
(2013) 09 CAL CK 0123
In the Calcutta High Court
Case No : Writ Petition No. 17967 (W) of 2013

Shree Renuka Sugars Limited and Another	APPELLANT
Vs	
The State of West Bengal and Others	RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : AIR 2014 Cal 65 : (2013) 4 CALLT 113 : (2014) 2 CHN 29

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Samaraditya Pal, Mr. Shyamal Sarkar, Ms. Vineeta Meharia, Mr. Ashoke Kumar Dhar, Ms. Sharmistha Dhar and Mr. Somnath Roy, for the Appellant; Bimal Chatterjee, Advocate-General, Mr. Sadananda Ganguly and Mr. Ayan Banerjee for the State, Mr. Pradip Kumar Roy, Joydeep Roy for the Respondent Nos. 2 and 4, Ms. Sutapa Sanyal, Debrup Bhattacharjee and Mr. P.K. Tulsyan for the W.B. State Marketing Board, for the Respondent

Final Decision : Allowed

Judgement

Sanjib Banerjee, J.—Though the petitioners question the applicability of the West Bengal" Agricultural Produce Marketing (Regulation) Act, 1972 to the import of raw sugar and the sale of refined sugar by the first petitioner company on the exalted constitutional ground of the competence of the State legislature to legislate in an occupied field in the Concurrent List, a more mundane, common sense ground may be the more substantial plank for founding the challenge. The petitioner company claims to be the largest manufacturer and processor of sugar in India and, surprisingly, has a sugar refinery in this State, According to the petition, almost the entirety of the refined sugar manufactured at the petitioners" facility in Haldia is sold through e-auction. The odd direct sale or sale through brokers that the petitioner company is a party to is made at its registered office in Belgaum. The petitioner company claims to import all of its principal raw material in the form of raw sugar primarily from Brazil to run its integrated sugar complex which has a capacity of spewing 2500 MT refined sugar per day. The Haldia factory of the petitioner company commenced production in

August, 2008 and the petitioners claim that ad hoc fees have been obtained by the respondent authorities from the petitioners in excess of Rs. 6.17 crore till the middle of June, 2013 on account of either the raw sugar coming into the Haldia factory or the refined sugar leaving its gates being liable to the levy under the said Act of 1972. The petitioner company has apparently been compelled to obtain a licence under the said Act. The petitioners claim that it was only upon recent demands made by the authorities under the said Act of 1972 to submit returns" that the petitioners sought legal advice and have been enlightened that the said Act of 1972 may not be applicable to either the raw sugar imported or the refined sugar sold by the petitioner company and the authorities thereunder have no jurisdiction to levy or collect market fees from the petitioner company or insist on the company submitting any returns in respect thereof.

2. The petitioners suggest that the demands made by the authorities under the said Act are irrational and arbitrary having regard to the purpose of the statute and the interests of the agriculturists sought to be served thereby. The petitioners refer to the rationale and the avowed objects of the State legislation, the history behind it and the fact that the levy thereunder is a fee and not a tax. The petitioners also question the inclusion of sugar in the schedule to the Act of 1972 on the ground that it may have been beyond the authority of the State legislature to do so. In the context of their second line of argument, the petitioners refer to the seventh schedule to the Constitution and the second and third lists thereunder.

3. Both the State and the local authorities under the said Act of 1972 have filed affidavits. The primary ground urged by the respondents is that it is not open to the petitioners to challenge the matters complained of in view of their ungrudging submission to the Act in seeking a licence thereunder in September, 2008 and, subsequently, requesting for an exemption thereunder. The petitioner company had, indeed, sought an exemption on the levy on the raw sugar imported and the refined sugar produced under the said Act as would be evident from its letter issued sometime in July, 2009 to the Chief Minister, citing the same ground that is now urged: that the petitioner company uses raw sugar and not sugarcane as its primary raw material at its Haldia facility; and, that neither the primary input nor the manufactured product was an agricultural produce.

4. The State insists that if the original material which is the primary input at the petitioners' refinery is included in the schedule to the Act, the processed material need also be regarded as an agricultural produce. The State has denied the assertion in the petition that no sale is conducted at the Haldia unit of the petitioner company or that the respondent authorities have acted without jurisdiction. The Tamruk Regulated Market Committee has suggested in its affidavit that the Sugar (Control) Order, 1966 that the petition has referred to has apparently been discontinued by reason of an amendment to the Essential Commodities Act, 1955 and, in view of the petitioners' contention that the entirety of the raw sugar used as the primary input at the Haldia facility is

imported and almost all of it is sold on the commodities exchange, the Sugar (Control) Order, 1966 would not apply to the petitioner company. As to the insinuation in the petition that the regulated market committees in this State do not offer any services to the persons subjected to a levy under the said Act of 1972, the Tamluk Regulated Market Committee has spoken of the "huge amount" it has spent "to develop principal market yard, sub-market yard and road and other infrastructures to facilitate transportation of agricultural goods in the market area ...to provide the agriculturist to obtain best price and to weed out the middleman from making the most profit at the cost of poor peasants."

5. The authorities under the said Act accept that the petitioner company does not manufacture sugar from sugarcane at its Haldia factory, but insist that the Sugar (Control) Order, 1966 and the provisions of the Essential Commodities Act, 1972 pertaining to sugar do not apply to the petitioner company since the petitioners claim to sell 99% of their manufactured refined sugar through the e-auction of the NCDEX to bidders who offer the highest price and the balance negligible amount through dealers in the open market. The market authorities suggest that since sugar is a notified agricultural produce under the said Act of 1972 and the petitioners sell a refined form of sugar, the petitioner company is liable to collect market fees from the buyers as a collecting agent under the said Act of 1972 and obliged to deposit the same to the market committee. The moot point urged by the market committee is that the sale of the petitioner company's produce is complete when the goods leave its factory gates and it is immaterial whether the delivery is effected at any place beyond the market area. The market committee also labours on - perhaps, needlessly - the petitioners having suppressed facts and being estopped by delay and acquiescence in launching the present challenge.

