

(2013) 12 SHI CK 0040

In the High Court Of Himachal Pradesh

Case No : CWP No"s. 1732 and 1885 of 2010

Sanjeev Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 26-12-2013

Acts Referred:

Citation : (2013) 12 SHI CK 0040

Hon'ble Judges : V.K. Sharma, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Ajay Mohan Goel and Mr. Karan Singh Kanwar, in CWPs Nos. 1732, 1885 of 2010, Mr. Ajay Sharma in CWP No. 7033 of 2010, Mr. Janesh Gupta in CWP No. 4665 of 2013, Mr. Ajay Vaidya in CWP No. 4675 of 2013, Mr. R.L. Sood and Arjun K. Lall, Janesh Gupta and Vishwa Bhushan, in CWP No. 4723 of 2013, for the Appellant; Shrawan Dogra, Advocate General and Mr. M.A. Khan, Additional Advocate General, Mr. Vivek Singh Attri, D.A.G. and Mr. Ramesh Thakur, Assistant Advocate General, Ms. Bhawna Dutta, Advocate, in CWP No. 1732 of 2010, Mr. Vivek Thakur, Advocate for Respondent No. 3 in CWP No. 1885 of 2010, Mr. R.L. Sood and Mr. Arjun Lall, Advocate, for the Intervener in CWP No. 1885 of 2010, Mr. Sandeep Sharma, Assistant Solicitor General of India, for Union of India in CWP Nos. 1885 of 2010, CWP No. 4665 of 2013 and 4675 of 2013, for the Respondent

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in all these writ petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, in order to maintain clarity, facts of all these CWP Nos. 1732/2010, 1885/2010, 7033/2010, 4665/2013 and 4675/2013 & 4723/2013 have been taken into consideration.

CWP No. 1732/2010

The petitioner is an agriculturist by occupation. He owns 35 Kanals of agricultural land. According to the averments contained in the petition, respondent No. 2, i.e. Himachal Pradesh State Civil Supplies Corporation Ltd. has invited tenders for purchase of 14 lacs plastic bottles/pouch packs of Kachhi Ghanni Mustard Oil

Agmark Grade-I for supply to its various godowns in the State of Himachal Pradesh. The petitioner has only challenged the tender process to the extent inviting tenders of mustard oil in pouch packs in violation of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. According to reply filed by respondent No. 2, the use of plastic pouches for the supply of essential commodities is economical and use of the same is inevitable. It is further averred in the reply that pouch packing is cheaper by Rs. 2.29.

CWP No. 1885/2010

2. The petitioner belongs to family of agriculturists. He is also an agriculturist by profession. He and his family own agricultural land in Village Basaral and the individual land holding of the petitioner is about 35 Kanals. The petitioner has highlighted ill effects of plastic and polythene, i.e. non-biodegradable material on the environment in general and on agricultural activities and domestic animals in particular. According to the petitioner, the respondent-State is remiss in implementing the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 and various notifications issued from time to time by the respondent-State. The first notification was issued by the respondent-State on 26.11.1998, whereby the respondent-State was pleased to impose prohibition on the traders, retailers and vendors in the State of Himachal Pradesh for using the coloured polythene carry bags manufactured from recycled plastic, for packaging the goods traded/sold by them w.e.f. 1.1.1999. The Department of Science and Technology, Government of Himachal Pradesh issued notification No. STE-A(3)-4/2003 dated 4.6.2004 whereby stockists, traders, retailers and vendors within the State of Himachal Pradesh were ordered not to use carry bags made of non-biodegradable material listed in the Schedule to the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 having thickness less than 70 microns and size less than 12" x 18". There was reference to earlier notification dated 26.11.1998. The respondent-State issued another notification dated 7.7.2009 in suppression of earlier notification dated 4.6.2004 whereby it was directed that no person including shopkeepers, vendors, wholesalers, retailers, hawkers, rehriwala etc. shall use plastic carry-bags (irrespective of their sizes and thickness) and plastic items having one time use such as disposable plastic cups, glasses and plates, which are made up of non-biodegradable material as listed in the Schedule to the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. The respondent-State issued another notification dated 13.8.2009 whereby it was notified that ban imposed on carry bags and littering of non-biodegradable waste was to take effect from 2.10.2009 instead of 15.8.2009. The words "plastic waste" mentioned in notification dated 7.7.2009 were substituted by the words " non-biodegradable waste".

3. It is averred in the petition that the respondent-State has not taken any affirmative action to discourage the use of plastic bags in the shape of pouches etc. which are being used by manufacturers or producers for sale of their products. According to the petitioner, products such as milk, lassi, refined oil,

iodized salt, desi ghee, paneer, pulses, gutkas, pan masalas, flour, shampoos, rice, wafers etc. are being sold either in plastic pouches or flax laminated pouches. However, these products may be sold in polypack bottles and paper bags etc. According to the petitioners, the plastic pouches or flax laminated pouches are being littered without disposing of the same in a scientific manner. According to the petitioner, since there is no scientific disposal of non-biodegradable material, a complete ban should be imposed to avoid environment degradation. The petitioner has also highlighted that the respondent-State has not taken sufficient steps to educate the people about the ill effects of the haphazard throwing or depositing of non-biodegradable garbage in public drains, roads and places open to public view. The petitioner has sought direction to the respondent-State not to permit sale of products packed/package in plastic/non biodegradable material in accordance with law.

4. Respondent No. 3 has filed the reply. According to respondent No. 3, the Department of Environment, Science & Technology was the nodal agency and it has taken all the steps to curb disposal of non-biodegradable garbage in a scientific manner. There is also a reference in the reply to the Recycled Plastics Manufacture and Usage (Amendment) Rules 2003.

5. According to reply filed by respondent No. 1, the respondent-State is making all-out efforts to save environment. There is reference to door to door collection of garbage.

6. Respondent No. 2 in its reply at page 89 of the paper book has reiterated the stand taken by respondent No. 3.

7. Petitioner has filed rejoinder to the replies filed by respondent No. 1.

The Court passed the following order on 19.6.2010:-

The Himachal Pradesh State Civil Supplies Corporation Ltd., purchases mustard oil from various manufacturers. This mustard oil is sold at subsidized rates to all ration card holders. The same is packed either in plastic bottles or in plastic pouches. The grievance of the petitioner is that the use of plastic pouches and bottles will harm the environment. Therefore, on 4.6.2010 we had directed the Corporation to consider whether some guidelines can be laid down providing that only after a person returns the empty plastic packaging will he be supplied fresh vegetable oil at the subsidized rates. Mr. Diljeet Singh, Managing Director of the H.P. State Civil Supplies Corporation Ltd., who is present in Court states that he had made reference in this behalf to the Government on 8.6.2010 and today he has produced before us a letter showing that guidelines are being issued to the Cooperative Societies and private individuals falling within the jurisdiction of the Corporation to abide by the aforesaid suggestion of the Court.

2. The Managing Director of the Civil Supplies Corporation has requested that the Registrar Co-operative Societies be directed to issue similar directions to the depot holders falling under its jurisdiction. We direct the Co-operative Societies

to ensure that such directions are issued within four weeks from today.

3. We appreciate this stand taken by the respondents. However, this will only partially deal with the problem. Mr. Vivek Thakur, learned Addl. Advocate General has placed on record the proceedings of a meeting held under the Chairpersonship of Mrs. Sarojini Ganju Thakur, Addl. Chief Secretary (Env. S & T) to the Govt. of Himachal Pradesh on 20.4.2010, wherein a decision was taken that the polythene/plastic waste lifted from each registered Collection Centres shall be purchased by the PWD @ Rs. 4/- per Kg. through the nominated Junior Engineer to the Panchayats/ULBs, Urban Local Bodies.

4. We are not oblivious to the fact that due to practical reasons we cannot recommend the total ban on the sale of mustard oil and other edible products in plastic packaging. Our concern is how the use of non biodegradable packaging is either reduced or the same is recycled in such a manner that there is minimum damage to the environment. This can be done by ensuring that the discarded packaging is used for some other purpose such as construction of road as envisaged by the State of Himachal Pradesh.

5. Keeping in view the aforesaid factors we direct that the Committee headed by Mrs. Sarojini Ganju Thakur, which dealt with the matter on 20.4.2010 shall also consider whether the plastic packaging used for supply of all edible bulk products by the Civil Supplies Corporation to the ration holders can also be collected and utilized by the PWD. There has to be a collective effort by the Civil Supplies Corporation, the ration depots, some of which may fall under the jurisdiction of the Civil Supplies Corporation and some may be private individuals or Cooperative Societies. It is apparent that edible products supplied to the ration card holders are being supplied at rates which are much less than market rates. There is a requirement to sensitize the people who utilize the products sold to them at subsidized rates about the damage caused to the environment and health by such non biodegradable packaging. They should be made aware about this fact so that they voluntarily return the plastic packaging to the Depots or other bodies which may be earmarked by the Committee so that the plastic packaging is not strewn all over the countryside, but is collected and utilized for public purpose i.e. construction of road.

6. We would again commend to the Civil Supplies Corporation and also to the Committee headed by Ms. Sarojini Ganju Thakur, that one way of ensuring that the non biodegradable packaging is returned by the people can be by making a provision that the subsidized ration/edible products will be supplied to customers only when the customers returns the plastic packaging previously given to him/her. The Committee may consider all these aspects, while making its recommendations.

7. We also make it clear that the Committee while considering these aspects shall not restrict itself to the goods supplied by the Civil Supplies Corporation. A lot of non biodegradable packaging is used in the packaging of water, milk etc.

being sold throughout the State of Himachal Pradesh. Here also the Committee may suggest the means and methods to reduce the use and recycling of non biodegradable packaging so that necessary instructions can be issued to the companies/societies responsible for selling the same.

8. The Committee may also consider whether in the process of protecting the environment of the State of Himachal Pradesh as far as non essential items are concerned a decision can be taken by the State totally banning the use of non biodegradable packaging and issuing instructions that such items must be packed in biodegradable packaging. There are various items which are consumed by the public which are not essential commodities, such as chips, snacks etc. Not only the environment of the State but the health of the young children who consume most of these items can be protected if the sale of such items is made only in bio degradable packaging even if the same is more expensive. The health of the people and the environment of the State need to be protected even if this means that the consumers have to spend extra for such non essential items. Most of these items are junk food and have no great role to play in the nutritional aspect of the diet of the consumers.

9. Another issue of concern is that PET (plastic) bottles are being used in large numbers for sale of water. It is the duty of the State to ensure that potable water is provided to all the citizens. The tourists buy packaged water to protect their health. The State may consider setting up vending machines to sell pure and clean water at Tourist Centres so that the plastic bottles which have been purchased can be re-used by the tourists by collecting water in them from the vending machine. In fact the consumers may fill-up their own water bottles obviating the need to buy plastic bottles of water. This will not only ensure that plastic bottles are re-used time and again but will drastically reduce the sale of such bottles. This water can be sold like the juice sold by HPMC.

10. We have also impressed upon the Civil Supplies Corporation that it should ensure that in future all tenders for supply of edible material should provide that the said edible material is packed in food grade plastic even if this raises the price of the products. This is necessary to protect the health of the people.

11. We further direct that Mrs. Sarojini Ganju Thakur shall convene a meeting/ committee already constituted within 30 days from today to consider the suggestions made by us hereinabove. Thereafter Mrs. Sarojini Ganju Thakur shall file her personal affidavit on the decision taken on or before 23rd August, 2010.

12. The Registrar General is directed to send a copy of this order to Mrs. Sarojini Ganju Thakur.

List the matter on 27th August, 2010.

8. In sequel to order dated 19.6.2010, compliance affidavit was filed by respondent No. 2 at page 108 of the paper-book. In the affidavit, initiatives taken by the respondent-State were highlighted including decisions/action taken

regarding minimizing the use of plastics and recycling/disposal of non-biodegradable packaging and other related decision regarding reducing/minimizing/disposal of plastic waste, monitoring and supervision. There is also a reference to notification dated 19.7.2010 whereby implementing agencies were issued necessary directions pursuant to notification dated 13.8.2009. Thereafter, this Court passed the following order on 30.9.2010:

Additional affidavit perused. A perusal of the additional affidavit shows that the action has to be taken by the State in the months of September & October, 2010.

The Additional Chief Secretary (Environment Science and Technology) to the Govt. of Himachal Pradesh shall file the status report on or before 15.11.2010 showing what action has been taken pursuant to the averments made in the affidavit. List the matter on 19.11.2010.

9. The compliance affidavit was filed by respondent No. 2 at page 147 of the paper-book, whereby progress was reviewed and decision was taken regarding minimizing of use of plastics and recycling and disposal of non-biodegradable packaging and progress was reviewed qua other related issues-reducing/minimizing/disposal of plastic waste. The Court passed another following order on 17.12.2010:-

On 7.5.2010 when notice was issued this Court highlighted the importance and significance of checking the use of plastic and non-biodegradable material used for packaging consumer goods and other articles. Need to strike a balance between economy and providing essential consumable items for sustenance of life to the poor at minimal cost was emphasized. Court was desirous of knowing as to whether H.P. State Civil Supplies Corporation (hereinafter referred to as "the Corporation") had thought of getting Mustard Oil packed in material other than plastic bottles/pouches.

2. On 4.6.2010 Court further directed the Corporation to consider supplying edible oil packed in plastic pouches only on return of empty pouches supplied earlier.

3. On 19.6.2010 this Court was appreciative of the fact that Corporation/State had taken certain measures in the direction of ensuring that no environmental degradation, resulting from use of plastic pouches/bottles as packaging material, takes place in the State of Himachal Pradesh. Court was apprised that guidelines had been issued to Cooperative Societies and private individuals falling under the jurisdiction of the Corporation for supply of fresh pouches of mustard oil only on receipt of empty pouches distributed earlier. With respect to other bodies, Registrar Cooperative Societies, was to issue similar directions. Our attention was invited to the decisions taken in the meeting convened by Ms. Sarojini Ganju Thakur, Additional Chief Secretary (Environment, Science and Technology) to the Government of Himachal Pradesh, on 19.8.2010 to the effect that polythene/plastic waste received at the registered collection centers was to be purchased by PWD through nominated Junior Engineer at the level of Panchayats/ULBs, Urban

Local Bodies. While commending such efforts, Court further directed the State to consider the possibility of collection and utilization of plastic packaging material used for supply of all edible products by the Corporation to the Ration Card holders. The need to sensitize the end consumers about the ill effects of use of non-biodegradable packaging material to the environment and public health was emphasized. Also need to take effective steps for checking use of non biodegradable packaging material used in packaging non essential consumable items and other goods was emphasized.

4. It was suggested that to avoid excessive use of plastic by way of packaged water bottles, perhaps, State could set up outlets for supply of pure and clean water at tourist centers.

5. Pursuant to our directions certain affidavits have been filed. We have perused the affidavits dated 23.8.2010 and 12.11.2010 filed by Ms. Sarojini Ganju Thakur. She has convened certain meetings. We fully appreciate the efforts made by her. To our mind, there is no doubt that State has taken some steps to ensure reducing the use of non biodegradable material in the State of Himachal Pradesh. But, however, this is not enough. It is just a small, if not a half hearted measure. State has to adopt a multi pronged strategy. It has to not only legislate/lay down policies and make people aware but also ensure strict compliance of the same.

6. To begin with, State has enacted the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 (hereinafter referred to as the Act). It has also framed Himachal Pradesh Non-Biodegradable Garbage (Control) Rules, 1996. Vide Notification dated 26.11.1998 it has imposed prohibition on the traders, retailers and vendors in the State of Himachal Pradesh from using coloured polythene carry bags manufactured from recycled plastic for packaging the goods traded/sold by them. On 4.6.2004 another notification was issued imposing complete ban on the stockists, traders and vendors, within the State of Himachal Pradesh, from using carry bags made of non-biodegradable material having thickness of 70 microns and size less than 12" x 18". Vide another notification dated 7.7.2009 State prohibited any person from using "plastic carry bags (irrespective of their sizes and thickness) and plastic items having one time use such as disposable plastic cups, glasses and plates" made of non-biodegradable material. In terms of said notification littering of plastic waste by institutions, commercial establishment or an individual is also subjected to fine.

7. Undisputedly State has put restrictions and prohibited use of polythene carry bags and littering of plastic waste. Efforts made in this regard are appreciable, but we feel that it is just a small step taken in the direction of preserving the pristine environment and natural beauty of the hilly State.

8. In small measure though, it has also taken steps in making the end user and general public aware of the same. In this regard, in association with the State Pollution Control Board, State has tried to create mass awareness by displaying hoardings at different places within the State. It has initiated a programme

popularly known as "Polythene Hatao-Paryavaran Bachao" Campaign-Phase-I (21st to 26th December, 2009) Phase-II (22nd April to 29th April, 2010) and Phase-III (25th September to 2nd October, 2010). This has led to collection of approximately 208 tons of polythene/plastic waste.

9. We find that only 72 tons of waste stands lifted from the collection centres and the remaining waste needs to be collected and utilized immediately. We also find that the State needs to continuously monitor various measures taken in this regard. For collection of such waste more collection centers are required to be notified by the Deputy Commissioners. Campaign about the ill effects of polythene on environment and health is to be carried out continuously.

10. The Himachal Pradesh Tourism Development Corporation has also prepared pamphlets for generating awareness under the programme, "Mindful Travel in HP". These pamphlets are to be distributed at various entry points to the State of Himachal Pradesh and Green Tax Barrier at Manali.

11. A Nine Point, "Environment Protection Code" especially prepared for the children is to be read out in the schools at the time of morning prayers/assemblies. By forming local Eco-Clubs students are expected to undertake environment protection pledge. This is highly appreciable. To our mind, this would inculcate the habit, importance and significance of protection of environment amongst children. Undisputedly this campaign would contribute in making Himachal Pradesh a clean, green and beautiful State, which endeavour should be of all residents and tourists visiting the State. We feel that this effort on the part of the State needs to be implemented with great vigour.

12. For the use of plastic waste collected by the State a novel method for its utilization has been adopted. In collaboration with the Municipal Corporation, Shimla and Public Works Department metalling of 800 meters of road by replacing 10-15% of bitumen by waste plastic/polythene stands identified. Subject to technical feasibilities collected waste should be immediately utilized for this purpose.

13. Possibility of further using this waste by various cement manufacturing units established within the State of Himachal Pradesh is also to be explored expeditiously. State is directed to do so.

14. State has also taken a decision of getting liquor packed in glass bottles instead of plastic bottles. This is to be done in a phased manner, but the step is definitely appreciable and in the right direction.

15. With regard to our suggestion of providing pure and clean drinking water to the residents and the tourists at various vintage points, our attention has been invited to installation of one such out let in Shimla. We are informed that matter is being pursued with various Associations of Hoteliers/Restaurant owners, Municipal Corporation and other local bodies throughout the State. Pure and clean water can be provided to all by installing water purifiers at certain

institutions/offices/commercial establishments/Restaurants/Hotels. This would definitely reduce excessive and frequent use of plastic in the shape of bottled water. We feel that for further and effective implementation of this measure active association of these Associations is necessary. We are informed that in Himachal Pradesh there is a registered body by the name Himachal Hotels Association, and in Shimla there is a body known as Shimla Hotels and Restaurants Association. Accordingly we implead Himachal Hotel Association, having its registered office at Hotel Himland East, Circular Road, Shimla-1 through its President Mr. Umesh Akre and Shimla Hotels and Restaurants Association, having its office at Shivalik Hotel Lower Forest Hill Road, Shimla through its President Mr. Jaswant Kukreja, as party respondents No. 4 and 5. Registry is directed to correct the cause title accordingly. We direct that notices be issued to the said respondents returnable for 26.3.2011.

16. We also notice that Milk Federation has also been asked to print a message on the milk packing material conveying that plastic is recyclable. Similar measure can be adopted by all other organizations of the State. We notice that Government has taken a decision to do away with use of plastic in its forest nurseries and replace it with starch based biodegradable material. We direct effective and prompt compliance of the same.

17. We have perused notification dated 20.8.2010 and guidelines circulated on 19.7.2010 whereby several functionaries of the State have been notified to effectively implement the provisions of the Act. However, this by itself would not result into implementation of the laws. We notice that in the guidelines framed by the State, concerned District Magistrate/Deputy Commissioner are required to send a report every month. We direct that the action taken on such action taken reports, in a tabulated form, be placed before the Court before the next date.

18. With regard to our suggestions that matter be considered for taking a decision of banning use of non biodegradable packaging material with regard to non-essential commodities, State has taken a view that Government of India has already notified Rules known as Re-cycled Plastics Manufacturer and Usages (Amendment) Rules, 2003. Now this stand of the State is not appreciable and acceptable. These Rules only deal with carry bags. State has already issued notifications in this regard. The extent and scope of the Rules do not cover the items which we had specifically mentioned in our orders.

19. We are not unmindful of the fact that, for the present, it may not be possible to have a total ban of use of plastic in packaging material but however, State can certainly take steps to check rampant use of the same within the State of Himachal Pradesh. Definitely, steps can be taken to discourage sale of items packed in plastic and pouches which are not biodegradable. It could definitely take up the matter with the manufacturers for use of biodegradable packaging material. Recently Supreme Court of India banned sale of Gutkas packed in plastic pouches. State is obliged in law to adhere to and comply with such directions.

20. Just as it is the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes and rivers, it is the fundamental right of every citizen to live in clean, healthy and hygienic environment. The Apex Court in *State of M.P. Vs. Kedia Leather and Liquor Ltd. and Others*, has laid down that environmental, ecological, air and water pollution amount to violation of right to life assured by Article 21 of the Constitution. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment. This view has been reiterated in *Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association and Others*, and *M.C. Mehta Vs. Union of India (UOI) and Others*,

21. In Part IV of the Constitution of India it is clearly laid down that State shall endeavour to protect and improve the environment and safeguard forests and wild life of the country.

22. Further Sections 3 and 3A of the Act prohibits throwing of any non-biodegradable garbage in drain, ventilation shaft, pipe and fittings which is likely to injure the drainage and sewage system, interfere with the free flow or affect the treatment and disposal of drain and sewage contents and become a cause of nuisance resulting into affecting public health. The Act further empowers the State to impose restrictions or prohibitions on the use of non-biodegradable material within the State of H.P. It also empowers the State to impose restrictions on manufacturers, distributors and other persons, who produce or handle commodities, with respect to type, size, labeling and composition of packaging with respect to its use and disposal. Duty is cast upon the local authorities and bodies for collection of garbage. Similar duty is cast upon the owners and occupiers of the land.

23. These provisions of law are either being put to disuse or brazenly violated with impunity. Drains are choked and streets are littered with non-biodegradable packaging material. Now implementing agencies cannot keep their eyes shut in checking this menace. Small measures, which are more of cosmetic in nature are not enough. Considering the enormity of the menace, at the ground level effective implementation of the laws/policies is to be carried out. In association with the local authorities, bodies and NGOs, the implementing agencies have to take pro-active action in this regard. In fact suggestions can be called from the residents and the local authorities/bodies to fight this menace of plastic waste.

24. It is not that 100% biodegradable and compostable plastic and packaging material is not available in the market. Developed countries throughout the World are already using the same. Such material is also available in India. It may be costly. It may increase the cost of the product but then people indulging in the luxury of consumption of such consumable articles, edible or otherwise, need to share the burden of costs.

25. By virtue of Sections 3 and 3A of the Act State is fully empowered to impose

any restrictions and prohibitions envisaged therein. We feel that this attitude of adhocism shall not work. A proper road map needs to be prepared in this regard. To begin with, State can impose such restrictions on the products which are actually being manufactured and consumed within the State of H.P. It is not difficult to identify such manufacturers. Harsh measures need to be adopted if environment is to be protected, preserved and saved.

26. Undoubtedly Himachal Pradesh is a tourist destination. Tourists from throughout the country and world travel to all parts of the State. Litter can be seen strewn all over tourist destinations both in the urban and rural areas. Why is it that the Municipal Corporation/Local Bodies do not provide dustbins for effective collection of such garbage even in the rural areas. Regretfully Panchayats are not taking any action for proper collection and disposal of non-biodegradable garbage. Ecology and environment are not really individual issues- they concern all of us.

27. What to talk of installing dustbins at popular tourist destinations, State has not even provided clean and proper toilets for public use. While travelling within the State, tourists especially travelling with families (women and children) face great difficulty in hunting for toilets. An endeavour can be made to provide for clean and hygienic public toilets on the Highways and at popular tourist destinations. State attracts tourists from all Sections of the society. Rich and affluent can perhaps afford to use public conveniences at private and government Hotels/Restaurants, but however State has to think and act for the common man. After all tourists do travel by public transport also. Setting-up of such public convenience centres would not only help easy collection of plastic waste at a particular point but also prevent littering of the same wherever tourists visit. After all tourists do consume lot of items packed in non-biodegradable material.

28. Further under the H.P. Non-Biodegradable Garbage (Control) Rules, 1996 the State has to create various zones for collection of garbage. They are to be known as Garbage Management Zones and Garbage Zones Committees are to be constituted. Prompt action must be taken for identification of such zones and constitution of these committees.

29. Perhaps Government can think of setting up of a "Green Fund" and come out with certain incentive schemes. We are not unmindful of the fact that State has also taken measures of conserving the environment by promoting eco-tourism. However, habit of environmental protection needs to be inculcated in all. People have to be made aware of bio-diversity which cannot be built over night. At all costs we must ensure that our children inherit a planet which is clean, healthy and sustainable.

30. We direct the respondents to look into the matter and file an action taken report within a period of 12 weeks from today. List on 26th March, 2011.

10. The compliance-affidavit was filed at page 180 of the paper book by

respondents No. 1 and 2. In this affidavit, details of polythene collected by various agencies of the State including PWD were given. The Court passed yet another order on 9.9.2011, which is reproduced as under:

Vide our order dated 19.6.2010 we had constituted a Committee and given certain directions to the Committee. At this stage, we are concerned with the following direction:-

The Committee may also consider whether in the process of protecting the environment of the State of Himachal Pradesh as far as non essential items are concerned a decision can be taken by the State totally banning the use of non biodegradable packaging and issuing instructions that such items must be packed in biodegradable packaging. There are various items which are consumed by the public which are not essential commodities, such as chips, snacks etc.. Not only the environment of the State but the health of the young children who consume most of these items can be protected if the sale of such items is made only in bio degradable packaging even if the same is more expensive. The health of the people and the environment of the State need to be protected even if this means that the consumers have to spend extra for such non essential items. Most of these items are junk food and have no great role to play in the nutritional aspect of the diet of the consumers.

2. In response to this direction the Additional Secretary (Environment, Science & Technology) to the Government of H.P. has filed an affidavit and it is stated that in compliance to the orders of the Hon"ble Supreme Court the Ministry of Environment and Forests, Government of India has notified Rules prohibiting use of plastic material for storing, packing or selling gutkha, tobacco and pan-masala. This action has been done by the Central Government. We expected the Committee to look into this question as to whether keeping in view the fragile ecology of the State of Himachal Pradesh and also taking into consideration the fact that tourism is the biggest industry for Himachal Pradesh and in case the beauty and environment of the State is marred by plastic littered everywhere the whole economy can suffer. We had expected that Committee would consider whether non-essential items such as potato chips and other snacks and savouries and things which are not essential for day to day use and would be packed in bio-degradable packaging even if they are slightly more expensive. The Committee should consider this proposal and suggest whether these items can be packaged in bio-degradable material.

3. Most of these items fall in the category of fast food or junk food which is now medically recognized to be not good for health. We see no impediment in the State taking steps to ensure that these items are packaged in biodegradable material. Even if the cost rises the consumers belong to the upper strata of the society and this will not in any manner affect larger section of the people. In fact, it may also help in reducing the consumption of unhealthy food. We, therefore, direct the Committee to come up with a clear cut and viable scheme for ensuring that such items are sold in Himachal Pradesh only in bio-degradable packaging.

We may make it clear that our order will not cover items like milk, vegetable-oils etc. which are items of essential use meant to be used by general public.

4. The Committee should file its report in this behalf through the Addl. Chief Secretary (Environment, Science & Technology) to the Government of H.P. within eight weeks from today.

5. Sh. Umesh Akre, President Himachal Hotels Association, has also filed his suggestions. We feel that these be considered by the same Committee. The Committee may also associate Sh. Umesh Akre with its deliberations as far as his suggestions are concerned. List on 18.11.2011.

11. The compliance affidavit was filed at page 271 of the paper-book by respondent No. 2 wherein the Committee had decided to refer the matter to Ministry of Environment & Forests, Government of India for taking holistic view vide letter dated 4.11.2011. Thereafter, the Court passed the following order on 18.11.2011:-

Affidavit dated 17.11.2011 filed by the Addl. Chief Secretary (Env., S & T) to the Government of H.P. has not taken into account the aspects pointed out by the Court in its order dated 9.9.2011. It is also not in the spirit of earlier orders passed by this Court. Affidavit is vague. Except for convening two meetings, nothing has been disclosed as to what steps at ground level have been taken by the State to ensure that the ecology and environment of the State is not polluted on account of menace of plastic and disposal of non-biodegradable material/garbage. As early as 17.12.2010 this Court had directed the State to consider the feasibility of imposing some restrictions on the products manufactured within the State of H.P. in non-biodegradable packaging material. The State has chosen to conspicuously remain silent on this aspect as also other aspects pointed out in the said order.

2. This court has been repeatedly emphasizing the need of sale of non-essential items packaged in bio-degradable packaging material. No effective steps for controlling sale of such items in non-biodegradable packaging material have been taken by the State so far. On the request of Mr. R.M. Bisht, learned Dy. A.G. two weeks more time is granted to the State to consider the feasibility of sale of non-essential items in bio-degradable packaging material within the State. It is clarified that if no effective steps are taken, Court would be constrained to impose a total ban on sale of such items packed in non-biodegradable material in near future. Addl. Chief Secretary, Government of H.P. shall also file an affidavit explaining the steps taken in compliance of earlier orders, including order dated 17.12.2010. On the request of Mr. R.M. Bisht, learned Dy. A.G. list on 9.12.2011.

12. The compliance affidavit was filed at page 282 of the paper-book by respondent No. 2. According to the affidavit, the ban on the use of polythene for packaging purposes would create un-competitive business scenario for industries undertaking manufacturing activities viz-a-viz their counterparts in other States. Besides creating non-level playing fields, it was felt that ban in use of non-

biodegradable packing material for non-essential items would also have interstate trade, tourism, transport and livelihood implications. There is also a reference that the mechanism proposed and agreed to by the Industries Association for sustainable plastic waste management in industrial areas through waste audit by the Industrial entities at the beginning of the year and to reduce the quantum of waste every year by waste reduction, waste recycling and waste re-use would certainly be an effective mechanism for sustainable plastic waste management in State of Himachal Pradesh.

13. The Union of India has also filed an affidavit after being impleaded as respondent No. 6. There is also a reference in its affidavit to Plastic Waste (Management and Handling) Rules 2011 and incorporation of Extended Producer's Responsibility (EPR). The Court after perusing all the affidavits passed following order on 19.10.2012:-

1. In this petition the Court is concerned with the serious issue of packaging of non-essential items in non-biodegradable/plastic material.

2. Himachal Pradesh is a State largely nestling in the mountain ranges. Tourism is the major activity which provides employment to a large number of people in the State. Tourists will come to Himachal only if it retains its glory and beauty. If the streams and nullahs are jammed with plastic and other non-biodegradable material then the beauty of the State will come to an end and this will result in loss of tourism.

3. We have for the last two years been passing orders and trying to coax the Government and its officials to take certain action. There have been some fruitful results but the pace at which things have moved is not to our satisfaction.

4. On 19.6.2010, we had referred certain issues to a Committee headed by Mrs. Sarojini Ganju Thakur, the then Addl. Chief Secretary (Environment, Science and Technology) to the Government of H.P. and observed as follows:-

4. We are not oblivious to the fact that due to practical reasons we cannot recommend the total ban on the sale of mustard oil and other edible products in plastic packaging. Our concern is how the use of non biodegradable packaging is either reduced or the same is recycled in such a manner that there is minimum damage to the environment. This can be done by ensuring that the discarded packaging is used for some other purpose such as construction of road as envisaged by the State of Himachal Pradesh.

