

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITON (C) NO. OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:-

BHARTIYA KISAN PARTY ...PETITIONER

VERSUS

UNION OF INDIA & ORS ...RESPONDENT

WITH

I.A.NO. OF 2020 APPLICATION FOR EX-PATE STAY

PAPER-BOOK

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ADVOCATE FOR PETITIONER: SANJEEV MALHOTRA

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PROFORMA FOR FIRST LISTING

SECTION -X

The case pertains to (Please tick/check the correct box):

- | | | |
|--------------------------|---------------------------------|----|
| <input type="checkbox"/> | Central Act: (Title) | |
| <input type="checkbox"/> | Section: | |
| <input type="checkbox"/> | Central Rule : (Title) | NA |
| <input type="checkbox"/> | Rule No.(s) | NA |
| <input type="checkbox"/> | State Act : (Title) | NA |
| <input type="checkbox"/> | Section : | NA |
| <input type="checkbox"/> | State Rule : (Title) | NA |
| <input type="checkbox"/> | Rule No. (s) | |
| <input type="checkbox"/> | Impugned Interim Order : (Date) | NA |
| <input type="checkbox"/> | Impugned Final Order : (Date) | NA |
| <input type="checkbox"/> | High Court : (Name) | NA |
| <input type="checkbox"/> | Name of Judges : | NA |
| <input type="checkbox"/> | Tribunal /Authority : (Name) | NA |

-
1. Nature of Matter : ☐ Civil
 2. (a) Petitioner/appellant No. : Bhartiya Kisan Party
(b) e-mail ID : sanjeevmalhotra@hotmail.com
(c) Mobile phone number: 9871911183
 3. (a) Respondent No. 1 : Union of India & Ors.
(b) e-mail ID : NA
(c) Mobile phone number: NA
 4. (a) Main category classification :
(b) Sub classification:

5. Not to be listed before: NA

6. a. Similar disposed of matter with NA

Citation if any in case details

b. Similar/Pending matter:

a. Criminal Matter:

(a) Whether accused/convict has surrendered :[]Yes [] No

(b) FIR No. : NA

(c) Police Station: NA

(d) Sentence Undergone: NA

9. Land Acquisition Matter:

(a) Date of Section 4 notification: NA

(b) Date of Section 6 notification: NA

(c) Date of Section 17 notification: NA

10. Tax Matters: State the tax effect:

11. Special Category (first petitioner/appellant only): []

Senior citizen > 65 years [] SC/ST [] Woman/child []

Disabled [] Legal Aid case [] In custody NA

12. Vehicle Number (in case of Motor Accident Claim matters):

NA

13. Decided cases with citation: NA

Date:03.10.2020

[SANJEEV MALHOTRA]
AOR for Petitioner(S)/Appellant(S)
Registration No.728
sanjeevmalhotra@hotmail.com

SYNOPSIS

That the Petitioner is invoking the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India against the enforcement of new Acts, 2020 of Parliament received the assent of the President vide gazette notification dated 27.09.2020 i.e (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and (3) The Essential Commodities (Amendment) Act, 2020 dated 27.09.2020 made by the Respondents in arbitrary manner. The substantial question of law involves in this case is that, whether the abovementioned three farmers Acts, 2020 violates the basic features of the Constitution of India. It is submitted that the Parliament has erred by not acting in the parity of reasoning adopted in constitution of India.

Whether the parliament have power to make law on the agriculture produce, which is the pure domain of the State list-II. The question is not free from doubt. It has been laid down that the various entries found in the three Lists of the Seventh

Schedule of the Constitution of India are demarcated fields of legislation and their contours and limits have been expressly described in the entries mentioned in the said three Lists. Each State is free and independent to legislate on the field which is covered by the State List (List II) or the Concurrent List (List III). So far as List I is concerned that is reserved purely for Parliament for any legislation to be made.

It is well-settled principle that Article 246 recognized the principle of Parliamentary supremacy in the field of legislation in case where both legislatures have competence to legislate. The constitutional scheme is that Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. A State Legislature has exclusive power to legislate with respect to matters in List II, excluding the matters falling in List I and has also concurrent power to legislate with respect to matters falling in List III excluding the matters falling in List I. The dominant position of the Central Legislature with regard to matters in List I and List III is established.

The principles of repugnancy in Indian Constitution are well-settled by this Hon'ble Court in I.T.C. Ltd. Etc vs State Of Karnataka & Ors on dated 03.05.1985, cited in 1985 SCR, Supl.

