or in other words, the law declared by the Supreme Court in the Constitution Bench case i.e. Ram Chandra Kailash Kumar & Co. (Supra), would be binding on this Court.

52. In Union of India (UOI) Vs. All India Services Pensioners' Association and Another, , page 504, it was observed as follows:

It has been repeatedly laid down by the Supreme Court that the decision of larger Bench prevails over the decision of smaller Benches. See Mattulal Vs. Radhe Lal, ; Union of India (UOI) and Another Vs. K.S. Subramanian, ; T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, .

53. In T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, , it was held as follows:

In this connection we may refer to the observations of this Court in Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, , according to which even if certain aspects of a question were not brought to the notice of the Court it would decline to enter upon re-examination of the question since the decision had been followed in other cases. (See Smt. Somavanti and Others Vs. The State of Punjab and Others, .

54. In Anil Kumar Neotia and Others Vs. Union of India (UOI) and Others, , it was observed at page 1361, para 18 as follows:

In that view of the matter this question is no longer open for agitation by the Petitioners. It is also no longer open to Petitioner to contend that certain points had not been urged and the effect of the judgment cannot be collarerall challenged," See Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, .

55. We are accordingly of the considered opinion that every new argumentative novelty cannot undo the binding precedent, particularly rendered by the earlier Constitution Bench, i.e. in Ram Chandra Kailash Kumar and Co. v. State of U.P. (supra), and also the observation in the subsequent Constitution Bench case i.e. Synthetics and Chemicals Ltd. v. State of U.P. (supra), by doing it the precedent will be always kept in uncertainty. Our answer to the second question is that the law declared by the Constitution Bench case in Ram Chandra Kailash Kumar and Company (supra), is binding on us and the binding effect of this decision cannot be taken away by subsequent Division Bench decision in I.T.C. Ltd. v. State (supra).

56. Recently in N. Meera Rani Vs. Government of Tamil Nadu and Another, , it was held that where there was a decision of Constitution Bench and there were decisions of Benches comprised of lesser number of judges, the latter have to be read in the light of the former. In para 13 (page 2043) it was observed:

The starting point is the decision of a Constitution Bench in Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, . All subsequent decisions which are

cited have to be read in the light of this Constitution Bench decision since they are decisions by the Benches comprised of lesser number of judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in Rameshwar Shaw's case (supra).

57. We are accordingly of the opinion that the decision rendered by the Constitution Bench in Ram Chandra Kailash Kumar and Co. v. State of U.P. is binding on this Court Under Article 141 of the Constitution. Even assuming but not conceding that some aspects of the matter were not considered, the subsequent decision of the Supreme Court in I.T.C. Ltd. v. State of Karnataka, (supra), has to be read in the light of the Constitution Bench decision in Ram Chandra Kailash Kumar and Co. v. State of U.P. (supra).

58. In view of the premises aforesaid, our answer to the first question is that the provisions of U.P. Krishi Mandi Utpadan Adhiniyam in respect of levy and collection of fee u/s 17(iii) of the Adhiniyam, in so far as the same applies to tobacco was not repugnant to the provisions of Tobacco Board Act, 1975, rather it was supplementary and complimentary. Our answer to the second question, however, is that the law declared by the Constitution Bench of the Supreme Court (Ram Chandra Kailash Kumar and Co. v. State of U.P.) is binding on us and subsequent Division Bench case in I.T.C. Ltd. v. State of Karnataka, (supra), is not binding on us. In other words that case has to be read in the light of earlier Constitution Bench case of the Supreme Court in Ram Chandra Kailash Kumar and Co. (supra), and also in the light of subsequent Constitution Bench decision in Synthetics and Chemicals Ltd. v. State of U.P. (supra).

59. As the Division Bench case of this Court in M/s. Ram Niwas Harish Chandra v. State of U.P. 1987 UPLBEC 344 has taken a contrary view to the law declared by the Supreme Court in Ram Chandra Kailash Kumar and Co. v. State of U.P. (supra), and also against the view we are taking in the present case, hence that is no longer a good law and the same is hereby overruled.

60. Applying the posteriori and priori reasonings we are of the considered opinion that the present petition is devoid of merits and the same is dismissed with costs.