

IN THE HON'BLE HIGH COURT OF JUDICATURE, ORISSA, CUTTACK.

(ORIGINAL JURISDICTION CASE)

O. J. C. No. 8246/1995

IN THE MATTER OF : AN APPLICATION UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, 1950.

A N D

IN THE MATTER OF : 1. THE ORISSA AGRICULTURAL PRODUCE
MARKETS ACT, 1956.

2. THE ORISSA FOREST ACT, 1972 A N D

3. THE ORISSA KENDU-LEAVES (CONTROL OF TRADE)
ACT, 1961 AND RULES FRAMED THEREUNDER.

A N D

IN THE MATTER OF : 1. M/S. BINESH & COMPANY, HAVING ITS REGD.
OFFICE, AT : 18, ARMENIAN STREET, CALCUTTA-
(WEST BENGAL)-700001.

2. M/S. V. RAJESH & COMPANY, HAVING ITS REGD.
OFFICE, AT : 17, RUPCHAND ROY STREET,
CALCUTTA-(WEST BENGAL)-700001.

3. M/S. SALE-N-SALE, HAVING ITS REGD. OFFICE
AT : 41, NETAJI ROAD, P.O. KHAGRA,
DIST. MURSHIDABAD, (WEST BENGAL).
(PETITIONERS NOS. 1 to 3, ARE REPRESENTED
BY THEIR AUTHORISED REPRESENTATIVE
SRI MANOJ KUMAR SINGHANIA.)

4. M/S. V. ~~MANM~~ MANGALAL & COMPANY, HAVING
ITS REGD. OFFICE, AT: 4D, RUPCHAND ROY
STREET, CALCUTTA (WEST BENGAL)-700001.

5. M/S. S. D. & COMPANY, HAVING ITS REGD.
OFFICE AT : 10, TARACHAND DUTTA STREET
CALCUTTA (WEST BENGAL)-700023.

6. M/S. M. P. ENTERPRISE, HAVING ITS REGD.
OFFICE AT : 344, KATHA BAZAR, BOMBAY-400009
(PETITIONERS NOS. 4 to 6, ARE PRESENTED
BY THEIR AUTHORISED REPRESENTATIVE
SRI H.M. PATEL.)

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G. Sharda
28/5/77

Presented in Court
B.O.
S.N. Dhall
20.11.95

Received Copy
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ADVOCATE
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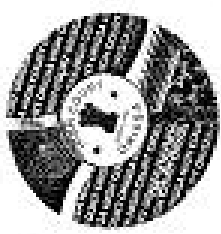
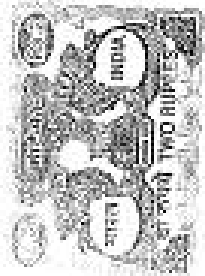


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- 7. M/S. NARESH KUMAR & CO., HAVING ITS REGD. OFFICE
AT : 17, ARMENIAN STREET, CALCUTTA (WEST BENGAL)-700001.
- 8. M/S. VINODRAI & CO., HAVING ITS REGD. OFFICE,
AT : 17, ARMENIAN STREET, CALCUTTA (WEST BENGAL)-700001.
- 9. M/S. D. NANDAL, HAVING ITS REGD. OFFICE
AT : SANJUYA, P.O. BAKHARHAT, 24, PRAGANAS (WEST BENGAL)
- 10. M/S. MALICK TOBACCO STORES, HAVING ITS REGD. OFFICE
AT : BANCHAR, MAHESPALLA, 24, PRAGANAS (WEST BENGAL)
- 11. M/S. DEEPAK TRADERS, HAVING ITS REGD. OFFICE
~~AT~~ AT : SANSADAK, DALAIPARA, DIST. SAMBALPUR, ORISSA.
- 12. M/S. CHIDAMBHAI PATEL, HAVING ITS REGD. OFFICE
AT : 57, NUTANGANJ, BANKURA (WEST BENGAL)
(PETITIONERS NOS. 7 to 12, ARE REPRESENTED BY THEIR
AUTHORISED REPRESENTATIVE SRI BHAGWANJEE PATEL,
- 13. M/S. C. K. TOBACCO., HAVING ITS REGD. OFFICE
AT : 21, RUPCHAND ROY STREET, CALCUTTA (WEST BENGAL)-700007.
- 14. M/S. HINDUSTHAN BIDI LEAVES, HAVING ITS REGD. OFFICE,
AT : PATRA MARKET, P.O. KRISHNANAGAR(NADIA), WEST BENGAL.
- 15. M/S. SUMANGAL TRADERS, HAVING ITS REGD. OFFICE;
AT : PATRA MARKET, P.O. KRISHNANAGAR, (NADIA), WEST BENGAL
(PETITIONERS NOS. 13 to 15, ARE REPRESENTED BY THEIR
AUTHORISED REPRESENTATIVE SRI BANAMBAR SAHU.)
- 16. M/S. B. R. PRASAD AND COMPANY,
HAVING ITS REGD. OFFICE, AT : 8/1, RUPCHAND ROY STREET
CALCUTTA- (WEST BENGAL) - 700007.
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE
SRI K. G. PATEL.

3-12-95
 APPLICANTY
 DIARY

A. Kasi

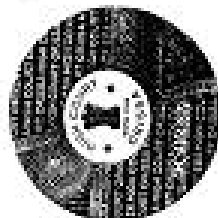
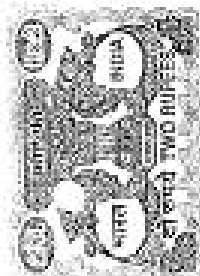


... .. PETITIONERS.

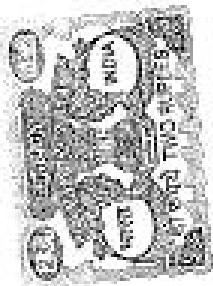
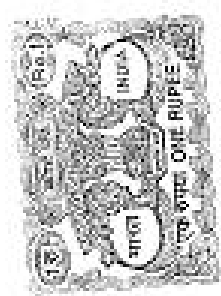
1. THE STATE OF ORISSA, REPRESENTED BY THE SECRETARY,
DEPARTMENT OF AGRICULTURAL AND CO-OPERATION, ORISSA
SECRETARIAT, BHUBANESWAR, DIST. KHURDA
2. THE STATE OF ORISSA, REPRESENTED BY ITS SECRETARY
DEPARTMENT OF FOREST AND ENVIRONMENT, ORISSA SECRETARIAT
BHUBANESWAR, DIST. KHURDA.
3. DIRECTOR OF MARKETS-CUM-EX-OFFICIO MEMBER SECRETARY,
ORISSA STATE AGRICULTURAL MARKETING BOARD, AT: HEADS
OF DEPARTMENT BUILDING, BHUBANESWAR, DIST. KHURDA.
4. ORISSA FOREST DEVELOPMENT CORPORATION LTD.,
(A GOVT. OF ORISSA UNDERTAKING), HAVING ITS HEAD.
OFFICE, AT : A/54, KHARVELA NAGAR, BHUBANESWAR, DIST. KHURDA.
5. REGULATED MARKET COMMITTEE, DHENKANAL,
AT/P.O./DIST. DHENKANAL, REPRESENTED BY ITS SECRETARY.
6. REGULATED MARKET COMMITTEE, KAMAKHYANAGAR,
AT/P.O. KAMAKHYANAGAR, DIST. DHENKANAL,
REPRESENTED BY ITS SECRETARY.
7. REGULATED MARKET COMMITTEE, ANGUL
AT/P.O./DIST. ANGUL, REPRESENTED BY ITS SECRETARY.
8. REGULATED MARKET COMMITTEE, TALCHER, AT/P.O. TALCHER
DIST. ANGUL, REPRESENTED BY ITS SECRETARY.
9. REGULATED MARKET COMMITTEE, ATHAMALLICK, AT/P.O. ATHAMALLICK.
DIST. ANGUL, REPRESENTED BY ITS SECRETARY.
10. THE KANTABANJI REGULATED MARKET COMMITTEE,
AT/P.O. KANTABANJI, DIST. BOLANGIR, REPRESENTED
BY ITS SECRETARY.
11. REGULATED MARKET COMMITTEE, BOLANGIR,
AT/P.O./DIST. BOLANGIR, REPRESENTED BY ITS SECRETARY.
12. REGULATED MARKET COMMITTEE, SAMBALPUR,
AT/P.O./DIST. SAMBALPUR, REPRESENTED BY ITS SECRETARY.

10.

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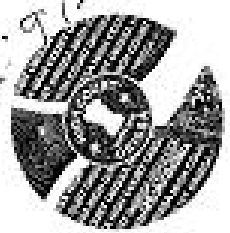


- 13. REGULATED MARKET COMMITTEE, JHARSUGUDA,
AT/P.O./DIST. JHARSUGUDA, REPRESENTED BY ITS
SECRETARY.
- 14. REGULATED MARKET COMMITTEE, BARGARH,
AT/P.O./DIST. BARGARH, REPRESENTED BY ITS SECRETARY.
- 15. REGULATED MARKET COMMITTEE, APPABIRA, AT/P.O. APPABIRA
DIST. BARGARH, REPRESENTED BY ITS SECRETARY
- 16. REGULATED MARKET COMMITTEE, PADAMPUR, AT/P.O. PADAMPUR
DIST. BARGARH, REPRESENTED BY ITS SECRETARY.
- 17. REGULATED MARKET COMMITTEE, DEOGARH,
AT/P.O./DIST. DEOGARH, REPRESENTED BY ITS SECRETARY.
- 18. REGULATED MARKET COMMITTEE, BHAMANIPATNA,
AT/P.O. BHAMANIPATNA, DIST. KALAHANDI, REPRESENTED
BY ITS SECRETARY.
- 19. REGULATED MARKET COMMITTEE, KESINGA, AT/P.O. KESINGA,
DIST. KALAHANDI, REPRESENTED BY ITS SECRETARY.
- 20. REGULATED MARKET COMMITTEE, JUNAGARH,
AT/P.O. JUNAGARH, DIST. KALAHANDI, REPRESENTED
BY ITS SECRETARY.
- 21. REGULATED MARKET COMMITTEE, MUKHIKUDA,
AT/P.O./ - MUKHIKUDA, DIST. KALAHANDI, REPRESENTED
BY ITS SECRETARY.
- 22. REGULATED MARKET COMMITTEE, KHARIAR ROAD,
AT/P.O. KHARIAR ROAD, DIST. NUAPADA, REPRESENTED
BY ITS SECRETARY.
- 23. REGULATED MARKET COMMITTEE, KORAPUT,
AT/P.O./DIST. KORAPUT, REPRESENTED BY ITS SECRETARY.
- 24. REGULATED MARKET COMMITTEE, JEYPORE, AT/P.O. JEYPORE,
DIST. KORAPUT, REPRESENTED BY ITS SECRETARY.