5. Keeping in view the aforesaid factors we direct that the Committee headed by Mrs. Sarojini Ganju Thakur, which dealt with the matter on 20.4.2010 shall also consider whether the plastic packaging used for supply of all edible bulk products by the Civil Supplies Corporation to the ration holders can also be collected and utilized by the PWD. There has to be a collective effort by the Civil Supplies Corporation, the ration depots, some of which may fall under the jurisdiction of the Civil Supplies Corporation and some may be private individuals or

Cooperative Societies. It is apparent that edible products supplied to the ration card holders are being supplied at rates which are much less than market rates. There is a requirement to sensitize the people who utilize the products sold to them at subsidized rates about the damage caused to the environment and health by such non biodegradable packaging. They should be made aware about this fact so that they voluntarily return the plastic packaging to the Depots or other bodies which may be earmarked by the Committee so that the plastic packaging is not strewn all over the countryside, but is collected and utilized for public purpose i.e. construction of road.

xxx

7. We also make it clear that the Committee while considering these aspects shall not restrict itself to the goods supplied by the Civil Supplies Corporation. A lot of non biodegradable packaging is used in the packaging of water, milk etc. being sold throughout the State of Himachal Pradesh. Here also the Committee may suggest the means and methods to reduce the use and recycling of non biodegradable packaging so that necessary instructions can be issued to the companies/societies responsible for selling the same.

8. The Committee may also consider whether in the process of protecting the environment of the State of Himachal Pradesh as far as non essential items are concerned a decision can be taken by the State totally banning the use of non biodegradable packaging and issuing instructions that such items must be packed in biodegradable packaging. There are various items which are consumed by the public which are not essential commodities, such as chips, snacks etc. Not only the environment of the State but the health of the young children who consume most of these items can be protected if the sale of such items is made only in biodegradable packaging even if the same is more expensive. The health of the people and the environment of the State need to be protected even if this means that the consumers have to spend extra for such non essential items. Most of these items are junk food and have no great role to play in the nutritional aspect of the diet of the consumers.

9. Another issue of concern is that PET (plastic) bottles are being used in large numbers for sale of water. It is the duty of the State to ensure that potable water is provided to all the citizens. The tourists buy packaged water to protect their health. The State may consider setting up vending machines to sell pure and clean water at Tourist Centres so that the plastic bottles which have been purchased can be re-used by the tourists by collecting water in them from the vending machine. In fact the consumers may fill-up their own water bottles obviating the need to buy plastic bottles of water. This will not only ensure that plastic bottles are re-used time and again but will drastically reduce the sale of such bottles. This water can be sold like the juice sold by HPMC.

5. Thereafter on 17.12.2010 this Court had passed a detailed order after considering the reports of the Committee. We had placed on record our

appreciation for certain decision taken by the State. The State has put restrictions on use of polythene bags and has prohibited the use of certain types of polythene bags in the State of Himachal Pradesh. This, as observed by us, is just a small step taken in the direction of preserving the stream, environment and natural beauty of this State. We had thereafter given certain suggestions and though some of our suggestions have been accepted, reservations have been expressed with regard to some suggestions.

6. There is one burning issue which cannot brook any further delay. We in our earlier orders had time and again asked the State to consider seriously the issue of taking a decision to ban the use of non-biodegradable packaging material for non-essential commodities. The view of the State was that the Government of India has notified the Rules known as Re-cycled Plastics Manufacturer and Usages (Amendment) Rules, 2003 and we had clearly indicated that we do not appreciate the stand of the State since those rules only deal with carry-bags and not with non essential items which are packed in non-biodegradable material. We had observed as follows:-

18. With regard to our suggestions that matter be considered for taking a decision of banning use of non biodegradable packaging material with regard to non-essential commodities, State has taken a view that Government of India has already notified Rules known as Re-cycled Plastics Manufacturer and Usages (Amendment) Rules, 2003. Now this stand of the State is not appreciable and acceptable. These Rules only deal with carry bags. State has already issued notifications in this regard. The extent and scope of the Rules do not cover the items which we had specifically mentioned in our orders.

19. We are not unmindful of the fact that, for the present, it may not be possible to have a total ban of use of plastic in packaging material but however, State can certainly take steps to check rampant use of the same within the State of Himachal Pradesh. Definitely, steps can be taken to discourage sale of items packed in plastic and pouches which are not biodegradable. It could definitely take up the matter with the manufacturers for use of biodegradable packaging material. Recently Supreme Court of India banned sale of Gutkas packed in plastic pouches. State is obliged in law to adhere to and comply with such directions.

20. Just as it is the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes and rivers, it is the fundamental right of every citizen to live in clean, healthy and hygienic environment. The Apex Court in State of M.P. Vs. Kedia Leather and Liquor Ltd. and Others, has laid down that environmental, ecological, air and water pollution amount to violation of right to life assured by Article 21 of the Constitution. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment. This view has been reiterated in Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association and Others, and M.C. Mehta Vs. Union of

India (UOI) and Others,

21. In Part IV of the Constitution of India it is clearly laid down that State shall endeavour to protect and improve the environment and safeguard forests and wild life of the country.

22. Further Sections 3 and 3A of the Act prohibits throwing of any non-biodegradable garbage in drain, ventilation shaft, pipe and fittings which is likely to injure the drainage and sewage system, interfere with the free flow or affect the treatment and disposal of drain and sewage contents and become a cause of nuisance resulting into affecting public health. The Act further empowers the State to impose restrictions or prohibitions on the use of non-biodegradable material within the State of H.P. It also empowers the State to impose restrictions on manufacturers, distributors and other persons, who produce or handle commodities, with respect to type, size, labeling and composition of packaging with respect to its use and disposal. Duty is cast upon the local authorities and bodies for collection of garbage. Similar duty is cast upon the owners and occupiers of the land.

23. These provisions of law are either being put to disuse or brazenly violated with impunity. Drains are choked and streets are littered with non-biodegradable packaging material. Now implementing agencies cannot keep their eyes shut in checking this menace. Small measures, which are more of cosmetic in nature are not enough. Considering the enormity of the menace, at the ground level effective implementation of the laws/policies is to be carried out. In association with the local authorities, bodies and NGOs, the implementing agencies have to take pro-active action in this regard. In fact suggestions can be called from the residents and the local authorities/bodies to fight this menace of plastic waste.

24. It is not that 100% biodegradable and compostable plastic and packaging material is not available in the market. Developed countries throughout the World are already using the same. Such material is also available in India. It may be costly. It may increase the cost of the product but then people indulging in the luxury of consumption of such consumable articles, edible or otherwise, need to share the burden of costs.

25. By virtue of Sections 3 and 3A of the Act State is fully empowered to impose any restrictions and prohibitions envisaged therein. We feel that this attitude of adhocism shall not work. A proper road map needs to be prepared in this regard. To begin with, State can impose such restrictions on the products which are actually being manufactured and consumed within the State of H.P. It is not difficult to identify such manufacturers. Harsh measures need to be adopted if environment is to be protected, preserved and saved.

26. Undoubtedly Himachal Pradesh is a tourist destination. Tourists from throughout the country and world travel to all parts of the State. Litter can be seen strewn all over tourist destinations both in the urban and rural areas. Why is it that the Municipal Corporation/Local Bodies do not provide dustbins for

effective collection of such garbage even in the rural areas. Regretfully Panchayats are not taking any action for proper collection and disposal of non-biodegradable garbage. Ecology and environment are not really individual issues—they concern all of us.

7. Though almost two years have passed since we issued the aforesaid directions and made these observations but nothing concrete has emerged and in our order dated 9th September, 2011 we had observed as follows:-

2. In response to this direction the Additional Secretary (Environment, Science & Technology) to the Government of H.P. has filed an affidavit and it is stated that in compliance to the orders of the Hon"ble Supreme Court the Ministry of Environment and Forests, Government of India has notified Rules prohibiting use of plastic material for storing, packing or selling gutkha, tobacco and pan-masala. This action has been done by the Central Government. We expected the Committee to look into this question as to whether keeping in view the fragile ecology of the State of Himachal Pradesh and also taking into consideration the fact that tourism is the biggest industry for Himachal Pradesh and in case the beauty and environment of the State is marred by plastic littered everywhere the whole economy can suffer. We had expected that Committee would consider whether non-essential items such as potato chips and other snacks and savouries and things which are not essential for day to day use and would be packed in bio-degradable packaging even if they are slightly more expensive. The Committee should consider this proposal and suggest whether these items can be packaged in bio-degradable material.

3. Most of these items fall in the category of fast food or junk food which is now medically recognized to be not good for health. We see no impediment in the State taking steps to ensure that these items are packaged in biodegradable material. Even if the cost rises the consumers belong to the upper strata of the society and this will not in any manner affect larger section of the people. In fact, it may also help in reducing the consumption of unhealthy food. We, therefore, direct the Committee to come up with a clear cut and viable scheme for ensuring that such items are sold in Himachal Pradesh only in biodegradable packaging. We may make it clear that our order will not cover items like milk, vegetable-oils etc. which are items of essential use meant to be used by general public.

4. The Committee should file its report in this behalf through the Addl. Chief Secretary (Environment, Science & Technology) to the Government of H.P. within eight weeks from today.

8. Again an additional affidavit was filed but the issue raised by the Court were not dealt with and we had expressed our dissatisfaction in our order dated 18th November, 2011 wherein we again observed as follows:-

2. This court has been repeatedly emphasizing the need of sale of non-essential items packaged in bio-degradable packaging material. No effective steps for controlling sale of such items in non-biodegradable packaging material have been

taken by the State so far. On the request of Mr. R.M. Bisht, learned Dy. A.G. two weeks more time is granted to the State to consider the feasibility of sale of non-essential items in biodegradable packaging material within the State. It is clarified that if no effective steps are taken, Court would be constrained to impose a total ban on sale of such items packed in non-biodegradable material in near future.

9. In the affidavit filed by the State in response to the order dated 18th November, 2011 it has been stated as follows:-

3. It is submitted that as a matter of fact, the deponent has made sincere efforts for furthering the agenda in pursuance to the Hon'ble Court's order by convening meeting with the Industries Association and the representatives of the Traders Associations. Vide affidavit filed on 17.11.2011 the responding Department has already apprised this Hon'ble Court that the matter w.r.t. considering usage of bio-degradable material for packaging non-essential items has been taken up with the Ministry of Environment and Forests, Govt. of India for taking a holistic view in the matter, in view of the fact that Industries Association in HP had conveyed in a meeting held with them on 11.11.2011 that the ban on the use of polythene for packaging purposes would create un-competitive business scenario for industries undertaking manufacturing activities viz-a-viz their counterparts in other states. Besides creating non-level playing fields, it is felt that banning the use of non-biodegradable packing material for non-essential items would also have interstate trade, tourism, transport and livelihood implications. Though, it is admitted that unsustainable polythene management results in degradation of environment, however, the State is duly attending to the environmental aspects in the State in a phased manner as already elaborated in paras supra. It is admitted that the bio-degradable packaging options are emerging but in view of the high cost of bio-degradable plastic, the packaging of non-essential items in bio-degradable material would create price disparity in the State.

4. Moreover, there can also be possible technological constraints involved in packaging non-essential items such as chips, etc. in bio-degradable plastic. The mechanism proposed and agreed to by the Industries Associations for sustainable plastic waste management in industrial areas through Waste Audit by the industrial entities at the beginning of the year and to reduce the quantum of waste every year by waste reduction, waste recycling and waste re-use would certainly be an effective mechanism for sustainable plastic waste management in Himachal Pradesh. It is felt that in the intervening period, use of biodegradable plastic packaging material would catch up due to economies of scale and would help facilitate to manage the packaging of non-essential items.

10. The stand of the State, to say the least, is ambiguous. More than a year has elapsed since this affidavit was filed. Why does the State not explore the other alternate packaging material? We had in our earlier orders on many occasions indicated that we do not want to totally ban plastic and non-biodegradable

packaging and the same can be used for packaging essential items, such as, milk, vegetable oils, medicines, etc. which are the daily-needs of the consumer because we do not want the prices of these items to increase and affect the poor public which is already reeling under the impact of inflation. At the same time, we cannot permit non-essential items, especially items commonly known as junk food which adversely affect the health of the children to be packed in non-biodegradable packaging. Already a start has been made by banning the sale of Gutka, etc. Junk food may not fall in the same category as the Gutka or other tobacco items but the adverse effects of such junk food are well known.

11. As a start, we are of the opinion that there should be a ban on only those non-essential items which fall in the category of junk food, such as, wafers, chips, sweets, noodles, chocolates, Ice cream candy, biscuits, namkeen, food items containing MSC etc. which should be brought into Himachal only in biodegradable packaging. Even soft drinks should be brought in glass bottles or other biodegradable packaging but not in non-biodegradable packaging. Even if the costs of such non essential items has to be increased slightly to meet the costs of this biodegradable packaging it would be the worth paying that extra money to protect not only the environment of the State but also the health of the children. We also make it clear that if we find that this experiment is successful then we may expand the scope of this order to cover other non-essential items also.

12. We constitute a Committee to be headed by the Principal Secretary (Science & Technology) and comprising of the Principal Secretary (Law), Principal Secretary (Health), Director (Health Services), Director (Ayurveda) and if Director (Ayurveda) is not a medical specialist then the senior most Ayurvedic Specialist in the State of Himachal Pradesh, Head of Department of Pediatrics, IGMC, Shimla and Head of the Department of Medicines, IGMC, Shimla. The Committee will draw up a list of those items which can be termed as junk food and submit its report to the Court by 30th November, 2012.

13. Once the Committee identifies these items, these items shall not be brought into Himachal in non-biodegradable packaging w.e.f. 1st April, 2013.

14. List on 21st December, 2012. An authenticated copy of this order be handed over by the Court Master to the learned Additional Advocate General.

14. Compliance affidavit at page 320 of the paper book was filed by respondent No. 2. According to the affidavit, meeting was convened on 13.12.2012 at 12.30 P.M. under the chairmanship of the Chief Secretary (In-charge Department of Environment, Science and Technology) to the Government of Himachal Pradesh. The committee made the following recommendations:

? It is clear that in the context of our country, the definition of "junk food" is not clear, especially which is being further packed in non biodegradable plastics and could be clearly termed as "non essential" commodities.

? In view of the fact that necessary legal definition of junk food does not exist in current format and, therefore, its regulation would not be legally tenable.

? Hon"ble High Court may like to implead Union of India in the matter so as to ensure that the legal definition of term "junk food" under the relevant regulatory provisions is coined and enforcement made effective.

? Further, the following items which do not fall in the category of "junk food" but being currently packed in non-biodegradable plastics can be considered for packaging in biodegradable plastic, cloth bags, paper etc. after the stakeholder consultations are carried out by the Department of Environment, Science & Technology:-

? Gift items-toys.

? Cosmetic products.

? Readymade clothes packaging (shirts, trousers, suit lengths, sarries etc.)

? Mattresses/pillows etc.

15. The Court after perusing the affidavit passed another following order on 28.12.2012:-

On 19.10.2012, this Court had passed a detailed order and issued the following directions:

10. The stand of the State, to say the least, is ambiguous. More than a year has elapsed since this affidavit was filed. Why does the State not explore the other alternate packaging material? We had in our earlier orders on many occasions indicated that we do not want to totally ban plastic and non-biodegradable packaging and the same can be used for packaging essential items, such as, milk, vegetable oils, medicines, etc. which are the daily needs of the consumer because we do not want the prices of these items to increase and affect the poor public which is already reeling under the impact of inflation. At the same time, we cannot permit non-essential items, especially items commonly known as junk food which adversely affect the health of the children to be packed in non biodegradable packaging. Already a start has been made by banning the sale of Gutka, etc. Junk food may not fall in the same category as the Gutka or other tobacco items but the adverse effects of such junk food are well known.

11. As a start, we are of the opinion that there should be a ban on only those non-essential items which fall in the category of junk food, such as, wafers, chips, sweets, noodles, chocolates, Ice cream candy, biscuits, namkeen, food items containing MSC etc. which should be brought into Himachal only in biodegradable packaging. Even soft drinks should be brought in glass bottles or other biodegradable packaging but not in non-biodegradable packaging. Even if the costs of such non essential items has to be increased slightly to meet the costs of this biodegradable packaging it would be the worth paying that extra money to protect not only the environment of the State but also the health of the

children. We also make it clear that if we find that this experiment is successful then we may expand the scope of this order to cover other nonessential items also.

12. We constitute a Committee to be headed by the Principal Secretary (Science & Technology) and comprising of the Principal Secretary (Law), Principal Secretary (Health), Director (Health Services), Director (Ayurveda) and if Director (Ayurveda) is not a medical specialist then the senior most Ayurvedic Specialist in the State of Himachal Pradesh, Head of Department of Pediatrics, IGMC, Shimla and Head of the Department of Medicines, IGMC, Shimla. The Committee will draw up a list of those items which can be termed as junk food and submit its report to the Court by 30th November, 2012.

2. Now, an affidavit has been filed by the Chief Secretary to the Government of Himachal Pradesh, wherein it is submitted as follows:

3. Detailed deliberations were held as to ascertain which items can be termed as "Junk food". The minutes of the meeting held on 13.12.2012 are at Annexure-R-2/1. Also annexed is the letter from the Additional Director, Health Services at Annexure R-2/2, which says that the "Food Safety and Standard Act (Packaging and Labelling) Regulation, 2011" is a Central Act and any amendment to these regulations or provisions contained in the Act can be carried out by the Central Government.

4. The Committee finally concluded with following recommendations that:

? It is clear that in the context of our country, the definition of "junk food" is not clear, especially which is being further packed in non biodegradable plastics and could be clearly termed as "non essential" commodities.

? In view of the fact that necessary legal definition of junk food does not exist in current format and, therefore, its regulation would not be legally tenable.

? Hon"ble High Court may like to implead Union of India in the matter so as to ensure that the legal definition of term "junk food" under the relevant regulatory provisions is coined and enforcement made effective.

? Further, the following items which do not fall in the category of "junk food" but being currently packed in non-biodegradable plastics can be considered for packaging in biodegradable plastic, cloth bags, paper etc. after the stakeholder consultations are carried out by the Department of Environment, Science & Technology:-

? Gift items-toys.

? Cosmetic products.

? Readymade clothes packaging (shirts, trousers, suit lengths, sarries etc.)

? Mattresses/pillows etc.

3. All that we can say is that the import of our order was not understood. The Committee cannot sit over the order of this Court. We had directed the Committee to identify the items, which could be termed as junk food. Thereafter, what action was to be taken was for this Court to decide and it was not for the Committee to advise this Court whether such directions can be issued or not. The Committee has also not cared to notice that the Union of India is already a party in the writ petitions. We have only sought assistance of the Committee with a view that they could assist the Court as to which items are essential items and can be permitted to be supplied in plastic packaging and which items are junk food. We had indicated some of the items which could be termed as junk food. We had given a direction to the Committee to draw up a list of items which could be termed as junk food and submit a report to this Court by 30.11.2012. The Committee has willfully disobeyed the orders of this Court on the specious plea that the necessary legal definition of junk food does not exist in current form at and its regulation would be legally untenable. The Committee should have done the job which we had asked it to perform and not sat over the orders of this Court.

4. If the State is aggrieved by our orders, it can approach the Supreme Court but the Officers of the State, especially of the rank of Chief Secretary and Secretary (Law), cannot sit over the orders of this Court. We are pained to observe that even the Secretary (Law), who was a member of the Committee, has not even pointed out to the Committee that the orders of this Court have to be complied with. We, therefore, direct the Committee to reconsider the matter and give us a list of junk food items, within ten days from today.

5. List on 10.1.2013. In case the Committee does not hold a meeting or does not identify the junk food items, the Chief Secretary as well as the Secretary (Law) shall remain present in the Court on the next date. A duly authenticated copy of this order be supplied to the Office of the learned Advocate General, today itself.

A duly authenticated copy of this order be supplied to the office of the learned Advocate General, today itself.

16. The compliance affidavit to this effect at page 332 of the paper book was filed by respondent No. 2. According to the affidavit, "junk food" though has not been legally defined yet as per para 6 of the letter received from Health and Family Welfare Department, the items that can possibly be considered as junk food if consumed in large quantities and cooked in undesirable manner such as frying and containing items of sugar, salt etc. over and above the recommended levels, are as under:-

(1) The Junk food items refer to foods that contribute lots of calories but little nutritional value. Most frequent factors associated with the Junk foods are

? Low in fiber

? High in palatability

? Offer a high number of calorie in a small volume

? Contains large amount of refined flour

? High in fat and preservatives

(2) Due to their very nature, they are low in satiation value which leads to over eating. Such foods tend to replace other, more nutritious food and many of these items such as patties and samosas are high in trans fats, raising cholesterol level. Some fried food items may have carcinogenic properties and the Carcinogens such as Acrylimide is present in many fried items. Further, in most of such food items, refined flour is used as a major ingredient which has a high glycemic index and this again leads to sudden rise of blood sugar level. High fructose and sucrose content in sweets and candies lead to sudden rise of blood sugar level

(3) Similarly the liquid Junk food items like sauces are high in sodium and sugar. The Mayonnaise use is high in preservatives and egg yolk aerated beverages contain high concentration of synthetic sugars which induces acidity and also increase tendency for storage of body fat.

(4) These Junk food items are harmful and lead to a number of disease conditions such as:

? Obesity

? Type-II diabetes

? High Blood Pressure

? Cardio vascular problems

? Osteo arthritis

? Sleep disorders

? Colon Cancer

? Low IQ in children

(5) Generally, Junk food items, supplied to the masses come packed in non-biodegradable packages where gases under pressure are used to inflate the packages so as to keep the items in fresh state and preventing them from turning rancid, soggy and state. Use of paper bags for packing food items such as wafers chips etc. may not permit the use of packing gages under high pressure and is risk of bursting and tearing remains. Therefore, use or other options such as tetra packs, tin packing or biodegradable plastic of 20 micro meter thickness is proposed.

(6) Due to geographical, cultural and other variations, it is not feasible to give an exhaustive list of all the Junk foods however, the Committee constituted by the Hon"ble High Court may consider the following for being branded as Junk food

among other possible items.

? Chips/wafers*

? Kurkure/mad angels*

? Biscuits*

? Namkeen*

? Lollypop*/Candy*/candy bar*/toffees/sweets*/chewing gum *

? Cheese puffs*

? Cookies*

? Aampappars*

? Ice Cream & Ice cream candies*

? Chocolates & Chocolates candies*

? Maggie*/Noodles*

? Sugary cereals/cornflakes/breakfast cereals coated with sugar*

? Deep fried samosas

? Pakoras

? Pizzas

? Burgers

? Patties

? French fries

? Colas & Carbonated drinks

? Shakes

? Synthetic & Fruit beverages

? Indian Sweets i.e. Jalebies, Gulab Jamun etc.

? Naan, Pav Bhajee

? Golgappa and other street fruits

? Creamy Cakes & other fruit cakes

? (items marked with asterisk * are supplied in non biodegradable packings)

17. The Court thereafter passed following order on 10.1.2013:

1. In these petitions this Court is concerned with the indiscriminate use of plastic polythene which are totally non biodegradable for the purpose of packaging.

2. The petitioners have raised important issues in these petitions with regard to the use of plastic and other non biodegradable material used for packaging of essential items. A balance has to be struck between the economy and need to provide essential items to the poor at minimal cost and also the need to prevent degradation of the environment.

3. At the initial stage we were only concerned with mustard oil, which was supplied by the H.P. State Civil Supplies Corporation Ltd. and packed in plastic bottles and polythene bags. We had then constituted a Committee headed by Mrs. Sarojini Ganju Thakur, the then Additional Chief Secretary to the State of Himachal Pradesh who also was heading the department of Environment Science and Technology, who vide our order dated 19.6.2010 was asked to go into the following aspects amongst other things:

7. We also make it clear that the Committee while considering these aspects shall not restrict itself to the goods supplied by the Civil Supplies Corporation. A lot of non bio degradable packaging is used in the packaging of water, milk etc. being sold throughout the State of Himachal Pradesh. Here also the Committee may suggest the means and methods to reduce the use and recycling of non biodegradable packaging so that necessary instructions can be issued to the companies/societies responsible for selling the same.

8. The Committee may also consider whether in the process of protecting the environment of the State of Himachal Pradesh as far as non essential items are concerned a decision can be taken by the State totally banning the use of non biodegradable packaging and issuing instructions that such items must be packed in biodegradable packaging. There are various items which are consumed by the public which are not essential commodities, such as chips, snacks etc. Not only the environment of the State but the health of the young children who consume most of these items can be protected if the sale of such items is made only in bio degradable packaging even if the same is more expensive. The health of the people and the environment of the State need to be protected even if this means that the consumers have to spend extra for such non essential items. Most of these items are junk food and have no great role to play in the nutritional aspect of the diet of the consumers.

9. Another issue of concern is that PET (plastic) bottles are being used in large numbers for sale of water. It is the duty of the State to ensure that potable water is provided to all the citizens. The tourists buy packaged water to protect their health. The State may consider setting up vending machines to sell pure and clean water at Tourist Centres so that the plastic bottles which have been purchased can be re-used by the tourists by collecting water in them from the vending machine. In fact the consumers may fill-up their own water bottles obviating the need to buy plastic bottles of water. This will not only ensure that plastic bottles are re-used time and again but will drastically reduce the sale of such bottles. This water can be sold like the juice sold by HPMC.

4. Keeping in view the larger interest of the State, we had enlarged the scope of the petition and in fact a separate petition being CWP No. 1885 of 2010 was filed by the petitioner wherein he raised all the issues relating to indiscriminate use of plastic in the State.

5. We must record our appreciation for the fact that both the Corporation and the State have shown a positive attitude in the matter and have always accepted what was possible to be done to reduce the use of plastic in the State. In fact, on the suggestion of the Court the H.P. Tourism Development Corporation had set up some water purifiers on the Mall Road, Ridge, etc. in Shimla from which pure water was dispensed. However, we have been told that these machines are no longer operational and in fact have been removed. By the next date, the H.P. Tourism Development Corporation as well as the State shall file a reply in this regard.

6. At this stage, it would be apposite to quote relevant portion of the order dated 17.12.2010:

6. To begin with, State has enacted the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 (hereinafter referred to as the Act). It has also framed Himachal Pradesh Non-Biodegradable Garbage (Control) Rules, 1996. Vide Notification dated 26.11.1998 it has imposed prohibition on the traders, retailers and vendors in the State of Himachal Pradesh from using coloured polythene carry bags manufactured from recycled plastic for packaging the goods traded/sold by them. On 4.6.2004 another notification was issued imposing complete ban on the stockists, traders and vendors, within the State of Himachal Pradesh, from using carry bags made of nonbiodegradable material having thickness of 70 microns and size less than 12" x 18". Vide another notification dated 7.7.2009 State prohibited any person from using "plastic carry bags (irrespective of their sizes and thickness) and plastic items having one time use such as disposable plastic cups, glasses and plates" made of non-biodegradable material. In terms of said notification littering of plastic waste by institutions, commercial establishment or an individual is also subjected to fine.

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8. In small measure though, it has also taken steps in making the end user and general public aware of the same. In this regard, in association with the State Pollution Control Board, State has tried to create mass awareness by displaying hoardings at different places within the State. It has initiated a programme popularly known as "Polythene Hatao-Paryavaran Bachao" Campaign-Phase-I (21st to 26th December, 2009) Phase-II (22nd April to 29th April, 2010) and Phase-III (25th September to 2nd October, 2010). This has led to collection of approximately 208 tons of polythene/plastic waste.

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15. With regard to our suggestion of providing pure and clean drinking water to

the residents and the tourists at various vintage points, our attention has been invited to installation of one such out let in Shimla. We are informed that matter is being pursued with various Associations of Hoteliers/Restaurant owners, Municipal Corporation and other local bodies throughout the State. Pure and clean water can be provided to all by installing water purifiers at certain institutions/offices/commercial establishments/Restaurants/Hotels. This would definitely reduce excessive and frequent use of plastic in the shape of bottled water. We feel that for further and effective implementation of this measure active association of these Associations is necessary. We are informed that in Himachal Pradesh there is a registered body by the name Himachal Hotels Association, and in Shimla there is a body known as Shimla Hotels and Restaurants Association. Accordingly we implead Himachal Hotel Association, having its registered office at Hotel Himland East, Circular Road, Shimla-1 through its President Mr. Umesh Akre and Shimla Hotels and Restaurants Association, having its office at Shivalik Hotel Lower Forest Hill Road, Shimla through its President Mr. Jaswant Kukreja, as party respondents No. 4 and 5. Registry is directed to correct the cause title accordingly. We direct that notices be issued to the said respondents returnable for 26.3.2011.

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17. We have perused notification dated 20.8.2010 and guidelines circulated on 19.7.2010 whereby several functionaries of the State have been notified to effectively implement the provisions of the Act. However, this by itself would not result into implementation of the laws. We notice that in the guidelines framed by the State, concerned District Magistrate/Deputy Commissioner are required to send a report every month. We direct that the action taken on such action taken reports, in a tabulated form, be placed before the Court before the next date.

18. With regard to our suggestions that matter be considered for taking a decision of banning use of non biodegradable packaging material with regard to nonessential commodities, State has taken a view that Government of India has already notified Rules known as Re-cycled Plastics Manufacturer and Usages (Amendment) Rules, 2003. Now this stand of the State is not appreciable and acceptable. These Rules only deal with carry bags. State has already issued notifications in this regard. The extent and scope of the Rules do not cover the items which we had specifically mentioned in our orders.

19. We are not unmindful of the fact that, for the present, it may not be possible to have a total ban of use of plastic in packaging material but however, State can certainly take steps to check rampant use of the same within the State of Himachal Pradesh. Definitely, steps can be taken to discourage sale of items packed in plastic and pouches which are not biodegradable. It could definitely take up the matter with the manufacturers for use of biodegradable packaging material. Recently Supreme Court of India banned sale of Gutkas packed in plastic pouches. State is obliged in law to adhere to and comply with such directions.

20. Just as it is the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes and rivers, it is the fundamental right of every citizen to live in clean, healthy and hygienic environment. The Apex Court in *State of M.P. Vs. Kedia Leather and Liquor Ltd. and Others*, , has laid down that environmental, ecological, air and water pollution amount to violation of right to life assured by Article 21 of the Constitution. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment. This view has been reiterated in *Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association and Others*, and *M.C. Mehta Vs. Union of India (UOI) and Others*,

21. In Part IV of the Constitution of India it is clearly laid down that State shall endeavour to protect and improve the environment and safeguard forests and wild life of the country.

22. Further Sections 3 and 3A of the Act prohibits throwing of any non-biodegradable garbage in drain, ventilation shaft, pipe and fittings which is likely to injure the drainage and sewage system, interfere with the free flow or affect the treatment and disposal of drain and sewage contents and become a cause of nuisance resulting into affecting public health. The Act further empowers the State to impose restrictions or prohibitions on the use of non-biodegradable material within the State of H.P. It also empowers the State to impose restrictions on manufacturers, distributors and other persons, who produce or handle commodities, with respect to type, size, labeling and composition of packaging with respect to its use and disposal. Duty is cast upon the local authorities and bodies for collection of garbage. Similar duty is cast upon the owners and occupiers of the land.

23. These provisions of law are either being put to disuse or brazenly violated with impunity. Drains are choked and streets are littered with non-biodegradable packaging material. Now implementing agencies cannot keep their eyes shut in checking this menace. Small measures, which are more of cosmetic in nature are not enough. Considering the enormity of the menace, at the ground level effective implementation of the laws/policies is to be carried out. In association with the local authorities, bodies and NGOs, the implementing agencies have to take pro-active action in this regard. In fact suggestions can be called from the residents and the local authorities/bodies to fight this menace of plastic waste.