6. The petitioners have primarily relied on a judgment of a Constitution Bench reported at *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*,]. The principal issue that arose in *Belsund Sugar* was as to whether a similar statute of Bihar could apply to the transactions of purchase of sugarcane and sale of sugar and molasses. The judgment throws sufficient light on several questions involved in the present case, but does not conclusively provide the answers to the key issues here. It is evident from paragraph 12 of the report in *Belsund Sugar* that the sugar company appellants purchased sugarcane in the market area within the jurisdiction of the market committee; and sugarcane, surely, was an agricultural produce. Thus, the primary raw material used for the sugar factories in that case was accepted to be an agricultural produce. The consideration thereafter was whether the Market Act, in that case recognised to have been enacted in exercise of the legislative powers under Entries 26, 27 and 28 of List II of Schedule VII to the Constitution, would govern the transactions of sale and purchase of sugarcane and sugar which were covered by a previous Sugarcane Act in the State of Bihar. The Constitution Bench opined, at paragraph 16 of the report, that "the field covered by the Sugarcane Act would obviously remain exclusively governed by the Sugarcane Act and to the extent the latter

Act carves out an independent field for its operation, the sweep of the general field covered by the Market Act which covers all types of agricultural produce, would pro tanto get excluded qua sugarcane and the products prepared out of it."

7. The Constitution Bench next proceeded to notice the object of the Market Act by referring to a previous Constitution Bench judgment reported at M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others,) and the recommendations of the Royal Commission on Agriculture in India appointed in 1928 and the report of an expert committee commissioned by the Government of Madras as noticed in Arunachala Nadar to deduce that the Market Act in the Belsund Sugar case had been engrafted essentially to protect the growers of agricultural produce in the State who on account of their ignorance, illiteracy and lack of collective bargaining power may get exploited by middlemen and economically strong purchasers of their agricultural produce with the result that the agriculturists may not get adequate price for their produce.

8. After referring to almost the entirety of the Sugarcane Act and some of the rules framed thereunder and the principal provisions of the Market Act, the Constitution Bench found, at paragraph 49 of the report, that "the entire machinery of the Market Act cannot apply to the transactions of purchase of sugarcane by the appellant Sugar Factories as they are fully covered by the special provisions of the Sugarcane Act." Thus, the Market Act in Belsund Sugar was held to not apply in the transactions of purchase of sugarcane by the appellants despite sugarcane, obviously, being an agricultural produce. The Court then noticed the Sugar (Control) Order, 1966 issued by the Central Government u/s 3 of the Essential Commodities Act and referred to a judgment reported at I.T.C. Ltd. and Others Vs. State of Karnataka and Others,) where the Supreme Court confirmed the reasoning in a judgment of the Karnataka High Court to the effect that the Karnataka Agricultural Produce Market (Regulation) Act, 1966 in so far as it provided for regulation of marketing of sugarcane was unconstitutional as the marketing of sugarcane was regulated by the provisions of the Essential Commodities Act and the Sugar (Control) Orders made thereunder. Turning to the transaction of sale of sugar by the appellant companies in Belsund Sugar, the Bench rendered the following finding at paragraphs 84 and 104 of the report:

84. The aforesaid provisions of the various Orders issued u/s 3 of the Essential Commodities Act clearly indicate that all sale transactions of sugar by factories manufacturing sugar out of the sugarcane, the basic "agricultural produce" and raw material, are regulated by these provisions. As noted earlier, section 15 of the Market Act is out of the picture qua even these transactions. The sale of sugar manufactured out of sugarcane and fixation of price thereof would also, therefore, go out of the sweep of sections 15(1) and (2) of the Market Act and would be governed wholly by these special provisions of the Control Orders. On the parity of reasons governing the transactions of sale and purchase of sugarcane, transactions of sale of sugar manufactured out of purchased

sugarcane by the very same sugar factories functioning in the market area would also be governed by the special provisions of the aforesaid special Sugar (Control) Orders and would pro tanto get excluded from the general sweep of the Market Act.

104. As a result of this discussion, the first contention will have to be answered in the negative by holding that the provisions of the Market Act cannot apply to the transactions of purchase of sugarcane and sale of sugar and molasses by the sugar mills situated and functioning within the market area of the Market Committee concerned constituted under the Market Act.

9. In view of the Constitution Bench dictum in *Belsund Sugar* there is some scope for argument that the levy of any fee on the purchase and sale of sugar in any form as provided by the said Act of 1972 may be unconstitutional on the ground of it being beyond the competence of the State legislature in view of Article 246 of the Constitution read with Lists II and III of the seventh schedule thereto, provided that the said Act of 1972 is regarded to have been engrafted under Entries 26 and 27 of List II of the seventh schedule. However naive as it may sound, the Market Act that fell for consideration in *Belsund Sugar* does not appear to have expressly indicated that it had been enacted as per the legislative power vested in the Bihar Assembly and covered by the fields reflected in Entries 26, 27 and 28 of List II of the seventh schedule to the Constitution. The said Act of 1972 does not indicate either in its statement of object and reasons or in its preamble that it has been made in exercise of the legislative power under Entries 26, 27 and 28 of List II of the seventh schedule to the Constitution. There is a reference to Article 304 of the Constitution in its preamble in the previous sanction of the President having been obtained. But merely because presidential sanction under Article 304(b) of the Constitution has been obtained for the restrictions of trade, commerce and intercourse being placed by the said Act of 1972, it may not imply that the Act has been engrafted under Entry 26 or Entry 27 of List II of the seventh schedule to the Constitution. The said Act of 1972 may be perceived to have been made under Entry 14 and Entry 66 of List II which read as follows:

14. Agriculture, including agricultural, education and research, protection against pests and prevention of plant diseases.

66. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

10. Entry 14 in List II covers the entire gamut of agriculture and the inclusive description of matters as wide as agricultural education and protection against pests would indicate that the entire field of agriculture, to the extent not covered by List I, is left for the States to legislate on. The States' exclusive authority to legislate on fees in respect of any of the matters in List II under Entry 66 thereof would give the States unfettered rights to levy fees in respect of anything connected with agriculture, subject to the reasonableness thereof being tested

against, inter alia, Article 14, 19 and 301 of the Constitution. Indeed, there are several entries in List I where an exception is made in respect of agriculture in the otherwise unencumbered authority of the Parliament to make laws with respect to the matters referred to therein. For example, Entry 82 of List I confers exclusive right on the Parliament to impose a tax on income other than agricultural income; Entry 86 permits taxes on the capital value of assets, exclusive of agricultural land; Entry 87 permits estate duty to be imposed in respect of property other than agricultural land and Entry 88 allows duties to be levied in respect of succession to property other than agricultural land. The sequitur to the discussion is that if the said Act of 1972 and the levy of fees thereunder is recognised to be in exercise of the exclusive legislative authority of the State under Entries 14 and 66 of List II of the seventh schedule to the Constitution, the provisions of the Act or what is sought to be done thereunder may not be regarded as subservient to Entry 33 of List III or in derogation of the Parliament's legislative competence. Indeed, List II of the seventh schedule to the Constitution could be a treasure trove of panacea for the finance minister of any cash-starved State.