A. L.

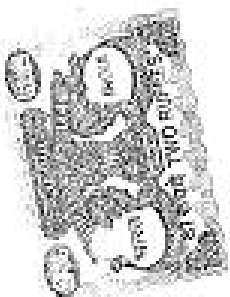
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L. N. MOHANTY
SECRETARY



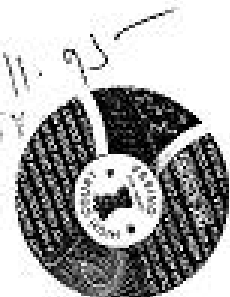
- 25. REGULATED MARKET COMMITTEE, MALKANGIRI,
AT/P.O./DIST. MALKANGIRI, REPRESENTED BY ITS
SECRETARY
- 26. REGULATED MARKET COMMITTEE, RAYAGADA,
AT/P.O./DIST. RAYAGADA, REPRESENTED BY ITS SECRETARY.
- 27. REGULATED MARKET COMMITTEE, GUNUPUR, AT/P.O. GUNUPUR,
DIST. RAYAGADA, REPRESENTED BY ITS SECRETARY.
- 28. REGULATED MARKET COMMITTEE, NOWRANGPUR,
AT/P.O./DIST. NOWRANGPUR, REPRESENTED BY ITS SECRETARY
- 29. REGULATED MARKET COMMITTEE, TIKABALI,
AT/P.O. TIKABALI, DIST. PHULBANI, REPRESENTED
BY ITS SECRETARY.
- 30. REGULATED MARKET COMMITTEE, KHANDAMAL,
AT/P.O. KHANDAMAL, DIST. PHULBANI, REPRESENTED
BY ITS SECRETARY.
- 31. REGULATED MARKET COMMITTEE, BOUDE, AT/P.O. BOUDE,
DIST. PHULBANI, REPRESENTED BY ITS SECRETARY.
- 32. REGULATED MARKET COMMITTEE, ANANDAPUR, AT/P.O. ANANDAPUR
DIST. KEONJHAR, REPRESENTED BY ITS SECRETARY.
- 33. REGULATED MARKET COMMITTEE, KEONJHAR,
AT/P.O./DIST. KEONJHAR, REPRESENTED BY ITS SECRETARY.
- 34. REGULATED MARKET COMMITTEE, CHAMPUA, AT/P.O. CHAMPUA
DIST. KEONJHAR, REPRESENTED BY ITS SECRETARY.
- 35. REGULATED MARKET COMMITTEE, PANPOSH, AT/P.O. PANPOSH,
DIST. SUNDARGARH, REPRESENTED BY ITS SECRETARY.
- 36. SARGIPALLI REGULATED MARKET COMMITTEE, AT/P.O. SARGIPALI
DIST. SUNDARGARH, REPRESENTED BY ITS SECRETARY,
- 37. REGULATED MARKET COMMITTEE, BONAI, AT/P.O. BONAI,
DIST. SUNDARGARH, REPRESENTED BY ITS SECRETARY.

... .. OPP. PANTIES.

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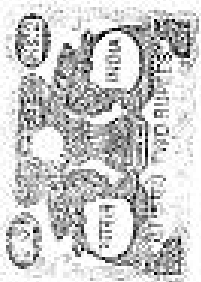
A. Ray
20.11.95
SECRETARY



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[O. H. C.-98]

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
4	24.04.2017	Vide common judgment passed today in OJC No.15285 of 2001 and other batch of cases, this writ petition stands disposed of.	By Order 





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Ape

HIGH COURT OF ORISSA, CUTTACK

OJC No.15285 of 2001, OJC Nos.1956, 2398, 2835, 3382, 3610, 3747, 3988, 4387 and 4388 of 1993, OJC Nos.980 and 4373 of 1994, OJC Nos.7043, 7479, 7724, 8147, 8244, 8245 and 8246 of 1995, OJC Nos.1081, 5743 and 8758 of 1996, OJC Nos. 12740, 12741, 12742 and 12743 of 2000, OJC No.17356 of 2001, W.P.(C) Nos.1714 and 4153 of 2002, W.P.(C) No.10423 of 2003 AND W.P.(C) No.12694 of 2005

In the matter of applications under Articles 226 and 227 of the Constitution of India.

M/s.Sriniwas Trading Company
(In OJC No.15285 of 2001)

M/s.Chhotabhai Jethabhai Patel & Co and others
(In OJC No.1956 of 1993)

M/s.Mati Biri Factory (P) Ltd and others
(In OJC No.2398 of 1993)

Sri Alak Kumar Mishra and others
(In OJC No.2835 of 1993)

M/s.Shyam Biri Works Limited
(In OJC No.3382 of 1993)

M/s.B.K.Exports and others
(In OJC No.3610 of 1993)

M/s.Laxmidas and Company
(In OJC No.3747 of 1993)

M/s.A. Abdul Latheef, Tobacco and Bedi Leaves Merchants and another
(In OJC No.3988 of 1993)

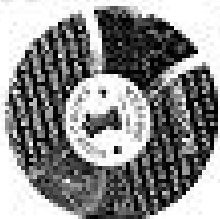
M/s.Dayalal Meghji Tobacco Products Pvt. Ltd.
(In OJC No.4387 of 1993)

M/s.Dayalal Meghji and Company
(In OJC No.4388 of 1993)

M/s.Appu Biri Works Pvt. Ltd
(In OJC No.980 of 1994)

M/s.Dayalal Meghji and Company and another
(In OJC No.4373 of 1994)

5



Ashok Biri Factory and others
(In OJC No.7043 of 1995)

M/s.Ganapathy Velmurugan Combines and others
(In OJC No.7479 of 1995)

M/s.Jalaram Enterprises and others
(In OJC No.7724 of 1995)

M/s.Dayalal Meghji & Company and others
(In OJC No.8147 of 1995)

M/s.Kalinga Traders and others
(In OJC No.8244 of 1995)

M/s.Assam Tea Co and others
(In OJC No.8245 of 1995)

✓ M/s.Dinesh & Company and others
(In OJC No.8246 of 1995)

M/s.Kothari Enterprise
(In OJC No.1081 of 1996)

M/s.A.Murali & Co and another
(In OJC No.5743 of 1996)

M/s.Orissa Forest Development Corporation Limited
(In OJC No.8758 of 1996)

M/s.Chhotabhai Jothabhai Patel & Company
(In OJC No.12740 of 2000)

M/s.Southern India Bidi Works Limited
(In OJC No.12741 of 2000)

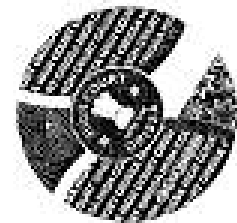
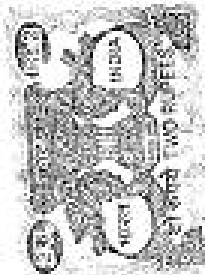
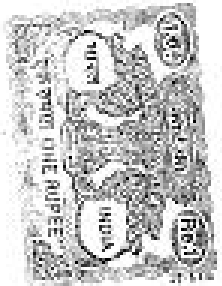
M/s.Nur Biri Works (P) Ltd
(In OJC No.12742 of 2000)

M/s.Saha Brothers Biri Works (P) Ltd
(In OJC No.12743 of 2000)

M/s.Sriniwas Trading Company
(In OJC No.17356 of 2001)

M/s.Prabhudas Kishoredas Tobacco Pvt. Ltd and another
(In W.P.(C) No.1714 of 2002)

M/s.Gayatri Trading Company
(In W.P.(C) No.4153 of 2002)



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M/s.Srinivas Trading Company and another
(In W.P.(C) No.10423 of 2003)

M/s.Srinivas Trading Company
(In W.P.(C) No.12694 of 2005)

... Petitioners

VERSUS

State of Orissa and others

... Opposite Parties

For Petitioner : M/s.A.K.Ray, S.Ray, S.Dey,
A.Mohanty, S.P.Das

(For petitioner in OJC Nos.15285, 17356 of
2001,W.P.(C) No.10423 of 2003 and
W.P.(C) No.12694 of 2005)

M/s.R.P.Kar, A.N.Ray, N.Paikray and
M.K.Badu

(For petitioner in OJC Nos.2835, 3382,
3747, 3988, 4387 and 4388 of 1993, OJC
Nos.980 and 4373 of 1994, OJC Nos.7479,
7724,8147, 8244, 8245 and 8246 of 1995
and OJC Nos.1081 and 5743 of 1996)

M/s.H.S.Mishra and P.C. Panda

(For petitioner in OJC Nos.1956, 2398 and
3610 of 1993)

M/s.S.K.Patnaik and U.C.Mohanty

(For petitioner in OJC No.8758 of 1996)

M/s.P.K.Pattnaik and B.Sahoo

(For petitioner in OJC Nos.12740, 12741,
12742 and 12743 of 2000)

M/s.A.K.Ray, S.Ray, S.Dey,
A. Mohanty and S.P.Das.