(1) 145. These are as follows:-

(1) A legislation, which in its pith and substance, falls within any of the entries of List I of the Seventh Schedule to the Constitution, would be exclusively within the competence of the Parliament.

(2) A legislation falling exclusively, in its pith and substance, within any of the entries in List II of the Seventh Schedule, would be within the exclusive competence of the State Legislature.

(3) A Central law which in its pith and substance, falls within any entry in List I would be valid even though it might contain incidental provisions in List II which may contain ancilliary provisions which might touch on an entry of List I incidentally.

(4) A State law, which in its pith and substance, within any entry in List II would be valid even though it might incidentally touch upon a subject falling within List I.

(5) A Central law, which in its pith and substance, dealt with a subject falling within List II would be bad and ultra vires the Constitution. Similarly, a State law which in its pith and substance dealt with a matter falling within List I would be invalid and ultra vires the Constitution.

(6) The concept of repugnancy arises only with regard to laws dealing with subjects covered by the entries falling in List III in respect of which both parliament and State Legislature are competent to legislate. Under Article 254 of the Constitution, a State law passed in respect of a subject matter comprised in List III would be invalid if its provisions were repugnant to a law passed on the same subject by Parliament. The repugnancy arose only if both the laws could not exist together. Repugnancy does not arise simply because Parliament and the States pass' law on the same subject. There cannot be any repugnancy in respect of State laws passed in respect of matter falling pith and substance in List II or in A respect of Central laws passed on subject falling I.T.C. Ltd. Etc vs State Of Karnataka & Ors on 3 May, 1985 in List I. Parliament cannot legislate on a State subject and State

cannot legislate on a Central subject. If either trenches upon the field of the other, law will be ultra vires.

The above three Acts, 2020 completely violates the Constitutional norm as has been laid down by this Hon'ble Court in I.T.C. Ltd. Etc vs State Of Karnataka & Ors, 1985 SCR, Supl. (1) 145 and Kihoto Hollohan vs Zachillhu and Others, 1992 SCC Supl. (2) 651. As such the three Acts of Parliament received the assent of the President published in the gazette notification dated 27.09.2020 is hence, vulnerable and ought to be struck down as it merely negates a binding judgement of this Hon'ble Court. In this case court can't be remain as mere spectator after these unconstitutional acts passed by the respondents, this Hon'ble Court is not expected to adopt a passive or negative role and remain bystander or a spectator, if violation of basic structure of constitution is observed.

While Parliament and the State Legislature in India enact the law and the Executive Government implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the Legislation sought to be implemented. One of the functions of the superior

judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights; for now it has been repeatedly held that no constitutional amendment can be sustained which violates the basic structure of the Constitution. The Hon'ble Court held in *Kesavananda Bharati Sripadagalayaru Vs. State of Kerala* [AIR 1973 SC 1461], *Smt. Indira Nehru. Gandhi v. Raj Narain* [1976 (2) SCR 347], *Minerva Mills Ltd. v. Union of India* [1981 (1) SCR 206] and in *S. P. Sampath Kumar v. Union of India*, [1987(2) SCALE 1414]. With this impressive expanse of judicial power, it is only right that the superior Courts in India should be conscious of the enormous responsibility which rests on them.

After this unconstitutional amendment, this Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights. There are enumerable decisions of this Court where this approach has been

adopted and decision should be taken with a view to enforce fundamental rights which may sometimes be perceived as legislative in nature.

The supreme court of India is the guardian of Indian Constitution and the most important functions of the superior judiciary in India is to examine the competence and validity of legislation, thus with a hope the Petitioner has approached this Glorious Institution, which has always safeguarded the very tenets of Indian Constitution, and has always provide Right to life in wider context to the masses of the Nation.

LIST OF DATES

19.12.2000 Agricultural marketing is witnessing major changes world over, owing to liberalization of trade in agricultural commodities. To benefit farming community for the new global market access opportunities, the internal agricultural marketing system in the country needs to be integrated and strengthened. In this context, Government of India in the Ministry of

Agriculture appointed an Expert Committee on 19th December 2000 followed by an Inter Ministerial Task Force to review the present system of agricultural marketing in the country and to recommend measures to make the system more efficient and competitive.

The Committee and the Task Force in their Reports of June 2001 and May 2002 respectively, have suggested various reforms relating to agricultural marketing system as well as in policies and programs for development and strengthening of agricultural marketing in the country. The reports have noted that the situation of control over agricultural markets by the State has to be eased to facilitate greater participation of the private sector, particularly to engender massive investments required for the development of marketing infrastructure and supporting services.

