

CASE NO.:
Appeal (civil) 6453 of 2001

PETITIONER:
I.T.C. LTD.

Vs.

RESPONDENT:
AGRICULTURAL PRODUCE MARKET COMMITTEE AND OTHERS

DATE OF JUDGMENT: 24/01/2002

BENCH:
Brijesh Kumar

JUDGMENT:

Brijesh Kumar, J.

I have the privilege of going through the judgments, separately prepared by my esteemed colleagues Brother G.B. Pattanaik, Brother Y.K. Sabharwal, and Mrs. Ruma Pal, J.J.

In all the three judgments, the facts as well as the relevant provisions of the law and the decisions on the subject have been very elaborately and lucidly discussed. Hence, it would not be necessary to go into those matters all again. The main question, however, which has been considered is as to whether the case ITC Ltd. versus State of Karnataka 1985 Supp. 1 S.C.R. 145 has been correctly decided or not. In the above cited case, it has been held that once Tobacco Industry, in the public interest, was declared as such under Entry 52 of List 1 of VIIth Schedule of the Constitution, the State Legislatures ceased to be competent to legislate on the subject viz. Tobacco Industry, in conflict with the laws made by the Parliament, namely, the Tobacco Board Act 1975. The State Act of Karnataka levying market fee on sale of tobacco in the market area was thus held to be invalid. The whole legislative field in relation to the subject of tobacco including its sale as an agricultural produce was held to have vested in the Parliament. While holding so reliance was placed on the decisions of this Court reported in State of Orissa versus M.A. Tullock & Co. 1964 (4) SCR 461 and Baij Nath Kedia versus State of Bihar and others 1969 (3) SCC 838. Mr. Justice Mukherjee, however took a different view holding that both Acts namely the Tobacco Board Act 1975 and the Karnataka Agricultural Produce Market Act could operate together without offending each other. Therefore, the other question for consideration before this Bench has been as to whether provisions of the two Acts viz. Tobacco Board Act and State Act could

operate together or not.

Different States namely Bihar, U.P., Tamil Nadu and others have similar State Legislations levying market fee on sale of agricultural produce including Tobacco. The same question arose for consideration in respect of these States as well, in one way or the other.

Brother Pattanaik, in his judgment has found that the ITC Case (supra) has been correctly decided, though reasons for holding so were slightly different than the reasons on the basis of which the judgment was rendered in the ITC case. It has been further held that once Parliament takes over the control of a particular industry in the interest of the said industry as well as in the national interest, the control should be effective and should be in such a manner that the desired object can be achieved. Therefore, whole legislative field was open to the Parliament to legislate on the subject of tobacco industry including growing of tobacco as well as its sale and purchase. It has also been held that in any case, entrenching into the legislative field of an entry in the other list on a matter which may be ancillary or incidental thereto, would not invalidate the legislation. On the other question it has been found that the two Acts namely Tobacco Board Act 1975 and the State Agricultural Produce Marketing Act cannot operate simultaneously.

Brother Sabharwal, J., has broadly held that the decision in Tika Ramji versus State of UP (1956) SCR 393 holds good for the purposes of meaning to be assigned to the expression 'industry' occurring in Entry 52 of List I. The pre-manufacture activity relating to growing and sale of tobacco cannot be subject matter of legislation by the Parliament by virtue of declaration of tobacco industry under Entry 52 of List I of the VIIth Schedule. The power of State legislation to legislate on the subject in the List II of the VIIth Schedule e.g. Entry 14, 28 etc. remains unaffected. It has also been held that the State Act and the Central Act cannot operate simultaneously whereas Hon'ble Ruma Pal J. has also found that power of the State Legislature to make laws relating to tobacco as agricultural produce, its sale and levy of market fee was not affected since it cannot be said to be covered by the expression "industry" in Entry 52 of List-I of the VIIth Schedule. The I.T.C. case (supra) has been held to be wrongly decided. It has however been held that the Tobacco Board Act 1975 and the State Act can simultaneously operate without offending each other. In case it may not be possible, the provisions of Markets Act and not the Tobacco Act would prevail.

As noticed earlier the majority view in the ITC Case (supra) has been upheld in the judgment of Brother Pattanaik, on slightly different reasoning and the decisions of this Court in M.A. Tullock and Baij Nath Kedia (Supra) dealing

with legislation on Mining and relied upon in the majority judgment of ITC case (supra) have been found to be not relevant for the decision. It is true, while legislating on any subject covered under an entry of any list, there can always be a possibility of entrenching upon or touching the field of legislation of another entry of the same List or another List for matters which may be incidental or ancillary thereto. In such eventuality, inter alia, broad and liberal interpretation of an entry in the list may certainly be required. An absolute or watertight compartmentalization of heads of subject for legislation may not be possible but at the same time entrenching into the field of another entry cannot mean its total sweeping off even though it may be in the exclusive List of heads of subjects for legislation by the other Legislature. As in the present case the relevant heads of subject in List II, other than entry 24, cannot be made to practically disappear from List II and assumed to have crossed over in totality to List I by virtue of declaration of Tobacco Industry under entry 52 of List I, in the guise of touching or entrenching upon the subjects of the list II.

I therefore, append my full agreement with the conclusions and judgment of Brother Sabharwal J. on all points.

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(Brijesh Kumar)

January 24, 2002