(For petitioner in OJC No.17356/2001)

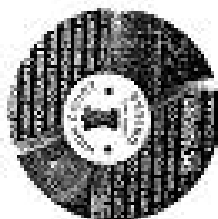
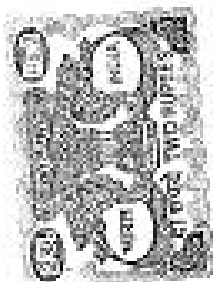
M/s.S.J.Pradhan, P.K.Pattnaik, B.Sahoo
J.A.Reddy and R.Patnaik

(For petitioner in W.P.(C) No.1714/2002)

M/s.N.N.Mohanty, B.D.Mishra, S.K.Burma,
T.Mohanty and Miss.Ranjita Sahoo

(For petitioner in W.P.(C) No.4153/2002)

For Opp. Parties : M/s.S.K.Pattnaik, U.C.Mohanty and
M.K.Pati



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(For O.P.3 in OJC No.15285/2001)

M/s.B.K.Sharma, G.Dash, B.Das and
S.R. Mohanty

(For O.Ps.4 and 5 in OJC No.15285/2001)

M/s.S.K.Das and Mr.N.N.Mohapatra
(For O.Ps.6 and 8 in OJC NO.1956/1993)

M/s.S.Mishra-2, S.Mantry, R.C.Rath and
A.K.Mishra

(For O.P.7 in OJC No.1956/1993)

M/s.S.K.Pattnaik, A. Pattnaik

(For O.P.3 in OJC No.1956/1993)

M/s.P.Mohanty, D.N.Mohapatra and
G.S.Sahoo

(For O.P.5 in OJC No.1956/1993)

M/s.S.Mishra-2, S.Mantry, R.C.Rath and
A.K.Mishra

(For O.P.7 in OJC No.2398/1993)

M/s.S.K.Das and N.N.Mohapatra

(For O.P.6 in OJC No.2398/1993)

M/s.S.K.Pattnaik and H.Pattnaik

(For O.P.3 in OJC No.2398/1993)

M/s.G.K.Mishra and B.K.Ray

(For O.P.5 in OJC No.2398/1993)

M/s.S.P.Mishra and D.Chatterjee

(For O.P.6 in OJC No.2398/1993)

M/s.D.Mohanty, D.N.Mohapatra and

B.S.Sahoo

(For O.P.5 in OJC No.2398/1993)

M/s.S.P.Mishra and D.Chatterjee

(For O.P.5 in OJC No.3382/1993)

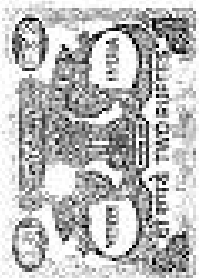
M/s.S.K.Das and N.N.Mohapatra

(For O.P.6 in OJC No.3610/1993)

M/s.S.Mishra-2, S.Mantry, R.C. Rath

A.K.Mishra

(For O.P.7 in OJC No.3610/1193)



M/s.G.K.Mishra, B.K.Ray and
B.K.Mishra
(For O.P.5 in OJC No.3610/1993)

Addl. Standing Counsel
(For O.Ps.1, 2 and 4 in OJC No.3610/1993)

M/s.S.P.Mishra and D.Chatterjee
M/s.P.Mohanty, D.N.Mohapatra and
G.S.Sahoo
(For O.P.5 in OJC No.3610/1993)

M/s.S.K.Pattnaik and P.K.Pattanaik
M/s.S.Mishra-2, S.Mantry, R.C.Rath and
A.K.Mishra
(For O.P.8 in OJC No.3747 of 1993)

M/s.S.P.Mishra and D.Chatterjee
(For O.P.5 in OJC No:3747/1993)

M/s.P.Mohanty, D.N.Mohapatra and
G.S.Sahoo
(For O.P.7 in OJC No.3747/1993)

M/s.S.Mishra-2, S.Mantry, R.C.Rath and
A.K.Mishra
(For O.P.8 in OJC No.3988/1993)

M/s.G.K.Mishra, B.K.Ray and B.K.Mishra
M/s.S.P.Mishra and D.Chatterjee
(For O.P.5 in OJC No.3988/1993)

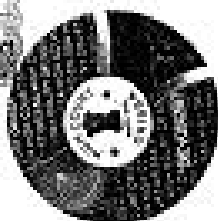
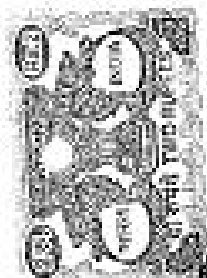
M/s.P.Mohanty, D.N.Mohapatra and
G.S.Sahoo
(For O.P.7 in OJC No.3988/1993)

M/s.S.Mishra-2, S.Mantry, R.C.Rath and
A.K.Mishra
(For O.P.9 in OJC No.4387/1993)

M/s.B.K.Ray, G.K.Mishra
(For O.P.6 in OJC No.4387/1993)

M/s.S.P.Mishra and D.Chatterjee
M/s.P.Mohanty, D.N.Mohapatra and
G.S.Sahoo
(For O.P.6 in OJC No.4387/1993)

M/s.S.P.Mishra and D.Chatterjee
M/s.S.Mishra-2, S.Mantry, R.C.Rath and
A.K.Mishra



(For O.P.9 in OJC No.4388 of 1993)

M/s.B.K.Raty, G.K.Mishra, D.N.Mohapatra
and G.S.Sahoo

(For O.P.6 in OJC No.4388/1993)

M/s.J.K.Das, S.K.Das and
B.Mohanty

(For O.P.9 in OJC No.980/1994)

M/s.G.K.Mishra and B.K.Ray

M/s.P.Mohanty, D.N.Mohapatra and
G.S.Sahoo

M/s.S.P.Mishra and D.Chatterjee

(For O.P. in OJC No.980/1994)

M/s.S.K.Das and N.N.Mohapatra

M/s.N.S.S.Ch. Roy, S.P.Mishra and
D.Chatterjee

M/s.G.K.Mishra, B.K.Ray and
B.K.Mishra

M/s.P.Mohanty, D.N.Mohapatra and
G.S.Sahoo

(For O.Ps. in OJC No.4373/1994)

M/s. P. Mohanty, D.N. Mohapatra and
G.S. Sahu

(For O.Ps. 7, 8, 9 and 10 in
OJC No.7043/1995)

Mr. D.P. Sahu

(for O.P. 13 in OJC No.7043 of 1995)

M/s. R. Das, L. Pradhan, B.K. Sharma &
A.K.Mohanty

(For O.P. in OJC No.7043 of 1995)

Addl. Govt. Advocate

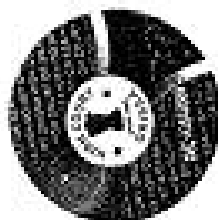
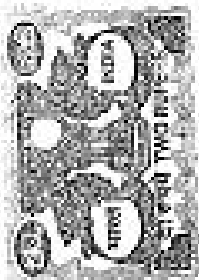
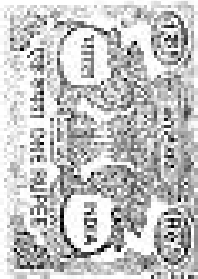
(For O.Ps. 1 to 3 in OJC No.7479 of 1995)

Mr. S.Mishra-2

(For O.P. No.18 in OJC No. 7479 of 1995)

M/s. S.P. Mishra, A.K. Mishra, S.K. Mishra,
D.Chatterjee and M.R. Mohanty

(For O.P. No.14 in OJC No. 7479 of 1995)



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M/s. D. N.Mohanty, G.S. Sahu &
P. Mohanty
(For O.Ps. 5, 10, 11, 17, 18 & 19 in OJC
No.7479 of 1995)

M/s. B.K. Agrawal, M.N. Harshabardhan,
A.Das and K.P. Nanda
(For O.P. In OJC No. 7479 of 1995)

M/s. J.M. Mohanty, D.Samal and
D.K. Swain
For O.P.No.9 in OJC No. 7479 of 1995)

M/s. L. Pradhan, Y. Das, B.K. Sharma &
A.K.Mohanty
(For O.P. Nos.6 and 8 in OJC No.7479 of
1995)

M/s.P. Mohanty, D.N. Mohapatra &
G.S. Sahu
(For O.P. Nos. 5, 10, 17, 18 & 19 in
OJC No.7724 of 1995)

M/s. R. Das, L. Pradhan, B.K. Sharma,
A.K.Mohanty and Y. Das
(For O.P. Nos.6 & 8 in OJC No.7724/1995)

Mr. D. Chatterjee
(For O.P. No.21 in OJC No.7724/1995)

M/s. J. M.Mohanty & D. Samal
(For O.P. No.9 in OJC No.7724/1995)

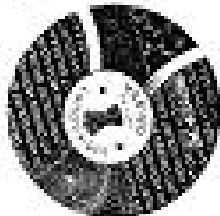
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M/s. S.P. Mishra, A.K. Mishra, S.K. Mishra,
D.Chatterjee, M.R. Mohanty and
Sk.Q.Mahammad
(For O.P. No.14 in OJC No.7424/1995)

M/s. S.K. Patnaik, R.C. Mohanty and
P.K.Patnaik
(For O.P. No.3 in OJC No.7424/1995)

M/s. P. Mohanty, D.N. Mohapatra &
G.S. Sahu
(For O.P. No.7 in OJC No.8147/1995)

M/s. S.P.Mishra, A.K. Mishra, S.K. Mishra,



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D.Chatterjee, M.R. Mohanty and
Sk. Q.Mahammad
(For O.P. No.36 in OJC No.8147/1995)

M/s. P.Mohanty, B.N. Mohapatra &
G.S. Sahu
(For O.P. Nos. 10, 32, 33 and 34
in OJC No.8244/1995)

M/s. J.K. Das, B. Mohanty and S.K. Das
(For O.P. in OJC No.8244/1955)

M/s.L. Pradhan, B.K. Sharma,
A.K. Mohanty, N. Panda and Y.Das
(For O.P. No.26 in OJC No.8244/1995)

Mr. D. Chatterjee
(For O.P. No.13 in OJC No.8244/1995)

M/s. A.K.Mohanty, B.K.Sharma
S.R.Mohanty, G.K.Das and S.Jee
(For O.P.16 in OJC No.8244/1995)

M/s.S.N.Kar and S.C.Mishra
(For O.P.Nos.23 and 24
in OJC No.8244/1995)

M/s.S.P.Mishra and D.Chatterjee
S.K.Mishra, A.K.Mishra, M.R.Mohanty
And Sk:Q. Md

M/s.L.Pradhan, R.Das, B.K.Sharma
A.K.Mohanty and Y.Das

M/s.M.N.Harshabadhan, V.K.Agarwala
A.Das and K.P.Nanda
(For O.Ps in OJC No.8244/1995)

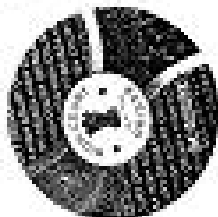
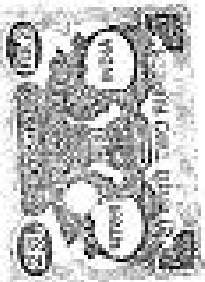
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A.Mohanty, G.K.Das. N.Panda
and Y.Das

M/s.S.P.Mishra, A.K.Mishra, S.K.Mishra
D.Chatterjee and M.R. Mohanty

M/s.P.Mohanty, D.N.Mohapatra, G.S.Sahoo

M/s.M.N.Harshabadhav, V.K.Agarwal
A.Das and K.P.Nanda

M/s.J.M.Mohanty and D.Samal



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(For O.Ps in OJC No.8245/1995)