27.09.2002

The recommendations contained in these Reports were discussed at the National Conference of State Ministers organized by the Ministry of Agriculture, Govt. of India at Vigyan Bhavan, New Delhi on 27th September 2002 and later by a Standing Committee of State Ministers constituted for the purpose under the chairmanship of Sri Hukumdeo Narayan Yadav, the then Union Minister of State for Agriculture on 29th January 2003.

In the Conference as well as the Standing Committee, State Governments expressed the view that reforms in the agricultural marketing sector were necessary to move away from a regime of controls to one of regulation and competition. In view of liberalization of trade and emergence of global markets, it was necessary to promote development of a competitive marketing

infrastructure in the country and to bring about professionalism in the management of existing market yards and market fee structure. While promoting the alternative marketing structure, however, Government needs to put in place adequate safeguards to avoid any exploitation of farmers by the private trade and industries.

For this, there was a need to formulate model legislation on agricultural marketing. The Ministry of Agriculture, Government of India accordingly set up a committee under the chairmanship of Shri. K.M. Sahni, Additional Secretary, Department of Agriculture and Cooperation to formulate a model law on agricultural marketing in consultation with the States.

03.05.2003

The Model Legislation has been drafted by the Committee after holding discussions with the State officials at Bhopal on 3-4th May,

2003, at Pune on 22-23rd May 2003, at Shillong on 31st May 2003 and at Srinagar on 7th June, 2003. The draft legislation was thereafter discussed with the State Governments at the National Institute of Agricultural Marketing, Jaipur on 11th and 12th June 2003 and finalized.

09.09.2003 The participating States included representatives from the State of Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Madhya Pradesh, Punjab, Rajasthan and Uttar Pradesh. The draft model legislation was fully discussed by the Committee at Pune on 8th and 9th September 2003 and finalized. The draft model legislation titled the State Agricultural Produce Marketing (Development and Regulation) Act, 2003, provides for establishment of Private Markets/ yards, Direct Purchase Centres, Consumer/Farmers Markets for direct sale

and promotion of Public Private Partnership in the management and development of agricultural markets in the country.

It also provides for separate constitution for Special Markets for commodities like Onions, Fruits, Vegetables, Flowers etc. A separate chapter has been included in the legislation to regulate and promote contract-farming arrangements in the country. It provides for prohibition of commission agency in any transaction of agricultural commodities with the producers. It redefines the role of present Agricultural Produce Market Committee to promote alternative marketing system, contract farming, direct marketing and farmers/consumers markets. It also redefines the role of State Agricultural Marketing Boards to promote standardization, grading, quality certification, market led extension and

training of farmers and market functionaries in marketing related areas. Provision has also been made in the Act for constitution of State Agricultural Produce Marketing Standards Bureau for promotion of Grading, Standardization and Quality Certification of Agricultural Produce.

This would facilitate pledge financing, E-trading, direct purchasing, export, forward/future trading and introduction of negotiable warehousing receipt system in respect of agricultural commodities.

09.09.2003 The Chairman of Committee hopes that the model legislation will enable nationwide integration of agricultural markets, facilitate emergence of competitive agricultural markets in private and cooperative sectors, create environment conducive to massive investments in marketing related

infrastructure and lead to modernization and strengthening of existing markets.

Agricultural Markets in most parts of the Country are established and regulated under the State APMC Acts. The whole geographical area in the State is divided and declared as a market area wherein the markets are managed by the Market Committees constituted by the State Governments. Once a particular area is declared a market area and falls under the jurisdiction of a Market Committee, no person or agency is allowed freely to carry on wholesale marketing activities.

The monopoly of Government regulated wholesale markets has prevented development of a competitive marketing system in the country, providing no help to farmers in direct marketing, organizing retailing, a smooth raw material supply to

agro-processing industries and adoption of innovative marketing system and technologies. An efficient agricultural marketing is essential for the development of the agriculture sector as it provides outlets and incentives for increased production, the marketing system contribute greatly to the commercialization of subsistence farmers. Worldwide Governments have recognized the importance of liberalized agriculture markets. Task Force on Agricultural Marketing Reforms set up by the Ministry has suggested promotion of new and competitive Agricultural Market in private and cooperative sectors to encourage direct marketing and contract farming programmes, facilitate industries and large trading companies to undertake procurement of agricultural commodities directly from the farmer's fields and to establish effective

linkages between the farm production and retail chains.