24. It is not that 100% biodegradable and compostable plastic and packaging material is not available in the market. Developed countries throughout the World are already using the same. Such material is also available in India. It may be costly. It may increase the cost of the product but then people indulging in the luxury of consumption of such consumable articles, edible or otherwise, need to share the burden of costs.

25. By virtue of Sections 3 and 3A of the Act State is fully empowered to impose

any restrictions and prohibitions envisaged therein. We feel that this attitude of adhocism shall not work. A proper road map needs to be prepared in this regard. To begin with, State can impose such restrictions on the products which are actually being manufactured and consumed within the State of H.P. It is not difficult to identify such manufacturers. Harsh measures need to be adopted if environment is to be protected, preserved and saved.

26. Undoubtedly Himachal Pradesh is a tourist destination. Tourists from throughout the country and world travel to all parts of the State. Litter can be seen strewn all over tourist destinations both in the urban and rural areas. Why is it that the Municipal Corporation/Local Bodies do not provide dustbins for effective collection of such garbage even in the rural areas. Regretfully Panchayats are not taking any action for proper collection and disposal of non-biodegradable garbage. Ecology and environment are not really individual issues- they concern all of us.

7. Thereafter, the matter was taken up on various occasions and on 9.9.2011 this Court after referring to the order dated 19.6.2010, had observed as follows:-

2. In response to this direction the Additional Secretary (Environment, Science & Technology) to the Government of H.P. has filed an affidavit and it is stated that in compliance to the orders of the Hon"ble Supreme Court the Ministry of Environment and Forests, Government of India has notified Rules prohibiting use of plastic material for storing, packing or selling gutkha, tobacco and pan-masala. This action has been done by the Central Government. We expected the Committee to look into this question as to whether keeping in view the fragile ecology of the State of Himachal Pradesh and also taking into consideration the fact that tourism is the biggest industry for Himachal Pradesh and in case the beauty and environment of the State is marred by plastic littered everywhere the whole economy can suffer. We had expected that Committee would consider whether non-essential items such as potato chips and other snacks and savouries and things which are not essential for day to day use and would be packed in biodegradable packaging even if they are slightly more expensive. The Committee should consider this proposal and suggest whether these items can be packaged in biodegradable material.

3. Most of these items fall in the category of fast food or junk food which is now medically recognized to be not good for health. We see no impediment in the State taking steps to ensure that these items are packaged in biodegradable material. Even if the cost rises the consumers belong to the upper strata of the society and this will not in any manner affect larger section of the people. In fact, it may also help in reducing the consumption of unhealthy food. We, therefore, direct the Committee to come up with a clear cut and viable scheme for ensuring that such items are sold in Himachal Pradesh only in biodegradable packaging. We may make it clear that our order will not cover items like milk, vegetable-oils etc. which are items of essential use meant to be used by general public.

4. The Committee should file its report in this behalf through the Addl. Chief Secretary (Environment, Science & Technology) to the Government of H.P. within eight weeks from today.

8. The Committee did not take into account the aspects pointed out by the Court and therefore, on 18.11.2011 we had granted two weeks further time to the Committee. Thereafter, the matter kept getting adjourned for one reason or the other but the Committee did not identify the food items which could easily be packed in bio-gradable packing and which were not essential food items and would fall in the category of junk food.

9. On 19.10.2012 we had referred to our earlier orders dated 19.6.2010, 17.12.2010 and 9.9.2011 and found that additional affidavit filed still did not deal with the matters raised by the Court. Therefore, we went on to hold as follows:-

10. The stand of the State, to say the least, is ambiguous. More than a year has elapsed since this affidavit was filed. Why does the State not explore the other alternate packaging material? We had in our earlier orders on many occasions indicated that we do not want to totally ban plastic and non-biodegradable packaging and the same can be used for packaging essential items, such as, milk, vegetable oils, medicines, etc. which are the daily needs of the consumer because we do not want the prices of these items to increase and affect the poor public which is already reeling under the impact of inflation. At the same time, we cannot permit nonessential items, especially items commonly known as junk food which adversely affect the health of the children to be packed in nonbiodegradable packaging. Already a start has been made by banning the sale of Gutka, etc. Junk food may not fall in the same category as the Gutka or other tobacco items but the adverse effects of such junk food are well known.

11. As a start, we are of the opinion that there should be a ban on only those non-essential items which fall in the category of junk food, such as, wafers, chips, sweets, noodles, chocolates, Ice cream candy, biscuits, namkeen, food items containing MSC etc. which should be brought into Himachal only in biodegradable packaging. Even soft drinks should be brought in glass bottles or other biodegradable packaging but not in non-biodegradable packaging. Even if the costs of such non essential items has to be increased slightly to meet the costs of this biodegradable packaging it would be the worth paying that extra money to protect not only the environment of the State but also the health of the children. We also make it clear that if we find that this experiment is successful then we may expand the scope of this order to cover other nonessential items also.

10. We then constituted a Committee in the following terms:-

12. We constitute a Committee to be headed by the Principal Secretary (Science & Technology) and comprising of the Principal Secretary (Law), Principal Secretary (Health), Director (Health Services), Director (Ayurveda) and if

Director (Ayurveda) is not a medical specialist then the senior most Ayurvedic Specialist in the State of Himachal Pradesh, Head of Department of Pediatrics, IGMCH, Shimla and Head of the Department of Medicines, IGMCH, Shimla. The Committee will draw up a list of those items which can be termed as junk food and submit its report to the Court by 30th November, 2012.

13. Once the Committee identifies these items, these items shall not be brought into Himachal in non-biodegradable packaging w.e.f. 1st April, 2013.

11. We in our order had clearly held that once the Committee identifies these items such items shall not be brought in Himachal Pradesh in non-biodegradable packaging w.e.f. 1st April, 2013. The Committee did not give a very clear cut report and vide our order dated 28th December, 2012 we had observed as follows:-

3. All that we can say is that the import of our order was not understood. The Committee cannot sit over the order of this Court. We had directed the Committee to identify the items, which could be termed as junk food. Thereafter, what action was to be taken was for this Court to decide and it was not for the Committee to advise this Court whether such directions can be issued or not. The Committee has also not cared to notice that the Union of India is already a party in the writ petitions. We have only sought assistance of the Committee with a view that they could assist the Court as to which items are essential items and can be permitted to be supplied in plastic packaging and which items are junk food. We had indicated some of the items which could be termed as junk food. We had given a direction to the Committee to draw up a list of items which could be termed as junk food and submit a report to this Court by 30.11.2012. The Committee has willfully disobeyed the orders of this Court on the specious plea that the necessary legal definition of junk food does not exist in current format and its regulation would be legally untenable. The Committee should have done the job which we had asked it to perform and not sat over the orders of this Court.

4. If the State is aggrieved by our orders, it can approach the Supreme Court but the Officers of the State, especially of the rank of Chief Secretary and Secretary (Law), cannot sit over the orders of this Court. We are pained to observe that even the Secretary (Law), who was a member of the Committee, has not even pointed out to the Committee that the orders of this Court have to be complied with. We, therefore, direct the Committee to reconsider the matter and give us a list of junk food items, within ten days from today.

12. The Committee has filed its fresh report and the concluding portion of the report of the Committee is as follows:-

However, after detailed deliberation it emerged that any food item could become "junk" or "unsafe" if consumed continuously and excessively. The Principal Secretary, on the basis of discussions, concluded that the general view of the Committee suggests that the nature of any particular food item depends on the

quantity of sugar, salt, fat and nutritive value it contains, the procedure through which the food item has been processed and finally the quantum of intake by any human being. Though "Junk Food" has not been legally defined yet as per para 6 of the letter received from Health and Family Welfare Department, the items that can be possibly considered as junk food if consumed in large quantities and cooked in undesirable manner such as frying and containing items of sugar, salt, etc. over and above the recommended levels are as annexed (Annexure-A). The list is merely illustrative not exhaustive.

13. Annexure-A, which the Committee has approved is a letter from the Health and Family Welfare Department to the Chief Secretary to the Govt. of H.P. and reads as follows:-

(1) The junk food items refer to foods that contribute lots of calories but little nutritional value. Most frequent factors associated with the junk foods are:

- ? Low in fiber.
- ? High in palatability
- ? Offer a high number of calorie in a small volume
- ? Contains large amount of refined flour
- ? High in fat and preservatives.

(2). Due to their very nature, they are low in satiation value which leads to other eating. Such foods tend to replace other, more nutritious food and many of these items such as patties and samosas are high in trans fats, raising cholesterol level. Some fried food items may have carcinogenic properties and the carcinogens such as Acrylimide is present in many fried items. Further, in most of such food items refined flour is used as a major ingredient which has a high glycemic index and this again leads to sudden rise of blood sugar level. High fructose and sucrose content in sweets and candies lead to sudden rise of blood sugar level.

(3) Similarly, the liquid junk food items like sauces are high in sodium and sugar. The Mayonnaise use is high in preservatives and egg yolk. Aerated beverages contain high concentration of synthetic sugars which induces acidity and also increase tendency for storage of body fat.

(4) These junk food items are harmful and lead to a number of disease conditions such as:

- ? Obesity
- ? Type-II diabetes
- ? High blood pressure
- ? Cardio vascular problems

- ? Osteo arthritis
- ? Sleep disorders
- ? Colon cancer
- ? Low IQ in children.

(5) Generally, junk food items supplied to the masses come packed in non-biodegradable packages where gases under pressure are used to inflate the packages so as to keep the items in fresh state and preventing them from turning rancid, soggy and stale. Use of paper bags for packing food items such as wafers, chips etc. may not permit the use of packing gases under high pressure and also risk of bursting and tearing remains. Therefore, use of other options such as tetra packs, tin packing or biodegradable plastic of 20 micro meter thickness is proposed.

(6) Due to geographical, cultural and other variations, it is not feasible to give an exhaustive list of all the junk foods however, the Committee constituted by the Hon"ble High Court may consider the following for being branded as Junk food among other possible items:

- ? Chips/wafers*
- ? Kurkure/mad angles*
- ? Biscuits*
- ? Namkeen*
- ? Lollypop*/Candy*/candy bar*/toffees/sweets*/chewing gum*
- ? Cheese puffs*
- ? Cookies*
- ? Aampappars*
- ? Ice cream & Ice cream candies*
- ? Chocolates & chocolates candies*
- ? Maggie*/Noodles*
- ? Sugary cereals/cornflakes/breakfast cereals coated with sugar*
- ? Deep fried samosas
- ? Pakoras.
- ? Pizzas
- ? Burgers
- ? Patties

- ? French fries
- ? Colas & carbonated drinks
- ? Shakes
- ? Synthetic & fruit beverages
- ? Indian sweets i.e. Jalebies, Gulab Jamun, etc
- ? Naan, Pav Bhajee
- ? Golgappa & other street fruits
- ? Creamy Cakes & other fruit cakes.

(item marked with asterisk * are mainly supplied in non biodegradable packings.)

14. From the report of the Committee it is obvious that junk food items are those which are low in fiber but tasty. These items have high calorific value and they contain large amount of refined flour and high amount of fat and preservatives. In para 4 of the report the Committee has clearly indicated that these junk foods are harmful and lead to a number of diseases, such as, obesity, diabetes, colon cancer, low IQ in children, etc. We had already earlier indicated that the health of the children who are future of the country is much more important than the profits which any private company will earn. We are not in any manner issuing directions that such items are banned because that is not within the purview of the Court but if we follow the law enacted by the State i.e. Himachal Pradesh Non-Biodegradable (Control) Act, 1995, the least we can do is to direct that these harmful items which are classified as junk foods if sold in the State of Himachal Pradesh in packed condition should be sold only in biodegradable packing and not in non-biodegradable packing. This may make these items slightly more expensive but as indicated by us earlier even if the consumption of these items is reduced that will be better for the health of the children. This may finally end up in saving crores of rupees which the State spends on health care.

15. Out of the items identified some of the items identified are normally not supplied in packaged condition. However, in case they are supplied in packaged condition they will have to comply with our orders and be sold only in biodegradable packaging.

16. Therefore, we direct that in terms of the earlier order dated 19th October, 2012 the items identified by the Committee in para 6 of its report shall not be permitted to be sold in the State of Himachal Pradesh in non-biodegradable packing w.e.f. 1st April, 2013. We may make it clear that this list is not the final list and the petitioners can file response to the report and claim that other items should also be included in the list.

17. Shri Ajay Mohan Goel, learned counsel for the petitioners has filed an affidavit of Shri Tarlok Chauhan, Advocate, of this Court in which Shri Tarlok Chauhan has also brought to the notice of this Court the fact that when he went

to Kullu on 22.12.2012 and had made purchases at Shamshi he was shocked and amazed to see that all the items were handed over to him in polythene bags which are otherwise banned. The polythene bags have been produced in Court which on the face of it are not of the quality framed under the rules. It appears that the ban is now being flouted. We call upon the State to take necessary steps in the matter and issue directions to all the officers concerned to ensure that the law as framed by the State is enforced and the ban on the polythene bags is strictly enforced.

18. We would like to bring on record the fact that from our experience we have found that the situation in the State of Himachal Pradesh with regard to degradation of the environment on account of plastic has improved ever since the act was framed and plastic was banned in the State. The streams and Nullahs are cleaner. In rural areas, earlier a large number of cattle used to die after ingesting these polythene bags. We also found that the public by and large has been very responsive to the ban and had welcomed it. It is only a few unscrupulous persons who are still defying the ban. We request the State to make the penalties even more harsh. This will definitely help in improving the situation.

19. The petitioners and in fact the Committee in its earlier report had also brought to the notice of this Court the fact that books, magazines, readymade clothes, suit cases, hand bags, utensils, gift items, mattresses and many other items rapped in polythene which is of very low grade polythene. Even if this cannot be totally banned, we are of the view that it should be made the responsibility of the persons selling these items to ensure that when they are actually sold the polythene/plastic covers and packing is removed and collected so that it can be used in terms of our earlier orders for laying of roads, etc. The Committee which we have constituted may also look into this aspect by the next date.

20. We place on record our appreciation for the valuable assistance rendered by Shri Ajay Mohan Goel and Shri Karan Singh Kanwar, Advocates. List the matter on 15th March, 2013.

List the matter on 15th March, 2013.

18. The Court ordered that in terms of earlier order dated 19th October 2012, the items identified by the Committee in para 6 of its report shall not be permitted to be sold in the State of Himachal Pradesh in non-biodegradable packing w.e.f. 1.4.2013. It was also made clear that the list was not the final list and the petitioners could file response to the report and claim that other items should also be included in the list.

19. The Haroli Block Industries Association moved an application bearing CMP No. 2278 of 2013 for impleadment. The impleadment was permitted by the Court on 15.3.2013 and the Haroli Block Industries Association was arrayed as respondent No. 7. Respondent No. 7 also moved an application bearing CMP No.

2279 of 2013 to defer date of coming into operation of the interim order dated 10.1.2013, i.e. 1.4.2013 till disposal of the writ petition. The respondent-State also filed an application bearing CMP No. 2280/2013 seeking extension of time. This Court on 15.3.2013 modified order dated 10.1.2013 to the limited extent that the implementation of the order was deferred till 1.7.2013. The Court on 1.7.2013 further modified order dated 10.1.2013 to the extent that its implementation was deferred till further orders and was made subject to result of Writ Petition Nos. 1732/2010, 7033/2010, 4665/2013, 4675/2013 and 4723/2012 and further directed that notification issued pursuant to order shall not be implemented till the next date and the matter was ordered to be listed for 3.9.2013.

CWP No. 7033/2010

20. According to the petitioner, she has established polythene and plastic manufacturing unit in the name and style of M/s. Koundal Industry. Primarily, the petitioner has challenged notification dated 15.7.2009. The petitioner had earlier approached this Court by way of CWP No. 885 of 2010. It was decided on 22.3.2010. The representation made by the petitioner pursuant to the judgment dated 22.3.2010 was rejected by the respondent-State on 7.10.2010. The respondents filed replies to the petition. According to the replies filed, the petitioner could continue with her Industry by using virgin plastic. It is further case of the respondents that notification dated 7.7.2009 and 13.8.2009 have been issued to save the fragile environment of the State of Himachal Pradesh.

CWP No. 4665/2013

21. The present petition has been filed by the Haroli Block Industries Association. According to them, the members of the petitioner Association include small scale units, which are involved in the manufacture, sale and distribution of various food products in the market. They have challenged vires of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 in general and more particularly Section 3A of the Act. According to them, framing of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 was beyond the legislative competence of the State legislature. The field was occupied by entry No. 52 of the Union List. Section 3A of the Act was ultra vires. There is reference to the Environment Protection Act 1986 and the Food Safety and Standards Act, 2006. According to the petitioner, the Food Safety and Standards Act, 2006 is traceable to entry 52 of the Union list. They have specifically challenged notification dated 26.6.2013 issued pursuant to directions issued by this Court in CWP No. 1885 of 2010 on 10.1.2013. They contended that their right to livelihood was affected. According to them, notification dated 26.6.2013 has been issued without any scientific and technical basis. According to them, there cannot be legislation on the same field by two different legislatures. According to them, Section 3A of the Act transgressed into the legislative field exclusively occupied by the Parliament read with delegated legislation framed thereunder and the same is beyond the legislative competence of the State. It is also contended that no norms have

been laid down as per Section 3A of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. Respondents No. 1 and 2 have filed reply to the same. According to them, the respondent-State has necessary legislative competence to frame the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. The petitioner filed rejoinder to the reply filed by respondents No. 1 and 2.

CWP No. 4675/2013

22. The petitioner-Indian Biscuit Manufacturers' Association has taken almost all the grounds to assail the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 and notification dated 26.6.2013 as urged in CWP No. 4665/2013. In this petition, Ministry of Environment and Forests was also added as respondent No. 6 on 19.11.2013. Respondents No. 4 and 5 have filed reply to the petition. There is a detailed reference to the Food Safety and Standards (Packing and Labelling) Regulations 2011. According to them, as per provisions of Section 3A of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995, the State Government may, by notification, impose restriction or prohibition on the use of non-biodegradable material within the State of Himachal Pradesh. According to them, as per provisions of sub-Section 2 of Section 3A of the Act, the State Government may impose requirements on manufacturers, distributors and other persons, who produce or hand commodities with respect to type, size, labelling and composition of packaging with respect to its use and disposal including standards or norms for material degradability and recyclability. It is further averred in the reply that the standards of packaging material as prescribed under the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 shall be applicable to food including biscuits and namkeen etc. throughout the country, however, if the packaging material allowed to pack the food articles imposes risk to environment of any State/UT, the State/UT Government may control the same by issuing prohibitory orders under the available legislation. It is further averred that the State Government has issued the impugned notification in exercise of the powers conferred u/s 3A of The Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 and in compliance of orders dated 10.1.2013 of the Court. In paras 41-44 of the reply, it is further averred that the State of Himachal Pradesh has restricted use of plastic packaging material for packaging of ready to eat snacks in the State of Himachal Pradesh. Petitioner has also filed rejoinder to the reply filed by respondents No. 4 and 5. The petitioner has moved an application bearing CMP No. 20418/2013 seeking amendment of the petition and to add Indian Institute of Packaging as respondent.

CWP No. 4723/2013

23. In this petition, the petitioners have reiterated the grounds taken in CWP No. 4665/2013. The petitioners have challenged the vires of Section 3A of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 and notification dated 26.6.2013. The petitioners filed rejoinder to the reply filed by

respondents No. 3 and 5 in CWP No. 4675/2013.

24. Mr. Shrawan Dogra, learned Advocate General, Mr. Ajay Mohan Goel and Mr. Karan Singh Kanwar, learned Advocates, have vehemently argued that the State Legislature has the competence to frame the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. They have also argued that the Act falls under entry 6 of the State list. They further contended that in sequel to the order passed by the Court on 10.1.2013, the State Government has issued necessary notification on 26.6.2013. They further contended that there is no repugnancy between the Food Safety and Standards Act, 2006, the Rules/Regulations framed thereunder, the Environment (Protection) Act, 1986 and the Rules framed thereunder and the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. In addition, they have also argued that the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 operates in different spheres. They have further contended that there was due application of mind before notification was issued on 26.6.2013 in sequel to order dated 10.1.2013. Mr. Shrawan Dogra, learned Advocate General, has also argued that the State Government can always change the fiscal Policy and the scope of judicial review in this matter is very limited. Learned Advocate General has also contended that reasonable restriction can always be imposed to safeguard the environment and ecology of the State. Learned Advocate General also argued that the order dated 10.1.2013 has been passed by the Court taking into consideration the ill effects of junk food on health and to arrest menace of plastic waste. He has relied upon the report submitted by the experts, which has been discussed in the order dated 10.1.2013.

25. Mr. R.L. Sood, learned Senior Advocate, with M/s. Arjun Lall, Ajay Sharma, Janesh Gupta, Ajay Vaidya and Vishwa Bhushan, learned Advocates, has vehemently argued that the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 is repugnant to Food Safety and Standards Act, 2006 and the Environment (Protection) Act, 1986 and the Rules/Regulations framed thereunder. According to them, the Food Safety and Standards Act, 2006 falls under entry 52 of the Union list and the State could not legislate on the same field under entry 24 of the State list. They have also contended relying on article 254 of the Constitution of India that once the Act is enacted by Parliament, the State Act has become void and impliedly repealed. They have also contended that the State Government has not framed any norms u/s 3A of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. They further contended that the notification dated 26.6.2013 has been issued without getting the report from the experts. They then contended that the order dated 10.1.2013 amounts to legislation by the Court.

26. Mr. Sandeep Sharma, learned Assistant Solicitor General of India appearing on behalf of the Union of India has vehemently argued that it is open to the State legislature to frame the laws for providing stringent provisions to safeguard the environment and fragile ecology of the State. He also argued that though the

Food Safety and Standards Act, 2006 is to be applied uniformly throughout the Country, but certain States have made their own stringent laws. He has also referred to Plastic Waste (Management and Handling) Rules 2011 framed under Environment Protection, Act 1986.

27. We have heard learned counsel for the parties and have also gone through the pleadings carefully.

28. The Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 has received the assent of the Governor on 20.12.1995. It was published in Rajpatra of Himachal Pradesh extraordinary on 22.12.1995. The object of the Act is to prevent throwing or depositing non-biodegradable garbage in public drains, roads and places open to public view and to regulate the use of non-biodegradable material in the State of Himachal Pradesh and for matters connected therewith or incidental thereto.

29. Section 2(a) defines "biodegradable garbage" as the garbage or waste material capable of being destroyed by the action of living beings. "Non-biodegradable garbage" has been defined u/s 2(e) as the waste garbage made of non-biodegradable material. Section 2(ee) defines "Non-biodegradable material" as the material which cannot be decomposed or degraded by action of micro-organisms, sunlight or other natural actions and includes goods made or manufactured from polythene, nylon or other plastic substances such as Polythene-Carbohydrates (P.V.C.), Polypropylene and polystyrene, specified in the Schedule to the Act. According to sub-section (1) of Section 3, no person, by himself or through another, shall, knowingly or otherwise throw or cause to be thrown in any drain, ventilation shaft, pipe and fittings, connected with the private or public drainage works, any non-bio-degradable garbage or any bio-degradable garbage in a non-biodegradable bag or container likely to-

(i) injure the drainage and sewage system;

(ii) interfere with the free flow or affect the treatment and disposal of drain and sewage contents; and

(iii) be dangerous or cause a nuisance or be prejudicial to public health.

As per sub-section (2) of Section 3, no person shall, knowingly or otherwise, place or permit to be placed, except in accordance with such procedure and after complying with such safeguards as may be prescribed, any bio-degradable or non-Biodegradable garbage in any public place or in a place open to public view, unless-

(a) the garbage is placed in a garbage receptacle; or

(b) the garbage is deposited in a location designated, by a local authority having jurisdiction on an area for the disposal of the garbage.

30. Section 3A has been added vide Act No. 17 of 2004. It reads as under:-

3-A Restriction or prohibition on use of certain things manufactured from non-biodegradable material-

(1) The State Government may, by notification, impose restriction or prohibition on the use of non-biodegradable material within the State of Himachal Pradesh, which is contrary to the norms as the State Government may, by notification, specify.

(2) The State Government may impose requirements on manufactures, distributors and other persons, who produce or handle commodities, with respect to the type, size, labelling and composition of packaging with respect to its use and disposal including standards or norms for material degradability and recyclability.

Sections 4, 5 and 6 read as under:-

4. Provision for placement of receptacles and places for deposit of non-biodegradable garbage.-It shall be the duty of the local authority, or any officer authorised by it, to-

(a) place or provide or place in proper and convenient situation public receptacles, deposit or places for temporary deposit or collection of non-biodegradable garbage;

(b) provide separate dustbins for temporary deposit of non-biodegradable garbage other than those kept and maintained for deposit of bio-degradable garbage;

(c) provide for the removal of contents of receptacles, deposit and of the accumulation at all places provided or appointed by it under clause (a) of this section; and

(d) arrange for recycling of the non-biodegradable garbage collected under this Act.

5. Duty of owners and occupiers to collect and deposit non-biodegradable garbage etc.-It shall be the duty of the owners and occupiers of all lands and buildings-

(a) to collect or to cause to be collected from their respective land and buildings the non-biodegradable garbage and to deposit, or cause to be deposited, in public receptacles deposits or places provided for temporary deposit or collection of the non biodegradable garbage by the local authority in the area;

(b) to provide separate receptacles or dustbins, other than those kept and maintained for deposit of bio-degradable garbage, of the type and in the manner prescribed by the local authority or its officers for collection therein of all the non-biodegradable waste from such land and building and to keep such receptacles dustbins in good condition and repair.

6. Power of local authority for removal of non-biodegradable garbage-The local

authority may, by notice in writing, require owner or occupier or part-owner, or person claiming to be the owner or part owner of any land or building, which has become a place of unauthorised stacking or deposit of non-biodegradable garbage and is likely to occasion a nuisance, remove or cause to be removed the said garbage so stacked or collected; and if, in its opinion, such stacking or collection of non-bio-degradable waste is likely to injure the drainage and sewage system or is likely to be dangerous to life and health, it shall forthwith take such steps at the cost of such persons as it may think necessary.

Section 8 deals with penalties. Section 9 provides for offences by companies. Section 10 deals with offences to be tried summarily. Section 12 provides for that the local authority shall carry out such directions as may be issued to it, from time to time, by the State Government for the efficient administration of the Act. Section 13 empowers the State Government in the public interest and in consultation with the Public Analyst, by notification in the Official Gazette, to add or omit from the Schedule any item of non-biodegradable waste and thereafter the Schedule shall be deemed to be amended accordingly. As per section 14 the State Government may, by order published in the Official Gazette direct that any power exercisable by it under this Act (not including the power to make rules u/s 17) may also be exercised, in such cases as may be specified in the order, by such officer or authority, as may be specified therein.

31. The State Government has framed the Rules called "the Himachal Pradesh Non-biodegradable Garbage (Control) Rules, 1996" u/s 17 of the Act.

32. Rule 3 provides for garbage management zone. Rule 4 provides for garbage/waste management committee. Rule 5 reads as under:-

5. Public Garbage receptacles dustbins-

(1) The local Authority in consultation with the Garbage Management Committee constituted under rule 4, shall for temporary deposit or collection of non-biodegradable garbage/waste generated in the area provide or place, in proper place and convenient situation, separate receptacles/dustbins other than those kept and maintained for deposit of biodegradable garbage.

(2) In Hospital, dispensaries, private clinics, laboratories and slaughter houses, the person managing such institution shall provide and place at convenient places separate receptacles/dustbins for the collection and deposit garbage and bio-medical/clinical waste generated there from.

(3) The local authority and Management referred in sub rule (2) while providing/placing the receptacles and dustbins under this rule shall take every possible precaution to ensure that those are kept beyond the approach/reach dogs and stray animals.

33. Rule 6 deals with colour and inscription on receptacles/dustbins. Rule 7 deals with safeguards to be taken by owner and occupants for deposit of garbage/waste generated from their buildings and lands. Rule 8 deals with prohibition to

throw non-biodegradable waste. Rule 9 provides that the local authority or its officer may, in order to clean up any non-biodegradable litter which has been disposed of contrary to the provision of the Act and these rules. Rule 10 deals with disposal of garbage/waste.

34. We will now take into consideration the salient features of Food Safety & Standards Act, 2006. This Act was passed by both the Houses of the Parliament and received the assent of the President on 23rd August, 2006. The statement of objections and reasons for the framing the Food Safety and Standards Act, 2006 reads as under:-

1. Multiplicity of food laws, standard setting and enforcement agencies pervades different sectors of food, which creates confusion in the minds of consumers, traders, manufacturers and investors. Detailed provisions under various laws regarding admissibility and levels of food additives, contaminants, food colours, preservatives, etc., and other related requirements have varied standards under these laws. The standards are often rigid and non-responsive to scientific advancements and modernisation. In view of multiplicity of laws, their enforcement and standard setting as well as various implementing agencies are detrimental to the growth of the nascent food processing industry and is not conducive to effective fixation of food standards and their enforcement.

2. In as early as the year 1998, the Prime Minister's Council on Trade and Industry appointed a Subject Group on Food and Agro Industries, which had recommended for one comprehensive legislation on Food with a Food Regulatory Authority concerning both domestic and export markets. Joint Parliamentary Committee on Pesticide Residues in its report in 2004 emphasized the need to converge all present food laws and to have a single regulatory body. The Committee expressed its concern on public health and food safety in India. The Standing Committee of Parliament on Agriculture in its 12th Report submitted in April, 2005 desired that the much needed legislation on Integrated Food Law should be expedited.

3. As an on going process, the then Member-Secretary, Law Commission of India, was asked to make a comprehensive review of Food Laws of various developing and developed countries and other relevant international agreements and instruments on the subject. After making an in depth survey of the international scenario, the then Member-Secretary recommended that the new Food Law be seen in the overall perspective of promoting nascent food processing industry given its income, employment and export potential. It has been suggested that all acts and orders relating to food be subsumed within the proposed Integrated Food Law as the international trend is towards modernisation and convergence of regulations of Food Standards with the elimination of multi-level and multi-departmental control. Presently, the emphasis is on (a) responsibility with manufacturers, (b) recall, (c) Genetically Modified and Functional Foods, (d) emergency control, (e) risk analysis and communication and (f) food safety and good Manufacturing Practices and process

control viz., Hazard Analysis and Critical Control Point.

4. In this background, the Group of Ministers constituted by the Government of India, held extensive deliberations and approved the proposed Integrated Food Law with certain modifications. The 92 FOOD SAFETY AND STANDARDS ACT, 2006 (c) International Law Book Company, 1562, Church Road, Kashmere Gate, Delhi-06 (INDIA) Ph.: 23867810, 23869939 Email: ilbco@ilbco.com Website: www.ilbco.com Integrated Food Law has been named as "The Food Safety and Standards Act, 2006". The main objective of the Act is to bring out a single statute relating to food and to provide for a systematic and scientific development of Food Processing Industries. It is proposed to establish the Food Safety and Standards Authority of India, which will fix food standards and regulate/monitor the manufacturing, import, processing, distribution and sale of food, so as to ensure safe and wholesome food for the people. The Food Authority will be assisted by Scientific Committees and Panels in fixing standards and by a Central Advisory Committee in prioritization of the work. The enforcement of the legislation will be through the State Commissioner for Food Safety, his officers and Panchayati Raj/Municipal bodies.

5. The Act, inter alia, incorporates the salient provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and is based on international legislations, instrumentalities and Codex Alimentaries Commission (which is related to food safety norms). In a nutshell, the Act takes care of International practices and envisages an over-reaching policy framework and provision of single window to guide and regulate persons engaged in manufacture, marketing, processing, handling, transportation, import and sale of food. The main features of the Act are:

- (a) movement from multi-level and multi-departmental control to integrated line of command;
- (b) integrated response to strategic issues like novel/genetically modified foods, international trade;
- (c) licensing for manufacture of food products, which is presently granted by the Central Agencies under various Acts and Orders, would stand decentralized to the Commissioner of Food Safety and his officer;
- (d) single reference point for all matters relating to Food Safety and Standards, regulations and enforcement;
- (e) shift from mere regulatory regime to self-compliance through Food Safety Management Systems;
- (f) responsibility on food business operators to ensure that food processed, manufactured, imported or distributed is in compliance with the domestic food laws; and
- (g) provision for graded penalties depending on the gravity of offence and

accordingly, civil penalties for minor offences and punishment for serious violations.