M/s.S.P.Mishra, A.K.Mishra, S.K.Mishra
D.Chatterjee and M.R. Mohanty

M/s.P.Mohanty, D.N.Mohapatra, G.S.Sahoo

M/s.J.M.Mohanty and D.Samal

M/s.S.K.Pattanaik and M.C.Mohanty
(For O.Ps in OJC No.8246/1995)

M/s.L.Pradhan, R.Das and B.K.Sharma
(For O.Ps 25 and 29 in OJC No.1081/1996)

M/s.J.M.Mohanty, D.Samal and
P.K.Mohanty
(For O.P.28 in OJC No.1081/1996)

M/s.J.K.Das, S.K.Das and B.Mohanty
(For O.P.27 in OJC No.1081/1996)

Addl. Standing Counsel
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G.S.Sahoo and Smt. J.Mohanty
(For O.P.10 in OJC No.5743/1996)

M/s.P.Mohanty, D.N.Mohapatra
G.S.Sahoo and Smt.J.Mohanty
(For intervenor in OJC No.8758/1996)

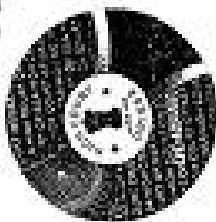
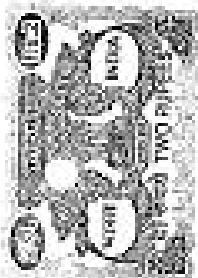
Addl. Standing Counsel
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M/s.P.Mohanty, D.N.Mohapatra,
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M/s.A.K.Mohanty, S.R.Mohanty, K.A.Guru
B.K.Sharma and B.K.Das

M/s.L.Pradhan, A.K.Pradhan, S.K.Sahoo
and S.Rath
(For O.Ps in OJC Nos.12740 to 12743/2000)



M/s.S.B.Jena, R.C.Roy, S.Behera and
S.S.Mohapatra
(For intervenor in OJC Nos.12740 to
12743/2000)

M/s.S.K.Pattanaik and U.C.Mohanty
(For O.P.3 In OJC No.17356/2001)

M/s.B.K.Sharma, G.K.Das, B.K.Das and
S.R.Mohanty
(For O.Ps.2,4,5 & 6 in OJC No.17356/2001)

M/s.L.Pradhan, A.Pradhan, D.Das and
n.riota
(For O.P.7 in OJC No.17356/2001)

M/s.B.K.Sharma, G.K.Das. B.K.Das and
B.N.Mohanty
(For O.P.Nos.6,8,13 and 15 In W.P.(C)
No.1714/2002)

Mr.S.C.Das (For O.P.14 In W.P.(C)
No.1714/2002)

M/s.S.K.Pattanaik, K.C.Mohanty and
M.K.Pati
(For O.P.3 In W.P.(C) No.4153/2002)

M/s.P.Mohanty, D.N.Mohapatra,
G.S.Satapathy and Smt.J.Mohanty
(For O.P.5 In W.P.(C) No.4153/2002)

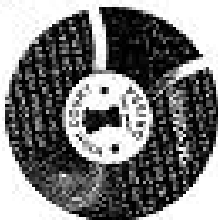
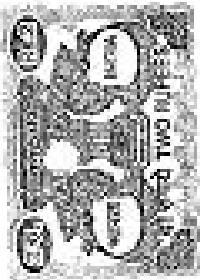
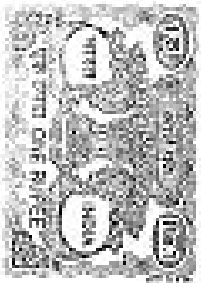
M/s.B.K.Sharma, S.R.Mohanty, G.K.Das and
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(For O.P.9 In W.P.(C) No.4153/2002)

M/s.D.Chatterjee, P.Sahoo and
S.Tandi
(For O.P.5 in W.P.(C) No.10423/2003)

M/s.S.K.Pattanaik and U.C.Mohanty
(For O.P.3 in W.P.(C) No.10423/2003)

M/s.B.K.Sharma, G.K.Dash and
S.R.Mohanty
(For O.P.4 In W.P.(C) No.10423/2003)

M/s.D.Chatterjee and P.Sahoo
(For O.Ps,4,5,6 & 8 in W.P.(C)
No.12694/2005)



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M/s.S.K.Pattanaik, U.C.Mohanty,
P.K.Pattanaik and N.Satapathy
(For O.P.3 in W.P.(C) No.12694/2005)

Miss.S.Ratho, Addl. Govt. Advocate
For State in all the cases

PRESENT :

THE HON'BLE DR. JUSTICE D.P.CHOUDHURY

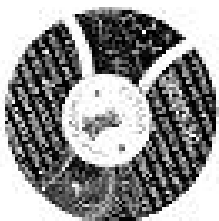
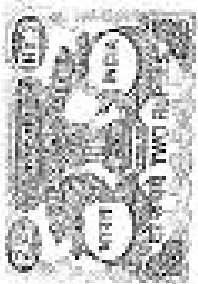
Date of hearing:17.04.2017

Date of judgment:24.04.2017

Dr. D.P.Choudhury, J. In O.J.C. Nos.15285 and 17356 of 2001, W.P.(C)

No.10423 of 2003, W.P.(C) No.12694 of 2005, challenge has been made with regard to illegal collection of market fees by the Regulated Market Committee (hereinafter called "the RMC") under Orissa Agricultural Produce Markets Act, 1956 (in short "the Act, 1956"). Since the question of law arising out of all these writ petitions is common, they are being disposed of by this common order.

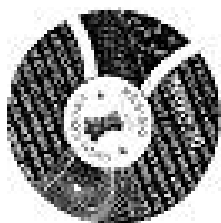
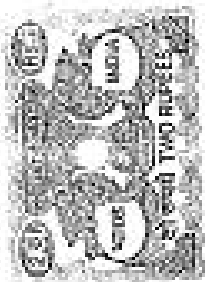
2. The factual matrix leading to the case of the petitioners in all the above writ petitions is that the petitioners are trading companies dealing with supply of Kendu Leaves to Sri Lanka. The petitioners receive orders from the buyers from Sri Lanka and supply the same after procuring the Kendu Leaves in the auction held by Orissa Forest Development Corporation Limited, Bolangir, Kendu Leaves Division (hereinafter called "the O.F.D.C."). The sale of Kendu Leaves inside the State of Orissa is controlled by the Orissa Kendu Leaves (Control of Trade) Act, 1961 (in short 'the Act, 1961'). Kendu Leaves were procured by the petitioner-companies is only for export to foreign buyers and not to be sold or marketed in the concerned market area. While the goods are being transported to Tuticorin for Shipment to Sri Lanka, various



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check-gates created under the RMCs, like Kantabani, Tikaballi and others, were levying and collecting market fees illegally and arbitrarily. Since the opposite parties are collecting the market fees without any sanction of law, the petitioner had to file OJC No.7479 of 1995 and this Court, on 2.11.1995 in Misc. Case No.6899 of 1995, passed an order restraining the RMC from collecting the market fees provided the petitioners are not coming under Section 11 of the Act, 1956. In spite of restrain order passed by this Court, the opposite parties 4 and 5 continued to levy and collect market fees from the petitioners.

3. Be it stated that the petitioner made declaration and produced other documents purportedly indicating that the Kendu Leaves as has been purchased from O.F.D.C. were for exporting to Sri Lanka but opposite parties 4 and 5 arbitrarily and illegally collected the market fees in spite of the fact that provisions of Section 11 of the Act, 1956 read with Rule-48 of the Rules made thereunder are not applicable to the petitioners. Export of goods to foreign company has been exempted from levy of the tax under the Constitution of India and Sales Tax laws have also exempted levy of tax on exports. So, the levy of market fees on Kendu Leaves which are to be exported to foreign company is also against the Constitutional Mandate and Government Policies. Since the action of the opposite parties 4 and 5 are illegal, arbitrary and unjust, the petitioners in all the above writ petitions have prayed for issuance of Writ of Mandamus restraining them from collecting marketing fees from

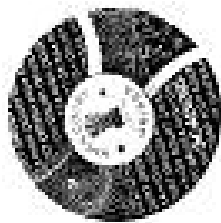
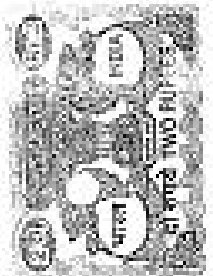


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the petitioners and to direct the opposite parties 4 and 5 to refund the market fee already collected from the petitioners.

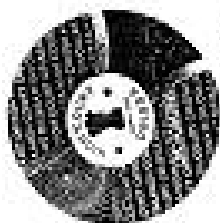
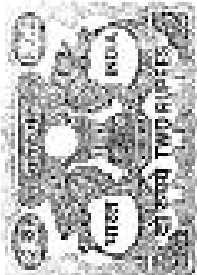
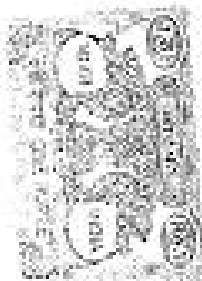
4. In O.J.C. Nos.1956, 2398, 2835, 3382, 3610, 3747, 3988, 4387 and 4388, of 1993, O.J.C. Nos.980 and 4373 of 1994, OJC Nos.7479, 7724, 8147, 8244, 8245 and 8246 of 1995, OJC Nos.1081 and 5743 of 1996, OJC. Nos.12740 to 12743 of 2000, W.P.(C) Nos.1714 and 4153 of 2002, the petitioners are manufacturer of BIDI and for that manufacturing process, they used to purchase raw material of Tobacco and Kendu Leaves from different parts of India and State of Orissa which are fully controlled by monopoly of State of Orissa through the O.F.D.C., a Government of Orissa undertaking. The petitioners incidentally carry on business involving purchase, sale and export of Kendu Leaves. Be it stated that the entire buying and selling of Kendu Leaves after obtaining licence/lease of different coupes from the Forest Department of State of Orissa on payment of consideration under the Act, 1956 take place at the outside market area of opposite parties-RMCs. But the RMCs under the Act, 1956 collected the market fees from the petitioners for transportation of Kendu Leaves within the market area of the respective opposite parties-RMCs. The Rules under the Act, 1961 also provided for grant of transport permit in statutory form on application to Divisional Forest Officer and thus the trade of Kendu Leaves are under the wide provisions of the Act, 1961.