11. The more wholesome answer to the legal question raised herein may, however, come from the less erudite but more common sense approach to ascertain the object and purpose of the said Act of 1972 and the acts complained of. The said Act of 1972 replaced the West Bengal Markets Regulation Act, 1970 which, in turn, had replaced the West Bengal Markets Regulation Act, 1968 that was enacted during the President's rule in the State in 1968. Section 1(3) of the said Act of 1972 envisages the Act coming into force on different dates in different areas. "Agricultural produce" is defined in section 2(1)(a) of the said Act as any produce of agriculture, horticulture, pisciculture, sericulture, forestry or animal husbandry and includes any related product specified in the schedule to the Act. The State government is empowered to include or exclude any item of agricultural produce in the schedule. The schedule has 12 major heads of entry covering agricultural produce as ordinarily understood, fibres, animal husbandry products, narcotics and miscellaneous goods. Sugarcane and sugar are included under the head of "Miscellaneous" in the last entry of the schedule. An agriculturist is defined in section 2(1)(b) of the said Act of 1972 to be a person who is engaged in the production and growth of agricultural produce but does not include a trader or broker notwithstanding that such trader or broker is also engaged in the production or growth of agricultural produce. A trader is defined u/s 2(1)(t) of the said Act of 1972 to mean a person ordinarily engaged in the business of purchase and sale of agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a person ordinarily engaged in the business of processing or preservation of agricultural produce. Section 3 of the Act pertains to the declaration of a market area for the purchase and sale of agricultural produce as may be specified to be regulated within an area declared to be the market area. Upon a market area being specified by notification by the State government or from any later date as may be specified

in the notification, no place can be set up or continued within the market area for purchase or sale of such agricultural produce as notified except in accordance with the provisions of the said Act and the rules made thereunder. Section 4 of the said Act of 1972 permits the State government to declare, by notification, any building or any locality in any market area to be the principal market yard and identify other enclosures, buildings or localities as sub-market yards. The section also authorises the State government to declare by notification that no place for purchase, sale, storage or processing of any agricultural produce may be set up or continued within such distance of the principal market yard or a sub-market yard as may be specified in the notification; an exemption is made, however, for sale and purchase for personal consumption and for retail purpose.

12. It is not necessary in the present context to notice the nitty-gritty's pertaining to the setting up of a market committee and other matters relating to the appointment and removal of its members and the like. Section 12 of the said Act of 1972 enumerates the duties and functions of a market committee; these include establishing a market, issuing licences u/s 13 of the Act, administering funds, maintaining market yards and sub-yards, keeping standard weights and standard measures, collecting and furnishing statistics and information as may be required by the director of marketing, publishing and disseminating information and instructions as may be issued by the director of marketing, settling disputes between buyers and sellers and like matters. Section 13 of the said Act of 1972 provides for the mandatory licence for sellers or buyers of agricultural produce, traders, brokers and all persons as specified but excludes retail sales and purchase for personal consumption.

13. Section 17 of the said Act of 1972 is the charging section and provides for levy of fees by the market committee, subject to a cap of two per cent, on the amount for which the agricultural produce is sold; the same agricultural produce being subjected to a solitary levy irrespective of the number of transactions. The first explanation to sub-section (1) of section 17 of the said Act introduces the legal fiction of all agricultural produce taken out of a market area to be presumed to have been sold within such area unless the contrary is proved. The fee is to be paid by the purchaser of the agricultural produce and it is the obligation of the licensed trader to pay the same if the licensed trader is the purchaser of any agricultural produce; or, if the licensed trader is the seller and the purchaser is not licensed, it is the obligation of the licensed trader to recover the fees from the purchaser and deposit the same with the market committee. Section 17A obliges every licensed trader to submit returns of turnover as may be prescribed by the market committee. Upon the licensed trader's failure to submit any return of turnover, the secretary to the market committee is empowered to assess fees payable under the Act by the licensed trader on the best judgment principle.

14. The other provisions of the said Act of 1972 may not be relevant for the present purpose.

15. The petitioners submit that the provisions of the said Act have to be viewed

in the context of such statute and the purpose thereof. They refer to the Constitution Bench judgment of some vintage in *Arunachala Nadar* where the validity of certain provisions of the Market Act introduced in the State of Madras was challenged. The Court recognised that the Act had been passed to provide for better regulation of the buying and selling of commercial crops in the State of Madras and, for that purpose, to establish markets and make rules for their proper administration. The judgment is replete with the expressions "cultivators", "growers of crops" and like description of agriculturists, emphasising on agriculturists being at the heart of the legislation and the agriculturists' interests being sought to be protected by the statute. The essence of a Market Act, which the Constitution Bench in *Arunachala Nadar* appreciated more than half a century ago, seems to have been missed in some of the later judgments which have dwelt at greater length on the principles of statutory interpretation and the division of power in the legislative field between the Parliament and the State legislatures. Indeed, what the Supreme Court hoped would be put into place one day to protect the interests of the agriculturists in the country may take many more years as the purpose of the Market Act appears to have been lost on those responsible for implementing it and those who interpret it. The pious purpose of a Market Act and what it ought to achieve resonate in the words of the Constitution Bench in *Arunachala Nadar*.

(9) ...Shortly stated, the Act, Rules and the Bye-laws framed thereunder have a long-term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities.

16. Apart from the petitioners insisting that imported raw sugar cannot be subjected to any levy under the said Act of 1972, they refer to the absurdity in the market committee's claim that the manufactured sugar sold by the petitioner company would be subject to the levy of market fees. The petitioners maintain that the State may legislate for the benefit of agriculturists in the State alone; and, if the raw material involved in the petitioner company's manufacture is not obtained from agriculturists in the State, the levy of any fee on its sale would not be permissible. The petitioners contend that if the fee - never mind the quid pro quo aspect thereof - under the said Act of 1972 is collected for conferring some

benefits on agriculturists in the State, when the raw material involved in the manufacturing process is not grown by agriculturists in the State, the levy would be beyond the purview of the Act and absurd in its context.