6. The abovesaid Act is contemporary, comprehensive and intends to ensure better consumer safety through Food Safety Management Systems and setting standards based on science and transparency as also to meet the dynamic requirements of Indian Food Trade and Industry and International trade. The Act seeks to achieve the aforesaid objectives. Section 2 reads as under:-

2. declaration as to expediency of control by the Union.-

It is hereby declared that it is expedient in the public interest that the Union should take under its control the food industry.

35. Section 3(a) defines the "adulterant"-any material which is or could be employed for making the food unsafe or sub-standard or misbranded or containing extraneous matter. The expressions "contaminant", "food", "food authority", "food business operator", "food laboratory", "food safety", "food safety audit", "label", "licence", "misbranded food", "package", "sale", "standard", "unsafe food" are defined as under:-

(g) "contaminant" means any substance, whether or not added to food, but which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry or veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination and does not include insect fragments, rodent hairs and other extraneous matter;

(j) "food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;

(m) "Food Authority" means the Food Safety and Standards Authority of India established u/s 4;

(o) "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;

(p) "food laboratory" means any food laboratory or institute established by the

Central or a State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency and recognised by the Food Authority u/s 43;

(q) "food safety" means assurance that food is acceptable for human consumption according to its intended use;

(r) "food safety audit" means a systematic and functionally independent examination of food safety measures adopted by manufacturing units to determine whether such measures and related results meet with objectives of food safety and the claims made in that behalf;

(s) "Food Safety Management System" means the adoption of Good Manufacturing Practices, Good Hygienic Practices, Hazard Analysis and Critical Control Point and such other practices as may be specified by regulation, for the food business;

(z) "label" means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed, graphic, perforated, stamped or impressed on or attached to container, cover, lid or crown of any food package and includes a product insert;

(za) "licence" means a licence granted u/s 31;

(zf) "misbranded food" means an article of food-

(A) if it is purported, or is represented to be, or is being-

(i) offered or promoted for sale with false, misleading or deceptive claims either-

(a) upon the label of the package, or

(b) through advertisement, or

(ii) sold by a name which belongs to another article of food; or (iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package; or

(B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but-

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale as the product of any place or country which is

false; or

(C) if the article contained in the package-

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or

(iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.

(zh) "package" means a pre-packed box, bottle, casket, tin, barrel, case, pouch, receptacle, sack, bag, wrapper or such other things in which an article of food is packed;

(zr) "sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;

(zu) "standard", in relation to any article of food, means the standards notified by the Food Authority;

(zz) "unsafe food" means an article of food whose name, substance or quality is so affected as to render it injurious to health:-

(i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substances; or

(ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or

(iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or

(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or

(v) by addition of a substance directly or as an ingredient which it not permitted; or

(vi) by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, flavoured or coated, powdered or polished,

as to damage or conceal the article or to make it appear better or of greater value than it really is; or

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being misbranded or substandard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.

36. Section 4 provides for establishment of Food Safety and Standards Authority of India. The duties and functions of Food Authority are defined u/s 16. General principles of food safety are contained in Chapter III of the Act. Section 23 reads as under:-

23. Packaging and labelling of foods.

(1) No person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations:

Provided that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.

(2) Every food business operator shall ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, does not mislead consumers.

37. The responsibilities of the food business operator are provided in Section 26. Section 27 deals with the liability of manufacturer, packers, wholesalers, distributors and sellers. As per Section 27(a) the Food Authority and the State Food Safety Authorities shall be responsible for the enforcement of the Act. Section 30 provides for Commissioner of Food Safety of the State. Section 31 deals with licensing and registration of food business. Section 33 deals with prohibition orders. Chapter IX deals with offences and penalties. Section 92 empowers the Food Authority, with the previous approval of the Central Government and after previous publication, by notification, to make regulations

consistent with the Act and the rules made thereunder to carry out the provisions of the Act. Section 92(2)(k) deals with the manner of marking and labelling of foods u/s 23.

38. In exercise of the powers conferred by clause (k) of sub-section (2) of section 92 read with Section 23 of the Food Safety and Standards Act, 2006, the Food Safety and Standards Authority of India has made the Food Safety and Standards Regulations insofar they relate to Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

39. Regulation 1.2.8 defines "pre-packaged" or "pre-packed food". According to regulation 2.1.2 containers made of plastic materials should conform the following Indian Standards Specification, used as appliances or receptacles for packing or storing whether partly or wholly, food articles, namely:-

- (i) IS: 10146 (Specification for Polyethylene in contact with foodstuffs);
- (ii) IS: 10142 (Specification for Styrene Polymers in contact with foodstuffs);
- (iii) IS: 10151 (Specification for Polyvinyl Chloride (PVC), in contact with foodstuffs);
- (iv) IS: 10910 (Specification for Polypropylene in contact with foodstuffs);
- (v) IS: 11434 (Specification for Ionomer Resins in contact with foodstuffs);
- (vi) IS: 11704 Specification for Ethylene Acrylic Acid (EAA) copolymer.
- (vii) IS: 12252-Specification for Poly alkylene terephthalates (PET).
- (viii) IS: 12247-Specification for Nylon 6 Polymer;
- (ix) IS: 13601-Ethylene Vinyl Acetate (EVA);
- (x) IS: 13576-Ethylene Metha Acrylic Acid (EMAA);
- (xi) Tin and plastic containers once used, shall not be re-used for packaging of edible oils and fats;

40. Regulation 2.1.3 provides for general packaging requirements for canned products as under:-

3. General packaging requirements for Canned products

- (i) All containers shall be securely packed and sealed.
- (ii) The exterior of the cans shall be free from major dents, rust, perforations and seam distortions.
- (iii) Cans shall be free from leaks.

2.1.2: Product specific requirements

1. Packaging requirements for Milk and Milk Products

(a) Bottling or filling of containers with heat-treated milk and milk product shall be carried out mechanically and the sealing of the containers shall be carried out automatically.

(b) Wrapping or packaging may not be re-used for dairy products, except where the containers are of a type which may be re-used after thorough cleaning and disinfecting.

(c) Sealing shall be carried out in the establishment in which the last heat-treatment of drinking milk or liquid milk-base products has been carried out, immediately after filling, by means of a sealing device which ensures that the milk is protected from any adverse effects of external origin on its characteristic. The sealing device shall be so designed that once the container has been opened, the evidence of opening remains clear and easy to check.

(d) Immediately after packaging, the dairy products shall be placed in the rooms provided for storage.

2. Packaging requirements for Edible oil/fat:

Tin Plate used for the manufacture of tin containers for packaging edible oils and fats shall conform to the standards of prime grade quality contained in B.I.S. Standards No. 1993 or 13955 or 9025 or 13954 as amended from time to time and in respect of Tin containers for packaging edible oils and fats shall conform to IS No. 10325 or 10339 as amended from time to time.

3. Packaging requirements for Fruits and Vegetables Products

(i) Every container in which any fruit product is packed shall be so sealed that it cannot be opened without destroying the licensing number and the special identification mark of the manufacture to be displayed on the top or neck of the bottle.

(ii) For Canned fruits, juices and vegetables, sanitary top cans made up of suitable kind of tin plates shall be used.

(iii) For Bottled fruits, juices and vegetables, only bottles/jars capable of giving hermetic seal shall be used.

(iv) Juices, squashes, crush, cordials, syrups, barley waters and other beverages shall be packed in clean bottles securely sealed. These products when frozen and sold in the form of ice shall be packed in suitable cartons. Juices and Pulps may be packed in wooden barrels when sulphited.

(v) For packing Preserves, Jams, Jellies, and Marmalades, new cans, clean jars, new canisters, bottles, chinaware jars, aluminium containers may be used and it shall be securely sealed.

(vi) For Pickles, clean bottles, jars, wooden casks, tin containers covered from inside with polythene lining of 250 gauge or suitable lacquered cans shall be used.

(vii) For Tomato Ketchups and Sauces, clean bottles shall be used. If acidity does not exceed 0.5% as acetic acid, open top sanitary cans may also be used.

(viii) Candied fruits and peels and dried fruits and vegetables can be packed in paper bags, cardboard or wooden boxes, new tins, bottles, jars, aluminium and other suitable approved containers.

(ix) Fruits and Vegetable products can also be packed in aseptic and flexible packaging material having good grade quality conforming to the standards laid down by BIS.

4. Packaging requirements for Canned Meat Products

(i) New sanitary top cans made from suitable kind of tin plate shall be used. The cans shall be lacquered internally; they shall be sealed hermetically after filling. The lacquer used shall be sulphur resistant and shall not be soluble in fat or brine.

(ii) Cans used for filling pork luncheon meat shall be coated internally with edible gelatin, lard or lined with vegetable parchment paper before being filled. 32 THE GAZETTE OF INDIA: EXTRAORDINARY [PART III--SEC. 4]

(iii) Meat products packed in hermetically sealed containers shall be processed to withstand spoilage under commercial conditions of storage and transport.

5. Packaging requirements for Drinking Water (Both Packaged and Mineral Water) It shall be packed in clean, hygienic, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) (conforming to IS: 10146 or polyvinyl chloride (PVC) conforming to IS: 10151 or Poly alkylene terephthalates (PET and PBT) conforming to IS: 12252 or polypropylene conforming to IS: 10910 or food grade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water. All packaging materials of plastic origin shall pass the prescribed overall migration and colour migration limits.

41. The Central Government has also framed the Plastic Waste (Management and Handling) Rules 2011 under Sections 3, 6 and 25 of the Environment (Protection) Act, 1986.

42. Rule 3(b) defines "carry bags" as bags made from any plastic material, used for the purpose of carrying or dispensing commodities but do not include bags that constitute or form an integral part of the packaging in which goods are sealed prior to use. "Food-stuffs" has been defined under Rule 3(h). Rule 5 deals with conditions-

During the course of manufacture, stocking, distribution, sale and use of carry bags and sachets, the following conditions shall be fulfilled, namely-

(a) carry bags shall either be 1["in natural shade (colourless) which is without any added pigments"] or made using only those pigments and colourants which are in conformity with Indian Standard: IS 9833: 1981 titled as list of pigments

and colourants for use in plastics in contact with foodstuffs, Pharmaceuticals and drinking water, as amended from time to time;

(b) no person shall use carry bags made of recycled plastics or compostable plastics for storing, carrying, dispensing or packaging food stuffs;

(c) no person shall manufacture, stock, distribute or sell any carry bag made of virgin or recycled or compostable plastic, which is less than 40 microns in thickness;

(d) sachets using plastic material shall not be used for storing, packing or selling gutkha, tobacco and pan masala;

(e) recycled carry bags shall conform to the Indian Standard: IS 14534:1998 titled as Guidelines for Recycling of Plastics, as amended from time to time;

(f) carry bags made from compostable plastics shall conform to the Indian Standard: IS/ISO 17088:2008 titled as Specifications for Compostable Plastics, as amended from time to time.

["(g) plastic material, in any form, shall not be used in any package for packing gutkha, pan masala and tobacco in all forms."]

43. Rule 6 provides for Plastic Waste Management as under-

(a) recycling, recovery or disposal of plastic waste shall be carried out as per the rules, regulations and standards stipulated by the Central Government from time to time;

(b) recycling of plastics shall be carried out in accordance with the Indian Standard: IS 14534: 1998 titled as Guidelines for Recycling of Plastics, as amended from time to time;

(c) the municipal authority shall be responsible for setting up, operationalisation and coordination of the waste management system and for performing the associated functions, namely-

(i) to ensure safe collection, storage, segregation, transportation, processing and disposal of plastic waste;

(ii) to ensure that no damage is caused to the environment during the process;

(iii) to ensure setting up of collection centres for plastic waste involving manufacturers;

(vi) to ensure its channelisation to recyclers;

(v) to create awareness among all stakeholders about their responsibilities;

(vi) to engage agencies or groups working in waste management including waste pickers, and

(vii) to ensure that open burning of plastic waste is not permitted;

1[(d)(i) the responsibility for setting up collection systems for plastic waste shall be of the municipal authority concerned and the said municipal authority may, for this purpose, seek the assistance of manufacturers of plastic carry bags, multilayered plastic pouches or sachets or of brand owners using such products;

(ii) the municipal authority may work out the modalities of a mechanism based on Extended Producer's Responsibility involving such manufacturers, registered within its jurisdiction and brand owners with registered offices within its jurisdiction either individually or collectively, as feasible or set up such collection systems through its own agencies;"]

(e) recyclers shall ensure that recycling facilities are in accordance with the Indian Standard: IS 14534:1998 titled as Guidelines for Recycling of Plastics and in compliance with the rules under the Environment (Protection) Act, 1986, as amended from time to time;

(f) the concerned municipal authority shall ensure that the residues generated from recycling processes are disposed of in compliance with Schedule II (Management of Municipal Solid Wastes) and Schedule III (Specifications for Landfill Sites) of the Municipal Solid Wastes (Management and Handling) Rules, 2000 made under the Environment (Protection) Act, 1986, as amended from time to time;

(g) the municipal authority shall incorporate the said rules in the Municipal bye-laws of all the Urban Local Bodies;

(h) the municipal authority shall encourage the use of plastic waste by adopting suitable technology such as in road construction, co-incineration etc. The municipal authority or the operator intending to use such technology shall ensure the compliance with the prescribed standards including 2["pollution control norms"] prescribed by the competent authority in this regard.

44. The Department of Science and Technology on 26.11.1998 was pleased to impose prohibition on the traders, retailers and vendors in the State of Himachal Pradesh for using the coloured polythene carry bags manufactured from recycled plastic, for packaging the goods traded/sold by them w.e.f. 1.1.1999. The State Government issued notification on 4.6.2004 whereby stockists, traders, retailers and vendors within the State of Himachal Pradesh were ordered not to use carry bags made of non-biodegradable material listed in the Schedule to the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 having thickness less than 70 microns and size less than 12" x 18". The State Government vide notification dated 7.7.2009 directed that no person including shopkeepers, vendors, wholesalers, retailers, hawkers, rehriwala etc. shall use plastic carry-bags (irrespective of their sizes and thickness) and plastic items having one time use such as disposable plastic cups, glasses and plates, which are made up of non-biodegradable material as listed in the Schedule to the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995. The State Government issued another notification dated 13.8.2009 whereby earlier notification dated 7.7.2009

was modified to the extent that the ban imposed on carry bags and littering of non-biodegradable waste was to take effect from 2.10.2009 instead of 15.8.2009. It is evident from the notification cited hereinabove that the State Government was always conscious to check use of non-biodegradable waste in the State of Himachal Pradesh.

45. Sub-section (1) of Section 3A of the Act, provides that the State Government may, by notification, impose restriction or prohibition on the use of non-biodegradable material within the State of Himachal Pradesh, which is contrary to the norms as the State Government may, by notification, specify. Sub-section (2) of the Act provides that the State Government may impose requirements on manufactures, distributors and other persons, who produce or handle commodities, with respect to the type, size, labelling and composition of packaging with respect to its use and disposal including standards or norms for material degradability and re-cyclability. It is not in dispute that the State Government till date has not laid any norms u/s 3A of the Act. When the State Government did not issue any notification to implement Section 3A of the Act, this Court was constrained to pass the order dated 10.1.2013, after taking into consideration the report submitted by the high level committee. The high level committee has filed the report as ordered by this Court. The Court has gone in depth into the ill-effects of junk food. The junk food has ill effects on the health of the citizens. The young generation is prone to eat junk food that too packed in non-biodegradable material. The State Government, in sequel to the directions issued by the Court, has issued necessary notification on 26.6.2013 whereby the State Government was pleased to impose prohibition on the traders, retailers and vendors in the State of Himachal Pradesh to store, supply and sale 25 items in the packaging made of non-biodegradable materials in the State of Himachal Pradesh with effect from 1.7.2013. The Court extended the period on the basis of the application filed by the State Government.

46. The statement of reasons and objects of the Himachal Pradesh Non-biodegradable Garbage (Control) Act, 1995, reads as under:-

Polythene and other plastics such as P.V.C. polypropylene and poly-styrene are non-biodegradable in nature. The presence of the Polythene bags/Polythene pouches makes the growth of plants, micro-organisms and numerous botanical species nearly impossible. The rain water can not percolate to the sub-soil and leaching of harmful chemicals (Particularly in low grade plastics) have led to unwarranted contamination of sub-soil elements. Besides this, drainage system in hilly areas has relatively smaller cross section and any chocking of drainage and sewage system due to the Polythene can lead to colossal damage, and is likely to cause a nuisance or be prejudicial to public health. In other parts of the country re-cycling has been considered as a solution to this menace. In hilly areas a large fraction of garbage generated every day is thrown down the steep inclines of the hillsides and there is no way in which this garbage can be collected by rag pickers for recycling. Thus it has become necessary to prohibit throwing or

deposit of Polythene articles in the public drainage and sewage and to facilitate the collection of said garbage or waste Polythene material for recycling.

47. The Federal Court in 1949-50 F.C.R. 693 (Federal Court) has held that to ascertain the class to which a particular enactment really belongs, the Court is to look to the primary matter dealt with by it, its subject matter and essential legislative feature. Their Lordships have further held that once the nature and character of a legislation determine its place in a particular list, the fact that it deals incidentally with matter appertaining to other lists is immaterial. Their Lordships have held as under:-

15. It was laid down by this court in *United Provinces v. Mussamat Aliqua Begum* (5) that "none of the items in the lists is to be read in a narrow or restricted sense and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it." The three legislative lists in the Constitution Act are not always mutually exclusive. As the Judicial Committee observed in a recent case *Prafulla Kumar Mukherji v. Bank of Commerce*, (6) "the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdiction. Subjects must still overlap and when they do, the question must be asked what is pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found." To ascertain the class to which a particular enactment really belongs, we are to look to the primary matter dealt with by it, its subject-matter and essential legislative feature. Once the true nature and character of a legislation determine its place in a particular list, the fact that it deals incidentally with matters appertaining to other lists is immaterial. The Judicial Committee made it perfectly clear in the case mentioned above that the extent of invasion by a Provincial Act into subjects enumerated in other lists is an important matter not because the validity of an Act can be determined by discriminating between degrees of invasions but for determining what is the "pith and substance" of the Act. Judged by the test, it can scarcely be argued that the impugned Ordinance is a legislation not on public order or preventive detention for reasons connected with it but on criminal procedure. It is true that detention of a person without a judicial order in a sense goes against the provision of the criminal law but that is the very essence of preventive detention. The Ordinance lays down what in the opinion of the legislative authority is essential for the maintenance of public order in the province. That is the true nature and character of the legislation which unquestionably brings it within Item (1) of List II. The offence that have been created and the procedure that have been laid down for arrest and trial of the offenders are only ancillary things without which no effective legislation would have been possible. We have, therefore, no hesitation in holding that the Ordinance is covered entirely by Items (1) and (2) of the Provincial List and as for no part of this provisions it is necessary to have recourse to the concurrent powers provided for in List III, the question of repugnancy u/s 107(1) of the Government of India Act does not arise at all.

48. The Federal Court in 1950 (52) BOMLR 591 (Federal Court) has held that where the Constitution Act has given to the provinces legislative power with respect to a certain matter in clear and unambiguous terms, the Court should not deny it to them or impose limitation on its exercise, on extraneous considerations. Their Lordships have further held that it is now well settled that if an enactment according to its true nature, its pith and substance, clearly falls within one of the matters assigned to the Provincial Legislature it is valid notwithstanding its incidental encroachment on a Federal subject. Their Lordships have held as under:-

5. Reference was also made in this connection to the newly inserted part of the preamble to the Abkari Act as to the necessity of prohibiting, among other things, the "import" of liquor and to the provisions in the Act relating to "import" and "export" of intoxicants, as showing that the Act was and purported to be a direct encroachment on the Federal field. But, as already pointed out, the Government of India (Adaptation of Indian Laws) Order, 1937, has brought those provisions into accord with item 19 of the Federal legislative list by substituting new definitions in Clause (10), Section 3, and no question of conflict could therefore arise in regard to those matters. It may be that a general adoption of the policy of prohibition by the Provinces will lead to a fall in the import of foreign liquors and to a consequential diminution of the Central Customs revenue, but where the Constitution Act has given to the Provinces legislative power with respect to a certain matter in clear and unambiguous terms, the Court should not deny it to them or impose limitations on its exercise, on such extraneous considerations. It is now well settled that if an enactment according to its true nature, its pith and substance, clearly falls within one of the matters assigned to the Provincial Legislature, it is valid notwithstanding its incidental encroachment on a Federal subject: *Prafulla Kumar Mukherjee Vs. The Bank of Commerce*,

6. Reliance was placed by learned Counsel on certain observations made obiter in *Emperor Vs. Saver Manuel Dantes*, *Prafulla Kumar Mukherjee Vs. The Bank of Commerce*, where the learned Chief Justice delivering the judgment of a Special Bench expressed the view that, whilst the Provincial legislative power under item 31, extended to prohibiting possession of intoxicating liquors, "absolute" prohibition was beyond the powers of the Provincial Legislature, as it destroys indirectly, no doubt, but none the less effectively, the right to import and export intoxicants across the sea frontier of Bombay. He saw no difficulty in reconciling the two items (Item 31 of List II and Item 19 of List I) now in question by holding that the Provincial Legislature has no power to legislate in respect of possession of intoxicants in such a way as to encroach upon the right to import and export across the customs frontiers. He did not, however, pause to indicate how the Provincial Legislature could limit possession at all without encroaching in that sense on the Federal power under item We Apparently, the learned Chief Justice thought that the test of validity was the degree of encroachment. This view cannot be accepted as correct. It has been pointed out by their Lordships of the Judicial Committee in the *Khulna Bank* case, already referred to, that, whilst

the extent of the encroachment by the Provincial Legislature is important for determining what is the pith and substance of the impugned Act, its validity cannot be determined "by discriminating between degrees of invasion.

49. Their Lordships of Hon^{ble} Supreme Court in *The State of Bombay and Another Vs. F.N. Balsara*, have held that of the principles which govern the interpretation of the legislative lists, one is that none of the items in each list is to be read in a narrow or restricted sense and the second is that where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction.

7. Since the enactment of the Govt. of India Act, 1935, there have been several cases in which the principles which govern the interpretation of the Legislative Lists have been laid down. One of these principles is that none of the items in each List is to be read in a narrow or restricted sense, vide AIR 1941 16 (Federal Court) The second principle is that where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. This principle has been stressed in a number of cases by the Federal Court as well as by the Privy Council. In *re The Central Provinces and Berar Act No. XIV of 1938* AIR 1939 1 (Federal Court) the question arose as to whether a tax on the sale of motor spirits was a tax on the sale of a goods within entry 48 of the Provincial List of duty of excise within entry 45 of the Federal List. Dealing with the difficulty which arose in that case, Gwyer C.J. observed as follows:

Only in the Indian Constitution Act can the particular problem arise which is now under consideration; & an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context & scheme of the Act, & a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together & by interpreting, & where necessary, modifying, the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, & only then, will the "non-obstinate" Clause operate & the federal power prevail; for the Clause ought to be regarded as a last resource, a witness to the imperfections of human expression & the fallibility of legal draftsmanship.

To the same effect are the following observations made by the Judicial Committee of the Privy Council in 1945 F.C.R. 179 (Federal Court) after referring to S. 100, Govt. of India Act, 1935:

Their Lordships do not doubt that the effect of these words is that, if the legislative powers of the Federal & Provincial Legislature, which are enumerated in List I & List II of the seventh schedule, cannot fairly be reconciled, the latter must give way to the former. But it appears to them that it is right first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it

might in another context bear, is yet one that can properly be given to it, & equally giving to the language of the Provincial Legislative List a meaning which it can properly bear.

In the present case, as already pointed out, the words "possession & sale" occurring in entry 31 of List II are to be read without any qualification whatsoever, & it will not be doing any violence to the construction of that entry to hold that the Provincial Legislature has the power to prohibit the possession, use and sale of intoxicating liquor absolutely. If we forget for the time being the principles which have been laid down in some of the American cases, it would be difficult to hold that the word "import" standing by itself will include either sale or possession of the article imported into the country by a person residing in the territory in which it is imported. There is thus no real conflict between entry 31 of List II & entry 19 of List I, & I find it difficult to hold that the Bombay Prohibition Act in so far as it purports to restrict possession, use and sale of foreign liquor, is an encroachment on the field assigned to the Federal Legislature under entry 19 of List I.

50. Their Lordships of Hon'ble Supreme Court in *Zaverbhai Amaldas Vs. The State of Bombay*, have held that the important thing to consider with reference to Article 254(2) is whether the legislation is "in respect of the same matter". If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254(2) will have no application. Their Lordships have held as under:

8. In the present case, there was no express repeal of the Bombay Act by Act No. 52 of 1950 in terms of the proviso to Art. 254(2). Then the only question to be decided is whether the amendments made to the Essential Supplies (Temporary Powers) Act by the Central Legislature in 1948, 1949 and 1950 are "further legislation" falling within S. 107(2) of the Government India Act or "law with respect to the same matter" falling within Art. 254(2). The important thing to consider with reference to this provision is whether the legislation is "in respect of the same matter". If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Art. 254(2) will have no application. The principle embodied in S. 107(2) and Art 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State.

51. Their Lordships of Hon'ble Supreme Court in *A.S. Krishna Vs. State of Madras*, have held that to ascertain the true character of the legislation which is impugned on the ground that it is ultra vires the powers of the Legislature which enacted it, one must have regard to the enactment as a whole, to its objects to the scope and effect of its provisions. Their Lordships have further held that if a statute is found in substance to relate to a topic within the competence of the

Legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence.

8. The appellants are right in their contention that S. 4(2) of the Act enacts a rule of evidence but does it follow from this that it is a law on evidence, such as is contemplated by Entry 5 in the Concurrent List? So also Ss. 28 to 32 undoubtedly deal with matters of procedure in relation to crimes, but are they for that reason to be regarded as legislation on Criminal Procedure Code within Entry 2 of the List III? The basic assumption on which the argument of the appellants rests is that the heads of legislation set out in the several List are so precisely drawn as to be mutually exclusive. But then, it must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Ss. 91 to 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the list were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment. Vide *Citizens Insurance Co. of Canada v. William Parsons*, 1881-7 AC 96(A); *Attorney-General of Ontario v. Attorney-General for Dominion of Canada*, 1894 AC 189(B); *Attorney-General for Ontario v. Attorney-General for the Dominion*, 1896 AC 348(C); *Union Colliery Co. of British Columbia v. Bryden*, 1899 AC 580(D); *Attorney-General for Canada v. Attorney-General for Ontario*, 1937 AC 355(E); *Attorney-General for Alberta v. Attorney-General for Canada*, 1939 AC 117(F); and *Board of Trustees of Lethbridge Northern Irrigation District v. Independent Order of Foresters*. 1940 AC 513(G).

12. The position, then, might thus be summed up. When a law is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that,

one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are intra vires, and what are not. Now, the Madras Prohibition Act is, already stated, both in form and in substance, a law relating to intoxicating liquors. The presumptions in S. 4(2) are not presumptions which are to be raised in the trial of all criminal cases, as are those enacted in the Evidence Act. They are to be raised only in the trial of offences under S. 4(1) of the Act. They are therefore purely ancillary to the exercise of the legislative power in respect of Entry 31 in List II. So also, the provisions relating to search, seizure and arrest in Ss. 28 to 32 are only with reference to offences committed or suspected to have been committed under the Act. They have no operation generally or to offences which fall outside the Act. Neither the presumption in S. 4(2) nor the provisions contained in Ss. 28 to 32 have any operation apart from offences created by the Act, and must, in our opinion, be held to be wholly ancillary to the legislation under Entry 31 in List II. The Madras Prohibition Act is thus in its entirety a law within the exclusive competence of the Provincial Legislature and the question of repugnancy under S. 107(1) does not arise.

52. Their Lordships of Hon^{ble} Supreme Court in *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, have held that where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival lists, it is necessary to examine the impugned legislation in its pith and substance and only if that pith and substance falls substantially within an entry or entries conferring legislative powers, is the legislation valid, a slight transgression upon a rival list, notwithstanding. Their Lordships have further held that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given. Their Lordships have held as under:-

8. After the dictum of Lord Selborne in *Queen-Empress v. Burah*, (1878) 3 AC 889 oft-quoted and applied, it must be held as settled that the legislatures in our Country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the List conferring respectively powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive are sometimes not really so. They occasionally overlap, and are to be regarded as enumeration simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls

substantially within an Entry or Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding. This was laid down by Gwyer C. J in AIR 1941 47 (Federal Court) in the following words:

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 purpose of determining whether it is legislation with respect to matters in this list or in that.

This dictum was expressly approved and applied by the Judicial Committee in AIR 1947 60 (Privy Council) and the same view has been expressed by this Court on more than one occasion. It is equally well settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably, included in the power given.

53. Their Lordships of Hon^{ble} Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, have explained doctrine of "pith and substance" as under:-

56. In the course of arguments the learned Attorney-General invited us to apply the test of pith and substance, and he contended that if the said test is applied the validity of the Act can be sustained. In support of his argument he has relied on the observations made by Das, C.J., in the case of *The State of Bombay Vs. R.M.D. Chamarbaugwala*, In that case the Court was called upon to consider the validity of the *Bombay Lotteries and Prize Competitions Control and Tax (Amendment), 1952*. The challenge to the Act proceeded on two grounds, (1) that it violated the fundamental right guaranteed under Art. 19(1)(g) and (2) that it offended against the provisions of Art. 301. The challenge on the first ground was repelled because it was held that gambling cannot be treated as trade or business under Art. 19(1)(g). This conclusion was sufficient to repel also the other ground on which the validity of the Act was challenged because, if gambling was not trade or business under Art. 19(1)(g), it was also not trade or commerce under Art. 301. On the conclusion reached by this Court that gambling is not a trade this position would be obvious. Even so, the learned Chief Justice incidentally applied the test of pith and substance, and observed that the impugned Act was in pith and substance an Act in respect of betting and gambling, and since betting or gambling was not trade, commerce or business "the validity of the Act had not to be decided by the yardstick of reasonableness and public interest laid down in Arts. 19(6) and 304". In this connection it may, with respect, be pointed out that what purports to be a quotation from Lord

Porter's judgment in *Commonwealth of Australia v. Bank of New South Wales*, 1950 AC 235, has not been accurately reproduced. In fact, referring to phrases such as "pith and substance" Lord Porter has observed that:

they no doubt raise in convenient form an appropriate question in cases where the real issue is one of subject-matter, as when the point is whether a particular piece of legislation is a law in respect of some subject within the permitted field. They may also serve useful purpose in the process of deciding whether an enactment which works some interference with trade, commerce and intercourse among the States is nevertheless untouched by S. 92 as being essentially regulatory in character" (pp. 312-313).

These observations would indicate that the test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the Legislature, and it has to be resolved by reference to the entries to which the impugned legislation is relatable. When there is a conflict between two entries in the legislative lists, and legislation by reference to one entry would be competent but not by reference to the other, the doctrine of pith and substance is invoked for the purpose of determining the true nature and character of the legislation in question (Vide: AIR 1947 60 (Privy Council) and AIR 1941 47 (Federal Court) But even the application of the test of pith and substance yields the same result in the present proceedings. The pith and substance of the legislation is taxation on the carriage of goods and that clearly falls within the terms of Art. 301.