5. Be it stated that the opposite party no.1, under Section 6 of the Act, 1961 by notification dated 25.11.1988, added Kendu Leaves to



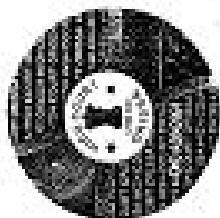
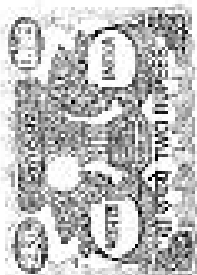
the items of agricultural produce specified in the schedule to the Act. By virtue of such notification, the RMCs collected the market fees. So, that notification was challenged before this Court in OJC No.2398/1993 and as an interim measure, RMC was restrained from collecting market fees under the Act. Similarly, under the Orissa Forest Act, 1972 (in short 'the Forest Act'), forest produce includes the Kendu Leaves under Section-2(g)(i)(a). It is stated that Section 26 of the Act provides that the State Government may by notification add to amend and cancel any of the items of agricultural produce specified in the Schedule. Such power cannot obviously include Kendu Leaves which is now the subject matter of Forest Act and as such the State Government has no jurisdiction to issue notification under Section 26 of the Act, 1956 in respect of forest produce as defined under the Forest Act to be the agricultural produce.

6. Moreover, Kendu Leaves being the forest produce under the Forest Act, its trading is entirely controlled under the Act, 1961 and issuance of notification under Section 26 of the Act, 1956 to bring the Kendu Leaves under the purview of the Act, 1956 is illegal. So, the collection of market fees from the petitioners on the Kendu Leaves transported by the petitioners through the geographical limits of areas of NH5, although they are not transacted even in the market area, are per se illegal and improper. So, in these writ petitions, the petitioners have prayed for quashing of the notification dated 25.11.1988 issued under Section 26 of the Act, 1956 and further prayed for issue of Mandamus restraining the opposite parties from collecting the market



fees in respect of the trade, commerce and purchase or sale of Kendu Leaves within the State of Orissa. But, during hearing of the writ petitions, petitioners, in the above cases, have submitted not to press the issue relating to vires of the notification dated 25.11.1988 issued under Section 26 of the Act, 1956.

7. In O.J.C. No.8758 of 1996, O.F.D.C. is the petitioner and it acts as a forest contractor under the permission of the State Government and takes up the trade and distribution of forest produce as allotted to them by State Government. So far as trading of Kendu Leaves is concerned, the petitioner-Corporation is appointed as an agent of the Government to sell the Kendu Leaves collected by the Forest Department. The collection and sale of Kendu Leaves is governed by the Act, 1961 and the Rules made thereunder and the Corporation used to make bundles according to their size and quality and then issued the auction sale notice of Kendu Leaves and stored in different godowns at different places. It is alleged, inter alia, that after Kendu Leaves being made as agricultural produce under the Act, the RMCs of respective areas are collecting the market fees from the buyers who are none other than the BIDI manufacturers. The federation of the buyers approached the petitioner-Corporation but the RMCs continued to collect the market fees on Kendu Leaves supplied by the Corporation to the buyers. The petitioner-Corporation made prayer on the similar manner to issue Writ of Mandamus to the opposite parties-RMCs for not collecting the market fees by detaining the vehicle carrying Kendu Leaves by the purchasers

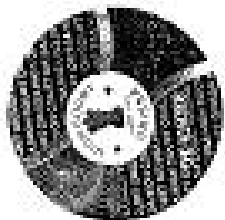
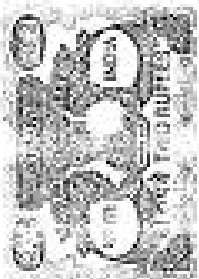


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or by the Corporation at the check gates with the consequential relief to refund the amount already collected.

8. On contrary, opposite party-RMCs of different places have filed counter affidavit stating that under Section 26 of the Act, 1956, the Kendu Leaves have been added as agricultural produce in the schedule of the Act by the State Government in its notification dated 25.11.1988. Under the Act, the RMCs are competent to collect the market fee on the agricultural produce as enumerated in the Schedule of the Act. On the other hand, under Section 11 of the Act, 1956 provisions have been made for collection of the market fee. After such Kendu Leaves added as an agricultural produce, the RMCs are competent to levy the market fee upon the petitioners. It is the case of the RMCs that OFDC used to call the auction and in the auction, the petitioners after became successful bidder to procure Kendu Leaves and they carry the same through the market area of the respective RMCs. Section 11 of the Act authorizes the RMCs to levy and collect such fees from every items of the agricultural produce marketed in the market area or leaving its market yard. The purpose and object of setting up of market area with the specified performance to look into the interest of purchasers of agricultural produce so that they can get the best competitive price in the open market and they are not to pay the middlemen.

9. It is the further case of the RMCs that the legislature has enacted the Orissa Kendu Leaves (Control of Trade) Rules, 1962 (hereinafter called as "the Rules, 1962") with the purpose that the State

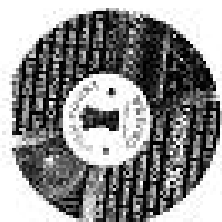
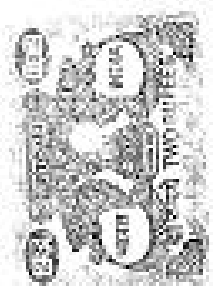


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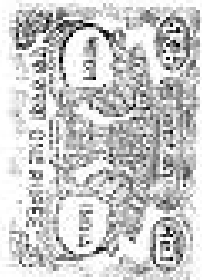
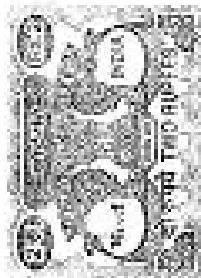
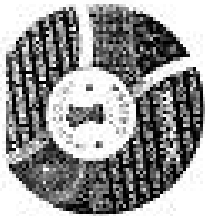
used to collect the Kendu Leaves grown by any person either in Government land or in private land and pay the fees for the said collection to the pluckers as well as to private growers. But the said collection cannot be equated with the purchase by the State because after the Kendu Leaves are collected, they are processed and after processing, they have been packed which is known as Kendu Leaves coming under the meaning of "agricultural produce". Even if the agricultural produce is termed as "forest produce" under Orissa Forest Act, 1972, the Kendu Leaves cannot be seized to be "agricultural produce".

10. The aims and object of the three State Act, i.e., Orissa Forest Act, Orissa Kendu Leaves (Control and Trade) Act, 1961 and the present Act, 1956 are different from each other. The Forest Act has got object of preservation and development of all forest produce and to increase the forest produce and as such to regulate them. Similarly, the Orissa Kendu Leaves (Control and Trade) Act, 1961 is enacted to provide for regulation and trade in Kendu Leaves by creation of state monopoly of such State. The purpose of the present Act, 1956 is to check unfair trade practices and undue exploitation of agricultural producers from the middlemen. It is also the object of this Act to collect fee which should be utilized for the interest of the agriculturists.

11. Be it stated that under Section 11 of the Act, 1956 read with Rule 48 of the Rules, 1958 made thereunder, the Market Committee is empowered to levy market fee on any notified agricultural produce



which are sold or brought for sale or for storage in market yard for which every agricultural produce coming within the area of market are leviable. Even though the purchase is not taken place in the market area, it shall be presumed that every agricultural produce including the Kendu Leaves brought within the market area is for the purpose of buying or selling. Sub-section(6)(b) of Section 4 of the Orissa Agricultural Produce Markets (Amendment) Act, 1984 specifically states that when any agricultural produce brought into any market area for the purpose of processing only, or for export, is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been brought into the market area for buying or selling. So, until contrary is proved the agricultural produce brought into market area is within the control of RMCs and as such entail levy of fees. This Court vide judgment dated 24.1.1992 passed in OJC No.4359 of 1992 has categorically laid down the dictum that unless the contrary is proved, the presumption is drawn that transaction took place in the market area because of which the levy of fees becomes realisable. Moreover, under clause-13 of the auction sale notice, the petitioners who are traders are liable to pay the duties, sales tax and other tax etc. over and above the sale price as per law for which the RMC are also entitled to levy the fee even if they had paid duties on Kendu Leaves they bought for export. It is, therefore, stated that the collection of revenue by RMCs from the petitioners who trade on Kendu leaves are justifiable and at no cost, it is illegal, when the



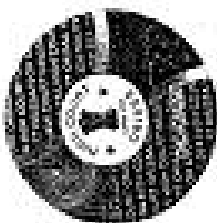
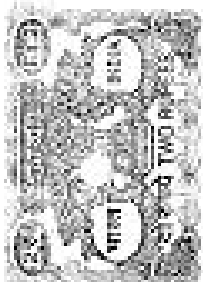
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objectives and reasons of the three State Acts are different. So, it is prayed to dismiss the writ petitions.

12. The opposite parties 1 to 4 have filed counter affidavit similar to the above counter filed by the RMCs. These opposite parties filed the Gazette Notification wherein under Section 26 of the Act, 1956 the State Government has added Sal Leaves and Kendu Leaves under the heading Grass. Fodder. Forest and other miscellaneous items as agricultural produce specified in the Schedule of the Act. They take the plea that since the State Government is competent to add any forest produce as agricultural produce to the Schedule of the Act, 1956, it has been justifiably added.

13. **SUBMISSION**

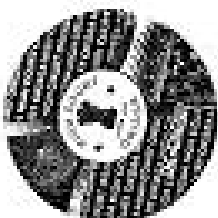
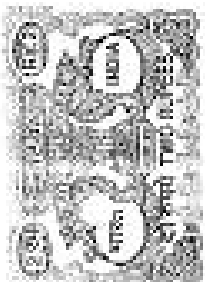
Mr.R.P.Kar, learned counsel for some of the petitioners submitted that the issue in question has already been set at rest by the decision of this Court in the case of *M/s. I.T.C. Limited and another -V- State of Orissa and others (OJC NO.5989 of 1991)* and according to him, the Division Bench of this Court has categorically held that the petitioner-company in that case being allowed to lift the stock of Sal Seeds from various godowns including Keonjhar godown, which has been situated in the market area of keonjhar Regulated Market Committee but the same being not marketed within the market area, levy of market fee by the concerned RMC was of without jurisdiction. In that case, this Court has relied upon the decision in OJC No.3511 of 1989. So, he submitted that since in the present cases, the petitioners



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have simply transported the Kendu Leaves from the godown of OFDC through the market area under RMC without the same being marketed in the market area, the RMCs have no power to levy the market fee. He also drew the attention of this Court to the case of *M/s.Ganesh Rice Mills and another -V- Attabira Regulated Market Committee and others; 1991 (II) OLR 58* where Their Lordships have observed that the Market Committee is competent to levy and collect market fees on agricultural produce, marketed in the area and in that case, since the purchase of paddy has taken place outside the market area, the marketing thus taken place beyond the market area and as such, not within competence of the Marketing Committee to levy fee thereon and in that case also, it is observed that merely because a portion of National Highway falls within the market area, it would have no authority to restrict movement of the agricultural produces on the National Highway and collect market fee on purchases that had been effected outside the market area.