17. The petition has been resisted by the State, the Tamluk Regulated Market Committee and the West Bengal State Marketing Board. The West Bengal State Marketing Board applied, by way of CAN 7519 of 2013, for being added as a party to the present proceedings. Such application was disposed of on August 19, 2013 without adding the applicant as a party but by recording that the West Bengal State Marketing Board had been heard on the merits of the petition.

18. The State defends the Act of 1972 and its application by accusing the petitioners of perceptual fallacy in the appreciation of the statute. The substance of the State's argument is that what is sought to be achieved or done under the said Act of 1972 is not to regulate the sale or purchase of agricultural products but to facilitate the marketing thereof. The State says that its legislature had due competence to enact the statute and that the Essential Commodities Act and Sugar (Control) Orders thereunder operate in a completely different field and neither such Central Act nor any Order thereunder may be cited to question the efficacy of the said Act of 1972 or its validity. The State also asserts that when interpreting a statute, its objects have to be seen only as stated therein and without any reference to the perceived history of the legislation; that the interpretation of the statute has to be with reference to the provisions in the statute and not in the context of any other baggage that it may be understood to carry. The State has referred to several judgments in defence of the said Act of 1972 and in assertion of its applicability to the raw material obtained by the petitioner company and the manufactured produce sold by it. The State has given an overview of the said Act of 1972 in so far as it is relevant for the present purpose and has, in particular, referred to section 2(1)(a) thereof and the reference to the schedule to the Act therein. The State says that whether or not a particular product may, in the ordinary sense, be regarded as an agricultural produce, the deeming provision in section 2(1)(a) of the Act would require all entries in the schedule to the Act to be regarded as agricultural produce. The State maintains that if the authority of the State legislature to make the legislation is found in the Constitution and the entries in the schedule to the Act have reasonable nexus with agricultural commodities, the operation of the Act cannot be curbed as the applicability of any provision has then to be regarded by the letter of the law and not its perceived spirit.

19. The State has first referred to a judgment reported at *Kishan Lal Vs. State of Rajasthan*, where the validity of the Market Act in Rajasthan was challenged on the ground of lack of legislative competence, violation of Articles 14, 19, 301 and 304 of the Constitution, absence of any quid pro quo in the fees paid and services rendered and the arbitrary inclusion of manufactured articles such as khandsari, shakkar, gur and sugar as agricultural produce in the schedule to the Act. In the context of sugar, the Supreme Court noticed that such item had been

included in the schedule to the relevant Act at its inception and also found that such commodity was covered by the comparable statutes, inter alia, in West Bengal. The Supreme Court held that the inclusion of sugar in the schedule to the relevant Act was not arbitrary, inter alia, on the strength of a Constitution Bench decision in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, that held sugar legislations to be within the scope of Entry 33 of the Concurrent List. With respect, it must be emphasised that the primary issue that arises herein is not as to the validity of the inclusion of sugar in the schedule to the said Act of 1972; the question, raised is whether imported raw sugar, which does not emanate from any sugarcane grown by the agriculturists in the State, would be subject to a levy under the Act.

20. The State has next referred to a judgment reported at *H.S. Jayanna and Brothers and Others Vs. State of Karnataka and Others*, where the levy of market fees on the sale of sugar in a market area was held to be valid under a comparable Market Act. A judgment reported at *Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others*,] has been relied upon by the State for the principle that the power to enact a law by a State legislature has to be traced to the fields in List II of the seventh schedule to the Constitution. In the context of Article 246 of the Constitution, the State has placed a judgment reported at *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.,*) to emphasise that the entries in the lists under the seventh schedule to the Constitution do not confer the power to legislate thereunder, they are only the fields in which the appropriate legislature may legislate; the power to legislate is provided in Article 246 of the Constitution. A Constitution Bench judgment reported at *Offshore Holdings Pvt. Ltd. Vs. Bangalore Development Authority and Others*, has been carried by the State on the competence of the Parliament and the State legislatures to legislate under a federal Constitution. The State submits that it is the "pith and substance" of a legislation that tells upon its nature and character and should guide the Court while examining the legislative scheme, object and purpose of the Act and the practical effect of its provisions. The judgment in *Offshore Holdings Pvt. Ltd* mandates that while examining such aspects, it should be kept in mind that the "legislative constituent enacting the law has the legislative competence with respect of Article 246 read with the Lists contained in Schedule VII to the Constitution." The judgment instructs that it is the result of such collective analysis that will demonstrate the pith and substance of the legislation and its consequential effect upon the validity of that law. Another Constitution Bench judgment reported at *Ujagar Prints Vs. Union of India (UOI) and Others etc. etc.,* has been relied on by the State. In such case it was, inter alia, considered by the Supreme Court whether in course of a manufacturing process a change is brought about such that the finished product can no longer be regarded as the original commodity but has to be reckoned as a new article as a result of the process. The judgment reported at *State of U.P. and Others Vs. Vam Organic Chemicals Ltd. and Others*, has been brought by the State for the proposition that a compulsory fee would

be justified if there was a co-relationship between the levy and the services rendered and such co-relationship need not be established by mathematical exactitude. These judgments throw no light on the principal legal issue which has arisen herein.

21. The State has relied on a judgment reported as *I.T.C. Limited Vs. The Agricultural Produce Market Committee and Others*,) where a Constitution Bench considered the propriety of the majority view in the judgment reported as *I.T.C. Ltd. and Others Vs. State of Karnataka and Others*, for the proposition that as to whether a State law has been enacted in a field occupied by a Central legislation had to be assessed with reference to the object and operation of the two enactments. The majority view of the three-judge Bench in *ITC v. State of Karnataka* was that the Market Act in Karnataka was in derogation of a Central Act which was already in place. The minority view in that case was that the area of operation of the State legislation was quite distinct from that of the Central Act and, as such, the two could co-exist. The Constitution Bench in *ITC Limited* reversed the majority view in *ITC v. State of Karnataka* and, in fact, accepted the minority view therein. The Constitution Bench judgment was, however, not unanimous.