54. Their Lordships of Hon'ble Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, have held that out of the two alternative ways of harmonizing these entries, namely (1) by giving the widest meaning to the word industry so as to include the industrial aspect of gas and gas works and leaving the other aspects to be covered by entry 25, or (2) by carving out gas and gas works in all its aspects from entry 24, the second alternative enables entries 24 and 25 to operate fully in their respective fields, while entry 24 covers a very wide field, that is, the fields of the entire industry in the State. Entry 25 dealing with gas and gas works, can be confined to a specific industry, that is, the gas industry. This second alternative thus gives full and effective scope of operation for both the entries in their respective fields and hence must be preferred. Their Lordships have held as under:-

8. At this stage it would be convenient to read the relevant Articles of the Constitution.

Article 246. (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.")

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the

matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List.")

List I-Union List

Entry 7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

Entry 52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

List II-State List

Entry 24. Industries subject to the provisions of entries 7 and 52 of List I.

Entry 25. Gas and gas-works.

Entry 26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

Entry 27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

Before construing the said entries, it would be useful to notice some of the well settled rules of interpretation laid down by the Federal Court and this Court in the matter of construing the entries. The power to legislate is given to the appropriate Legislatures by Art. 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different Lists or in the same Lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them. When the question arose about reconciling entry 45 of List I, duties of excise, and entry 18 of List II, taxes on the sale of goods, of the Government of India Act, 1935, Gwyer, C.J., in AIR 1939 1 (Federal Court) observed:

A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by considerations arising out of what appears to be the general scheme of the Act.

The learned Chief Justice proceeded to state:

...an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary modifying the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the non-obstinate clause operate and the federal power prevail.

The Federal Court in that case held that the entry "taxes on the sale of courts" was not covered by the entry "duties of excise" and in coming to that conclusion, the learned Chief Justice observed:

Here are two separate enactments, each in one aspect conferring the power to impose a tax upon goods; and it would accord with sound principles of construction to take the more general power, that which extends to the whole of India, as subject to an exception created by the particular power, that which extends to the province only. It is not perhaps strictly accurate to speak of the provincial power as being excepted out of the federal power, for the two are independent of one another and exist side by side. But the underlying principle in the two cases must be the same, that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning.

The rule of construction adopted by that decision for the purpose of harmonizing the two apparently conflicting entries in the two Lists would equally apply to an apparent conflict between two entries in the same List. Patanjali Sastri, J., as he then was, held in *State of Bombay Vs. Narothamdas Jethabai and Another*, that the words "administration of justice" and "constitution and organization of all courts" in item one of List II of the Seventh Schedule to the Government of India Act, 1935 must be understood in a restricted sense excluding from their scope "jurisdiction and powers of courts" specifically dealt with in item 2 of List II. In the words of the learned Judge, if such a construction was not given "the wider construction of entry 1 would deprive entry 2 of all its content and reduce it to useless lumber." This rule of construction has not been dissented from in any of the subsequent decisions of this Court. It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory.

10. The first question that occurs to one's mind is, what is the meaning of the expression, "industry" in Entry 24 of List II? Is it different from the meaning of that expression in Entry 52 of List I? Whatever may be its connotation, it must bear the same meaning in both the entries, for the two entries are so interconnected that conflicting or different meanings given to them would snap the connection. Entry 24 is subject to the provisions of Entry 7 and entry 52 of List I. Entry 7 of List I provides for industries declared by Parliament by law to be necessary for the purpose defence or for the prosecution of war and Entry 52 for industries the control which by the Union is declared by Parliament by law to be expedient in the public interest. Therefore, ordinarily industry is in the field of State legislation; but, if Parliament by law makes a relevant declaration or declarations, the industry or industries so declared would be taken off its field and passed on to Parliament. In the premises, the expression "industry" in all the

entries must be given the same meaning. Now what is the meaning of the word "industry"? In *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, the expression "industries" is defined to mean the process of manufacture or production and does not include the raw materials used in the industry or the distribution of the products of the industry. It was contended that the word "industry" was a word of wide import and should be construed as including not only the process of manufacture or production but also activities antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry. But that contention was not accepted. It is not necessary in this case to attempt to define the expression "industry" precisely or to state exhaustively all its ingredients. As summing that the expression means only production or manufacture, would it take in its sweep production or manufacture, of gas? Entry 24 in List II in its widest amplitude takes in all industries, including that of gas and gas-works. So too, Entry 25 of the said List comprehends gas industry. There is, therefore an apparent conflict between the two entries and they overlap each other. In such a contingency the doctrine of harmonious construction must be invoked. Both the learned counsel accept this principle. While the learned Attorney-General seeks to harmonise both the entries by giving the widest meaning to the word "industry" so as to include the industrial aspect of gas and gas-works and leaving the other aspects to be covered by Entry 25, learned counsel for the contesting respondents seeks to reconcile them by carving out gas and gas-works in all its aspects from Entry 24. If industry in Entry 24 is interpreted to include gas and gas-works, Entry 25 may become redundant, and in the context of the succeeding entries, namely, Entry 26, dealing with trade and commerce, and Entry 27, dealing with production, supply and distribution of goods, it will be deprived of all its contents and reduced to "useless lumber". If industrial trade, production and supply aspects are taken out of Entry 25, the substratum of the said entry would disappear: in that event we would be attributing to the authors of the Constitution inaptitude, want of precision and tautology. On the other hand, the alternative contention enables Entries 24 and 25 to operate fully in their respective fields: while Entry 24 covers a very wide field, that is, the field of the entire industry in the State, Entry 25, dealing with gas and gas works, can be confined to a specific industry, that is the gas industry. There may be many good reasons for the authors of the Constitution giving separate treatment to gas and gas-works. If one can surmise, it may be that, as the industry of gas and gas works was confined to one or two States and was not of all-India importance, it was carved out of Entry, 24 and given a separate entry as otherwise if a declaration by law was made by Parliament within the meaning of Entry 7 or Entry 52 of List I, it would be taken out of the legislative power of States. Be it as it may, the express intention of the Constitution is to treat it, in normal times, as a State subject and it is not in the province of this Court to ascertain and scrutinize the reasons for doing so. It is suggested that this interpretation would prevent Parliament to make law in respect of gas and gas works during war or other national emergency. Apart from the relevancy of such a consideration, the

apprehension has no justification, for Under Art. 249. Parliament is enabled to take up for legislation any matter which is specifically enumerated in List II whenever the Council of States resolves by two-thirds majority that such a legislation is necessary or expedient in the national interest. So too, under Art. 250 Parliament can make laws with respect to any of the matters enumerated in the State List, if a Proclamation of Emergency is in operation. Article 252 authorises the Parliament to legislate for two or more States. If the Houses of the Legislatures of those States give their consent to the said course subject to such emergency or extraordinary powers, the entire industry of gas and gas-works is within the exclusive legislative competence of a State. It is, therefore, clear that the scheme of harmonious construction suggested on behalf of the State gives full and effective scope of operation for both the entries in their respective fields while that suggested by Learned counsel for the appellant deprives Entry 25 of all its content and even makes it redundant. The former interpretation must, therefore, be accepted in preference to the latter. In this view, gas and gas-works are within the exclusive field allotted to the States. On this interpretation the argument of the learned Attorney-General that, under Art. 246 of the Constitution, the legislative power of State is subject to that of Parliament ceases to have any force, for the gas industry is outside the legislative field of Parliament and is within the exclusive field of the Legislature of the State. We, therefore, hold that the impugned Act was within the legislative competence of the West Bengal Legislature and was, therefore, validly made.

12. Nor is the contention of learned Attorney-General that S. 20 of the Central Act would still be valid vis-a-vis gas industry has any force. Under S. 20 of the Central Act,

After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorizes any Government or local authority so to do.

We have expressed the view that the Legislature of a State has the exclusive power to make law in respect of gas industry by virtue of Entry 25 of List II, and that Entry, 24 does not comprehend gas industry. As we have indicated earlier, the expression "industry" in Entry 52 of List I bears the same meaning as that in Entry 24 of List II, with the result that the said expression in Entry 52 of List I also does not take in a gas industry. If so, it follows that the Central Act, in so far as it purported to deal with the gas industry, is beyond the legislative competence of Parliament. Section 20 is an integral part of the Central Act, and if it is taken out of the Act, it can only operate in vacuum. The said section was introduced for the effective implementation of the provisions of the Central Act. It was also enacted by virtue of entry 52 of List I of the Seventh Schedule to the Constitution. If the Act was constitutionally void in so far as it purported to affect the gas industry, for the aforesaid reasons, S. 20 would equally be void to the same extent for the same reasons. In this context two decisions of this Court,

namely, Thakur Raghubir Singh and Others Vs. The State of Ajmer (Now Rajasthan) and Others, and State of Bihar and Another Vs. Umesh Jha, , may usefully be consulted, for in the said decisions this Court held that ancillary provisions enacted for carrying out the objects of a main Act would fall with the main Act on the ground that they were enacted only to subserve the purpose of the main Act. Section 20, therefore, will not avail the appellant to question the validity of the State action.

55. Their Lordships of Hon''ble Supreme Court in State of Orissa Vs. M.A. Tulloch and Co., have held that repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. Their Lordships have held as under:

15. But even if the matter was res integra the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of S. 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no super session, of the State Act.

56. Their Lordships of Hon''ble Supreme Court in State of Assam and Others Vs. Labanya Probha Debi, have held that when two entries in the Constitution whether in the same list or different lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Their Lordships have held as under:-

11. The short question, therefore, is whether any of the provision of the Amending Acts is repugnant to any of the provisions of the existing law with respect to any of the matters enumerated in the Concurrent List. Under the existing law, i.e., Act 9 of 1936, on motor vehicles could be used in the Assam Province unless the owner thereof had paid in respect of it a tax at the appropriate rate specified in the Schedule to the Act and. save as therein specified, such tax should thereafter be payable annually notwithstanding that

the motor vehicle might From time to time cease to be used (see S. 4). As aforesaid, the Schedule annexed to the Principal Act was amended from time to time by different amending Acts and the rate was increased. Under the 1963 amending Act, apart from other provisions which do not relate to any principles of taxation a new Schedule has been substituted. Neither the amending Act nor the Schedule laid down any principles of taxation in respect of motor vehicles. So too, the amending Act of 1966 substituted the Schedule of the Act by another Schedule. A perusal of the aforesaid Schedule only discloses that different rates were fixed; that is to say, the amended Schedule does not lay down any principles on which taxes on motor vehicles are to be levied within the meaning of Entry 35 of the Concurrent List: it is solely concerned with taxes on vehicles within the meaning of Entry. 57 of List II. The two entries deal with two different matters though allied ones-one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. When two entries in the Constitution, whether in the same List or different Lists, deal with two subjects, if possible an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression "principles of taxation " denotes rules of guidance in the matter of taxation. We, therefore, hold that the amending Acts do not come into conflict with the existing law in respect of any principles of taxation, but only deal with a subject-matter which is exclusively within the legislative competence of the State Legislature. In this view, there is no scope for the application of Art. 254 of the Constitution.

57. Their Lordships of Hon"ble Supreme Court in The Second Gift Tax Officer, Mangalore etc. Vs. D.H. Nazareth etc., have held that the sovereignty of Parliament and the Legislature is a sovereignty of enumerated entries, but within the ambit of an entry, the exercise of power is as plenary as any legislature can possess, subject, of course, to the limitations arising from the Fundamental Rights. Since the entries are likely to overlap occasionally, it is usual to examine the pith and substance of legislation with a view to determining to which entry they can be substantially related, a slight connection with another entry in another list notwithstanding. Their Lordships have held as under:-

5. It will, therefore, be seen that the sovereignty of Parliament and the Legislatures is a sovereignty of enumerated entries, but within the ambit of an entry, the exercise of power is as plenary as any legislature can possess, subject, of course, to the limitations arising from the Fundamental Rights. The entries themselves do not follow any logical classification or dichotomy. As was said in The State of Rajasthan Vs. G. Chawla and Dr. Pohumal, the entries in the lists must be regarded as enumeration simplex of broad categories. Since they are likely to overlap occasionally, it is usual to examine the pith and substance of legislation with a view to determining to which entry they can be substantially related, a slight connection with another entry in another list notwithstanding. Therefore, to find out whether a piece of legislation falls within any entry, its true

nature and character must be in respect to that particular entry. The entries must of course receive a large and liberal interpretation because the few words of the entry are intended to confer vast and plenary powers. If, however, no entry in any of the three lists covers it, then it must be regarded as a matter not enumerated in any of the three lists. Then it belongs exclusively to Parliament under Entry 97 of the Union List as a topic of legislation.

58. Their Lordships of Hon^{ble} Supreme Court in *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, have laid down the following principles for interpretation of legislative lists under Article 246 of the Constitution of India:

6. Before construing these entries it is useful to notice some of the well settled rules of interpretation laid down by the Federal Court any by this Court in the matter of construing the entries. The power to legislate is given to the appropriate legislatures by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate legislatures can operate. It is well established that the widest amplitude should be given to the language of the entries. But some of the entries in the different lists or in the same list may overlap or may appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about a harmonious construction. In *re AIR 1939 1 (Federal Court)* Sir Maurice Gwyer proceeded to state:

Only in the Indian Constitution Act can the particular problem arises which is now under consideration; and an endeavour must be made to solve it, as the Judicial Committee have said by having recourse to the context and scheme of Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary, modifying, the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the non obstinate clause operate and the federal power prevail; for the clause ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship." (P. 44)

The Federal Court in that case held that the entry ""taxes on the sale of goods"" was not covered by the entry ""duties of excise"" and in coming to that conclusion the learned Chief Justice observed:

Here are two separate enactments, each in one aspect conferring the power to impose a tax upon goods; and it would accord with sound principles of construction to take the more general power, that which extends to the whole of India, as subject to an exception created by the particular power, that which extends to the Province only. It is not perhaps strictly accurate to speak of the provincial power as being excepted out of the federal power, for the two are independent of one another and exist side by side. But the underlying principle in the two cases must be the same, that a general power ought not to be so

construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when the reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning." (pp. 49-50)

The rule of construction adopted by that decision for the purpose of harmonizing the two apparently conflicting entries in the two Lists would equally apply to an apparent conflict between two entries in the same List. Patanjali Sastri J. (as he then was) held in *State of Bombay Vs. Narothamdas Jethabai and Another*, that the words "administration of justice" and "constitution and organization of all courts" in Entry I of List II of the Seventh Schedule to the Government of India Act, 1935 must be understood in a restricted sense excluding from their scope "jurisdiction and powers of courts" specifically dealt with in item 2 of List II. In the words of the learned Judge, if such a construction was given "the wider construction of entry 1 would deprive entry 2 of all its content and reduce it to useless lumber.

7. The question to be considered is what is the meaning of the word "industry" in Entry 52 of List I, Entry 24 of List II and Entry 33 of List III. Whatever may be its connotation it must bear the same meaning in all these entries which are so interconnected that conflicting or different meanings given to them would snap the connection. In the Shorter Oxford English Dictionary the word "industry" is defined as "a particular branch of productive labour; a trade or manufacture." According to Webster's Third New International Dictionary (1961 edn.) the word "industry" means "(a) systematic labour especially for the creation of value; (b) a department or branch of a craft, art, business or manufacture, a division of productive and profit making labour especially one that employs a large personnel and capital especially in manufacturing; (c) a group of productive or profit making enterprises or organisations that have a similar technological structure of production and that produce or supply technically substitutable goods, services or sources of income". It was said that if the word "industries" is construed in this wide sense, Entry 27 of List II will lose all meaning and content. It is not possible to accept this contention for, Entry 27 is a general Entry and it is a well-recognised canon of construction that a general power should not be so interpreted as to nullify a particular power conferred by the same instrument. In *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, the expression "industry" was defined to mean the process of manufacture or production and did not include raw materials used in the industry or the distribution of the products of the industry. It was contended that the word "industry" was a word of wide import and should be construed as including not only the process of manufacture or production but also activities antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry. But this contention was not accepted. It was contended by Mr. Daphtary that if the process of production was to constitute "industry" a process of machinery or mechanical contrivance was essential. But we see no reason why such a limitation should be imposed on the

meaning of the word "industry" in the legislative lists. Similarly it was argued by Mr. Palkhivala that the manufacture of gold ornaments was not an industry because it required application of individual art and craftsmanship and aesthetic skill. But mere use of skill or art is not a decisive factor and will not take the manufacture of gold ornaments out of the ambit of the relevant legislative entries. It is well settled that the entries in the three lists are only legislative heads or fields of legislation and they demarcate the area over which the appropriate legislature can operate. The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of subjects to the lists is not by way of scientific or logical definition but is a mere enumeration of broad and comprehensive categories. It is not however, necessary for the purpose of this case to attempt to define the expression "industry" precisely or to state exhaustively all its different aspects. But we are satisfied in the present case that the manufacture of gold ornaments by goldsmiths in India is a "process of systematic production" for trade or manufacture and so falls within the connotation of the word "industry" in the appropriate legislative entries. It follows, therefore, that in enacting the impugned Act Parliament was validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List III.

59. Their Lordships of Hon^{ble} Supreme Court in *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, have held that the State has legislative competence to legislate on Entry 18 List II and Entry 42 List III. This power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52 List I. Effect is not the same thing as subject-matter. If a State Act, otherwise valid, has effect on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III. Their Lordships have held as under:-

29. It seems to us clear that the State has legislative competence to legislate on Entry 18, List II and Entry 42 List III. This power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52, List I. Effect is not the same thing as subject-matter. If a State Act, otherwise valid, has effect on a matter in List I does not cease to be a legislation with respect to an entry in List II or List III. The object of Sections 4 and 5 seems to be to enable the State to acquire all the lands which do not fall within the categories (a), (b) and (c) of S. 4(1). These provisions are really incidental to the exercise of the power of acquisition. The State cannot be denied a power to ascertain what land should be acquired by it in the public interest.

60. Their Lordships of Hon^{ble} Supreme Court in *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*, have held that the repugnancy can only arise if both the parliamentary legislation and State legislation fall in terms of an entry in list III. Their Lordships have held as under:-

3. There is, in the arguments on behalf of the respondents, a certain amount of confusion. The question of repugnance arises only in case both the legislations

fall within the same List III. There can, therefore, be no question of repugnance between the Electricity Act and the Electricity (Supply) Act on the one hand and the Kerala Act on the other, if the former fall in List I or List III and the latter in List II. If any legislation is enacted by a State Legislature in respect of a matter falling within List I that will be without jurisdiction and therefore void.

11. Having discussed the question of the legislative field it might be necessary to discuss the question as to what happens if it should be held that the matter under consideration in these cases falls within the Concurrent List, that is, Entry 38 in List III as contended in the alternative by some of the respondents. As already mentioned the question will arise only if it should be held that the Kerala State Act falls under Entry 38 as contended by Mr. B. Sen. If the impugned legislation falls under List III then the question of repugnancy of that legislation with the existing law or the law made by Parliament, as the case may be, will have to be considered. Both the 1910 Act as well as the 1948 Act are existing law as contemplated under Art. 372 of the Constitution. An existing law continues to be valid even though the legislative power with respect to the subject-matter of the existing law might be in a different list under the Constitution from the list under which it would have fallen under the Government of India Act, 1935. But after the Constitution came into force an existing law could be amended or repealed only by the legislature which would be competent to enact that law if it were to be newly enacted. In that sense both the 1910 Act and the 1948 Act could be amended or repealed by the Parliament and also by the State Legislature if it obtains the Presidential assent to an Act amending or repealing the 1910 Act or 1948 Act (leaving aside for the moment the question whether they fall wholly or partly under Entries 43 and 44 of List I of the Seventh Schedule to the Constitution). That the question of repugnancy can arise only with reference to a legislation falling under the Concurrent List is now well settled. In *A.S. Krishna Vs. State of Madras*, after referring to Section 107 of the Government of India Act, 1935, which is in terms similar to clause (1) of Art. 254, this Court observed.

For this section to apply, two conditions must be fulfilled: (1) The provisions of the provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the provincial law will, to the extent of the repugnancy, become void.

To the similar effect is the decision in *Prem Nath Kaul Vs. The State of Jammu and Kashmir*, The whole question of repugnancy is elaborately discussed in *J. and K. State of Jammu and Kashmir Vs. M.S. Farooqi and Others*,

61. Their Lordships of Hon"ble Supreme Court in *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, have held that the doctrine of Dominion paramountcy does not operate merely because the Dominion has legislated on the same subject-matter. The doctrine of "occupied field" applies only where there is a clash between Dominion Legislation and Provincial Legislation within an

area common to both. Their Lordships have further held that where both can co-exist peacefully, both reap their respective harvests. Their Lordships have held as under:-

57. Here we turn to Entry 24 of List II which runs: "Industries subject to the provisions of Entries 7 and 52 of List I"". This means that the State Legislature loses its power to make laws regarding "gold industry" since Entry 24, List II is expressly subject to the provisions of Entry 52 of List I. This does not mean that other entries in the State List become impotent even regarding "gold". The State Legislature can make laws regarding money-lending even where gold is involved under Entry 30, List II, even as it can regulate "gambling in gold" under Entry 34, impose sales tax on gold sales under Entry 54, regulate by municipal laws under Entry 5 and by trade restrictions under Entry 26, the type of buildings for gold shops and the kind of receipts for purchase or sale of precious metal. The multiply instances is easy, but the core of the matter is that where under its power Parliament has made a law which overrides an entry in the State List, that area is abstracted from the State List. Nothing more.

58. In *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, this Court put the point tersely while dealing with Entry 52 of the Union List:

Once it is declared by Parliament by law to be expedient in the public interest to control the industry, Parliament can legislate on that particular industry and the States would lose their power to legislate on that industry. But this would not prevent the States from legislating on subjects other than that particular industry"".

(underscoring, ours)

59. This is authority for the proposition that while Entry 23 of List II, in the light of the fact that under Entry 52 of List I Parliament has made the Gold Control Act, has become inoperative to legislate on industry, there is no inhibition whatever on State legislation on subjects other than that particular industry. Money-lending is one such subject and the power to legislate thereon remains intact.

60. We are free to agree that the word "industry" as a legislative topic has to be interpreted in the widest amplitude. We also find, as a fact, that dealings in gold, including pledging, have been covered in part by the Gold Control Act, 1968; even so nothing prevents the State from making the impugned Act. In *Paresh Chandra Chatterjee Vs. The State of Assam and Another*, *Subba Rao J.* (as he then was) dealt with an apparent conflict between the Central Act (The Tea Act) and a State "legislation (The Assam Land Requisition and Acquisition Act, 1948). After examining the scheme of the two laws, the learned Judge concluded:

As comparative study of both the Acts makes it clear that the two Acts deal with different matters and were passed for different purposes"".

Unreal and imaginary conflicts between the Central and the State Acts cannot be

the foundation for invalidation of the latter.

61. In *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, it was further pointed out:

If that Act (the Tea Act) is within the competence of Parliament and the impugned Act is within the competence of the State, the petitioners must show that the impugned Act is repugnant to the Tea Act but we can see no conflict between the provisions of the impugned Act and the Tea Act". *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, was referred to in the course of the arguments and various passages were stressed by different counsel. The essential question there was as to whether manufacture of gold ornaments by goldsmiths fell within the connotation of the word "industry". It did. It was further pointed out by Ramaswami J in that case some of the entries overlap and seems to be in direct conflict but the duty of the Court is to reconcile and harmonize while giving the widest amplitude to the language of the Entries. We see nothing in that decision which contradicts the position that while the Gold Control Act fell within Entry 52 of List I the State List was not totally suspended for that reason for purposes of legislating on subjects which fell within that List, but incidentally referred also to gold transactions. Nobody disputes the paramountcy of parliamentary power. We have to reconcile the paramountcy principle with the "trenching" doctrine.

62. In the Canadian Constitution, the question of conflict and coincidence in the domain in which provincial and Dominion legislation overlap has been considered. If both may overlap and co-exist without conflict, neither legislation is ultra vires. But if there is confrontation and conflict the question of paramountcy and occupied field may crop up. It has been held that the rule as to predominance of Dominion legislation can only be invoked in case of absolutely conflicting, legislation in pari materia when it will be an impossibility to give effect to both the Dominion and provincial enactments. There must be a real conflict between the two Acts i.e., the two enactments must come into collision. The doctrine of Dominion paramountcy does not operate merely because the Dominion has legislated on the same subject matter. The doctrine of "occupied field" applies only where there is a clash between Dominion Legislation and Provincial Legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests (Please see: Canadian constitutional Law by Laskin-pp. 52-54, 1951 Edn.).

62. Their Lordships of Hon"ble Supreme Court in *M. Karunanidhi Vs. Union of India and Another*, have held that before any repugnancy can arise the conditions which must be satisfied are: (1) that there is a clear and direct inconsistency between the Central Act and the State Act; (2) that such an inconsistency is absolutely irreconcilable and (3) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other. Their Lordships have further held that there can be

no repeal by implication unless the inconsistency appears on the face of the two statutes. Their Lordships have further held that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional.

24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied-

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:-

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

37. Last but not the least there is a very important circumstance which completely and conclusively clinches the issue and takes the force out of the argument of Mr. Venu Gopal on the question of repugnancy. It would be seen that in the original State Act, Section 29 ran thus:-

Act to override other laws, etc.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of a court or other authority.

This section underwent an amendment which was brought about by Tamil Nadu Act 16 of 1974 which substituted a new Section 29 for the old one. The new

section which was substituted may be extracted thus:-

Saving-The provisions of the Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public man from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him.

This amendment received the assent of the President on 10th April, 1974 and was published in the Tamil Nadu Government Gazette Extraordinary dated 16th April, 1974. We have already shown that although the State Act was passed as far back as 30th December, 1973 it received the assent of the President on the 10th April, 1974, that is to say, on the same date as Act 16 of 1974. The Act was however brought into force on the 8th May, 1974 when the new S. 29 which had already replaced the old section and had become a part of the statute. Therefore, for all intents and purposes the State Act cannot be read in isolation, but has to be interpreted in conjunction with the express language contained in Section 29 of the State Act. This section has in unequivocal terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only be "in addition to and not in derogation with any other law for the time being in force" which manifestly includes the Central Acts namely, the Indian Penal Code, the Corruption Act and the Criminal Law (Amendment) Act. Thus, the Legislature about a month before the main Act came into force clearly declared its intention that there would be no question of the State Act colliding with the Central Acts referred to above. The second part of Section 29 also provides that nothing contained in the State Act shall exempt any public man from being proceeded with by way of investigation or otherwise under a proceeding instituted against him under the Central Acts. It is, therefore, clear that in view of this clear intention of the legislature there can be no room for any argument that the State Act was in any way repugnant to the Central Acts. We have already pointed out from the decisions of the Federal Court and this Court that one of the important tests to find out as to whether or not there is repugnancy is to ascertain the intention of the legislature regarding the fact that the dominant legislature allowed the subordinate legislature to operate in the same field *pari passu* the State Act.

63. Their Lordships of Hon'ble Supreme Court in *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, have held that legislative power of the States under Entry 24 of List II is eroded only to the extent control is assumed by the Union pursuant to a declaration made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion. The control has to be concrete and specific and the manner of its exercise has to be laid down in view of the well established proposition that executive authority must have the support of law for its action. Subject to such erosion, on the remainder the State legislature will have power to legislate in respect of declared industry without in any way trenching upon the occupied field. It is, therefore, not correct to say

that once a declaration is made under Entry 52 of List I in respect of an industry that industry as a whole is taken out of Entry 24 of List II. The State Legislature which is otherwise competent to deal with industry under Entry 24, List II, can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in Lists II and III and this power cannot be denied to the State. Their Lordships have held as under:-

9. The declaration made in S. 2 of IDR Act reads as under:

It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule.

22. There is on the contrary a good volume of authority for the proposition that the control assumed by the Union pursuant to declaration to the extent indicated in the statute making the declaration does not comprehend the power of acquisition if it is not so specifically spelt out. In *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, constitutional validity of Kannan Devan Hills (Resumption of Lands) Act, 1971, was challenged on the ground of legislative competence of Kerala State legislature to enact the legislation. It was urged that in view of the declaration made in S. 2 of the Tea Act, 1853. Tea was a controlled industry and, therefore, the State legislature was denuded of any power to deal with the industry. It was further contended that the plantation required extensive land and that resumption of land by the impugned legislation would directly and adversely affect the control taken over by the Union and, therefore, the State legislature was incompetent to enact the impugned legislation. This contention was repelled holding that the impugned legislation was in pith and substance one under entry 18 of List II read with entry 42, List III. In reaching this conclusion the Court held as under:

It seems to us clear that the State has legislative competence to legislate on entry 18, List II and entry 42, List III. This power cannot be denied on the ground that it has some effect on an industry controlled under entry 52, List I. Effect is not the same thing as subject-matter. If a State Act, otherwise valid, has effect on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III. The object of Ss. 4 and 5 seems to be to enable the State to acquire all the lands which do not fall within the categories (a), (b) and (c) of S. 4(1). These provisions are really incidental to the exercise of the power of acquisition. The State cannot be denied a power to ascertain what land should be acquired by it in the public interest.

64. Their Lordships of Hon"ble Supreme Court in *Raghubir Vs. State of Haryana*, have held that though the Haryana Children Act came into existence on 1.3.1974 while the Criminal Procedure Code came into force on 1.4.1974 both could co-exist since their spheres of operation are different. Their Lordships have held as under:-

9. Let us now set out the relevant provisions of the Criminal P.C., 1973 with which we are directly concerned.

Section 4 reads:

(1) All offences under, the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 5 reads:

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Section 27 reads:

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

Putting emphasis on the expression, "in the absence of any specific provisions to the contrary", occurring in Section 5, Mr. Bhagat submits that Section 27 is the specific provision to the contrary and as such this provision shall affect the Haryana Children Act which is a local law for the time being in force. We are unable to accept the submission. As it has been pointed out above, the purpose of the Haryana Legislature as well as of the Parliament in enacting the Haryana Children Act and the Central Children Act (Act LX of 1960) respectively was to give separate treatment to delinquent children in trial, conviction and punishment for offences including offences punishable with death or imprisonment for life. In our opinion, Section 27 is not "a specific provision to the contrary" within the meaning of Section 5 of the Code; the intention of the Parliament was not to exclude the trial of delinquent children for offences punishable with death or imprisonment for life, inasmuch as Section 27 does not contain any expression to the effect "notwithstanding anything contained in any Children Act passed by any State Legislature". Parliament certainly was not unaware of the existence of the Haryana Children Act coming into force a month earlier or the Central Children Act coming into force nearly fourteen years earlier. What Section 27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate or any Court specially empowered under the Children Act, 1960. It is an enabling provision, and, in our opinion, has not affected the Haryana Children Act in the trial of delinquent children for offences punishable with death or imprisonment for life.

10. Criminal Procedure appears in Item 2 of the Concurrent List of the Seventh Schedule of the Constitution. One of the circumstances under which repugnancy between the law made by the State and the law made by the Parliament may result is whether the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable. In the case in hand as we have shown that the relevant provisions of the Code and the Act can coexist. Their spheres of operation are different.

65. Their Lordships of Hon^{ble} Supreme Court in *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, have held that in determining whether an enactment is a legislation "with respect to" a given power, what is relevant is not the consequences of the enactment on the subject matter or whether it affects it, but whether, in its pith and substance, it is a law upon the subject-matter in question.

13. In determining whether an enactment is a legislation "with respect to" a given power, what is relevant is not the consequences of the enactment on the subject matter or whether it affects it, but whether, in its pith and substance, it is a law upon the subject matter in question. The Central and the State Legislations operate on two different and distinct fields. The Central Rules, to some extent, trench upon the field reserved to the State Legislature, but that is merely incidental to the main purpose, that is, to levy duties of excise on medicinal and toilet preparations containing alcohol. Similarly, some of the impugned provisions may be almost similar to some of the provisions of the Central Rules, but that does not imply that the State Legislature had no competence to enact the provisions.