There is a necessity to integrate farm production with national and international markets to enable farmers to undertake market driven production plan and adoption of modern marketing practices. If agricultural markets are to be developed in private and cooperative sectors and to be provided a level competitive environment vis-à-vis regulated markets, the existing framework of State APMC Acts will have to undergo a change.

The State has to facilitate varying models of ownership of markets to accelerate investment in the area and enable private investment in owning, establishing and operating markets. Working of existing Government regulated markets also need to be professionalized by promoting public private partnership in their management. Appropriate

legal framework is also required to promote direct marketing and contract farming arrangements as alternative marketing mechanism. Therefore, there is a need to strength the existing APMC Act, 2003 for agricultural market and Legalised the Minimum Support Price (in short MSP) in the interest of farmers. MSP should be implemented in letter and spirit, so that no one can cheat the farmers of the country and at least farmers may not get their food grain price below than the MSP.

It is submitted that agricultural markets in India are mainly regulated by state Agriculture Produce Marketing Committee (APMC) laws. APMCs were set up with the objective of ensuring fair trade between buyers and sellers for effective price discovery of farmers' produce. APMCs can:

(i) regulate the trade of farmers' produce by providing licenses to buyers, commission agents, and private markets, (ii) levy market fees or any other charges on such trade, and (iii) provide necessary infrastructure within their markets to facilitate the trade.

The Standing Committee on Agriculture (2018-19) observed that the APMC laws are not implemented in their true sense and need to be reformed urgently. Issues identified by the Committee include: (i) most APMCs have a limited number of traders operating, which leads to cartelization and reduces competition, and (ii) undue deductions in the form of commission charges and market fees. Traders, commission agents, and other functionaries organise themselves into associations, which do not allow easy entry of new persons into market yards, stifling competition. The Acts are highly

restrictive in promotion of multiple channels of marketing (such as more buyers, private markets, direct sale to businesses and retail consumers, and online transactions) and competition in the system.¹³

During 2017-18, the central government released the model APMC and contract farming Acts to allow restriction-free trade of farmers' produce, promote competition through multiple marketing channels, and promote farming under pre-agreed contracts. The Standing Committee (2018-19) noted that states have not implemented several of the reforms suggested in the model Acts. It recommended that the central government constitute a Committee of Agriculture Ministers of all states to arrive at a consensus and design a legal framework for agricultural marketing. A High Powered Committee of seven Chief Ministers was set

up in July 2019 to discuss, among other things: (i) adoption and time-bound implementation of model Acts by states, and (ii) changes to the Essential Commodities Act, 1955 (which provides for control of production, supply, and trade of essential commodities) for attracting private investment in agricultural marketing and infrastructure.

05.06.2020 The central government in COVID-19 period promulgated three Ordinances on June 5, 2020: (i) the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020, (ii) the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020, and (iii) the Essential Commodities (Amendment) Ordinance, 2020. The Ordinances collectively seek to (i) facilitate barrier-free trade of farmers' produce outside the markets notified under the various state APMC laws, (ii) define a framework for contract farming, and (iii) impose stock limits on agricultural produce only if there is a sharp increase in retail

prices. The three Ordinances together aim to increase opportunities for farmers to enter long term sale contracts, increase availability of buyers, and permits buyers to purchase farm produce in bulk.

20.09.2020 The (i) the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020, (ii) the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020, and (iii) the Essential Commodities (Amendment) Bill, 2020. introduced in Lok Sabha, on Sept. 14, 2020 passed in Lok Sabha on Sep 17, 2020 Passed in Rajya Sabha on Sept. 20, 2020 in haste manner without following the constitutional provisions of discussion and voting.

27.09.2020 The three impugned Acts, 2020 of Parliament received the assent of the President published in the gazette dated 27.09.2020 are question and is hereby place before this Hon'ble court.

(1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and; (3) The Essential Commodities (Amendment) Act, 2020.

Aggrieved by the manner in which the constitution of India is being breached, the Petitioner herein prefer the present Writ Petition in public interest challenging the three Acts, 2020 passed by the Parliament.

03.10.2020

Hence, the present Writ Petition under Article 32 of the Constitution of India against the three Farmers Acts, 2020 issued in the gazette notification dated 27.09.2020 made by the Respondents in arbitrary manner.