22. It is not necessary to make a more detailed reference to the Constitution Bench judgment in *ITC Limited* since the exalted issue does not arise in this case. It cannot be questioned that if there is a State Act and a Central Act covering a particular matter, but different aspects of it, the two may co-exist. To ascertain whether two Acts apparently occupying the same field can co-exist or whether the one has to yield to the other, it would be necessary to assess the purpose of the statutes. The Essential Commodities Act is a statute to ensure the supply and availability of commodities regarded as essential. The field of operation of the Essential Commodities Act is quite distinct from the field of operation of a Market Act covering the same commodity. The purpose of any Market Act is to ensure that the growers of agricultural produce have a level playing field to market their produce at a fair price without being exploited either because of lack of facilities of a market or because of lack of information as to price or by virtue of the social and financial condition of the agriculturists. The two statutes - the Essential Commodities Act enacted by the Parliament and any Market Act enacted by a State Legislature - may not necessarily be in conflict even if both Acts cover a particular commodity. Notwithstanding the Constitution Bench judgment in *Belsund Sugar*, there can be no conflict in the legal proposition that the operation of a Market Act to a particular agricultural produce or commodity may not be ipso facto in derogation of the Essential Commodities Act if the same produce or commodity is covered by the Central Act. However, if, by virtue of the incidental provisions of the Central Act or the rules made thereunder, the purpose of the Market Act is seen to have been taken care of by the process envisaged under the Central Act and the rules thereunder, the application of the Market Act to the same agricultural produce or commodity may be regarded as otiose.

23. The dictum in Belsund Sugar must be confined to the facts in that case and, more particularly, to the fact that there was a prior State Act pertaining to sugarcane that, willy nilly, covered the aspects that were sought to be subjected to regulation by the subsequent Market Act. Such aspect of the decision in Belsund Sugar has to be regarded more as a conflict between a previous statute and a subsequent enactment passed by the same legislature. The judgment in Belsund Sugar has to be read, on such aspect, to imply that the entire purpose of the Market Act in Bihar qua sugar was already covered by the operation of the Sugar (Control) Orders under the Essential Commodities Act and the prior Sugarcane Act of the Bihar legislature.

24. The Tamluk Regulated Market Committee has emphasised on the words of the said Act of 1972 to insist that since the validity of the said Act has not been challenged, if the literal meaning of its provisions permit a fee to be levied thereunder on the transactions involving the petitioner company, such levy cannot be doubted. The market committee has also claimed that the petitioners have suppressed facts which would disentitle them from seeking any of the reliefs claimed. The market committee says that there has been an inordinate delay between the petitioner, company obtaining a licence under the said Act of 1972 and filing the present petition. It submits that the present petition is mala fide and has been launched after the market committee insisted that appropriate returns be filed by the petitioner company and its books of accounts be presented for inspection. The market committee suggests that in the petitioner company having paid the fees for its import of raw sugar for a considerable period of time, it has accepted the levy and cannot be heard to question the same after acquiescing therein for several years. The market committee refers to section 17D of the said Act of 1972 and says that if the petitioner company is aggrieved by any measure taken by any authority under the said Act, it has to prefer an appeal therefrom and not carry the grievance in this extraordinary jurisdiction. In the same light, the market committee has placed the overriding provision of the said Act recognised in section 37 thereof.

25. Apart from repeating one or two of the judgments cited by the State, the market committee has referred to the judgment reported at Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others, to suggest that the petitioner should be appropriately penalized for suppressing material facts in approaching this Court; the judgments reported at Mirza Majid Hussain Vs. State of M.P. and another, , The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, and I. Chuba Jamir and Others Vs. The State of Nagaland and Others, on the ground of delay; and, the judgments reported at Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., Sita Devi (Smt) (Dead) by Lrs. Vs. State of Bihar and Others, Union of India and another Vs. Deoki Nandan Aggarwal, , Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others, and Krishi Utpadan Mandi Samiti and Another Vs. Ved Ram, on how the said Act of 1972 should be interpreted by Court. In addition, the Market Committee has placed an

unreported Division Bench order of this Court passed on January 4, 2013 in APOT No. 524 of 2012, WP No. 1034 of 2009 (Sheoraphully Regulated Market Committee v. Aditya Birla Nuvo Ltd.).

26. It must be observed with regret that the Tamluk Regulated Market Committee has merely sought to obfuscate the issue and waste time in placing affidavits, statutes and decisions which are hardly of any relevance in the context. Suppression and delay are red herrings in the context of the assessment required to be made herein. Indeed, it has become a bad habit to allege suppression at the final hearing in an attempt to malign a party or prejudice the Court. In a matter where an order is sought upon effective service on the respondent, it is open to the respondent to contest the petition on any ground that may be available to the respondent. At the stage before any affidavit is filed by the respondent, it is open to the respondent to attack the petition on the ground of suppression so as to dissuade the Court from accepting the statements contained in the petition to found an interim order thereon. But once a petition has progressed to the final stage upon affidavits being entertained from all parties, the question of suppression is of no relevance, for what may have been suppressed by the petitioner ought to have been brought on record by the respondent. In the adversarial system where a matter is heard after inviting affidavits from the respondents, suppression is rarely of any significance when no interim order has been passed.

27. Since the point of suppression has been raised, some more time and paper need to be wasted thereon. The market committee talks of suppression by the petitioners by referring to the copy documents appended to the petition. Its contention is that the petitioners suppressed relevant facts by not placing the copy documents annexed to the petition in course of the opening submission at the final hearing. To begin with, notwithstanding the time constraints under which Courts function in this country, it is not unreasonable for a petitioner to take the petition and all documents appended thereto as read at the final hearing. The market committee may have been disappointed in a pithy argument being made by the petitioners on the legal ground that has arisen by not wasting time in reading every page of the petition and every copy document appended thereto as the market committee has endeavoured to in a bid to skirt the legal issue. There are limits to the Court's endurance and the market committee's submission in this case has stretched the limit; and it ought to be appropriately rewarded therefor.

28. The ground of delay and the perceived acquiescence on the part of the petitioners are again of no consequence in the light of the primary issue. Since there can be no estoppel against the law, the market committee cannot take advantage of its perceived illegal application of the said Act of 1972 to the transactions involving the petitioner company and resist the petitioners from questioning the same. The judgments cited by the market committee on suppression and delay do not, therefore, merit any detailed discussion.