15. In AIR 1947 60 (Privy Council) the Privy Council in dealing with the question of distribution of powers laid down the tests that in order to see whether an Act is in respect of a particular subject, one must look to "its true nature and character"; "its pith and substance". Lord Porter, in delivering the judgment of the Judicial Committee, observed:

As Sir Maurice Gwyer, C.J. said in the AIR 1941 47 (Federal Court) 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 inter-twined that blind observance 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 purpose of determining whether it is legislation, with respect to matters in this list or in that.

The doctrine of "pith and substance" evolved by the Privy Council has been followed by this Court throughout". Thus, in *The State of Bombay and Another*

Vs. F.N. Balsara, Fazl Ali, J. following the decision of the Judicial Committee, reiterated:

If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another Legislature." In such matters of seeming conflict or encroachment of jurisdictions, what is more important is the true nature and character of the legislation. A necessary corollary of the doctrine of pith and substance is that once it is found that in pith and substance the impugned Act is a law on a permitted field any incidental encroachment on a forbidden field does not affect the competence of the legislature to enact the law.

66. Their Lordships of Hon''ble Supreme Court in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, have held that the question of repugnancy under article 254(1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect one of the matters enumerated in the concurrent list, and there is direct conflict between the two laws. Their Lordships have held as under:-

76. It would therefore appear that there is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. In *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, this Court dealt with the scheme of the separation of taxation powers between the Union and the States by mutually exclusive lists. In List I, Entries 1 to 81 deal with general subjects of legislation; Entries 82 to 92-A. deal with taxes. In List, II, Entries 1 to 44 deal with general subjects of legislation; Entries 45 to 63 deal with taxes. This Mutual exclusiveness is also brought out by the fact that in List III, the Concurrent Legislative List, there is no entry relating to a tax, but it only contains an entry relating to levy of fees in respect of matters given in that list other than court-fees. Thus, in our Constitution, a conflict of the taxing power of the Union and of the States cannot arise. That being so, it is difficult to comprehend the submission that there can be intrusion by a law made by Parliament under Entry 33 of List III into, a forbidden field viz. the State's exclusive power to make a law with respect to the levy and imposition of a tax on sale or purchase of goods relatable to Entry 54 of List II, of the Seventh Schedule. It follows that the two laws viz. sub-sec. (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.

67. Their Lordships of Hon''ble Supreme Court in *Vijay Kumar Sharma and others Vs. State of Karnataka and others*, have held that repugnancy between State law and Parliamentary Law can arise only in respect of matters in the concurrent list.

However, where both the laws fall under different heads of the concurrent list, no question of repugnancy can arise. Their Lordships have explained the terms, "occupied field", operational incompatibility", "irreconcilability" and "repeal by implication". Their Lordships have also held that whenever repugnancy between the State and Central Legislation is alleged, what has to be first examined is whether the two legislations cover or relate to the same subject matter. Their Lordships have held as under:

10. Though for some time there was difference of judicial opinion as to in what situation Art. 254 applies,-decisions of this Court by overruling the contrary opinion have now concluded the position that the question of repugnancy can arise only with reference to a legislation falling under the Concurrent List: Bar Council of The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another, and Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.,

11. This Court in Deep Chand Vs. The State of Uttar Pradesh and Others, , T. Barai Vs. Henry Ah Hoe and Another, and Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, have laid down that cl. (1) of Art. 254 lays down the general rule and cl. (2). is an exception thereto; the proviso qualifies the exception. Therefore, while interpreting Art. 254 this position has to be kept in view. The situation of the 1939 Motor Vehicles Act being existing law and the Karnataka Act containing provision repugnant to that Act with Presidential assent for the State Act squarely came within the ambit of cl. (2) of the Article. That is how the State Act had overriding effect.

12. The consideration of the present question has to be within the ambit of cl. (1) as the State law is the earlier legislation and the Parliamentary Act of 1988 came later and it is contended that the State legislation has provisions repugnant to provisions made in the 1988 Act. There can be no controversy that if there is repugnancy, the Parliamentary legislation has to prevail and the law made by the State Legislature to the extent of repugnancy becomes void.

13. In cl. (1) of Art. 254 it has been clearly indicated that the "competing legislations must be in respect of one of the matters enumerated in the Concurrent List. The seven-Judge Bench examining the vires of the Karnataka Act did hold that the State Act was an Act for acquisition and came within Entry 42 of the Concurrent List. That position is not disputed before us. There is unanimity at the Bar that the Motor Vehicles Act is a legislation coming within Entry 35" of the Concurrent List. Therefore, the Acquisition Act and the 1988 Act as such do not relate to one common head of legislation enumerated in the Concurrent List and the State Act and the Parliamentary statute deal with different matters of legislation.

17. It has already been stated that the State Act intended to eliminate private operators from the State in regard to contract carriages acquired under the existing permits, vehicle and ancillary property and with a view to giving effect to a monopoly situation for the State undertaking made provision in S. 20 for

excluding the private operators. The 1988 Act does not purport to make any provision in regard to acquisition of contract carriage permits which formed the dominant theme or the core of the State Act. Nor does it in S. 73 or S. 74 indicate as to who the applicant shall be while laying down how an application for a contract carriage permit shall be made and how such a permit shall be granted. Section 80 of the 1988 Act does contain a liberalised provision in the matter of grant of permits but here again it has to be pointed out that the ancillary provision contained in S. 20 of the Acquisition Act to effectuate acquisition does not directly run counter to the 1988 provision.

19. A number of precedents have been cited at the hearing and those have been examined and even some which were not referred to at the Bar. There is no, clear authority in support of the stand of the petitioners where the State law is under one head of legislation in the Concurrent List; the subsequent Parliamentary legislation is under another head of legislation in the same List and in the working of the two it is said to give rise to a question of repugnancy.

28. It is thus clear from the provisions of the Karnataka Act that the whole object of the Act is to nationalise the contract carriage service in the State with a view to put an end to the abuse of the contract carriage services by the private operators and to provide better transport facilities to the public, and also to prevent concentration of the wealth in the hands of the few and to utilise the resources of the country to subserve the interests of all. To secure the objective of the Act, it was also necessary to prohibit the grant of the contract carriage permits to private individuals and to reserve them exclusively to the State undertaking which was done by Sections 14 and 20 of the Act. Unlike the MV Act 1988, which is admittedly enacted by the Parliament under Entry 35 of the Concurrent List, to regulate the operation of the motor vehicles, the object of the Karnataka Act is not only the regulation of the operation of the motor vehicles. Nor is its object merely to prevent the private owners from operating their vehicles with the exclusive privilege of such operation being reserved in favour of the State or the State Undertaking. For if that were the only object, the same could have been achieved by the Transport Undertakings of the State following the special provisions relating to State Transport Undertakings in Chapter IV-A, of the Motor Vehicles Act, 1939 which was in operation when the Karnataka Act was brought into force. The very fact that instead the State undertook the exercise of enacting the Karnataka Act shows that the object of the State Legislature in enacting it was materially different. This is also obvious from the various provisions of the enactment pointed out above.

29. It is for this reason that the contention advanced by the petitioners that the object of the Karnataka Act and that of the MV Act, 1988 is the same and that both of them occupy the same field cannot be accepted. A comparison of the provisions of the MV Act, 1939 (old Act) and MV Act, 1988 (new Act) further shows that the latter has merely replaced the former. All that it has done is to update, simplify and rationalise the law on the subject. For this purpose it has

made important provisions in the following matters, namely:

- a) rationalisation of certain definitions with additions of certain new definitions of new types of vehicles;
- b) stricter procedures relating to grant of driving licences and the period of validity thereof,
- c) laying down of standards for the components and parts of motor vehicles;
- d) standards for anti-pollution control devices;
- e) provision for issuing fitness certificates of vehicles also by the authorised testing stations;
- f) enabling provision for updating the system of registration marks;
- g) liberalised schemes for grant of stage carriage permits on non-nationalised routes, all India Tourist permits and also national permits for goods carriages,
- (h) to (1)...

31. It is also not correct to say that the new Act, i.e. M V Act 1988 incorporates a special policy of liberalisation for private sector operations in the transport field. We see no such provision in the Act nor was any pointed out to us. The provisions with regard to the grant of permits under both the old and the new Acts are the same. In any case there is no provision for liberalisation of the grant of contract carriage permits in favour of the private individuals or institutions so as to come in conflict with the Karnataka Act.

46. What is important from our point of view, is the view taken in that case that. when repugnancy is alleged between the two statutes, it is necessary to examine whether the two laws occupy the same field, whether the new or the later statute covers the entire subject matter of the old, whether legislature intended to lay down an exhaustive code in respect of the subject matter covered by the earlier law so as to replace it in its entirety and whether the earlier special statute can be construed as remaining in effect as a qualification of or exception to the later general law, since the new statute is enacted knowing fully well the existence the earlier law and yet it has not repealed it expressly. The decision further lays down that for examining whether the two statutes cover the same subject matter, what is necessary to examine is the scope and the object of the two enactments, and that has to be done by ascertaining the intention in the usual way and what is meant by the usual way is nothing more or less than the ascertainment of the dominant object of the two legislations.

53. The aforesaid review of the authorities makes it clear that whenever repugnancy between the State and Central Legislation is alleged, what has to be first examined is whether the two legislations cover or relate to the same subject matter. The test for deter mining the same is the usual one, namely, to find out the dominant intention of the two legislations. If the dominant intention, i.e. the

pith and substance of the legislations is different, they cover different subject matters. If the subject matters covered by the legislations are thus different, then merely because the two legislations refer to some allied or cognate subjects they do not cover the same field. The legislation, to be on the same subject matter must further cover the entire field covered by the other. A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation. But such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). Both the legislations must be substantially on the same subject to attract the Article.

68. Their Lordships of Hon^{ble} Supreme Court in *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, have held that the entries in the three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. Their Lordships have further explained that pith and substance has to be applied. Their Lordships have held as under:-

16. Courts of law are enjoined to gather the meaning of the Constitution from the language used and although one should interpret the words of the Constitution on the same principles 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 to be remembered that it is a Constitution that requires interpretation. Constitution is the mechanism under which the laws are to be made and not merely an Act which declares what the law is to be. See the observations of Justice Higgins in the *Attorney General for the State of New South Wales v. The Brewery Employees Union of New South Wales* (1908). 6 CLR 469 at 611-2.

17. In re: AIR 1939 1 (Federal Court) Chief Justice Gwyer of the Federal Court of India relied on the observations of Lord Wright in *James v. Commonwealth of Australia* (1936) AC 578 and observed that a Constitution must not be construed in any narrow or pedantic sense, and that construction most beneficial to the widest possible amplitude of its powers must be adopted. The learned Chief Justice emphasised that a broad and liberal spirit should inspire those whose duty it is to interpret the Constitution, but they are not free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or correcting supposed errors. A Federal Court will not strengthen, but only derogate from, its position, if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution of a country is a living and organic thing, which of all instruments has the greatest claim to be construed *Ut res magis valeat quam pereat*, "It is better that it should live than that it should perish".

18. Certain rules have been evolved in this regard, and it is well settled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Art. 246 and other articles of the Constitution. See the observations of this Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, The entries in the three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the lists. See the observations of this Court in *Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others*, *Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon*, The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied restriction on the legislative power conferred by Art. 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. Hence, the language of the entries should be given widest scope, *Duni Chand Rataria Vs. Bhuwarka Brothers Ltd.*, to find out which of the meanings is fairly capable because these set up machinery of the Govt. (Sic). 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 one in the same list. It is in this background that one has to examine the present controversy.

69. Their Lordships of Hon''ble Supreme Court in *M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others*, have held that the language of Entry 52 read with Entry 24 in List I would suggest that once it is declared by Parliament by law that the control of a particular industry by the Union is expedient in the public interest, the State legislatures completely lose all competence to legislate with respect to such an industry in any respect whatever. Their Lordships have further held that mere declaration of a law of Parliament that it is expedient for an industry or the regulation and development of mines and minerals to be under the control of Union under Entry 52 or Entry 54 does not denude the State legislatures of their legislative powers with respect to the fields covered by the several entries of List II or List III.

70. Their Lordships of Hon''ble Supreme Court in *B. Viswanathiah and Company and Others Vs. State of Karnataka and Others*, have held that the process of manufacturer or production can be legislated on by States under Entry 24 of List II so long as the industry is not a controlled industry within the meaning of Entry 7 or Entry 52 of the List I. Their Lordships have held as under:-

6. It will at once be seen that the point raised by the petitioners/appellants has been repelled by the High court on the basis of a series of decisions of this court regarding scope of Entry 52 of List I in the Seventh Schedule to the Constitution. the High court has pointed out that when Entry 52 talks of control of industry it does not mean all aspects of the industry in question. an industry comprises of 3 important aspects:

(I) raw materials;

(II) the process of manufacture or production; and

(III) the distribution of the products of the industry.

Legislation in regard to raw materials would be permissible under Entry 27 of List II, notwithstanding a declaration of the industry under Entry 52 to be one within the purview of parliamentary legislation. the process of manufacture or production can be legislated on by States under Entry 24 of List II so long as the industry is not a controlled industry within the meaning of Entry 7 or Entry 52 of List 1. So far as the third aspect viz. the distribution of the products of the industry are concerned, the State legislature would be quite competent to legislate thereto in regard thereto under Entry 27 of List II. However, when the industry is also a controlled industry legislation in regard to the products of the industry would be permissible by both the central and the State legislatures by virtue of Entry 33 of List III. This in short is the decision of the High Court based, as already pointed out on a series of decision of this court. Observations by this court to a like effect in *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.* may also be seen. We entirely agree with this view.

71. Their Lordships of Hon"ble Supreme Court in *Raghu Seeds and Farms and others Vs. Union of India and others*, have held that entries in the three lists under, are fields of legislation. Language of the entries should be given widest scope of which their meaning is fairly capable of. Their Lordships have held as under:-

7. The various entries in three lists are fields of legislation. (See *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*,

8. Again it is well established that the language of the various entries should be given the widest scope of which their meaning is fairly capable.

72. In *Gandhi Irwin Salt Manufacturers Association and Vs. The Government of Tamil Nadu and etc. etc.*, learned Single Judge of Madras High Court has held that the Prevention of Food Adulteration Act is the subject relating to which there is a specific entry in Entry 18 in the concurrent list III. Learned Single Judge has held as under:-

58. Now, the question to be considered is whether the impugned Notification issued under the Act relating to the subject in entry 18 in the concurrent list (List

III of 7th Schedule to the Constitution) is in conflict in any way with the legislations enacted under entry 58 of the Union List. In my opinion, the provisions of the 1944 Act or 1953 Act relating to entry 58 in the first list are in no way conflicting or inconsistent with Section 7(iv) of the Act under which the impugned Notification is issued. The three Acts operate in their respective fields. The Notification issued is one under the Prevention of Food Adulteration Act, 1954. That is the subject relating to which there is a specific entry in entry 18 in List III.

73. Their Lordships of Hon''ble Supreme Court in State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., have held that once a legislation exclusively falls under any of the entries in List II of Schedule VII, Parliament's competence is excluded and State's competence cannot be challenged on the ground that State's power under clause (3) of Article 246 is subject to Parliament's power under clauses (1) and (2) thereof. Their Lordships have held as under:-

19. It has been repeatedly pointed out by this Court and the Federal Court (dealing with a similar distribution of legislative powers among the Centre and the Provinces under the Government of India Act, 1935) that the several entries in the three List in the Seventh Schedule are mere legislative heads and that it is quite likely that very often they overlap. Wherever such a situation arises, it is held, the issue must be solved by applying the rule of pith and substance. As explained by T.L. Venkatarama Iyer, J. in A.S. Krishna Vs. State of Madras,

It must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Ss. 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a

subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment. Vide *Citizens Insurance Company of Canada v. William Parsons*, (1881) 7 AC 96; *The Attorney-General for Ontario v. Attorney General for the Dominion of Canada*, 1894 AC 189; *The Attorney General of Ontario v. Attorney-General for the Dominion*, 1896 AC 348; *Union Colliery Company of British Columbia v. Bryden*, 1899 AC 580; *Attorney General for Canada v. Attorney-General for Ontario*, 1937 AC 355; *Attorney-General for Alberta v. Attorney-General for Canada*, 1939 AC 117; and *Board of Trustees of Letherbridge Northern Irrigation District v. Independent Order of Foresters*, 1940 AC 513."

36. In view of our finding that the impugned enactment is perfectly with the legislative competence of the State legislature and is fully covered by Entry 8 read with Entry 6 of List-II, it is not necessary for us to deal with the arguments based upon Clause (3) of Article 246 of the Constitution except to say the following: once the impugned enactment is within the four corners of Entry 8 read with Entry 6, no central law whether made with reference to an entry in List-I or with reference to an entry in List-III can affect the validity of such State enactment. The argument of occupied field is totally out of place in such a context. If a particular matter is within the exclusive competence of the State legislature, i.e., in List-II that represents the prohibited field for the Union. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the States. The concept of occupied field is really relevant in the case of laws made with reference to entries in List-III. In other words, whenever a piece of legislation is said to be beyond the legislative competence of a State Legislature, what one must do is to find out, by applying the rule of pith and substance, whether that legislation falls within any of the entries in List II. If it does, no further question arises; the attack upon the ground of legislative competence shall fail. It cannot be that even in such a case, Article 246(3) can be employed to invalidate the legislation on the ground of legislative incompetence of State Legislature. If, on the other hand, the State legislation in question is relatable to an entry in List-III applying the rule of pith and substance, then also the legislation would be valid, subject to a Parliamentary enactment inconsistent with it, a situation dealt with by Article 254. Any incidental trenching, as already pointed out; does not amount to encroaching upon the field reserved for the Parliament, though as pointed out by T.L. Venkatarama Iyer, J. in *A.S. Krishna Vs. State of Madras*, the extent of trenching beyond the competence of the legislating body may be an element in determining whether the legislation is colourable. No such question arises here.

38. The ratio of the above decision fully supports what we have said hereinbefore. In fact, Entry 8 is more specific than Entry 25 in List-II. While Entry 25 merely speaks of "gas and gas-works"*, Entry 8 expressly speaks of production and manufacture besides possession, transport, purchase and sale of intoxicating liquors. The ratio of the *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, fully supports our conclusion that the

industries engaged in the production and manufacture of intoxicating liquors are outside the purview of Entry 24 and fall squarely within Entry 8 in List-II and that Entry 52 in List-I does not override or impinge upon Entry 8 in List-II. According to this decision, the expression "industry" in both Entry 24 in List-II and Entry 52 in List-I must carry the same meaning, which means that if a particular industry is not within the purview of Entry 24 in List-II, it would equally not be within the purview of Entry 52 in List-I. The decision also supports our conclusion that Article 246 cannot be invoked to deprive the State legislatures of the powers inhering in them by virtue of entries in List-II. To wit, once an enactment, in pith and substance, is relatable to Entry 8 in List-II or for that matter any other entry in List-II, Article 246 cannot be brought in to yet hold that State legislature is not competent to enact that law.

74. Their Lordships of Hon'ble Supreme Court in *State of Rajasthan and Others Vs. Vatan Medical and General Store and Others etc. etc.*, have held that if legislation in pith and substance falls within any of the entries of List II, State Legislature's competence cannot be questioned on the ground that the field is covered by Central list. Their Lordships have held as under:-

12. The judgment under appeal rendered by State of Rajasthan is liable to be set aside mainly for two reasons. Firstly, it does not take notice of the decision of this Court in *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, Secondly, it proceeds upon wrong premises that once a field is covered by Central Legislation referable to List I, the power of State Government to legislate in the field covered by an entry in List II is taken away without dealing with the doctrine of pith and substance and by ignoring the well settled position of law that the doctrine of covered field has to be applied only to entries in List III. This is the position of law settled by three-Judges Bench decision in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*,

75. Their Lordships of Hon'ble Supreme Court in *I.T.C. Limited Vs. The Agricultural Produce Market Committee and Others*, have held that the expression "industries" in Entry 24 List II or Entry 52 List I, cannot be interpreted in a manner that would make other entries of List II of the Seventh Schedule subject to Union control, which in fact they are not. Wherever it was intended to be made subject to such control, whether of List I or that of List III, it was said so. A perusal of List II shows that whenever a particular entry was intended to be made subject to any entry in List I or III, it has been so stated specifically. Therefore, an interpretation which tends to have the effect of making a particular entry subject to any other entry, though not so stated in the entry, deserves to be avoided unless that be the only possible interpretation. Such interpretation on the entries in question, namely, Entry 52 of List I and Entry 24 of List II cannot be placed. Their Lordships have further held that there may not be any embargo or limitation on the power of Parliament to enact the law in respect of activities other than manufacturing activities but that power is non-

existent in Entry 52 of List I. It may be elsewhere. Reference in this regard can be made to Entry 33 of List II including in its ambit foodstuff and certain raw materials. Their Lordships have further held that applying the negative test as evolved in *Tika Ramji* in this case it would follow that the word "industry" in Entry 24 of List II and consequently Entry 52 of List I does not and cannot be read to include Entries 28 and 66 of List II which have been expressly marked out as fields within the State's exclusive legislative powers. Their Lordships have held as under:-

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

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

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

76. Their Lordships of Hon^{ble} Supreme Court in Welfare Asscn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others, have held that in every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within an item in the list. Their Lordships have further held that there is a presumption that the legislature does not exceed its jurisdiction. Their Lordships have held as under:-

25. What should be the approach of the Court dealing with a challenge to the constitutionality of a legislation has been succinctly set out in Principles of Statutory Interpretation by Justice G.P. Singh (Eighth Edition, 2001 at pp. 453-454 and 36). A statute is construed so as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat". (It is better to validate a thing than to invalidate it). There is a presumption that the Legislature does not exceed its jurisdiction. The burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. If a case of violation of a constitutional provision is made out then the State must justify that the law can still be protected under a saving provision. The Courts strongly lean against reducing a statute to a futility. As far as possible, the Courts shall act to make a legislation effective and operative.

28. The fountain source of legislative power exercised by the Parliament or the State Legislatures is not Schedule-7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three Lists in Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three Lists are fields of legislation. The Constitution makers purposely used general and comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the Lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the Courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another List.

29. In every case where the legislative competence of a Legislature in regard to a particular enactment is challenged with reference to the entries in the various Lists, it is necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within an item in the List. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of Constitutional Law that everything necessary to the exercise of a power is included in the grant of the power (See the Constitution Bench decision in *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*,

77. Their Lordships of Hon''ble Supreme Court in *Bharat Hydro Power Corpn. Ltd. and Others Vs. State of Assam and Another*, have held that onus to show repugnancy and extent of repugnancy lies on the party attacking validity of the legislation. Their Lordships have further held that if two legislations operate in different fields without encroaching upon each other''s field there cannot be any repugnancy. Their Lordships have held as under:-

18. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of the another Legislature. This may result in large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged in the field of other legislatures, in fact or in substance,

or is incidental, keeping in view the true nature of the enactment, the Courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of enactment falls within Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the Courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of "pith and substance" regard is to be had (i) to the enactment as a whole, (ii) to its main objects, with (iii) to the scope and effect of its provisions. For this see: *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, ; *Thakur Amar Singhji Vs. State of Rajasthan*, *Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others*, and *Vijay Kumar Sharma and others Vs. State of Karnataka and others*, In the last mentioned case it was held:

Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List trenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by the large the law falls within the four corners of the State List and trenchment, if any, is purely incidental or inconsequential.

19. Another principle which needs to be stated here is that when the question is as to whether a provincial legislation is repugnant to the laws enacted by the Parliament the onus to showing its repugnancy and the extent to which it is repugnant would be on the party attacking its validity. There ought to be a presumption in favour of its validity and every effort should be made to reconcile them and construe both so as to avoid they being repugnant to each other. Repugnancy has to be there in fact and not based on a mere possibility. If the two enactments operate in different fields without encroaching upon each other then there would be no repugnancy. In AIR 1939 74 (Federal Court) the Court held:

When the question is whether a provincial legislation is repugnant to an existing India Law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further repugnancy must exist in fact, and not

depend merely on a possibility:

Their Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the province of Ontario where the prohibitions of the Canadian Act are not and may never be in force: (1896) AC 348 369-370.

39. The impugned Act and the Central Acts in the instant case operate in two different fields without encroaching upon each other's field in as much as the true nature and character of the impugned State Act is to acquire the undertaking the pay compensation as provided in the Act whereas both the Central Acts (Acts of 1910 and 1948) have made general provisions with regard to supply and use of electrical energy. The provisions regarding purchase of undertaking in the Act of 1910 would not be applicable as the appellants are not licensees within the meaning of the Act of 1910. There is not even a semblance of conflict what to talk of direct conflict between the impugned State Act and the Central Acts to bring about the situation where one cannot be obeyed without disobeying the others. Both the Acts can operate simultaneously as they do not occupy the same field. As the enactments operate in two different fields without encroaching upon each other's field there is no repugnancy.

40. Since there is no repugnancy the question of the State Act being kept for the consideration of the President or receiving his assent did not arise.

78. Their Lordships of Hon^{ble} Supreme Court in Association of Natural Gas and Others Vs. Union of India (UOI) and Others, have held that if there is conflict between the Union and States, the endeavour of the court should be to reconcile by applying pith and substance Rule. Their Lordships have held as under:-

13. The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and the Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative power of both Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an Entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the Court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same.

79. Their Lordships of Hon^{ble} Supreme Court in Engineering Kamgar Union Vs. Electro Steels Castings Ltd. and Another, have held that repugnancy would be applicable only in case of direct conflict. Their Lordships have further held that direct conflict arises not only where one of the Acts has to be disobeyed if the other is followed but also where both the laws lead to different results. Their Lordships have also held that the existence of repugnancy is to be determined

keeping in view the law already made irrespective of whether it had or had not been brought into force. Their Lordships have held as under:-

19. Article 254 of the Constitution of India would be attracted only when legislations covering the same ground both by Centre and by the Province operate in the field; both of them being competent to enact. (See *Deep Chand Vs. The State of Uttar Pradesh and Others*, *M. Karunanidhi (supra)* and *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*,

21. The Central Act and the State Act indisputably cover the same field. The jurisdiction of the State Legislature to enact a law by a Parliamentary legislation is not impermissible. Subject to the provisions contained in Art. 254 of the Constitution of India, both will operate in their respective fields. The constitutional scheme in this behalf is absolutely clear and unambiguous. In this case, this Court is not concerned with the conflicting legislations operating in the same field by reason of enactments made by the Parliament and the State in exercise of their respective legislative powers contained in List I and List II of the Seventh Schedule of Constitution of India but admittedly the field being the same, a question would arise as regard the effect of one Act over the other in the event it is found that there exists a conflict. For the said purpose, it is not necessary that the conflict would be direct only in a case wherein the provisions of one Act would have to be disobeyed if the provisions of the other is followed. The conflict may exist even where both the laws lead to different legal results.

24. The judgments of this Court clearly lay down the law to the effect that if two Acts produce two different legal results, a conflict will arise.

25. The State Act lays down a complete exhaustive Code. It covers the same subject-matter as contained in Ss. 25K and 25O of the Central Act. Both the State Act and the Central Act contain penal provisions. If the procedures laid down in the Central Act are not applicable, a person need not comply the provisions therein keeping in view the fact that its industrial establishment is covered by the State Act in terms whereof the applicability of the relevant provisions would be attracted only when the establishment employees more than 300 persons.

31. Keeping in view the constitutional scheme vis-a-vis the Central Act and the State Act, we are of the opinion that there exists a conflict and, thus, Art. 254 of the Constitution would be attracted.

Date of coming into force of the Central Act-Is it material?

32. The phraseology used in Art. 254 of the Constitution of India is clear and unambiguous. It does not contemplate coming into effect of a law having regard to the nature of the legislation as a conditional one. It in no uncertain terms states that the conflict is required to be found out keeping in view a law which has already been made. The makers of the Constitution deliberately and consciously used past tense. It has, thus, to be given its ordinary meaning.

41. In any event, such a question could have arisen for consideration if the Central Act and the State Act had been enacted in terms of different entries of List I and List II of the Seventh Schedule of the Constitution of India. In this case, admittedly both the Central Act and the State Act had been enacted in terms of Entry 22 of List III of the Seventh Schedule of Constitution of India. In case of any conflict therefor the constitutional scheme contained in Art. 254 will have to be applied. Even if S. 258 of the State Act is read to have an overriding effect, undoubtedly the provisions of the supreme law shall prevail over a statute. A non obstante clause contained in a statute cannot override the provisions of the Constitution of India.

80. Their Lordships of Hon^{ble} Supreme Court in Punjab Dairy Development Board and Another, etc. Vs. Cepham Milk Specialities Ltd. and Others, etc., have held that repugnancy must exist as a fact and not as a mere possibility. In the absence of any specific order or provision the question of repugnancy cannot arise. Their Lordships have held as under:-

12. Even otherwise, we find that the High Court was wrong in concluding that the field was already occupied by a Central legislation, namely, the Industries (Development and Regulation) Act, 1951. As laid down in the cases of Ch. Tika Ramji v. State of U.P. and Belsund Sugar Co. Ltd. v. State of Bihar repugnancy must exist as a fact and not as a mere possibility. In the absence of any specific order or provision the question of repugnancy cannot arise. Admittedly, the Central legislation levies no cess or fee. Thus, there can be no question of repugnancy if a fee were to be levied.

81. Their Lordships of Hon^{ble} Supreme Court in Hindustan Lever and Another Vs. State of Maharashtra and Another, have explained the doctrines of "occupied field", "covered field", "pith and substance" as under:-

34. In Welfare Assn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others, it was held that there is a presumption that the Legislature does not exceed its jurisdiction. A statute should be construed so as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat". (It is better to validate a thing than to invalidate it). The burden of establishing that the Act is within the competence of the Legislature, or that it has transgressed other constitutional mandates is always on the person who challenges its vires. That the fountain source of legislative power exercised by the Parliament or the State Legislature is not Schedule Seven; the fountain source is Article 246 and other provisions of the Constitution. The function of the three Lists in Seventh Schedule is merely to demarcate legislative fields between Parliament and State Legislatures and not to confer any legislative power. The several entries mentioned in the three Lists are fields of legislation. While exercising the legislative competence of a Legislature in regard to a particular enactment with reference to the entries in the various lists it is necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within the item in the list. The express words employed in an entry

would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at.

35. If the matter is within the exclusive competence of State Legislature, i.e., List II then the Union Legislature is prohibited to make any law with regard to the same. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the State Legislatures. The concept of occupied field is relevant in the case of laws made with reference to entries in List III. The doctrine of covered field has to be applied only to the Entries in List III. This proposition of law is well settled in a number of decisions of this Court including State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., State of Rajasthan and Others Vs. Vatan Medical and General Store and Others etc. etc., and Shri Krishna Gyanoday Sugar Ltd. & Anr. Vs. State of Bihar, 2003 (2) Scale 226.

82. Their Lordships of Hon"ble Supreme Court in State of Haryana Vs. State of Punjab and Another, have held that merely saying that a particular provision is legislatively incompetent or discriminatory will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. Their Lordships have held as under:-

82. The challenge to Section 14 of the 1956 Act has been made "without prejudice to Punjab's pending application u/s 5(3) of the Act". Assuming such a reservation is legally possible, the ground for submitting that Section 14 of the 1956 Act is "unsustainable" is legally impermissible. It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word "unsustainable") of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in subparagraphs (i), (iv), (v), (vi) and (vii) to declare Section 14 invalid. Furthermore, merely saying that a particular provision is legislatively incompetent [ground (ii)] or discriminatory [ground (iii)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine.