IN THE SUPREME COURT OF INDIA
[CIVIL ORIGINAL JURISDICTION]

WRIT PETITION (C) NO. OF 2020

IN THE MATTER OF:-

Bhartiya Kisan Party

Through its General Secretary

E-58, Taranagar, Jhotwara, Jaipur,

Rajasthan -302012

...Petitioner

VERSUS

1. UNION OF INDIA

Through the Cabinet Secretary,

Cabinet Secretariat,

Rashtrapati Bhawan,

New Delhi – 110004.

2. Ministry of Agriculture & Farmers Welfare

Through Secretary

Krishi Bhawan, Room No. 120,

First floor, Dr Rajendra Prasad Road,

New Delhi, Delhi 110001.

3. Ministry of Law and Justice

Through its Secretary

Shastri Bhawan,

New Delhi-110001

...Respondents.

PETITION UNDER ARTICLE 32 READ WITH 246
OF THE CONSTITUTION OF INDIA FOR
ISSUANCE OF A WRIT IN THE NATURE OF
MANDAMUS OR ANY OTHER APPROPRIATE
WRIT

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition under Article 32 of the Constitution of India is arising out of enforcement of new Acts, 2020 of Parliament received the assent of the President vide gazette notification dated 27.09.2020 i.e (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and; (3) The Essential Commodities (Amendment) Act, 2020 passed by the Respondents in arbitrary manner.

1A. The petitioner is a political party registered under section 29A of the representation of the People Act, 1951, vide registration no. F. No. 56/410/2017-18/PPS-I dated 15.06.2018. (True Copy enclosed with Vakalatnama) and Mr. Dhansingh Choudhary the General Secretary of petitioner has been authorized by the Association vide resolution dated 26.09.2020 (Copy enclosed with Vakalatnama) to file the Writ Petition.

2. The objectives and aims of the petitioner to build up India as a strong and prosperous nation, party believes in decentralization of political and economic powers. The aim of the party is to make India self-sustained with all round developments in Agricultural, Social, Economics, Industrial and service sectors. The Petitioner is registered political party and has no personal interest in the present litigation, but is agitating the present issues in wider public interest and to protect the Constitution of India and the social fabric of the nation. The annual income of the General Secretary of Petitioner is Rupees 350000/- (Three Lakhs only). A true copy of the Adhar Card No.

437101551961, PAN Card No. AGZPC9632M, Mob No: 8810200523 of the General Secretary of Petitioner is attached herewith and marked as **Annexure P-1**. (Pg).

3. That the petitioner states that he has not preferred any other similar Petition for the same cause before this Hon'ble Court or any other court, except the present Writ Petition. The Petitioner does not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Petition in public interest.
4. The Respondents herein are the proper authorities representing the Government of India that is responsible for the impugned Acts, 2020. They are all covered by the definition of 'State' in Article 12 of the Constitution, and as such, the present Petition is maintainable against them.
5. That the Parliament has erred by not acting in the parity of reasoning adopted in constitution of India. The substantial question of law for general importance arises in the present petition is that:-

SUBSTANTIAL QUESTION OF LAW

- A. Whether the impugned three farmers Acts, 2020 passed by the respondents violates the basic features of the Constitution of India?
- B. Whether the Parliament have power to pass legislation under article 246 (4) of the constitution of India relating to the Seventh Schedule of List II - State Entry No. 14, 18, 30, 46, 47 and 48? The Parliament cannot be said to have legislative competence to make law in relation to The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and The Essential Commodities (Amendment) Act, 2020 must be held to be invalid and unconstitutional.
- C. Whether the provisions of the Central Acts dated 27.09.2020 repugnant to the State Act on the subject matter of Constitution of India, Seventh Schedule and Entry No. 14, 18, 30, 46, 47 and 48 of List II - State?
- D. Whether the Central Legislature competent to validate the subject matter of article 246 of Constitution of

India, Seventh Schedule., Entry No. 14, 18, 30, 46, 47 and 48 of List II - State List declared by parliament as bad in law.

E. Whether in view of The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and The Essential Commodities (Amendment) Act, 2020 dated 27.09.2020, hereinafter referred to as the Central Acts and the issued of the notification dated 27.09.2020 by which the Central Acts, 2002 was made applicable in the States, in so far as the Central Act dealt with the contract farming act, the State legislature was not competent to pass this enactment?

F. Whether Section 18 and 19 of The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, embodied therein detract from or abrogate judicial review under the Constitution of India in so far as infirmities based on violations of constitutional mandates, mala-fides,

non-compliance with Rules of Natural Justice and perversity are concerned?