14. Mr. Kar also stressed on the decision of the Hon'ble Supreme Court in the case of *Agricultural Market Committee, Andhra Pradesh and others -V- M.K.Exports, Andhra Pradesh and others; (2011) 13 SCC 290*; where Their Lordships, at paragraph-16, have observed that the fee is levied by the Market Committee on sale or purchase of any notified agricultural produce or livestock or products of livestock in the notified market area by virtue of Section 12(1) of the A.P.Agricultural (Produce and Livestock) Markets Act, 1966. So, he

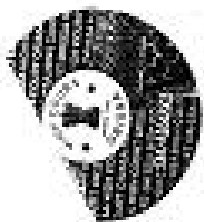


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submitted that the Market Act has got main elements of sale or purchase within the market area so as to attract levy of fee by the concerned RMC but not otherwise. Same analogy is also applicable to the present case.

15. Mr.Kar, learned counsel for some of the petitioners also drew the attention to the decision of this Court In the case of **Deochand Champalal and others -V- Chairman, Nowarangpur Market Committee and another; 1973 ILR 277** where the Division Bench of this Court have been pleased to follow the decision of the Hon'ble Supreme Court In the case of **Mohammad Hussain Gulam Mohammad and another -V- State of Bombay and another; AIR 1962 SC 97** where Their Lordships have held that under Section 11 of the Act, 1956, there are two restrictions on the power of the Market Committee and the first restriction is that the fee fixed must be within the maxima prescribed by the Rules and the second restriction is that fee has to be levied not on the produce brought into but only on such produce as is actually sold. So, he submitted that the levy of market fee by the RMC on the Kendu Leaves or any other material transported by the petitioners or stored by the petitioners in the market area without having been any buying or selling thereon is illegal and the opposite parties may be directed to refund the fees already collected.

16. Mr.S.Ray, learned counsel for some of the petitioners, while adopting the arguments of Mr.Kar, submitted that the Act, 1956 being the Act with the aim and object to levy fees on buying and selling of

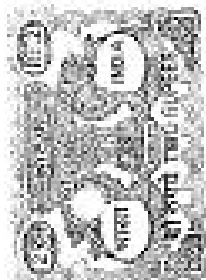


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agricultural produce in the market area, it has no any jurisdiction to the agricultural produce brought into the market area for its transportation to the outside the State and particularly they are exported to Sri Lanka. He submitted that the Kendu Leaves transacted by the petitioners for whom he is appearing were transported after procuring the same from depot of the State Government. They were transported to export to Sri Lanka but the check gates of the different RMC in the State of Orissa forcibly collected the market fee which is not legal and proper. He submitted that when there is no transaction within the market area and the petitioners have already paid the sale price at their auction centre at Sambalpur and Bhubaneswar and they are again to pay export fee at a destination of shipping to Sri Lanka, the RMCs are not entitled to levy and collect any fee thereon.



17. Learned counsel for the rest of the petitioners, without making further arguments, have thoroughly supported the arguments of the above petitioners.

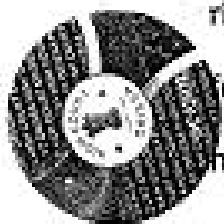
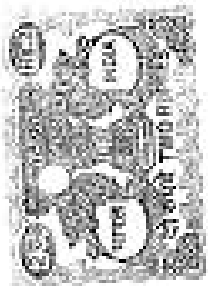


18. Learned Additional Government Advocate and the learned counsel appearing for the RMCs submitted that the aim and object of the Act, 1956 is very specific and it is meant to curtail the harassment to the agricultural producers and abolition of middlemen interference. They further submitted that the Act of 1956 is exhaustive and takes care of all the agricultural producers. They submitted that Section 11 of the Act, 1956 read with Rule 48 of Rules, 1958 direct the Marketing Committee to levy and collect the market fee from the agricultural producers. Since



the petitioners are not agricultural producers but are traders and they were doing transaction, of course not with reference to buying and selling but storing and transporting the Kendu Leaves. They further submitted that the levy of fee is within the competency of the State Government. It is true that trading of Kendu Leaves is within the domain of the State Monopoly but that Act, 1961 is meant for protecting the Kendu Leave producers or growers but not for the petitioner-traders, even if the petitioner-traders have paid the auction price and used to lift the Kendu Leaves from the godown of the OFDC situated inside the market area for their onward transportation to different places outside the State. The word "marketing" under the Rules framed under the Act, 1956 also denotes the storing, transporting and other activities by amendment of "marketing" being brought in 2007.

19. Learned Additional Government Advocate and learned counsel for the RMCs also drew attention of the Court to the decision of this Court in the case of *Sri Sri Gour Sunder Rice and Oil Mills and another -V- Bargarh Regulated Market Committee and another; Vol.33(1991) O.J.D. 251 (Civil)* where the Division Bench of this Court has been pleased to decide that rice and paddy being two different commercial commodities, the mere fact that market fee has been levied on paddy would be of no ground to exempt imposition of market fee on rice. Their Lordships have further observed in that case that the levy of fee is not permissible on agricultural produce brought from outside the market area into the market for the use by the Industrial concern



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situated within the market or for export subject to the condition that a declaration in respect of the produce has been made and certified in Form IV. Since in this case, no declaration has been made and the fact is not well established by the petitioners to the effect that the agricultural produce brought into the area of the market is not meant for transaction of the same, the RMCs have rightly collected the market fee under Section 11 of the Act, 1956

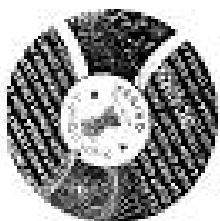
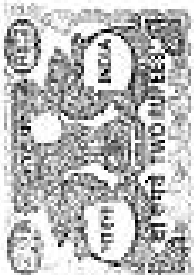
20. Main Point For Consideration

- (i) Whether the levy and collection of market fee under the Act, 1956 by the RMCs from the petitioners on Kendu leaves is legal and proper?

**21. DISCUSSION
POINT NO.(i)**

It is not in dispute that the petitioners are dealing in Kendu Leaves. It is also not in dispute that OFDC have got godowns inside the market area of respective RMCs. It is the admitted fact that the RMCs have already collected the market fee by the time of filing of the writ petitions under Section 11 of the Act, 1956. It is also not in dispute that the petitioners have neither sold nor bought any agricultural produces, namely, Kendu Leaves inside the market area.

22. The only contention of both the parties about the levibility of market fee by the market committee and collection of same from the petitioners as the Kendu Leaves are brought into the market area of the marketing committee. Before going to the fact, it is necessary to take

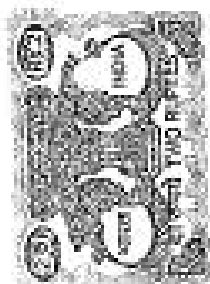


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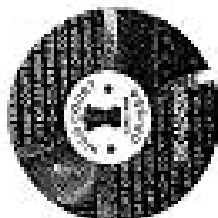
note of the relevant provisions of the Act, 1956 vis-à-vis other relevant State Acts.

23. The Act, 1956 was enacted and assented by the President of India on 22.1.1957 and published in the extraordinary issue of Orissa Gazette on 8.2.1957. The said Act was enacted to provide for better regulation of **buying and selling** of agricultural produce and the establishment of markets for agricultural produce in the State of Orissa. When it came first to Statute Book, there were thirty Sections with a schedule which includes the agricultural produce as defined under Section 2(1)(i). In that schedule, Sal Leaves and Kendu Leaves did not find place in the Schedule as agricultural produce.

24. The aforesaid Act got first amendment in 1984 in respect of certain provisions particularly Sections 2, 4, 11 and 28 for the purpose of this case. Section 2(1)(i) has also been amended. On the other hand, "agricultural produce" means such produce (whether processed or not) of agricultural, forest, animal husbandry, agriculture, horti-culture and pisciculture as are specified in the schedule. Similarly, Section 11 of the Act, 1956 has been amended in the following manner:



"11. It shall be competent for a Market Committee to levy and collect such fees (hereinafter referred to as the market fees) not being less than one rupees from every purchaser for every hundred rupee worth of agricultural produce marketed in the market area in such manner as may be prescribed and at such rate as may be specified in the bye-laws:



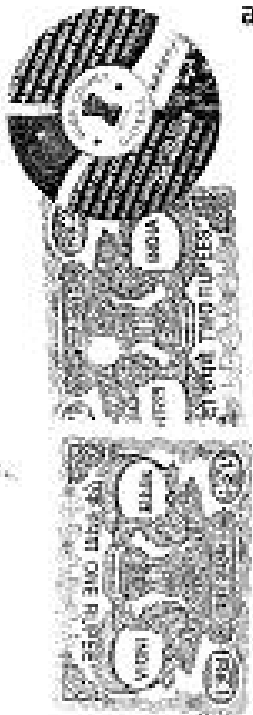
Provided that the rate of fees to be specified in the bye-laws shall not exceed three percent of the value of agricultural produce sold in the markets within the market area;

Provided further that no such fees shall be levied and collected in the same market area in relation to any agricultural produce in respect of which fees under this section have already been levied and collected therein:

Explanation-For the purpose of this section all notified agricultural produce leaving a market yard shall unless the contrary is proved, be presumed to have been brought within such yard by the person in possession of such produce."

25. Similarly the Act, 1956 was further amended in 2006 by incorporating certain provisions with regard to the establishment of private markets and contract firms.

26. In accordance with the provisions of Section 27 of the Act, the State Government made Rules in 1958 which has been published in the Gazette on 30.5.1958. In the Rules, the words "market" and "market yard" have been defined. That Rule also prescribes the manner of levy and collection of fees vide Rule 48 which is very important for the purpose of this case. Thereafter, the Rules, 1958 have been amended on 29.11.1974 in the following manner:



"48. Market fees. (1) The Market Committee shall levy and collect fees on agricultural produce brought and sold in the market area at such rates as may be specified in the bye-laws.