83. In K.M. Vijayan, Senior Advocate Vs. State of Tamil Nadu, learned Division Bench of Madras High Court has upheld the constitutionality of the Green Tax on motor vehicles. The Division Bench has further held that even if it is tax on pollution, the State is competent to levy it. The Division Bench has further considered entry 6 of the State List (Public Health). Learned Division Bench has held as under:-

17. From the above discussion, we conclude that,

(1) the Notification u/s 3(A) is not a law relating to Pollution Control. It is a law pertaining to imposition of tax on a motor vehicle using Tamil Nadu roads which are old vehicles;

(2) the fact that the amount recovered are used for implementation of various measures to control pollution will not make the pith and substance of the amendment of the Act as one falling within Pollution;

(3) the Supreme Court itself has directed that necessary legislation and rules are to be issued to prevent motor vehicle causing pollution and such direction should be issued to the registering authority, which means that can be issued only by the State Government; and

(4) the subject "pollution" falls under Entry 6 of State List, namely "Public Health" and the Pollution Control Legislation are passed in National interest under Article 249 of the Constitution. In fact, a law has been enacted by the Central legislation in respect of Water and Air Pollution, but it does not take away the power of the State Government to legislate on the above subject. The power is still available under Entry 6 of List II State List, for State to legislate. Accordingly, we reject the contentions raised by Mr. Vijayan, learned Senior Advocate, relating to "Green tax".

18. Now, we shall consider the challenge relating to "lifetime tax". It would be useful to refer the relevant provisions of the Tamil Nadu Motor Vehicles Taxation Act, 1974 and the Tamil Nadu Motor Vehicles Taxation Rules, 1974.

84. Their Lordships of Hon'ble Supreme Court in Govt. of A.P. and Another Vs. J.B. Educational Society and Another etc., have held that the Court's duty is to interpret the enactments to avoid conflict between the Parliamentary Legislation and State Legislation. Their Lordships have held as under:-

9. The Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non-obstinate clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State legislature with respect to a matter enumerated in List II of the Seventh Schedule.

10. There is no doubt that both Parliament and the State legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the legislations made by the Parliament and the State legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non-obstinate clause in Clause (1) of Article 246, the Parliamentary legislation would prevail notwithstanding the exclusive power of the State legislature to make a law with respect to a matter enumerated in the State List.

11. With respect to matters enumerated in the List III (Concurrent List), both the Parliament and the State legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

12. Thus, the question of repugnancy between the Parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in Concurrent List and there is a conflict. In both the situations, Parliamentary legislation will predominate, in the first, by virtue of the non-obstinate clause in Article 246(1), in the second, by reason of Article 245(1). Clause (2) of Article 245 deals with a situation where the State legislation having been reserved and having obtained President's assent prevails in that State; this again is subject to the proviso that the Parliament can again bring a legislation to override even such State legislation

85. Their Lordships of Hon'ble Supreme Court in *Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others*, have reiterated that Article 254 deals only with laws made by Parliament and State Legislatures in respect of matters enumerated in the concurrent list. Therefore, article 254 would be inapplicable in case of conflict between State Act made under Schedule VII List II Entry 53 and Central Act under list III Entry 38. Their Lordships have held as under:-

57. In *National Thermal Power Corpn. Ltd. (supra)*, this Court has clearly held that "the power of the State Legislature to enact law to levy tax by reference to List II of the Seventh Schedule has two limitations: one, arising out of the entry itself, and the other, flowing from the restriction embodied in the Constitution.

Entry 53 does not contain any such restriction and, thus, Clause (3) of Article 254 of the Constitution of India will have no application in the instant case.

61. Article 254 deals with methods of resolving conflict between the law made by the Parliament and law made by the State in respect of the matters enumerated in the concurrent list.

In *M.P. Vidyut Karamchari Sangh Vs. M.P. Electricity Board*, it was held:

28. Recourse to the said principles, however, would be resorted to only when there exists direct conflict between two provisions and not otherwise. Once it is held that the law made by Parliament and the State Legislature occupy the same field, the subsequent legislation made by the State which had received the assent of the President of India indisputably would prevail over the parliamentary Act when there exists direct conflict between two enactments. Both the laws would ordinarily be allowed to have their play in their own respective fields. However, in the event there does not exist any conflict, the parliamentary Act or

the State Act shall prevail over the other depending upon the fact as to whether the assent of the President has been obtained therefor or not. (See *Bharat Hydro Power Corpn. Ltd. v. State of Assam*)

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86. Their Lordships of Hon"ble Supreme Court in *Dharappa Vs. Bijapur Co-operative Milk Producers Societies Union Ltd.*, have again reiterated the principles to determine repugnancy under Article 254 of the Constitution of India. Their Lordships have held as under:-

12. "Co-operative societies" fall under Entry 32 of the State List. "Industrial and labour disputes" fall under Entry 22 of the Concurrent List. Industrial Disputes Act, 1947 is an "existing law" with respect to a matter enumerated in the Concurrent List, namely, industrial and labour disputes. A dispute between a co-operative society and its employees in regard to terms of employment, working conditions and disciplinary action, is an industrial and labour dispute squarely covered by an existing law (ID Act), if the employees are "workmen" as defined in the ID Act. Clause (1) of Article 254 provides that if any provision of a law made by a State Legislature is repugnant 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 existing law shall prevail, and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. Clause (2) of Article 254, however, provides that where a law made by the

Legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an Entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co-exist and operate without repugnancy with the provisions of the existing law. What is stated above with reference to an existing law, is also the position with reference to a law made by the Parliament. Repugnancy is said to arise when: (i) there is clear and direct inconsistency between the Central and the State Act; (ii) such inconsistency is irreconcilable, or brings the State Act in direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. If the State Legislature, while making or amending a law relating to co-operative societies, makes a provision relating to labour disputes falling under the Concurrent List, then Article 254 will be attracted if there is any repugnancy between such provision of the State Act (MCS Act) with the existing law (ID Act). We will have to examine the issue in this case keeping the above legal position in mind.

15. In *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, , this Court considered Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964, which dealt with disputes which could be referred to the Registrar. The said section was in pari materia with Section 70 of KCS Act, as it originally stood, before the amendments under Act 19 of 1976 and Act 2 of 2000. This Court held that where a State Co-operative Societies Act had received the assent of the President, if any provision of such State Act was repugnant to any provision of the ID Act, the provisions of the State Act will prevail over the provisions of the ID Act. This Court accepted the general proposition that the jurisdiction of the Industrial Tribunal/Labour Court under the Industrial Disputes Act will be barred if the disputes can be competently decided by the Registrar u/s 61 of the Andhra Pradesh Act, in view of the fact that the Andhra Pradesh Act had received the assent of the President. This Court then proceeded to examine whether disputes relating to service conditions of workmen could be referred to the Registrar for decision u/s 61 of the State Act and held that the disputes could only be decided by an Industrial Tribunal dealing with an industrial dispute. This

Court held that the Registrar under the Co-operative Societies Act, could not grant the relief in respect of such disputes because of the limitations placed on his powers under the Act itself, and having regard to the expression "touching the business of the society" in Section 61 which did not include a dispute in regard to conditions of service of workmen.

87. Their Lordships of Hon^{ble} Supreme Court in *State of Maharashtra Vs. Bharat Shanti Lal Shah and Others*, have held that if in pith and substance, the area and subject of the State Act falls under an entry within the competence of the State Legislature (i.e. entry contained in State List or Concurrent List), mere incidental encroachment on topics in the Union List would not make the State Act invalid and ultra vires the Constitution. Their Lordships have further held that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that the State law is repugnant to be Union Law. Their Lordships have further held that though statement of objects and reasons cannot be used to determine the true meaning and effect of the substantive provisions of a statute, but can be referred to for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the status and evil which the statute sought to remedy. Their Lordships have also held that there must always be a presumption of constitutionality in favour of a statute and while constructing a State statute every legally permissible effort should be made to keep the same within the competence of the State Legislature. Their Lordships have held as under:-

40. It is also a cardinal rule of interpretation that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of State legislature. In *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, this Court held the same in the following manner:

25... Where the validity of a law made by a competent authority is challenged in a Court of law that court is bound to presume in favour of its validity. Further while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained...

43. One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the respective Legislature under the constitutional scheme. The said doctrine

has come to be established in India and is recognized in various pronouncements of this Court as also of the High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on topics in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the topics in the Union List.

46. Though it is true that the State Legislature would not have power to legislate upon any of the matters enumerated in the Union List but as per the doctrine of Pith and Substance there could not be any dispute with regard to the fact that if it could be shown that the area and subject of the legislation is also covered within the purview of the entry of the State List and the Concurrent List, in that event incidental encroachment to an entry in the Union List will not make a law invalid and such an incidental encroachment will not make the legislation ultra vires the Constitution.

48. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by the Parliament and the State Legislature. The question of repugnancy under Article 254 will arise when a law made by Parliament and a law made by State Legislature occupies the same field with respect to one of the matters enumerated in Concurrent List and there is a direct conflict in two laws. In other words, the question of repugnancy arises only in connection with subjects enumerated in Concurrent List. In such situation the provisions enacted by Parliament and State Legislature cannot unitedly stand and the State law will have to make the way for the Union Law. Once it is proved and established that the State law is repugnant to the Union law, the State law would become void but only to the extent of repugnancy. At the same time it is to be noted that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that State law is repugnant to Union law.

53. It is now well settled that though the Statement of Objects and Reasons accompanying a legislative Bill cannot be used to determine the true meaning and effect of the substantive provisions of a statute, but it is permissible to refer to the Statement of Objects and Reasons accompanying a Bill for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. In this regard we may refer to the majority view (6:1) in the case of *State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others*, wherein it was observed as under:

Question 4. Statement of Objects and Reasons--Significance and role thereof 69. Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to the

statute, and the evil which the statute has sought to remedy. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004, at p. 218). In *The State of West Bengal Vs. Subodh Gopal Bose and Others*, the Constitution Bench was testing the constitutional validity of the legislation impugned therein. The Statement of Objects and Reasons was used by S.R. Das, J. for ascertaining the conditions prevalent at that time which led to the introduction of the Bill and the extent and urgency of the evil which was sought to be remedied, in addition to testing the reasonableness of the restrictions imposed by the impugned provision. In his opinion, it was indeed very unfortunate that the Statement of Objects and Reasons was not placed before the High Court which would have assisted the High Court in arriving at the right conclusion as to the reasonableness of the restriction imposed. *State of West Bengal Vs. Union of India*, approved the use of Statement of Objects and Reasons for the purpose of understanding the background and the antecedent state of affairs leading up to the legislation.

70. In *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, itself, which has been very strongly relied upon by the learned counsel for the respondents before us, Chief Justice S.R. Das has held: (SCR pp. 652 & 661) "The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. (AIR para 15)

* * *..."

The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence...". This should be the proper approach for the court but the ultimate responsibility for determining the validity of the law must rest with the court.... (AIR para 21, also see the several decisions referred to therein.)"

71. The facts stated in the preamble and the Statement of Objects and Reasons appended to any legislation are evidence of the legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction

imposed on the fundamental rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved.

88. Their Lordships of Hon''ble Supreme Court in Zameer Ahmed Latifur Rehman Sheikh Vs. State of Maharashtra and Others, have held that it is a well-established rule of interpretation that the entries in the list being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. There is presumption of constitutionality in favour of a statute. Their Lordships have reiterated that one of the proven methods of examining the legislative competence of a legislature with regard to an enactment is by the application of the doctrine of pith and substance. Their Lordships have held as under:-

38. It is a well-established rule of interpretation that the entries in the List being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. Each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. [Reference in this regard may be made to the decisions of this Court in Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, State of Maharashtra Vs. Bharat Shanti Lal Shah and Others,

39. It is also a cardinal rule of interpretation that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature [Reference may be made to the cases of: Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, Karnataka Bank Ltd. Vs. State of A.P. and Others,

40. One of the proven methods of examining the legislative competence of a legislature with regard to an enactment is by the application of the doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. This doctrine is an established principle of law in India recognized not only by this Court, but also by various High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the Court has to look to the substance of the State Act and on such analysis and examination, if it is

found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on any of the matters enumerated in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the matters in the Union List.

43. It is common ground that the State Legislature does not have power to legislate upon any of the matters enumerated in the Union List. However, if it could be shown that the core area and the subject-matter of the legislation is covered by an entry in the State List, then any incidental encroachment upon an entry in the Union List would not be enough so as to render the State law invalid, and such an incidental encroachment will not make the legislation ultra vires the Constitution.

89. Their Lordships of Hon''ble Supreme Court in *Bondu Ramaswamy Vs. Bangalore Development Authority and Others*, have reiterated that question of repugnancy can arise only where State Law and Central Law are with reference to any one of the matters enumerated in List III. Their Lordships have held as under:-

91. The question of repugnancy can arise only where the State law and the existing Central law are with reference to any one of the matters enumerated in the Concurrent List. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, that is, when both the Union and State laws relate to a subject in List III. Article 254 has no application except where the two laws relate to subjects in List III [See: *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, But if the law made by the State Legislature, covered by an Entry in the State List, incidentally touches upon any of the matters in the Concurrent List, it is well-settled that it will not be considered to be repugnant to an existing Central law with respect to such a matter enumerated in the Concurrent List. In such cases of overlapping between mutually exclusive lists, the doctrine of pith and substance would apply. Article 254 will have no application if the State law in pith and substance relates to a matter in List II, even if it may incidentally trench upon some item in List III. (See *Hoechst (supra)*, AIR 1947 72 (Privy Council) 1949-50 F.C.R. 693 (Federal Court))

90. Where the law covered by an Entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can co-exist and operate without repugnancy to the provisions of the existing law. This Court in *Munithimmaiah (supra)* has held that the BDA Act is an Act to provide for the establishment of a development authority to facilitate and ensure planned growth and development of the City of Bangalore and areas adjacent thereto, and that acquisition of any lands, for such development, is merely incidental to the main object of the Act, that is development of Bangalore Metropolitan area. This Court

held that in pith and substance, the BDA Act is one which squarely falls under Entry 5 of List II of the Seventh Schedule and is not a law for acquisition of land like the LA Act, traceable to Entry 42 of List III of the Seventh Schedule, the field in respect of which is already occupied by the Central Act, as amended from time to time. This Court held that if at all, BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same will not be considered to be a part of the LA Act. The fallacy in the contention of the appellants is that it assumes, erroneously, that BDA Act is a law referable to Entry 42 of List III, while it is a law referable to Entry 5 of List II. Hence the question of repugnancy and Section 6 of the LA Act prevailing over Section 19 of BDA Act would not at all arise."

91. Their Lordships of Hon^{ble} Supreme Court in *Girnar Traders Vs. State of Maharashtra and Others*, have explained the origin and applicability of the doctrine of "pith and substance" as under:-

173. The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want of legislative competence as well as where two legislations are embodied together for achieving the purpose of the principal Act. Keeping in view that we are construing a federal Constitution, distribution of legislative powers between the Centre and the State is of great significance. Serious attempt was made to convince the Court that the doctrine of pith and substance has a very restricted application and it applies only to the cases where the Court is called upon to examine the enactment to be ultra vires on account of legislative incompetence.

174. We are unable to persuade ourselves to accept this proposition. The doctrine of pith and substance find its origin from the principle that it is necessary to examine the true nature and character of the legislation to know whether it falls in a forbidden sphere. This doctrine was first applied in India in the case of AIR 1947 60 (Privy Council) *The principle has been applied to the cases of alleged repugnancy and we see no reason why its application cannot be extended even to the cases of present kind which ultimately relates to statutory interpretation founded on source of legislation.*

176. An apparent repugnancy upon proper examination of substance of the Act may not amount to a repugnancy in law. Determination of true nature and substance of the laws in question and even taking into consideration the extent to which such provisions can be harmonized, could resolve such a controversy and permit the laws to operate in their respective fields. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, i.e. when both, the Union and the State laws, relate to a subject in List III *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*,

179. The Court has to keep in mind that function of these constitutional lists is not to confer power, but to merely demarcate the legislative heads or fields of

legislation and the area over which the appropriate legislatures can operate. These Entries have always been construed liberally as they define fields of power which spring from the constitutional mandate contained in various clauses of Article 246. The possibility of overlapping cannot be ruled out and by advancement of law this has resulted in formulation of, amongst others, two principal doctrines, i.e. doctrine of pith and substance and doctrine of incidental encroachment. The implication of these doctrines is, primarily, to protect the legislation and to construe both the laws harmoniously and to achieve the object or the legislative intent of each Act. In the ancient case of AIR 1941 47 (Federal Court) Sir Maurice Gwyer, CJ supported the principle laid down by the Judicial Committee as a guideline, i.e. pith and substance to be the true nature and character of the legislation, for the purpose of determining as to which list the legislation belongs to.

181. The primary object of applying these principles is not limited to determining the reference of legislation to an Entry in either of the lists, but there is a greater legal requirement to be satisfied in this interpretative process. A statute should be construed so as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat*. Once it is found that in pith and substance, an Act is a law on a permitted field then any incidental encroachment, even on a forbidden field, does not affect the competence of the legislature to enact that law *State of Bombay Vs. Narothamdas Jethabai and Another*,

182. To examine the true application of these principles, the scheme of the Act, its object and purpose, the pith and substance of the legislation are required to be focused at, to determine its true nature and character. The State Act is intended only to ensure planned development as a statutory function of the various authorities constituted under the Act and within a very limited compass. An incidental cause cannot override the primary cause. When both the Acts can be implemented without conflict, then need for construing them harmoniously arises.

187. Even if fractional overlapping is accepted between the two statutes, then it will be saved by the doctrine of incidental encroachment, and it shall also be inconsequential as both the constituents have enacted the respective laws within their legislative competence and, moreover, both the statutes can eloquently co-exist and operate with compatibility. It will be in consonance with the established canons of law to tilt the balance in favour of the legislation rather than invalidating the same, particularly, when the Central and State Law can be enforced symbiotically to achieve the ultimate goal of planned development.

92. Their Lordships of Hon^{ble} Supreme Court in *Offshore Holdings Pvt. Ltd. Vs. Bangalore Development Authority and Others*, have explained the doctrine of pith and substance and held that Article 246 of the Constitution of India is one of the sources conferring power to legislate. Their Lordships have further held that the principle of federal supremacy should normally be resorted to only when conflict is so patent and irreconcilable that coexistence of the two laws is not feasible.

Their Lordships have further held that onus of proof lies on the person challenging the Act on the ground of being ultra vires. Their Lordships have held as under:

62. There cannot be any doubt that acquisition and requisitioning of property, as specified in Entry 42 of List III of Schedule VII which, read with Article 246, is a standalone Entry for acquisition of land. The very fact that the subject falls in the Concurrent List means that both the legislative constituents, i.e. the Parliament and the State legislatures, have legislative competence to legislate on that subject. Further, it can also not be disputed that the Land Acquisition Act has been enacted earlier, in point of time, in comparison to BDA Act. The Land Acquisition Act is a law enacted by the Parliament while BDA Act is a State legislation. Therefore, the question that really requires consideration of the Court is whether the State law is in conflict with or repugnant to Central law, if so, what would be its effect? There is no dispute that the State law, though enacted subsequent to the Central law, is not saved if repugnancy results according to the provisions of Article 254(1) of the Constitution as the BDA Act was never reserved for consideration of the President and never received his assent in terms of Article 254(2) of the Constitution.

63. As this was the principal argument vehemently addressed by the learned counsel appearing for the appellant, let us examine the ambit and scope of these Entries and its impact on the validity of law so enacted. Article 246 of the Constitution of India provides the subject matters on which laws can be enacted by the Parliament or by the State legislatures, as the case may be. In terms of Article 246(1) of the Constitution, the Parliament has the exclusive power to make laws with respect to any of the matters enumerated in List I of Schedule VII, referred to as "Union List". Article 246(2) empowers the Parliament and the State legislature, subject to Article 246(1), to make laws on any of the matters enumerated in List III of Schedule VII, termed as "Concurrent List". Subject to clauses (1) and (2) of Article 246, the State has exclusive powers to make laws for such State, or any part thereof, with respect to any of the matters enumerated in List II of Schedule VII, termed as State List under Article 246(3). Article 246(4) gives power to the Parliament to make laws with respect to any matter for any part of the territory of India not included in a "State" and notwithstanding that such matter is a matter enumerated in the State List.

64. As already noticed Entry 42 of List III of Schedule VII relates to "acquisition and requisitioning of property". This Entry, read with Article 246 of the Constitution, empowers the Parliament as well as the State legislatures to enact laws in that field. Development of land is not a subject that finds place either in the Concurrent List or in the Union List for that matter.

65. We may now refer to the relevant Entries in the State List. Entry 5 of List II reads as under:

5. Local government, that is to say, the constitution and powers of municipal

corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

And Entry 18 of List II reads as under:

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

66. In other words, the State legislature has legislative competence to enact laws to constitute and define powers of the Municipal Corporation, Improvement Trust and other local authorities for the purpose of local self-governance or village administration. The State is also empowered to enact laws with respect to land, i.e. right in or over the land, transfer and alienation of agricultural land, land improvement, colonising, etc. Thus, these two Entries, which have been worded very widely, give power to the State legislature to constitute and define powers of any local authority which, in furtherance to the powers vested in it, can deal with the subject of development, colonising and even transfer of land etc. The Land Acquisition Act certainly relates to Entry 42 of List III while the BDA Act is undoubtedly relatable to Entries 5 and 18 of List II of Schedule VII.

67. The Entries in the legislative Lists are not the source of powers for the legislative constituents but they merely demarcate the fields of legislation. It is by now well settled law that these Entries are to be construed liberally and widely so as to attain the purpose for which they have been enacted. Narrow interpretation of the Entries is likely to defeat their object as it is not always possible to write these Entries with such precision that they cover all possible topics and without any overlapping.

71. The Courts have taken a consistent view and it is well-settled law that various Entries in three lists are not powers of legislation but are fields of legislation. The power to legislate flows, amongst others, from Article 246 of the Constitution. Article 246(2), being the source of power incorporates the non-obstinate clause, "notwithstanding anything contained in Clause (3), Parliament and, subject to clause (1), the legislature of any State" have power to make laws with respect to any of the matters enumerated in List III. Article 246 clearly demarcates the fields of legislative power of the two legislative constituents. It clearly states on what field, with reference to the relevant constitutional Lists and which of the legislative constituents has power to legislate in terms of Article 246 of the Constitution. While the States would have exclusive power to legislate under Article 246(2) of the Constitution in relation to List II; the Concurrent List keeps the field open for enactment of laws by either of the legislative constituents. In the event the field is covered by the Central legislation, the State legislature is not expected to enact a law contrary to or in conflict with the law framed by the Parliament on the same subject.

76. Once we analyze the above-stated principle, it is obvious that Entries in the

constitutional Lists play a significant role in examining the legislative field taking its source of power from Article 246 of the Constitution. BDA Act is an Act which provides for formulation and implementation of schemes relating to development of the Bangalore City. Acquisition of land is neither its purpose nor its object and is merely an incidental consequence of principal purpose of development of land. Planned development under the scheme is a very wide concept and the concerned Authorities are accordingly vested with amplified functions and powers.

89. In our view the above judgments also furnish a complete answer to the contentions raised before us. Having bestowed our careful consideration to the matter in issue, we are unable to persuade ourselves to accept the contentions that the BDA Act is a law relatable exclusively to Entry 42 of List III of Schedule VII and is beyond the legislative competence of the State legislature.

Application of different doctrines on the facts of the present case to determine repugnancy and/or overlapping

92. One of the settled principles to examine the repugnancy or conflict between the provisions of a law enacted by one legislative constituent and the law enacted by the other, under the Concurrent List, is to apply the doctrine of pith and substance. The purpose of applying this principle is to examine, as a matter of fact, what is the nature and character of the legislation in question. To examine the "pith and substance" of a legislation, it is required of the Court to examine the legislative scheme, object and purpose of the Act and practical effect of its provisions. After examining the statute and its provisions as a whole, the Court has to determine whether the field is already covered. While examining these aspects, it should further be kept in mind that the legislative constituent enacting the law has the legislative competence with respect to Article 246 read with the Lists contained in Schedule VII to the Constitution. It is the result of this collective analysis which will demonstrate the pith and substance of the legislation and its consequential effects upon the validity of that law.

98. We shall shortly examine whether there is conflict between the two laws which are the subject matter of the present appeal but, on due application of the principle of pith and substance, we have no doubt in our minds that the BDA Act is actually referable to Entry 5 of List II of Schedule VII to the Constitution. We are dealing with a federal Constitution and its essence is the distribution of legislative powers between the Centre and the State. The Lists enumerate, elaborately, the topics on which either of the legislative constituents can enact. Despite that, some overlapping of the field of legislation may be inevitable.

93. Their Lordships of Hon''ble Supreme Court in K.K. Baskaran Vs. State rep. by its Secretary, Tamil Nadu and Others, have held explained that when a legislation overlaps both List I as well as List II of Schedule VII, doctrine of pith and substance is applied. Their Lordships have held as under:-

18. It often happens that a legislation overlaps both Lists I as well as List II of the Seventh Schedule. In such circumstances, the doctrine of pith and substance

is applied. We are of the opinion that in pith and substance the impugned State Act is referable to Entries 1, 30 and 31 of List II of the Seventh Schedule and not Entries 43, 44 and 45 of List I of the Seventh Schedule.

21. The doctrine of pith and substance means that an enactment which substantially falls within the powers expressly conferred by the Constitution upon a Legislature which enacted it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. The Court must consider what constitutes in pith and substance the true subject matter of the legislation. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid even though it incidentally trenches on matters beyond its legislative competence vide *Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College*,

22. For applying the doctrine of pith and substance regard is to be had to the enactment as a whole, its main objects and the scope and effect of its provisions vide *Association of Natural Gas and Others Vs. Union of India (UOI) and Others*, For this purpose the language of the Entries in the Seventh Schedule should be given the widest scope of which the meaning is fairly capable vide *State of West Bengal vs. Kesoram Industries Ltd. (supra)* (para 31(4)), *Union of India vs. Shah Goverdhan Kabra Teachers College (supra)* (para 6), *ITC Ltd. vs. State of Karnataka (supra)* (para 17).

94. Their Lordships of Hon''ble Supreme Court in *K.T. Plantation Pvt. Ltd. and Another Vs. State of Karnataka*, I have held that test to determine repugnancy whether State law and Central Law cover or relate to same subject-matter, is identicalness or diversity between dominant intention of the two legislations. Their Lordships have further held that mere incidental/partial coverage of same area in a different context and to achieve a different purpose would not amount to repugnancy. Their Lordships have held as under:

107. The plea of repugnancy can be urged only if both the legislations fall under the Concurrent List. Under Article 254 of the Constitution, a State law passed in respect of a subject matter comprised in List III would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only if both the laws cannot exist together.

108. The question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are fully inconsistent or are absolutely irreconcilable and it is impossible without disturbing the other, or conflicting results are produced, when both the statutes covering the same field are applied to a given set of facts. Repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by the Parliament and the law made by the State Legislature occupies the same field. Reference may be made to the decisions of this Court in *Deep Chand Vs. The State of Uttar Pradesh and Others*, *Prem Nath Kaul Vs. The State of Jammu and*

Kashmir, *Ukha Kolhe v. State of Maharashtra* AIR 1963 SC 1531; *The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another*, *T. Barai Vs. Henry Ah Hoe and Another*, ; *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, and *Vijay Kumar Sharma and others Vs. State of Karnataka and others*,

109. When the repugnancy between the Central and State Legislations is pleaded we have to first examine whether the two legislations cover or relate to the same subject matter. The test for determining the same is to find out the dominant intention of the two legislations and if the dominant intention of the two legislations is different, they cover different subject matter then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same field.

110. A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). In other words, both the legislations must be substantially on the same subject to attract Article 254. In this connection, reference may be made to the decisions of this Court in *Municipal Council Palai Vs. T.J. Joseph and Others*, ; *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, ; *M. Karunanidhi Vs. Union of India and Another*, ; and *Vijay Kumar Sharma and others Vs. State of Karnataka and others*,

95. Their Lordships of Hon"ble Supreme Court in *State of Kerala and Others Vs. Mar Appraem Kuri Company Ltd. and Another*, have explained when the question of repugnancy would arise between parliamentary legislation and State Legislation as under:-

47. The question of repugnancy between the Parliamentary Legislation and State Legislation arises in two ways. First, where the Legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two Legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the Parliamentary Legislation will predominate, in the first, by virtue of non-obstinate clause in Article 246(1); in the second, by reason of Article 254(1).

49. In clause (1) of Article 254 the significant words used are "provision of a law made by the Legislature of a State", "any provision of a law made by Parliament which Parliament is competent to enact", "the law made by Parliament, whether passed before or after the law made by the Legislature of such State", and "the law made by the Legislature of the State shall, to the extent of repugnancy, be void". Again, clause (2) of Article 254 speaks of "a law made by the Legislature of a State", "an earlier law made by Parliament", and "the law so made by the Legislature of such State". Thus, it is noticeable that throughout Article 254 the

emphasis is on law-making by the respective Legislatures.

96. Their Lordships of Hon^{ble} Supreme Court in *Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others*, have held that for a State law to be void under Article 254(2), there must be direct conflict of State law with Central Law. Their Lordships have further held that "direct conflict" is not necessarily restricted to obedience of one resulting in disobedience of the other but even where result of one would be in conflict with the other. Their Lordships have held as under:-

66. From the above consistent view of this Court it is clear that wherever the field is covered by the Parliamentary law in terms of List I and List III, the law made by the State Legislature would, to the extent of repugnancy, be void. Of course, there has to be a direct conflict between the laws. The direct conflict is not necessarily to be restricted to the obedience of one resulting in disobedience of other but even where the result of one would be in conflict with the other. It is difficult to state any one principle that would uniformly be applicable to all cases of repugnancy. It will have to be seen in the facts of each case while keeping in mind the laws which are in conflict with each other. Where the field is occupied by the Centre, subject to the exceptions stated in Article 254, the State law would be void.

97. Following principles emerge to see competence of the Parliamentary Legislation and the State Legislation and also to determine the repugnancy between the Parliamentary Legislation and the State Legislation under the Union List, State List and Concurrent List:-

(a) Where the Constitution Act has given to the provinces legislative power with respect to a certain matter in clear and unambiguous terms, the Court should not deny it to them or impose limitation on its exercise, on extraneous considerations.

(b) If an enactment according to its true nature, its pith and substance, clearly falls within one of the matters assigned to the Provincial Legislature it is valid notwithstanding its incidental encroachment on a Federal subject.

(c) Firstly, none of the items in each list is to be read in a narrow or restricted sense and secondly, where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. The important thing to consider with reference to Article 254(2) is whether the legislation is "in respect of the same matter". If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254(2) will have no application.

(d) If legislation is challenged on the ground that it is ultra vires the powers of the Legislature which enacted it, one must have regard to the enactment as a whole, to its objects to the scope and effect of its provisions.

(e) If a statute is found in substance to relate to a topic within the competence of the Legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence.

(f) In case there is a conflict between rival lists, it is necessary to examine the impugned legislation in its pith and substance and only if that pith and substance falls substantially within an entry or entries conferring legislative powers, is the legislation valid, a slight transgression upon a rival list, notwithstanding. It is also laid down that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given.

(g) When two entries in the Constitution whether in the same list or different lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. There may be instances when the entries are likely to overlap occasionally and in that eventuality, it would be usual to examine the pith and substance of legislation with a view to determining to which entry they can be substantially related, a slight connection with another entry in another list notwithstanding.

(h) The State has legislative competence to legislate on Entry 18 List II and Entry 42 List III and this power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52 List I. If a State Act, otherwise valid, has effect on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III.

(i) The repugnancy can only arise if both the parliamentary legislation and State legislation fall in terms of an entry in list III.

(j) The doctrine of "Dominion Paramountcy" does not operate merely because the Dominion has legislated on the same subject-matter. The doctrine of "occupied field" applies only where there is a clash between Dominion Legislation and Provincial Legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests.

(k) Before any repugnancy can arise the conditions which must be satisfied are: (1) that there is a clear and direct inconsistency between the Central Act and the State Act; (2) that such an inconsistency is absolutely irreconcilable and (3) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other. There can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

(l) It would not be correct to say that once a declaration is made under Entry 52 of List I in respect of an industry that industry as a whole is taken out of Entry 24 of List II. The State Legislature which is otherwise competent to deal with industry under Entry 24, List II, can deal with that industry in exercise of other

powers enabling it to legislate under different heads set out in Lists II and III and this power cannot be denied to the State.