29. The judgment in *Sim Devi* dealt with cattle sold in the market area being subjected to the levy of market fees under the statute in Bihar. The judgment has been cited by the market committee to suggest that even though animal husbandry cattle could not be regarded as agricultural produce, the Supreme Court repulsed the challenge on the ground that cattle fell within the definition of agricultural produce in the relevant statute. The market committee has not made the next argument to link the judgment to the legal issue in the present case; but since the judgment has been cited, the market committee must be seen to assert that if any commodity is included in the definition of agricultural produce in a Market Act, the levy of fees thereunder cannot be questioned. The judgment in *Sita Devi* has to be read too literally, and almost artificially, to infer such legal proposition therefrom. Both a statute and its interpretation have to be read with a minimum level of intelligence. Animal husbandry and pisciculture are included in several comparable Market Acts and have to be understood against the backdrop of the statutes and their purpose, particularly the ills they endeavour to remove. In India it is agriculturists and their ilk who raise cattle or sell cattle produce like milk or ghee or engage in fishing. It is such class of persons, by reason of their social and financial standing, who suffer from a disability in marketing their products. Since the purpose of the Market Acts is to protect the interests of such class of persons, the application of such statute has been extended to like products by bringing such comparable products within the definition of agricultural produce by a legal fiction. But the nexus between the agricultural produce and the related products and the like disability of pisciculturists and cattle-rearers cannot be lost sight of. The Market Acts extend to persons similarly placed as disadvantaged agriculturists in this country and it is for such reason that Market Acts have been stretched for their benefit. That is the ratio of the judgment in *Sita Devi* and not the one that the market committee in this case espouses: that merely upon a literal interpretation of the definition section, the levy of market fees under a Market Act may be justified without reference to the object of the exercise.

30. The market committee's reference to the judgment in *Deoki Nandan Aggarwal* cannot be appreciated, particularly as paragraph 14 of the report that is placed instructs that Courts cannot rewrite, recast or reframe legislation. The petitioners here do not invite the Court to modify the said Act of 1972; their request is that the Act should be read to not mandate the levy of market fees thereunder in respect of what cannot be regarded as any produce by any agriculturist or like person in the State or the country which is used in the manufacturing process by the petitioner company. *Sasa Musa Sugar Works* dealt with the Market Act in Bihar and pertained to the addition to or deletion from the list of agricultural produce covered by the Act. The judgment essentially deals with the validity of delegated legislation. Such decision is inapposite in the present context. The judgment in *Ved Ram* has been placed by the market committee for the mechanism envisaged therein for objecting to the payment of any market fees. The decision in *Dew an Chand Builders and Contractors* has

been carried by the market committee to justify the levy of fees under the said Act of 1972 on the ground that if there exists "a reasonable nexus between the payer of cess and the services rendered in that industry the fees or cess would be valid.? Thankfully, there are several other pronouncements of the Supreme Court on the Market Acts that are equally irrelevant to the issues that arise in the present case that the market committee here has not placed.

31. As to the market committee's objection to the present petition being instituted in preference to an appeal u/s 17D of the said Act, it must be appreciated that the petitioners have questioned the jurisdiction to demand market fees under the said Act in respect of the raw sugar imported by the petitioner company; and, when a challenge to the applicability of a statute is fashioned, the existence of an alternative remedy by way of an appeal to a body recognised by the statute would not prompt the writ Court to not entertain the challenge. It is for the same reason that the reference to the mechanism envisaged in Ved Ram is found to be inapposite as the petitioners question the authority to levy fees under the said Act of 1972 in respect of an import transaction.

32. The unreported order in Sheoraphuli Regulated Market Committee that has been placed does not decide the question whether imported sugar may be subjected to the levy of fees under the said Act of 1972. If the Division Bench had answered this question, the present exercise would not have been necessary since the decision would have been binding. However, the short order of less than two pages says this in its material part:

The question of levy of market fee was questioned before a Single Bench. The Single Bench has left the question open for determination by the appellant by observing, "whether the petitioners are selling any agricultural produce within the Sheoraphuli Regulated Market Committee is a factual issue required to be determined by the Sheoraphuli Regulated Market Committee upon examination of the returns supported by the requisite documentary proof". At the same time, the Single Bench has observed that, "export of manufactured goods from out of imported raw material cannot and does not amount to sale of any agricultural produce within the Sheoraphuli Regulated Market Area and cannot attract fee u/s 17 of the said Act."

There was no room for recording the aforesaid finding by the Single Bench as it has been stated in the earlier part of the order in the same paragraph that it is a factual issue which required to be determined by the Sheoraphuli Regulated Market Committee. As that was required to be determined on the basis of the returns furnished by the respondents, there was no room to make the aforesaid finding.

We therefore set aside the aforesaid finding to the effect that, "However, export of manufactured goods from out of imported raw material cannot and does not amount to sale of any agricultural produce within the Sheoraphuli Regulated

Market Area and cannot attract fee u/s 17 of the said Act."

33. The Division Bench did not hold that the import of any agricultural produce would be subject to a levy under the said Act of 1972. It merely said that the finding that "export of manufactured goods from out of imported raw material cannot and does not amount to sale of agricultural produce" was unnecessary since it was a factual issue which had to be determined by the market committee in that case in the light of the Single Bench order. It is elementary that a decision which is not express and is neither founded on reasons nor proceeds on a consideration of an issue cannot be deemed to be of binding effect; any declaration or conclusion arrived at without application of mind to the entirety of the issue cannot be regarded as a binding precedent. The Division Bench order must be understood in the context that it was rendered: that since the determination was left by the Single Bench to the market committee, it was unnecessary to render the impugned finding.

34. The West Bengal State Marketing Board has supported the stand taken by the State and has referred to a judgment reported at Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, for the proposition that there can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations meet, the Dominion legislation must prevail. Such issue of repugnancy is not relevant to the core question as to whether the said Act of 1972, which remains unchallenged otherwise, can be seen to apply to agricultural produce not produced within the country to qualify for the levy of market fees thereunder.