(2) The market committee shall also levy and collect licence fees from traders, general commission agents, brokers, weighmen, measurers, surveyors and other persons operating in the market according to rates specified in the bye-laws.

(3) No fees shall be levied on agricultural produce brought from out-side the market area into the market area for use by the industrial concerns situated in the market area or for export and in

respect of which a declaration has been made and a certificate has been obtained in Form-IV:

Provided that if such agricultural produce brought into the market area for export is not exported or removed therefrom before the expiry for twenty days from the date on which it was so brought, the market committee shall levy and collect the fees on such agricultural produce from the person bringing the produce into market area at such rates as may be specified in the bye-laws.

(4) The seller who is himself the producer of the agricultural produce offered for sale and the buyer who buys such produce for his own private and/or household use shall be exempted from payment of any fees under this rule:

27. Rule 48 has also been amended again on 3.8.1996, which is reproduced as under:

*48. (1) The Market Committee shall levy and collect market fees from:

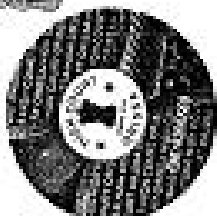
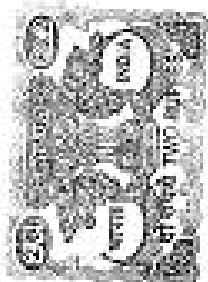
(a) a purchaser notified agricultural produces marketed in the market area;

(b) The person deemed to be a purchaser under the explanation to Section 11 of the Act in respect of the notified agricultural produce; and

(c) The persons bringing any notified agricultural produce into the market area for the purpose of processing or for export only, but not processing it therein or exporting it therefrom within the period of thirty days as provided in the provisos to Sub-section(6) of Section 4 of the Act, at such rates as may be specified in its bye-laws, subject to the minima and the maxima specified in Section 11 of the Act;

(2) The Market Committee shall levy and collect licence fees from traders, adatyas, brokers, weighmen, measures, surveyors and warehousemen operating in the market area at such rates as may be fixed in its bye-laws.

(3) A person bringng any notified agricultural produce from outside the market area into the



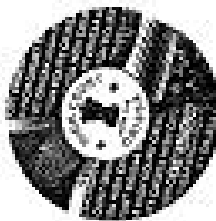
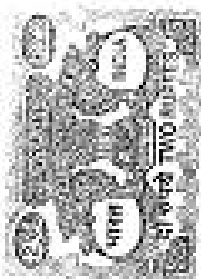
market area, for the purpose of processing by his industrial concern situated within the market area, if any, or for export from such area, shall be subject to levy of market fee unless he furnishes a declaration in respect of the produce and the certificate in Form-IV, to any Officer or servant of the Market Committee specifically authorized by the Committee in that behalf at the time of entry of the said produce into the market area

Provided that if the agricultural produce is not used by the industrial concern and is removed from the market or if it is not exported within twenty days of the purchase, the Market Committee shall levy and collect fees on such agricultural produce from the industrial concern or the persons furnishing the certificate at such rates as may be specified in its bye-laws.

(4) Retail sale of agricultural produce by the producer shall be exempted from any fees.

Explanation-"Retail Sale" in respect of any agricultural produce means the sale of such agricultural produce in any calendar day not exceeding the quantity or value specified in the bye-laws of the Market Committee.

(5) Purchase of any agricultural produce in any calendar day not exceeding the quantity or value specified in the bye-laws of the Market Committee, by a buyer for his domestic or household consumption shall be exempted from the payment of any fee.



48-A. Establishment of Check Points by the Market Committee- The Market Committee may, for the purpose of due discharge of its responsibilities, under the Act, Rules and Bye-laws, establish check points at such locations as may be notified by it from time to time, with the previous approval of the Government."

28. It appears that Sub-Rules-1, 3 and 5 have been incorporated to the text-book vide O.J.E. No.794 dated 3.8.1996. On a conjoint reading of Sub-Rules-1 and 3, it appears that if the agricultural

produce is marketed in the market area, the purchaser was liable to pay the fees. Similarly, the persons bringing scheduled agricultural produce to market area for the purpose of processing or for export only, but do not process it within a period of thirty days or exporting the same within a period of thirty days, such person is liable to pay the fee as levied under Section 11 of the Act. At the same time, if a person is bringing any notified agricultural produce from outside the market area into market area for the purpose of processing by his industrial concern situated within the market area, if any or for export from such area as well as area would not be levied with market fee if he produces a declaration in respect of the produce and the certificate in Form-IV to any officer or servant of the market committee specifically authorized by the committee in that behalf at the time of entry of the said produce into the market area. Again it is said that if the agricultural produce is not removed from the market area within twenty days of the purchase, the marketing committee shall levy and collect the fees. Further, such restriction is not applicable to the domestic and household buyer. Thus, the germane of the provisions is that the market fee is not leviable from the persons who do not make sale or purchase in the market area. Of course, the persons who store the Kendu Leave in their godown at the market area has to give declaration as required under Rule, 48 of the Rules, 1958.

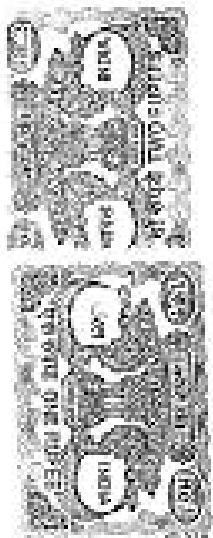
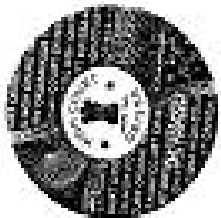
29. From the foregoing provisions, it appears that Rule, 48 has been completely changed with effect from 3.8.1996 but before or after

the amendment, the object of the Act, 1956 about leviability of agricultural produces upon selling or buying of the same in market area remain intact and there is no change to the basic object and reasons behind the enactment of the Act, 1956.

30. The Act, 1961 was enacted vide Orissa Act, 28 of 1961 having been assented by the Governor on 23.12.1961. Some provisions of the Act have been amended in 1961 by Amendment Act 6 of 1969. The aim and object of this Act to stop the monopoly of private persons to purchase Kendu Leaves from the Kendu Leave growers or Kendu Leaves owners and sell the same without having any middlemen between the Kendu Leave growers and retail purchaser. The very object of the Act is to stop the exploitation to the Kendu Leave growers or Kendu Leave pluckers.

31. After the Kendu Leaves are purchased by the Government or by its agents, the same are sold or disposed of in the manner as prescribed under the Orissa Kendu Leave (Control and Trade) Rules.

32. Orissa Forest Act, 1972 also defines the forest produce and the same includes the Kendu Leaves. The purpose of Indian Forest Act or Orissa Forest Act is to codify Forest Laws in order to bring same within the scope of one enactment. The further purpose of the Act is to regulate the transit of the forest produce and the duty leviable on timber and other forest produce. The comparison of the above three State Acts amply disclose that the three State Acts have got different aims and objects without overlapping on each other. The statutory



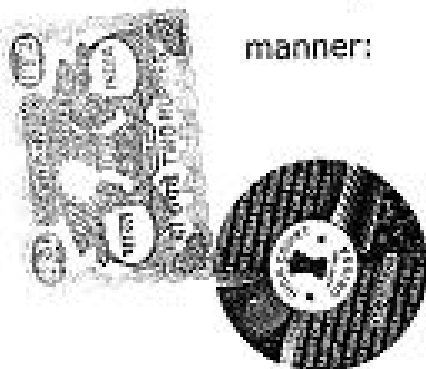
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provisions are to facilitate the common man not to be exploited. On the other hand, the main purpose of these three State Acts have got aims of inclusive growth. When the Act, 1958 has got aim of levy and collect the fee for the larger interest of the respective market, the object of the Act, 1961 is to stop unfair trade practice by middlemen and facilitate poor Kendu Leave growers or the pluckers to earn money by selling the Kendu Leaves to Government or their agents. On the other hand, Indian Forest Act or Orissa Forest Act, as the case may be, have got aim to make laws with rational idea to discourage deforestation and encourage aforestation. Not only this, but also the Forest Act has got object to regulate the forest produce for its utility but not to allow the same to be removed by whims of forest dwellers or forest offenders. Thus, the purpose of the three State Acts are important in their respective jurisdiction.

33. It is reported in the case of *Deochand Champalal and others (Supra)* where Their Lordships have been pleased to follow the decision of the Hon'ble Supreme Court in the case of *Mohammad Hussain Gulam Mohammad and another (Supra)* where Their Lordships at paragraph-7 have been pleased to observe in the following manner:

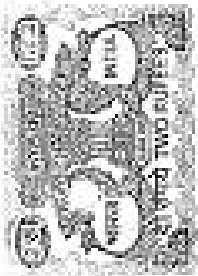
"XX XX XX

There are thus two restrictions on the power of the market committee under section 11; the first is that the fee fixed must be within the maxima prescribed by the Rules and naturally till such maxima are fixed it would not be possible for the market committee to levy fees, and the second restriction is that fees have to be charged not on



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the produce brought into but only on such produce as is actually sold. Rule 53 provides that the market committee shall levy and collect fees on agricultural produce bought and sold in the market area at such rates as may be specified in the bye-laws. The Rules nowhere prescribe the maxima within which the bye-laws will prescribe fees. The first attack therefore on the Rules is that it will not be open to the market committee to prescribe any fee under section 11 till the State Government prescribes the maxima by the Rules, which it has not done so far. Further there is an attack on Rule 54 which lays down that the fees on agricultural produce shall be payable as soon as it is brought into the principal market yard or sub-market yard or market proper or market area as may be specified in the bye-laws. The argument is that this rule allows fees to be charged on the produce brought into the market irrespective of whether it is actually bought and sold, and this is against Section 11. As we read Section 11, there is no doubt that the State Government is expected to specify the maxima within which the market committee shall fix fees and until such maximum is specified by the State Government in the Rules it would not be possible for the market committee to fix any fees under section 11.



Xx xx xx xx"

From the aforesaid decision, it is clear that the restriction under Section 11 is that fees has to be charged not on the produce brought into but only on such produce as is actually sold. It is needless to say that the main object of the Act, 1958 is to collect the fee if there is actual buying and selling in the market area.