(m) Where both the laws fall under different heads of the concurrent list, no question of repugnancy can arise. It is well settled that repugnancy between State law and Parliamentary Law can arise only in respect of matters in the concurrent list. It is also well settled that whenever repugnancy between the State and Central Legislation is alleged, what has to be first examined is whether the two legislations cover or relate to the same subject matter.

(n) Three lists of the Seventh Schedule to the Constitution are designed to define and delimit the respective areas of respective competence of the Union and the States.

(o) Mere declaration of a law of Parliament that it is expedient for an industry or the regulation and development of mines and minerals to be under the control of Union under Entry 52 or Entry 54 does not denude the State legislatures of their legislative powers with respect to the fields covered by the several entries of List II or List III.

(p) The expression "industries" in Entry 24 List II or Entry 52 List I, cannot be interpreted in a manner that would make other entries of List II of the Seventh Schedule subject to Union control, which in fact they are not. It is held that the word "industry" in Entry 24 of List II and consequently Entry 52 of List I does not and cannot be read to include Entries 28 and 66 of List II which have been expressly marked out as fields within the State's exclusive legislative powers.

(q) There is a presumption that the legislature does not exceed its jurisdiction. If two legislations operate in different fields without encroaching upon each other's field there cannot be any repugnancy.

(r) The repugnancy would be applicable only in case of direct conflict. The direct conflict arises not only where one of the Acts has to be disobeyed if the other is followed but also where both the laws lead to different results.

(s) The repugnancy must exist as a fact and not as a mere possibility. When the provisions are challenged on the ground of legislative incompetence, *prima facie* acceptable grounds in support have to be pleaded to sustain the challenge.

(t) It is the duty of the Court to interpret the enactments to avoid conflict between the Parliamentary Legislation and State Legislation.

(u) Article 254 deals only with laws made by Parliament and State Legislatures in respect of matters enumerated in the concurrent list. Therefore, article 254 would be inapplicable in case of conflict between State Act made under Schedule VII List II Entry 53 and Central Act under list III Entry 38.

(v) Objects and reasons though cannot be used to determine the true meaning and effect of the substantive provisions of a statute, but can be referred to for the purpose of understanding the background, the antecedent state of affairs,

the surrounding circumstances in relation to the status and evil which the statute sought to remedy. There must always be a presumption of constitutionality in favour of a statute and while constructing a State statute every legally permissible effort should be made to keep the same within the competence of the State Legislature.

(w) The principle of "federal supremacy" should normally be resorted to only when conflict is so patent and irreconcilable that coexistence of the two laws is not feasible.

(x) When a legislation overlaps both List I as well as List II of Schedule VII, doctrine of pith and substance is applied.

(y) Mere incidental/partial coverage of same area in a different context and to achieve a different purpose would not amount to repugnancy.

98. There is no merit in the contention of Mr. Ajay Sharma, Advocate, that the fiscal policies could not be changed by the respondent-State mid-way. We are of the considered view that fiscal policies can always be changed within the parameters of law.

99. Their Lordships of Hon^{ble} Supreme Court in *State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd.*, have held that the Courts should not normally interfere with the fiscal policy of Government more so when such decisions are taken in public interest. Their Lordships have held as under:-

27. In cases where the Government on the basis of material available before it, bona fide, is satisfied that public interest would be served by granting, withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so. The withdrawal of exemption "in public interest" is a matter of policy and the Courts should not bind the government in its policy decision. The Courts should not normally interfere with fiscal policy of the government more so when such decisions are taken in public interest and where no fraud nor lack of bona fide is alleged much less established.

100. Their Lordships of Hon^{ble} Supreme Court in *Md. Murtaza and Others Vs. State of Assam and Others*, have held that the State Government must be left with wide latitude in devising ways and means of social control and regulation and the Court should not, unless compelled by law, encroach into this field. Their Lordships have held as under:-

15. In our opinion, the State should not be hampered by the Court in dealing with evils at their point of pressure. All legislation, including delegated legislation (such as the kind we are examining) and executive action is essentially ad hoc. Since, social problems nowadays are extremely complicated, this inevitably entails special treatment for distinct social phenomena. If legislation or executive action is to deal with realities it must address itself to variations in society. The State must, therefore, be left with wide latitude in devising ways and means of social control and Regulation, and the Court should not, unless compelled by the

law, encroach into this field.

101. Their Lordships of Hon''ble Supreme Court in Indian Railway Catering and Tourism Corpn. Ltd. Vs. Indian Railway Major and Minor Caterers Association and Others, have held that Policy decisions of the Government should not be interfered with in a routine manner unless policy is contrary to provisions of statutory rules or of the Constitution.

102. Their Lordships of Hon''ble Supreme Court in State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, have held that in framing a policy various inputs are required and it is neither desirable nor advisable for a Court to direct Government to adopt a particular policy which it deems fit or proper. Their Lordships have further held that the Courts are ill-equipped to deal with competing claims and conflicting interests and these competing claims are required to be addressed by the policy-makers. Their Lordships have held as under:-

17. The High Court has found that the Government of Jharkhand, till date, had not framed any policy regarding the number of posts to be filled by Physical Trained Candidates. How many posts of Primary School Teachers be filled up by Physical Trained candidates, in our opinion, is essentially a question of policy for the State to decide. In framing of the policy, various inputs are required and it is neither desirable nor advisable for a Court of law to direct or summarise the Government to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy. Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the Courts do not have satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.

18. One may contend that providing primary education to the children is essential for the development of the country. Whereas others argue that physical training of the children in the Primary School is must as that would make the nation healthy. As in the present case, the candidates trained in teaching claim that the posts of Primary School Teachers be filled by them and Physical Trained Candidates be considered for Physical Trained Teachers only as they in absence of any training in education not equipped to teach in Primary Schools, whereas Physical Trained Teachers contend that they should be considered for appointment against both the posts. These, competing claims, in our opinion, need to be addressed by the policy makers. Further, we do not have the statistics as regards to the number of Primary Schools, the resources which the Government can spend for providing Physical Trained Teachers and their need. In such a situation, any direction in matters of policy is uncalled for.

103. There is no merit in the contention of Mr. R.L. Sood, learned Senior Advocate that there is no application of mind by the State Government while issuing notification dated 26.6.2013. The notification dated 26.6.2013 has been

issued by the State Government by taking into consideration the competing interest of the food packed in non-biodegradable material vis-a-vis environment and ecology of the State of Himachal Pradesh.

104. Their Lordships of Hon^{ble} Supreme Court in East Coast Railway and Another Vs. Mahadev Appa Rao and Others, have held that proper application of mind depends on facts and circumstances of each and every case. However, what is absolutely essential is that the authority making the order is alive to material on the basis of which it purports to take a decision.

105. Every citizen has a fundamental right to clean air and water under article 21 of the Constitution of India. The State of Himachal Pradesh is a famous tourist destination. It is the duty of the State Government to make every effort to preserve and conserve the environment and fragile ecology of the State of Himachal Pradesh. The reservoirs, lakes, rivers, oceans and sky belong to none under the Roman law, thus, they belong to all. It is the duty of every citizen to protect the natural environment, ecology including forests lakes etc. as enshrined under article 51A of the Constitution of India. It is duty of the State Government to raise the level of nutrition and the standard of living and to improve public health under article 47 of the Constitution of India. The State Government is required to ensure that children are given opportunities and facilities to develop in a healthy manner. Ready to eat food is injurious to health. It is right of every citizen to consume safe and wholesome food under article 21 of the Constitution of India.

106. The State Government has framed the Himachal Pradesh Non-biodegradable Garbage (Control) Act, 1995, to safeguard the health of the citizens. The State legislature was alive to the ill-effects of the littering of plastic waste throughout the State of Himachal Pradesh and more particularly the ill-effects of the food being packed in non-biodegradable material on health.

107. Mr. R.L. Sood, learned Senior Advocate has vehemently argued that the Himachal Pradesh Non-biodegradable Garbage (Control) Act, 1995, is repugnant to the Food Safety & Standards Act, 2006. According to him, the Food Safety & Standards Act, 2006 falls under Entry 52 of the List I-Union List, which entry reads as under:

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

108. We are of the considered view that the Himachal Pradesh Non-biodegradable Garbage (Control) Act, 1995 falls under Entry No. 6 of the State List. Entry No. 6 reads as under:

Public Health and sanitation; hospitals and dispensaries.

109 The Himachal Pradesh Non-biodegradable Garbage (Control) Act, 1995 is not relatable to entry 24, as argued by Mr. R.L. Sood, learned Senior Advocate. We have already taken into consideration the entire Act i.e. Himachal Pradesh Non-

biodegradable Garbage (Control) Act, 1995, to understand the background, the antecedent state of affairs, the surrounding circumstances in relation to the status and evil which the statute sought to remedy and whether it is repugnant or inconsistent with the Food Safety & Standards Act, 2006 and the Environment (Protection) Act, 1986, as argued by Mr. R.L. Sood, learned Senior Advocate, under Article 254.

110. The State Legislature has the necessary competence to enact the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 in order to safeguard the environment, ecology and health of the general public.

111. We, after applying principles of "pith and substance", are of the considered view that there is no conflict between the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995, the Food Safety and Standards Act, 2006, the Food Safety and Standard Act (Packaging and Labelling) Regulation, 2011 and the Environment (Protection) Act, 1986. They operate in different spheres. There is no repugnancy in the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 and the Food Safety and Standards Act, 2006. The petitioners in CWP No. 7033/2010, CWP No. 4665/2013, CWP No. 4675/2013 and CWP No. 4723/2013 have failed to discharge the burden imposed on them to assail the constitutionality of the Act. There is presumption of constitutionality in favour of a statute. The Court has considered the area of operation of three different enactments-the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995, the Food Safety and Standards Act, 2006, the Food Safety and Standard Act (Packaging and Labelling) Regulation, 2011 and the Environment (Protection) Act, 1986 and Rules framed thereunder. Even assuming hypothetically that there is overlapping in two enactments, it is well settled that there can be incidental and ancillary encroachment. An Act can also supplement another enactment by making the provisions more stringent without avoiding any conflict with the principal enactment. The emphasis of the Food Safety and Standards Act, 2006 is to establish food safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The Court after going through the report of the Committee has held 25 food articles mentioned in notification dated 26.6.2013 as "junk food", which cannot be permitted to be sold/traded and stored by the vendors in order to protect and safeguard the health of the citizens.

112. We have given widest interpretation to entry 6 of the State List. There is no conflict between entry 52 of the Union List and entry 6 of the State List. These two enactments operate in different spheres, as already noticed. Similarly, there is no repugnancy in the Environment (Protection) Act 1986 and the Rules framed thereunder and the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995.

113. The emphasis of Food Safety and Standards Act, 2006 is to provide safe

and wholesome food to every citizen of India and aim and object of the Environment (Protection) Act, 1986 is to provide protection and improvement of the environment. The Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 is to arrest menace of throwing or depositing of non-biodegradable garbage in public drains, roads and places open to public view. The Food Safety and Standards Act, 2006 deals with food items as defined and the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 deals with depositing, throwing and scientific disposal of the non-biodegradable material. Sub-section 1 of Section 3A imposes restriction on the use of non-biodegradable material within the State of Himachal Pradesh and sub-section 2 of Section 3A provides that the State Government may impose requirements on manufacturers, distributors and other persons, who produce or handle commodities, with respect to the type, size, labelling and composition of packaging with respect to its use and disposal including standards or norms for material degradability and re-cyclability. Thus, intent of this section is for prohibition of use and manufacturing of non-biodegradable material. Rule 5A of the Plastic Waste (Management and Handling) Rules, 2011 provides that carry bags shall either be, in natural shade (colourless) which is without any added pigments, or made using only those pigments and colourants which are in conformity with Indian Standard: IS 9833: 1981 titled as List of pigments and colourants for use in plastic in contact with food stuffs, pharmaceuticals and drinking water, as amended from time to time. To the contrary, the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 provides for complete ban on use of carry bags. There may be some incidental overlapping and a slight transgression in the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 and the Plastic Waste (Management and Handling) Rules, 2011. However, the duty of the Court is to harmonize the two entries instead of bringing them into conflict. Entry 52 of the Union list and Entry 6 of the State list are in different lists. The Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995, Food Safety and Standards Act, regulations made thereunder and the Environment (Protection) Act, 1986 and regulations made thereunder can co-exist and they can be enforced and implemented independently. Thus, doctrine of "occupied field" may not be attracted in this case.

114. The scope of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 is primarily to prevent throwing or depositing of non-biodegradable material in public drains, roads and places open to the public view in the State of Himachal Pradesh.

115. The ill-effects of the non-biodegradable garbage have been highlighted in statement of objects and reasons. Non-biodegradable materials have degraded the quality of agricultural land by not permitting the water to percolate to the sub-soil. It has affected the growth of plants, micro-organisms and numerous botanical species. It has injured the sewage and sewerage system. In State of Himachal Pradesh, a large quantity of plastic waste generated day by day is thrown down the steep slopes. It has endangered the public health. The local

authorities, i.e. Municipal Corporation, Municipal Councils, Nagar Panchayats and Gram Panchayats have failed to provide receptacles and suitable places for throwing or depositing of non-biodegradable garbage. The Local Authorities are remiss in removal of non-biodegradable garbage. It was expected from the State Government to carryout studies, research and support programmes as per Section 7 of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 in order to strengthen the enactment. The "food" as defined u/s 3(j) including "primary food" defined u/s 3(zk) of the Food Safety and Standards Act, 2006 is required to be packed only in the material, which conforms to the standards prescribed in Chapter II of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. No food can be permitted to be packed in plastic material, which does not conform to the regulations laid down under the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, more particularly, when the food comes in direct contact with packaging. The packaging material should be such, which provides for protection of food products from contamination and adulteration. The degradation of the environment and fragile ecology of the State of Himachal Pradesh by plastic waste has not been addressed seriously by the State agencies, despite framing the Plastic Waste (Management and Handling) Rules 2011. The hills in the State of Himachal Pradesh are strewn with plastic pouches and sachets instead of blossoming with flowers. The competent authority for the enforcement of the Plastic Waste (Management and Handling) Rules 2011 related to registration, manufacturer and recycling is the State Pollution Control Board and for enforcement of provisions of these Rules related to use, collection, segregation, transportation and disposal of plastic waste, the prescribed authority is Municipal Authority concerned. The Municipal Authority as per Rule 6 of the Plastic Waste (Management and Handling) Rules 2011 is responsible for setting up operationalisation and co-ordination of the waste management system and for performing the associated functions, namely:-(i) to ensure safe collection, storage, segregation, transportation, processing and disposal of plastic waste; (ii) to ensure that no damage is caused to the environment during this process; (iii) to ensure setting up of collection centres for plastic waste involving manufacturers; (iv) to ensure its channelisation to recyclers; (v) to create awareness among all stakeholders about their responsibilities; (vi) to engage agencies or groups working in waste management including waste pickers, and (vii) to ensure that open burning of plastic waste is not permitted. The responsibility for setting up collection systems for plastic waste is also of the Municipal Authority concerned and it can seek assistance of manufacturers of plastic carry bags etc.. The Municipal Authorities are permitted to work out modalities of a mechanism based on "Extended Producer's Responsibility" involving such manufacturers, registered within their jurisdiction. The Municipal Authorities are responsible to ensure that the residues generated from recycling processes are disposed of in accordance with law. The Municipal Authorities are required to incorporate these Rules in the Municipal Bye-laws of all the urban local bodies. The Municipal Authorities, i.e. Municipal Corporation, Municipal

Councils, Nagar Panchayats till date have not framed the bye-laws as per the Plastic Waste (Management and Handling) Rules, 2011 in order to safe guard the environment and fragile ecology of the State of Himachal Pradesh.

116. The emphasis of the notification dated 26.6.2013 is to impose prohibition on the traders, retailers and vendors in the State of Himachal Pradesh to store, supply and sale of 25 non-essential food items in the packaging made of non-biodegradable material in the State of Himachal Pradesh. These items are in addition to the food items, which are to be packed as per Food Safety and Standards Act, 2006. The junk food/ready to eat food cannot not be permitted to be packed in non-biodegradable material. We hasten to add that the packaging of other food items including essential food items is also required to conform to the norms prescribed in the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. The Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 is a step towards protecting environment and fragile ecology of the State of Himachal Pradesh as well as health of the citizens. The Geographical topography of the State of Himachal Pradesh is different from the rest of the Country. The degradation of the environment in the Himalayas affects the environment and ecology of the entire country.

117. The committee headed by Mrs. Sarojini Ganju Thakur, the then Addl. Chief Secretary (Env. S&T) to the Govt. of Himachal Pradesh was called upon to consider as per order dated 19.6.2010 whether in the process of protecting the environment of the State of Himachal Pradesh as far as non essential items are concerned, a decision could be taken by the State totally banning the use of non biodegradable packaging and issuing instructions that such items must be packed in biodegradable packaging. We have referred to non-essential commodities, such as chips, snacks etc. It is not only the environment of the State but the health of the young children who consume most of these items can be protected if the sale of such items is made only in bio degradable packaging even if the same is more expensive. The State was fully competent to impose any restrictions and prohibitions u/s 3A of the Act. The Court on 9.9.2011 had directed the Committee to come up with a clear cut and viable scheme for ensuring that non-essential items are sold in Himachal Pradesh only in biodegradable packaging. On 19.10.2012, the Court has observed that there should be a ban on only those non-essential items which fall in the category of junk food, such as, wafers, chips, sweets, noodles, chocolates, ice cream candy, biscuits, namkeen, food items containing MSC etc. and soft drinks should be brought in glass bottles or other biodegradable packaging but not in non-biodegradable packaging. Even if the cost of such non essential items has to be increased slightly. We have constituted a Committee to be headed by the Principal Secretary (Science & Technology), comprising of the Principal Secretary (Law), Principal Secretary (Health), Director (Health Services), Director (Ayurveda) and if Director (Ayurveda) is not a medical specialist then the senior most Ayurvedic Specialist in the State of Himachal Pradesh, Head of Department of Pediatrics, IGMC, Shimla and Head of the Department of Medicines, IGMC,

Shimla. The Committee was directed to identify the items which could be termed as junk food and submit its report to the Court by 30.11.2012. The Court after taking into consideration the material placed on record passed the order dated 10.1.2013, whereby the items identified by the Committee in para 6 of its report were not permitted to be sold in the State of Himachal Pradesh in non-biodegradable packaging w.e.f. 1.4.2013. The junk food/ready to eat food can lead to a number of diseases, such as, obesity, diabetes, colon cancer, low IQ in children, etc.. As per Annexure A of the report, most frequent factors associated with the junk foods are that they are low in fiber, high in palatability, offer a high number of calorie in a small volume, contains large amount of refined flour and high in fat and preservatives.

118. In order to provide safe food, it is necessary for the respondent-State to enforce provisions of Food Safety and Standards Act, 2006 and Regulations framed thereunder and the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 scrupulously. The Central Government, the State Government, the Food Authority and other agencies while implementing the provisions of the Act are to be guided by the principles contained in Section 18 as under:-

18. General principles to be followed in administration of Act.

The Central Government, the State Governments, the Food Authority and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following principles, namely:-

(1)(a) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of food trade with reference to food safety standards and practices;

(b) carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the opinion of the Food Authority are relevant to the matter under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;

(c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;

(d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;

(e) the measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type

of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;

(f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and

(g) where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

(2) The Food Authority shall, while framing regulations or specifying standards under this Act-

(a) take into account-

(i) prevalent practices and conditions in the country including agricultural practices and handling, storage and transport conditions; and

(ii) international standards and practices, where international standards or practices exist or are in the process of being formulated, unless it is of opinion that taking into account of such prevalent practices and conditions or international standards or practices or any particular part thereof would not be an effective or appropriate means for securing the objectives of such regulations or where there is a scientific justification or where they would result in a different level of protection from the one determined as appropriate in the country;

(b) determine food standards on the basis of risk analysis except where it is of opinion that such analysis is not appropriate to the circumstances or the nature of the case;

(c) undertake risk assessment based on the available scientific evidence and in an independent, objective and transparent manner;

(d) ensure that there is open and transparent public consultation, directly or through representative bodies including all levels of panchayats, during the preparation, evaluation and revision of regulations, except where it is of opinion that there is an urgency concerning food safety or public health to make or amend the regulations in which case such consultation may be dispensed with:

Provided that such regulations shall be in force for not more than six months;

(e) ensure protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume;

(f) ensure prevention of-

(i) fraudulent, deceptive or unfair trade practices which may mislead or harm the consumer; and

(ii) unsafe or contaminated or substandard food.

(3) The provisions of this Act shall not apply to any farmer or fisherman or farming operations or crops or livestock or aquaculture, and supplies used or produced in farming or products of crops produced by a farmer at farm level or a fisherman in his operations.

119. The packaging and labelling of foods is regulated u/s 23 of the Act. Sub-section (1) of Section 23 imposes restriction that no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations. As per sub-section (2) of Section 23, every food business operator has to ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, does not mislead consumers. Section 27 imposes liability of manufacturers, packers, wholesalers, distributors and sellers. It is responsibility of the Food Authority and the State Food Authorities to enforce the Act as per Section 29 including monitoring. The State Government is required to appoint Commissioner of Food Safety for the State as per Section 30, if not already appointed. No person can be permitted to commence or carry on any food business except after obtaining licence as per Section 31.

120. The petitioner, in CWP No. 1732/2010, has specifically highlighted that the Himachal Pradesh State Civil Supplies Corporation Ltd. has issued tender notice for the purchase of 14 lac plastic bottles/pouch packs of Kachhi Ghanni Mustard Oil Agmark Grade-I for supply to its various godowns in the State of Himachal Pradesh. The stand of the State Civil Supplies Corporation Ltd. is that the flexible plastic pouch is more environment friendly in comparison to solid waste packaging like a bottle. According to the reply, weight of a bottle is about 27 to 30 grams, whereas weight of plastic pouch is about 9 to 13 grams. It is also stated in the reply that per litre rate of pouch packing is Rs. 47.60 as compared to bottle packing, i.e. Rs. 49.80. Hence, pouch packing is cheaper by Rs. 2.29. There is consumption of about 13.50 lac litre of mustered oil in the State per month.

121. The edible oils are used on day to day basis and required to be manufactured, transported, sold, packed and distributed as per Regulation 2.1.2 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. The citizens have to change their attitude and outlook towards food safety. It is responsibility of the State Government and its undertakings to ensure that health of the citizens and natural environment of the State is not put to peril.

122. We are of the opinion that milk and milk products, edible oils/fats, fruits and

vegetable products and meat products should be packed strictly as per regulation 2.1.2 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 in order to ensure that the citizens get safe and wholesome food in larger public interest. We are also of the prima facie view that the drinking water (both packaged and mineral water) may not fall within the meaning of "junk food" and for that matter, necessary directions are required to be issued to the respondent-State as per the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

123. The petitioners have failed to point out any clear and direct inconsistency between the Central Act and the State Act. There is no direct collision with each other. Though the Union has taken the control of the food industry under entry 52 of the list I, as a whole, it cannot be said that the State Legislature was not competent to exercise other powers enabling to legislate the statute in list II, more particularly, entry 6 of the State list. This power cannot be denied to the State. The repugnancy only arises if both-the Parliamentary Legislation and the State Legislation-fall in terms of an entry in the concurrent list. It is also to be taken into consideration whether two legislations cover or relate to the same field. In the instant case, it is reiterated that all these enactments operate in different spheres. Mere incidental/partial coverage of same area in a different context and to achieve a different purpose would not amount to repugnancy. We see no unconstitutionality and illegality in the impugned notification dated 26.6.2013. The Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 is intra vires and a valid piece of legislation. Neither is it rendered void nor repealed after the enforcement of the Food Safety and Standards Act, 2006. The application bearing CMP No. 2779 of 2013 in CWP No. 1885 of 2013 filed by Haroli Block Industries Association was not for recalling the order dated 10.1.2013, as argued by the learned Advocates, but it was only to defer the interim order dated 10.1.2013. Since Haroli Block Industries Association was already party in CWP No. 1885 of 2013, it could not file independent writ petition against the notification issued on 26.6.2013 on the basis of interim order dated 10.1.2013.

124. The petitioners in CWP No. 7033/2010, CWP No. 4665/2013, CWP No. 4675/2013 and CWP No. 4723/2013 have also taken a plea that the Court by issuing interim order dated 10.1.2013 has entered into the arena of legislation. This plea deserves only to be rejected. The Courts determine the lis on the facts adduced by the parties and after applying the law. The Courts do not legislate by pronouncing the judgments and issuing necessary directions. The Courts only recognize and enforce the fundamental, constitutional and legal rights of the parties by issuing various writs including mandamus or any other direction. The interim order dated 10.1.2013 has been passed after hearing the parties and weighing all pros and cons to safeguard health of the citizens and save environment of the State of Himachal Pradesh. In view of the discussions and analysis made hereinabove, CWP No. 7033/2010, CWP No. 4665/2013, CWP No. 4675/2013 and CWP No. 4723/2013, being devoid of merit, are dismissed, while

CWP No. 1732/2010 and CWP No. 1885/2010 are allowed and following mandatory directions are issued:-

1) The respondent-State is directed to implement notification dated 26.6.2013 w.e.f. 26.1.2014 and also to ensure that the non essential food items except drinking water (both packed and mineral water), mentioned therein are not stored, supplied, sold and permitted to enter the State of Himachal Pradesh in the packaging made of non-biodegradable material. The District Magistrates and Superintendents of Police throughout the State of Himachal Pradesh are directed to enforce the notification dated 26.6.2013 in letter and spirit w.e.f. 26.1.2014. The District Magistrates and Superintendents of Police shall be personally liable and accountable for the non-enforcement of the notification dated 26.6.2013;

2) We direct the respondent-State to ensure that from 31.3.2014 milk and milk products, edible oils/fats, fruits and vegetable products and meat products are manufactured, transported, sold, packed and distributed as per regulation 2.1.2 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. The milk and milk products shall be sold as per Regulation 2.1.2 in the following manner:

(a) Bottling or filling of containers with heat-treated milk and milk product shall be carried out mechanically and the sealing of the containers shall be carried out automatically.

(b) Wrapping or packaging shall not be re-used for dairy products, except where the containers are of a type which may be re-used after thorough cleaning and disinfecting.

(c) Sealing shall be carried out in the establishment in which the last heat-treatment of drinking milk or liquid milk-base products has been carried out, immediately after filling, by means of a sealing device which ensures that the milk is protected from any adverse effects of external origin on its characteristic. The sealing device shall be so designed that once the container has been opened, the evidence of opening remains clear and easy to check.

(d) Immediately after packaging, the dairy products shall be placed in the rooms provided for storage.

The edible oils/fats shall not be sold in plastic bottles/pouches and shall be packed in the tin containers. However, the tin plate used for the manufacture of tin containers for packaging edible oils and fats shall conform to the standards of prime grade quality contained in B.I.S. Standards No. 1993 or 13955 or 9025 or 13954 as amended from time to time and in respect of tin containers for packaging edible oils and fats shall conform to IS No. 10325 or 10339 as amended from time to time. The fruits and vegetables products shall also be sold as per Regulation 2.1.2 in the following manner:-

(ii) Every container in which any fruit product is packed shall be so sealed that it cannot be opened without destroying the licensing number and the special

identification mark of the manufacture to be displayed on the top or neck of the bottle.

(iii) For Canned fruits, juices and vegetables, sanitary top cans made up of suitable kind of tin plates shall be used.

(iv) For Bottled fruits, juices and vegetables, only bottles/jars capable of giving hermetic seal shall be used.

(v) Juices, squashes, crush, cordials, syrups, barley waters and other beverages shall be packed in clean bottles securely sealed. These products when frozen and sold in the form of ice shall be packed in suitable cartons. Juices and Pulps shall be packed in wooden barrels when sulphited.

(vi) For packing Preserves, Jams, Jellies, and Marmalades, new cans, clean jars, new canisters, bottles, chinaware jars, aluminium containers may be used and it shall be securely sealed.

(vii) For Pickles, clean bottles, jars, wooden casks, tin containers covered from inside with polythene lining of 250 gauge or suitable lacquered cans shall be used.

(viii) For Tomato Ketchups and Sauces, clean bottles shall be used. If acidity does not exceed 0.5% as acetic acid, open top sanitary cans shall also be used.

(ix) Candied fruits and peels and dried fruits and vegetables shall be packed in paper bags, cardboard or wooden boxes, new tins, bottles, jars, aluminum and other suitable approved containers.

(x) Fruits and Vegetable products shall also be packed in aseptic and flexible packaging material having good grade quality conforming to the standards laid down by BIS.

Similarly, canned meat products shall be sold only in new sanitary top cans made from suitable kind of tin plate. The cans shall be lacquered internally and sealed hermetically after filling. The lacquer used shall be sulphur resistant and shall not be soluble in fat or brine. Cans used for filling pork luncheon meat shall be coated internally with edible gelatin, lard or lined with vegetable parchment paper before being filled. Further, the drinking water (both packaged and mineral water) shall be packed in clean, hygienic, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) (conforming to IS:10146 or polyvinyl chloride (PVC) conforming to IS: 10151 or Poly alkylene terephthalates (PET and PBT) conforming to IS: 12252 or polypropylene conforming to IS: 10910 or food grade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water.

3) The respondent-State is directed to ensure that w.e.f. 31.3.2014 no food stuff, including primary and essential food, is permitted to be manufactured, transported, packed, distributed and sold without conforming to the provisions of Food Safety and Standards Act, 2006 and the Food Safety and Standards

(Packaging and Labelling) Regulations, 2011, more particularly Chapter 2 thereof. It is made clear by way of an abundant precaution that this direction is in addition to directions already issued in sub-para 1) for non-essential food items and in sub para 2).

4) The respondent-State is directed to appoint a Commissioner of Food Safety, if not already appointed, within a period of four weeks from today;

5) The respondent-State is directed to ensure that no person is permitted to commence or carry on any food business without obtaining licence as per Section 31 of the Food Safety and Standards Act, 2006;

6) The respondent-State is directed to lay down the norms as per Section 3A of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 within a period of twelve weeks from today;

7) The respondent-State is directed to implement Section 7 of the Himachal Pradesh Non-Biodegradable Garbage (Control) Act, 1995 in order to determine new non-essential food items, which are required to be manufactured, transported, sold, packed and distributed in biodegradable material, including by constituting a High Power Committee comprising of Officers not below the rank of Principal Secretaries, within a period of twelve weeks from today;

8) The respondent-State is directed to ensure that necessary bye-laws are incorporated in the Municipal Corporation Rules, Municipal Councils Rules and Nagar Panchayats Rules as per Rule 6 of the Plastic Waste (Management and Handling) Rules, 2011 within a period of twelve weeks from today;

9) All the Municipal Authorities throughout the State of Himachal Pradesh including Municipal Corporation Shimla are directed as per Rule 6(c) of the Plastic Waste (Management and Handling) Rules, 2011 to ensure-(a) safe collection, storage, segregation, transportation, processing and disposal of plastic waste; (b) no damage is caused to the environment during the process; (c) setting up of collection centres for plastic waste involving manufacturers; its channelisation to recyclers; create awareness among all stakeholders about their responsibilities; engage agencies or groups working in waste management including waste pickers, and open burning of plastic waste is not permitted at any cost. It shall be open to all the Municipal Authorities throughout the State of Himachal Pradesh to work out the modalities of a mechanism based on "Extended Producer's Responsibility" involving such manufacturers, registered within its jurisdiction and brand owners with registered offices within its jurisdiction either individually or collectively, as feasible or to set up such collection systems through its own agencies; and

10). All the Municipal Authorities in the State of Himachal Pradesh are directed to manage the plastic waste by undertaking "waste audit" at the beginning of the year.

The interim order dated 1.7.2013 is vacated. All pending application(s), if any,

also stand disposed of. There shall, however, be no order as to costs.