35. Every statute has a purpose. Most statutes may also have some history behind them. The State's submission that the said Act of 1972 must be read as it is and without reference to any other statute or what may be perceived to be the history behind, the introduction of the Market Acts in several States, cannot be accepted. The State itself has sought to support its Act by referring to similar Acts of other States and relying on Supreme Court judgments on such similar enactments. In several of the Supreme Court judgments there are cross-references to the comparable Acts in other States. The structure of the said Act of 1972 mirrors the provisions of comparable Acts in earlier statutes enacted by other States. In any event, the State does not question that the Act is for the benefit of agriculturists in the State as the State submits that the Act is for the purpose of facilitating the marketing of agricultural produce. The affidavit stand of the Tamruk Regulated Market Committee militates against the State's submission that there is no history that should be looked at since such affidavit declares that the market committee has understood its mandate to be, inter alia, "to provide the agriculturists to obtain best price and to weed out the middleman from making the most profit at the cost of poor peasants." It may also be profitable in the context to refer to the reasons proffered for the enactment of the 1968 Act in this State which referred to "cultivators selling their produce

(being) subject to many disadvantages and malpractices..." Indeed, the following extract from the reasons given for enacting the 1968 Act in this State is instructive and ought to be kept in mind:

2. The object of this measure is to secure better conditions in the markets for the public generally and to protect buyers and sellers and in particular cultivators selling their produce, from unjustified exactions and other malpractices which prevail. With provision of such facilities and protection, the growers' share in the price of agricultural produce paid by consumers will increase, creating an incentive for improvement in production. The Royal Commission on Agriculture in India (1928) while recommending legislation for establishment of regulated markets for agricultural produce says, "Well regulated markets create in the mind of the cultivator a feeling of confidence and of receiving fair play and this is the mood in which he is most ready to accept new ideas and to strive to improve his agricultural practice....

36. The statement of object and reasons for the said Act of 1972 declares, inter alia, as follows:

The West Bengal Markets Regulation Act. 1968 was enacted during the first spell of the President's Rule in 1968 and was later put on the Statute Book as the West Bengal Markets Regulation Act. 1970 (W. Bengal Act 7 of 1970). The Present Act seeks to replace the W. Bengal Markets Regulation Act. 1970 (W. Bengal Act 7 of 1970) by removing the deficiencies of the latter in these respects with a view to providing for the needs of new development. The Act of 1970 sought to regulate the activities of the owners and other operators in the existing markets of agricultural produce by fixing fair rents of market-stalls realised by the owners and the lessees of the markets and prohibiting realisation of unauthorised levies on the purchase and sale of agricultural produce. This Act also imposed upon the market owners the responsibility to provide for sanitary and other arrangements which had hitherto been inadequate. The Act of 1970 was an improvement on conditions previously prevailing in the unregulated markets; the various provisions of the Act have been found to be deficient for purposes of new development.

37. What cannot be overemphasized in this case is that the challenge in this petition is confined to the raw sugar that the petitioner company imports that it ultimately processes and sells. Any Market Act introduced by a State legislature has to be for the benefit of the agriculturists in the State. Every municipal law has an aspect of territoriality about it. State laws cannot be made to operate beyond the territories of the respective States. If the Market Act of 1972 in the State has to be seen in the historical perspective of Market Acts being enacted by the provincial Governments in this country and if the rationale of the Market Act is traced to the Royal Commission, it would be evident that such Act is for the growers of agricultural crops and to facilitate the marketing of the produce so as to ensure a fair price to the growers. That the Market Act or its operation may have degenerated to something other than its original avowed purpose should

not carry any weight with the Court. It cannot be the State's case that the Market Act of 1972 that is in vogue in the State is not in tune with the Market Acts in other States or does not owe its birth to the Royal Commission report noticed in the Constitution Bench judgment in Arunachala Nadar.

38. Arunachala Nadar appears to be the first of the serious cases pertaining to the Market Act that was carried to the Supreme Court. It is necessary to dwell awhile on the judgment to appreciate the ethos of the Market Act which has since been adopted by several States. The length of the judgment refers to growers of crops and stresses on the interest of the agriculturist being at the heart of the Market Act. It is necessary to refer to the excerpts from the two reports that were heavily relied on by the Constitution Bench. The Royal Commission on Agriculture in India appointed in 1928 was quoted to have observed as follows:-

That cultivator suffers from any handicaps: to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation.

39. The Constitution Bench also referred to the recommendation for a marketing legislation by an expert committee set up by the then Government of Madras following a demand therefor by bodies like the Indian Central Banking Enquiry Committee and the All India Rural Credit and Survey Committee. The expert committee appointed by the Government of Madras reported on the role of the middlemen as noticed in Arunachala Nadar.

The middleman plays a prominent part in sale transactions and his terms and methods vary according to the nature of the crop and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to the taluk or district centre and entrusts it to a commission agent for sale. If it is not sold on the day on which it is brought, it is stored in the commission agent's godown at the cultivators' expense and as the latter generally cannot afford to wait about until the sale is effected he leaves his produce to be sold by the commission agent at the best possible price, and it is doubtful whether eventually he receives the best price. The middle-class ryot invariably disposes of his produce through the same agency but, unlike the rich ryot he is not free to choose his commission agent,

because he generally takes advances from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore, he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price but he loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between a creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour the villages and the price at which it changes hands is governed not so much by the market rates, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middleman occupies and his methods of sale and the terms of his dealings have long ago been realised.

40. In the light of the Royal Commission report - which, by virtue of its reference in the predecessor statutes of 1968 and 1970 that the said Act of 1972 has replaced, has to be looked into - the Supreme Court dreamt in Arunachala Nadar that the plight of the growers of agricultural crops in this country would be alleviated by the Market Acts so that agriculturists secure the best prices for their commodities. The next generations of administrators and interpreters of law may not have lived up to such dream; but the hope remains. Notwithstanding agriculture being a tax-free and lucrative industry in the hands of large landholders in some areas of the country, the ordinary agriculturist is still a poor person. There may be better roads in some places for the cultivators to reach their crops (sugarcane, for example) more swiftly to factories to ensure better returns, but the lot of the peasant class has not so remarkably improved that they can be said to no longer be in the clutches of middlemen, mahajans and other unsavoury vultures who feed off them. For a Market Act to be effective, the entire rural area in a State needs to be divided into a manageable number of market areas to ensure that the benefits conferred on agriculturists and like persons thereunder are not denied to them by conducting sales in any rain shadow area not covered by the Act. Indeed, parts of northern India have successive areas covered by Market Acts; but here again, there are the larger sized landowners who have wielded their influence in appropriating for themselves the benefits meant for a different class of agriculturists. A Market Act would not be effective if all areas under cultivation in a State are not covered thereby. Likewise, all contiguous areas under cultivation in neighbouring States need also to be covered by Market Acts in such States to ensure that those who seek to exploit small farmers do not slip out of the net by dragging farmers to a nearby area not subject to the rigours of a Market Act. But these are thoughts for the administration and not for the Court and it must be left at that.