6. The brief facts of the present petition are as follow:-

6.1 That the Petitioner is invoking the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India against the three Farmers Acts, 2020 issued in the gazette notification dated 27.09.2020 i.e (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and (3) The Essential Commodities (Amendment) Act, 2020 dated 27.09.2020 made by the Respondents in arbitrary manner.

6.2 That whether parliament have power to make law on the agriculture produce, which is the pure domain of the State list-II? The question is not free from doubt. It has been laid down that the various entries found in the three Lists of the Seventh Schedule of the Constitution of India are demarcated fields of

legislation and their contours and limits have been expressly described in the entries mentioned in the said three Lists. Each State is free and independent to legislate on the field which is covered by the State List (List II) or the Concurrent List (List III). So far as List I is concerned that is reserved purely for Parliament for any legislation to be made.

- 6.3 That it is well-settled principle that Article 246 recognized the principle of Parliamentary supremacy in the field of legislation in case where both legislatures have competence to legislate. The constitutional scheme is that Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. A State Legislature has exclusive power to legislate with respect to matters in List II, excluding the matters falling in List I and has also concurrent power to legislate with respect to matters falling in List III excluding the matters falling in List I. The dominant position of the

Central Legislature with regard to matters in List I and List III is established.

6.4 That the principles of repugnancy in Indian Constitution are well-settled by this Hon'ble Court in I.T.C. Ltd. Etc vs State Of Karnataka & Ors on dated 03.05.1985, cited in 1985 SCR, Supl. (1) 145.

These are as follows:-

(1) A legislation, which in its pith and substance, falls within any of the entries of List I of the Seventh Schedule to the Constitution, would be exclusively within the competence of the Parliament.

(2) A legislation falling exclusively, in its pith and substance, within any of the entries in List II of the Seventh Schedule, would be within the exclusive competence of the State Legislature.

(3) A Central law which in its pith and substance, falls within any entry in List I would be valid even though it might contain incidental provisions in List II which may contain ancillary provisions which might touch on an entry of List I incidentally.

(4) A State law, which in its pith and substance, within any entry in List II would be valid even though it might incidentally touch upon a subject falling within List I.

(5) A Central law, which in its pith and substance, dealt with a subject falling within List II would be bad and ultra vires the Constitution. Similarly, a State law which in its pith and substance dealt with a matter falling within List I would be invalid and ultra vires the Constitution.

(6) The concept of repugnancy arises only with regard to laws dealing with subjects covered by the entries falling in List III in respect of which both parliament and State Legislature are competent to legislate. Under Article 254 of the Constitution, a State law passed in respect of a subject matter comprised in List III would be invalid if its provisions were repugnant to a law passed on the same subject by Parliament. The repugnancy arose only if both the laws could not exist together. Repugnancy does not arise

simply because Parliament and the States pass' law on the same subject. There cannot be any repugnancy in respect of State laws passed in respect of matter falling pith and substance in List II or in A respect of Central laws passed on subject falling I.T.C. Ltd. Etc vs State Of Karnataka & Ors on 3 May, 1985 in List I. Parliament cannot legislate on a State subject and State cannot legislate on a Central subject. If either trenches upon the field of the other, law will be ultra vires.

- 6.5 The relevant part of SEVENTH SCHEDULE read with Article 246 including List I—Union List, List II—State List and List III—Concurrent List is placed as under:-

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

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated

in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

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

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

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2 [in a State] notwithstanding that such matter is a matter enumerated in the State List.

SEVENTH SCHEDULE (Article 246)

List I—Union List

82. *Taxes on income other than agricultural income.*

86. *Taxes on the capital value of the assets, exclusive of agricultural land, of individuals*

and companies; taxes on the capital of companies.

- 87. *Estate duty in respect of property other than agricultural land.*
- 88. *Duties in respect of succession to property other than agricultural land.*

List II—State List

- 14. *Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.*
- 18. *Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.*
- 30. *Money-lending and money-lenders; relief of agricultural indebtedness.*
- 46. *Taxes on agricultural income.*
- 47. *Duties in respect of succession to agricultural land.*
- 48. *Estate duty in respect of agricultural land.*

List III—Concurrent List

- 6. *Transfer of property other than agricultural land; registration of deeds and documents.*

7. *Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.*

41. *Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.*

6.6 That the statement of objects and reasons given by the respondents is as under:-

1. Indian Agriculture is characterised by fragmentation due to small holdings and has certain weaknesses such as dependence on weather, uncertainties in production and unpredictable market. This makes agriculture risky and inefficient in respect of both input and output management. These challenges needed to be addressed by way of realising higher productivity, cost effective production and efficient monetisation of the produce to increase the farmers' income. It was felt that promotion of agreements for farming produce may strengthen the process of monetisation

whose primary objective is to de-risk agriculture at various stages, enable scaling of investment by industry for production and processing of high value agriculture produces, give fillip to exports and help farmers to enjoy the additional benefits of operational efficiency.