34. It is reported in the case of *M/s. Ganesh Rice Mills and another (Supra)* where Their Lordships at paragraph 3 has observed in the following manner:

"3.The authority to levy market fee is as provided in Section 11 of the Act which says that it is

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competent for the Market Committee to levy and collect such fee, referred to as the market fee, on the agricultural produces marketed in the area. Admittedly the purchase of paddy has taken place outside the market area, the villages of purchase being not included in it. The marketing thus having taken place outside the market area, the Market Committee of the opp. party No. 1 would not have the authority to collect any market fee in respect of the transactions. Merely because a portion of the National Highway falls within the market area of the opp. party No. 1, it would have no authority to restrict movement of the agricultural produces on the National Highway and collect market fee on purchases that had been effected outside the market area.

xx xx xx xx"

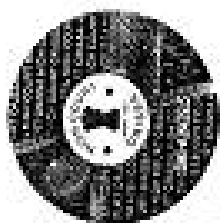
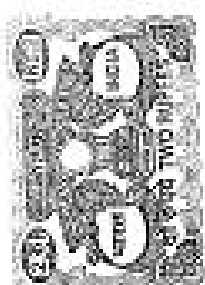
With due regard to the above decision, it appears that if the Kendu Leaves are transported by vehicle on National Highways which run within the market area of RMC, then market fee is not chargeable.

35. A Division Bench of this Court in the case of *M/s. I.T.C. Limited and another (Supra)* at paragraph-5 have observed in the following manner:

"xx xx xx xx"

In this case, the transactions of sale took place in Bhubaneswar and as per Annexure-3, the petitioner company was allowed to lift the stock of Sal seeds from various godowns including Keonjhar godown. Though the Keonjhar godown situates within the 'Market Area' of keonjhar Regulated Market Committee, as Sal seeds were not marketed within the market area, the levy of market fee by opp. Party no.4 is without jurisdiction. The fees which has already been collected by the opp. Party no.4 as "Market fee" is, therefore, refundable to the petitioner."

36. With due respect to the above decision, it is clear that unless there is buying and selling inside the market area prior to 2007



amendment, the properties brought into the market area for the above purpose cannot be said to be subject matter for levy and collection of fees by RMCs.

37. In another decision in the case of *Sri Ramkaran Agarwal and another -V- Regulated Market Committee, Bhadrak; 74 (1992) CLT 861* where Their Lordships at paragraph-6 have observed as under:

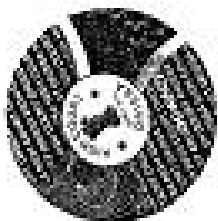
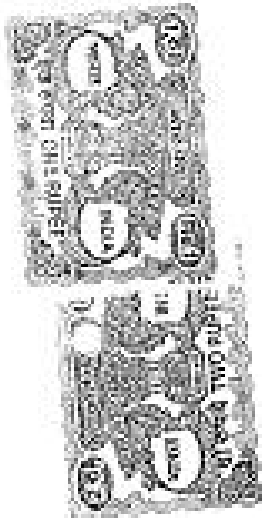
"xxx xxx xxx"

Thus, the paddy brought from outside the market area to the industrial unit of the petitioners shall not be leviable with market fees, if the same has been brought for use by the industrial unit itself. In the present case, it has been asserted by the petitioners and not denied by the opposite party that that paddy which is brought to the industrial unit is neither brought for sale nor in fact sold as such. They also allege that the paddy is not brought to the unit for the purposes of storage. Thus the paddy brought by the petitioners for use by their industrial unit itself which is situated within the market area, according to the plain reading of sub-rule(3) of Rule 48 would be exempted from levy of market fees.

Xxx xxx xxx"

With dues respect to the above decision, it is clear that if the agricultural produce is brought from outside to the Industrial unit which is situated in the market area for their own use, the same will not be leviable.

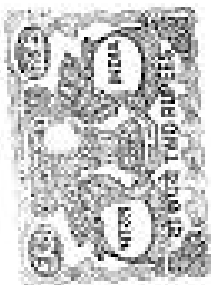
38. From the aforesaid discussions, it has been consistently held by the Hon'ble Supreme Court and this Court that there must be actual purchasing or selling of the agricultural produce in the market area so as to enable the RMCs to collect the market fee. Moreover, Rule 48 of



By

the Rules, 1958 amended from time to time has stressed upon within the certain period for the utilization of the same by industrial unit or export of the same are exempted. However, the main object and reason is the buying or selling of the agricultural produces or stored for such purpose in the market area.

39. Now adverting the facts of the batch of cases, it appears that there are allegations about the collection of market fees by the RMCs without having jurisdiction. In the counter affidavit, the RMCs have also reiterated that there is justification of levy of fee to be collected from the petitioners. In the counter, it is specifically admitted that the Kendu Leaves which are auctioned at Sambalpur and Bhubaneswar but the godowns of OFDC are situated in the market area and under Sub-section 6 of Section 4 unless contrary proved, the Kendu Leave being the agricultural produce brought within the market area is deemed to have been brought for buying and selling. At the same time, it is admitted by the opposite parties that actual purchase of the Kendu Leaves does not take place inside the market area of their respective RMCs. The contention of the learned counsel for the RMCs is clear that once the agricultural produce is purportedly brought into the market area, the respective market committee has got competence to levy the market fee even if there is no sale or purchase. Also in the counter affidavit, they have said that even if the petitioners have purchased the Kendu Leaves for export only but used to lift the same from godown



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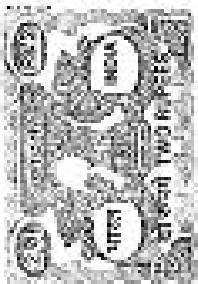
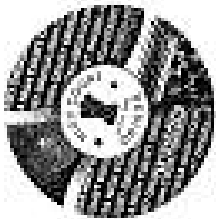
situated within the market area within a period of 90-150 days for which they are leviable.

40. It is not revealed from the counter that in the cases where the petitioners have stored the Kendu Leaves after sale or brought for sale and kept the same beyond thirty days although it is admitted that auction sale of Kendu Leaves takes place at Sambalpur or Bhubaneswar where the auction sale is completed after the petitioners purchased the Kendu leaves on being highest bidders. Section 64(2) of the Sale of Goods Act, 1930 is placed before for better reference:

"(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid"

In view of the aforesaid provision, once the auction caller has struck of the hammer of highest bid, the auction sale is complete irrespective of the fact that the Kendu Leaves are not lifted then and there but lifted from the godown of the OFDC inside the market area later on. There it is clear that Kendu Leaves either have been transported from the godown after sale at places other than market area or have been only transported through the market area by carrying the transport permit from the respective State Government and the agencies for the State Government.

41. Relying upon the decision of the Division Bench of this Court in the case of *M/s.I.T.C. Limited and another (Supra)*, in the case at hand, even if godowns of OFDC are situated inside the market area of the respective RMCs, the Kendu Leaves being not marketed within the

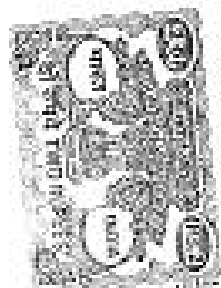
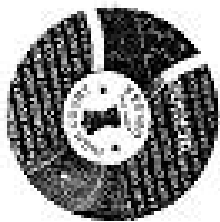


market area, levy of market fee is without jurisdiction. Similarly, following the decision of this Court in the case of *M/s. Ganesh Rice Mills and another (Supra)*, in the present cases, the Kendu Leaves being transported on the National Highways falling within the market area, cannot be said to be leviable.

42. In both the decisions, it is necessary for the RMCs to prove that there was actual selling or buying of Kendu Leaves inside the market area. But, in the instant cases, there is no marketing of such Kendu Leaves inside the market area as observed above.

43. In the case of *Agricultural Market Committee, Andhra Pradesh and others (Supra)* where the Hon'ble Supreme Court have only observed about the leviability of the market fee on sale and purchase of agricultural produce inside the market area so as to attract the concerned Market Act. In the instant cases, there being no sale or purchase within the market area in accordance with law, the levy and collection of market fee by the RMCs is also illegal and improper.

44. Learned Additional Government Advocate, citing the decision of this Court in the case of *Sri Sri Gour Sunder Rice and Oil Mills and another (Supra)*, submitted that in absence of proof of declaration about the properties brought into the market area for the purpose of transaction, the RMCs can levy the market fee. After going through the facts of that case, it appears that the petitioners in that case had brought the agricultural produce into the market area for transaction, but did not produce necessary declaration and certificate in Form-IV. In



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the instant case, the facts are different because the sale and purchase completed by auction took place outside the market area. Therefore, the aforesaid decision cited by the learned Additional Government Advocate is not applicable to the facts of these cases.

45. Thus, in view of the decisions of the Hon'ble Supreme Court as well as of this Court, there being no any sale or purchase of Kendu Leaves inside the market area or marketed inside the market area, the genesis of the Act, 1956 being not proved, the levy and collection of market fee upon the Kendu Leaves from the present petitioners is illegal and improper. Point No.(1) is answered accordingly.

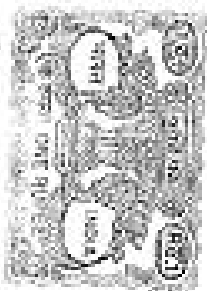
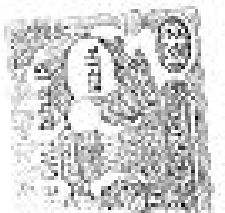
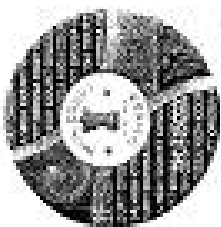
46. **CONCLUSION**

Since it has been already observed, as above, that collection of market fee by the respective RMCs from the petitioners at their respective check gates are contrary to the legal provisions, this Court is of the view that the said collection of the market fee is illegal and devoid of jurisdiction and directs the RMCs not to collect the same. It is, therefore, directed that the opposite parties-RMCs shall refund the market fee collected so far from the petitioners within a period of four months to the petitioners from the date of this judgment failing which the same shall be refunded with interest at the rate of 9% per annum from the date of collection till the date of actual payment.


The writ petitions are disposed of accordingly.

Interim orders, if any, in the writ petitions stand vacated.

Dr. D.P. Choudhury, J.



Date of Application:- 22
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 Date of Ready:- 27
 Date of Delivery:- 27-5-12

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	Rs.	P.
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Searching Fee.....	—	—
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Folio Pages... 92.	48	50
Hologram Fee ().....	44	00
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