41. In principle, Market Acts are for the benefit of both the seller and the buyer of agricultural products. To the extent that such statute ensures a level playing field, in the sense that sellers and buyers of different hues would receive and pay the same price for similar goods and enjoy better infrastructure, it is for the

benefit of the agriculturist and the trader. In its ideal implementation, a Market Act would reduce the disabilities of a small farmer qua a large trader and, equally, it would offset the disadvantages of a small trader qua a large farmer. The levy of market fees is, thus, justified on both sides. But where the agricultural produce is not the manufacture of any agriculturist in a State, the application of the Market Act of the State to the transaction may be impermissible. Since there is relatively easy access of goods from one State to another in this country, the distinction between agricultural produce of one State and that of another may be difficult or impractical. But when agricultural produce is procured by a person from a foreign country, the application of a Market Act to the transaction would be inappropriate in the context of what such Act aspires to achieve.

42. Indeed, the levy of market fees to an import transaction may be beyond the purview of a State in view of such matter being within the exclusive field of legislation of the Parliament. Entry 83 in the Union List under Schedule VII to the Constitution covers duties of customs including export duties. Entry 96 permits the Parliament to make laws for imposition of fees in respect of any of the matters in the Union List, but not including fees taken in any Court. The residuary entry in the Union List, Entry 97, recognises the Parliament's authority to make laws on any matter not enumerated in the State List or the Concurrent List, including any tax not mentioned in either of the other lists. The levy of market fees on an import transaction would amount to a form of duty on import that would be beyond the competence of the State legislature as it is the exclusive domain of the Parliament. Seen in such light, both in the context of what a Market Act or the said Act of 1972 seeks to achieve and the extent of the authority of the State legislature, an import of agricultural produce cannot be subject to the levy of market fees under any Market Act or the said Act of 1972.

43. The levy of market fees under the said Act of 1972 on imported agricultural produce would amount to a tax and not a fee. Even though the quid pro quo aspect is not assessed on a narrow, individualistic consideration, if the entire class of importers of agricultural produce were taken into account, there would be no occasion either to regard them as agriculturists or traders within the meaning of the said Act of 1972 or to render any services to them against the levy of the market fees.

44. The matter may be viewed from another perspective. Section 3 of the said Act of 1972, which is a provision reflected in identical or similar form in almost all Market Acts, permits the state government to declare any area as a market area within which the purchase and sale of such agricultural produce as may be specified shall be regulated. The provision also prohibits any place to be maintained or established for the sale or purchase of such agricultural produce as may be specified except in accordance with the provisions of the Act and the rules made thereunder. Section 4 of the said Act of 1972, which is also akin to like provisions in other Market Acts, pertains to the declaration of any enclosure

or building or locality in a market area to be the principal market yard and other enclosures or buildings or localities within the market area to be the sub-market yards. The provision also prohibits any place to be maintained or established for the sale or purchase or storage or processing of any agricultural produce within such distance of the market yard or a sub-market yard as may be specified by the state government. Simply stated, sections 3 and 4 of the said Act of 1972 mirror the like provisions in comparable statutes and are at the heart of the Act to achieve its primary purpose of eliminating the exploitation of agriculturists and like persons who are defined as agriculturists in the statute. If there is an area declared as a market area, inter alia, the sale and purchase of all specified agricultural produce in the market area has to be made at the market yard or the sub-market yards.

45. No State government would be able to mandate that the sale and purchase of any imported agricultural produce is concluded in a market yard or a submarket yard only. Just as any specified agricultural produce purchased outside a market area would not attract the levy of market fees if it is merely carried into the market area or transported through the market area, the import of an agricultural produce for use in course of any manufacturing process within the market area will not attract the levy of market fees under the Market Act covering the market area. That appears to be elementary.

46. The scheme of the said Act of 1972, like Market Acts in other States, provides for a substantial part of the markets fees obtained by a market committee governing a market area to be ploughed back for the development of systems and infrastructure in that market area itself. This again demonstrates the concept of territoriality in a different sense. The import of any specified agricultural produce cannot be regarded as a transaction subject to the levy of market fees as such transaction has no nexus with the object of the Act, which is to protect the interests of the agriculturists in the market area.

47. In the context of the Royal Commission report which is the fountainhead of all Markets Acts in this country including the said Act of 1972, the ills that a Market Act must be perceived to reduce or eliminate must be seen to be those that plague the local cultivators. A Market Act can scarcely be conceived to be for the benefit of the agriculturists in a far away land from which a specified agricultural produce may be imported into a market area. Again, without reference to any of the precedents carried by the parties, it is apparent from the said Act of 1972 that the sale of any specified agricultural produce is subjected to a levy of market fees only once. It would follow that if the initial transaction is not exigible to a levy of market fees, the subsequent transactions covering the same agricultural produce would also not be subject thereto. However, on the strength of the Constitution Bench dictum at paragraph 84 of the report in *Belsund Sugar*, no Market Act of any State would be applicable to the sale of sugar since the Sugar (Control) Orders under the Essential Commodities Act have been found to cover the same area of operation.

48. A trickier issue may have arisen in these proceedings if the petitioners had insisted on the refund of the ad hoc fees that the market committee has obtained from the petitioner company, but the petitioners have expressly abandoned the prayer for refund. It is reiterated and clarified that the only issue canvassed in these proceedings was as to whether the import of raw sugar by the petitioner company for the manufacture of refined sugar therefrom would attract the levy of market fees under the said Act of 1972. Such issue is decided by declaring that the said Act of 1972 would not be applicable to the import of raw sugar by the petitioner company for its manufacture of refined sugar therefrom and that no levy of market fees under the said Act of 1972 would be attracted either for the import of the raw sugar by the petitioner company or the sale of refined sugar manufactured from the imported raw sugar. The respondents and each of them, and in particular the Tamluk Regulated Market Committee, is restrained from levying or collecting any market fees or demanding any returns from the petitioner No. 1 in any manner whatsoever in respect of the raw sugar imported by the petitioner company or the sale of refined sugar by the petitioner company by use of such imported raw sugar. WP No. 17967(W) of 2013 is decided and allowed accordingly and to such extent as indicated. The Tamluk Regulated Market Committee is left undisturbed notwithstanding it having illegally obtained fees under the said Act of 1972 from the petitioner company, but it will pay costs assessed at Rs. 1 lakh for its efforts in the present proceedings. Such costs should be deposited with the West Bengal State Legal Services Authority within a fortnight from date.

Certified website copies of this judgment, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.

Later

Both the State and the Tamluk Regulated Market Committee seek a stay of the operation of this order, which is unhesitatingly declined.