2. The COVID-19 pandemic and resultant lockdown also threw up challenges for agriculture and impacted the livelihood of farmers. As agriculture sector has immense potential to make significant contribution to the economic growth, there was a need to find long term solutions for farmers and for agriculture as a whole. Therefore, to achieve these objectives and to mitigate risks for farmers, enhance their income, put in place an effective and conducive policy regime for agreements and for holistic development of

the agriculture sector, there was a need for immediate legislation.

3. As the Parliament was not in session and there was an immediate need for legislation in this regard, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 was promulgated by the President of India on the 5th June, 2020 under clause (1) of article 123 of the Constitution.

4. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020 which seeks to replace the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 (Ord. 11 of 2020) provides for—

(a) *facilitating written farming agreement to be entered into in respect of a*

farming produce, except where such agreement derogates the rights of a share cropper;

(b) the conditions for performance of farming agreement, including compliance with mutually acceptable quality, grade and standards of farming produce;

(c) the pricing of farming produce;

(d) the manner of delivery of farming produce;

(e) exempting the farming produce under a farming agreement from the application of a State Act regulating the sale and purchase of such farming produce and also from the provisions of the Essential Commodities Act, 1955 (10 of 1955) and the control orders made thereunder;

(f) prohibiting the Sponsor from acquiring ownership rights or making permanent modification on farmers' land or premises;

(g) the Sponsor to ensure timely acceptance of delivery and payment for such farming produce;

(h) linkage of farming agreement with insurance or credit instrument;

(i) establishment of Registration Authority to provide for e-registry and for registration of farming agreements;

(j) conciliation and dispute settlement mechanism for settlement of disputes under the farming agreement.

5. The Bill seeks to replace the aforesaid Ordinance.

6.7 That in this case court can't be remain as mere spectator after these unconstitutional acts passed by the respondents, this Hon'ble Court is not expected to adopt a passive or negative role and remain bystander or a spectator, if violation of basic structure of constitution is observed.

6.8 That while Parliament and the State Legislature in India enact the law and the Executive Government

implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the Legislation sought to be implemented. One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights; for now it has been repeatedly held that no constitutional amendment can be sustained which violates the basic structure of the Constitution. The Hon'ble Court held in *Kesavananda Bharati Sripadagalayaru Vs. State of Kerala* [AIR 1973 SC 1461], *Smt. Indira Nehru. Gandhi v. Raj Narain* [1976 (2) SCR 347], *Minerva Mills Ltd. v. Union of India* [1981 (1) SCR 206] and in *S. P. Sampath Kumar v. Union of India*, [1987 (2) SCALE 1414]. With this impressive expanse of judicial power, it is only right that the superior Courts in India should be conscious of the enormous responsibility which rests on them.

6.9 That after this unconstitutional Acts, 2020 passed by the parliament, this Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights. There are enumerable decisions of this Court where this approach has been adopted and decision should be taken with a view to enforce fundamental rights which may sometimes be perceived as legislative in nature.

6.10 The supreme court of India is the guardian of Indian Constitution and the most important functions of the superior judiciary in India is to examine the competence and validity of legislation, thus with a hope the Petitioner has approached this Glorious Institution, which has always safeguarded the very tenets of Indian Constitution, and has always

provide Right to life in wider context to the masses of the Nation.

6.11 That agricultural marketing is witnessing major changes world over, owing to liberalization of trade in agricultural commodities. To benefit farming community for the new global market access opportunities, the internal agricultural marketing system in the country needs to be integrated and strengthened. In this context, Government of India in the Ministry of Agriculture appointed an Expert Committee on 19.12.2000 followed by an Inter Ministerial Task Force to review the present system of agricultural marketing in the country and to recommend measures to make the system more efficient and competitive.

6.12 That the Committee and the Task Force in their Reports of June 2001 and May 2002 respectively, have suggested various reforms relating to agricultural marketing system as well as in policies and programs for development and strengthening of

agricultural marketing in the country. The reports have noted that the situation of control over agricultural markets by the State has to be eased to facilitate greater participation of the private sector, particularly to engender massive investments required for the development of marketing infrastructure and supporting services.

6.13 That the recommendations contained in these Reports were discussed at the National Conference of State Ministers organized by the Ministry of Agriculture, Govt. of India at Vigyan Bhavan, New Delhi on 27.09.2002 and later by a Standing Committee of State Ministers constituted for the purpose under the chairmanship of Sri Hukumdeo Narayan Yadav, the then Union Minister of State for Agriculture on 29th January 2003.

6.14 That in the Conference as well as the Standing Committee, State Governments expressed the view that reforms in the agricultural marketing sector were necessary to move away from a regime of

controls to one of regulation and competition. In view of liberalization of trade and emergence of global markets, it was necessary to promote development of a competitive marketing infrastructure in the country and to bring about professionalism in the management of existing market yards and market fee structure. While promoting the alternative marketing structure, however, Government needs to put in place adequate safeguards to avoid any exploitation of farmers by the private trade and industries.

6.15 That for this, there was a need to formulate model legislation on agricultural marketing. The Ministry of Agriculture, Government of India accordingly set up a committee under the chairmanship of Shri. K.M. Sahni, Additional Secretary, Department of Agriculture and Cooperation to formulate a model law on agricultural marketing in consultation with the States.

6.16 That the Model Legislation has been drafted by the Committee after holding discussions with the State officials at Bhopal on 3-4th May, 2003, at Pune on 22-23rd May 2003, at Shillong on 31st May 2003 and at Srinagar on 7th June, 2003. The draft legislation was thereafter discussed with the State Governments at the National Institute of Agricultural Marketing, Jaipur on 11th and 12th June 2003 and finalized.

6.17 That the participating States included representatives from the State of Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Madhya Pradesh, Punjab, Rajasthan and Uttar Pradesh. The draft model legislation was fully discussed by the Committee at Pune on 8th and 9th September 2003 and finalized. The draft model legislation titled the State Agricultural Produce Marketing (Development and Regulation) Act, 2003, provides for establishment of Private Markets/ yards, Direct Purchase Centres, Consumer/Farmers Markets for direct sale and

promotion of Public Private Partnership in the management and development of agricultural markets in the country.

6.18 That it also provides for separate constitution for Special Markets for commodities like Onions, Fruits, Vegetables, Flowers etc. A separate chapter has been included in the legislation to regulate and promote contract-farming arrangements in the country. It provides for prohibition of commission agency in any transaction of agricultural commodities with the producers. It redefines the role of present Agricultural Produce Market Committee to promote alternative marketing system, contract farming, direct marketing and farmers/consumers markets. It also redefines the role of State Agricultural Marketing Boards to promote standardization, grading, quality certification, market led extension and training of farmers and market functionaries in marketing related areas. Provision has also been made in the Act for

constitution of State Agricultural Produce Marketing Standards Bureau for promotion of Grading, Standardization and Quality Certification of Agricultural Produce.

6.19 That this would facilitate pledge financing, E-trading, direct purchasing, export, forward/future trading and introduction of negotiable warehousing receipt system in respect of agricultural commodities.

6.20 That the Chairman of Committee hopes that the model legislation will enable nationwide integration of agricultural markets, facilitate emergence of competitive agricultural markets in private and cooperative sectors, create environment conducive to massive investments in marketing related infrastructure and lead to modernization and strengthening of existing markets.

6.21 That Agricultural Markets in most parts of the Country are established and regulated under the State APMC Acts. The whole geographical area in

the State is divided and declared as a market area wherein the markets are managed by the Market Committees constituted by the State Governments. Once a particular area is declared a market area and falls under the jurisdiction of a Market Committee, no person or agency is allowed freely to carry on wholesale marketing activities.

6.22 That the monopoly of Government regulated wholesale markets has prevented development of a competitive marketing system in the country, providing no help to farmers in direct marketing, organizing retailing, a smooth raw material supply to agro-processing industries and adoption of innovative marketing system and technologies. An efficient agricultural marketing is essential for the development of the agriculture sector as it provides outlets and incentives for increased production, the marketing system contribute greatly to the commercialization of subsistence farmers. Worldwide Governments have recognized the

importance of liberalized agriculture markets. Task Force on Agricultural Marketing Reforms set up by the Ministry has suggested promotion of new and competitive Agricultural Market in private and cooperative sectors to encourage direct marketing and contract farming programmes, facilitate industries and large trading companies to undertake procurement of agricultural commodities directly from the farmer's fields and to establish effective linkages between the farm production and retail chains.

- 6.23 That there is a necessity to integrate farm production with national and international markets to enable farmers to undertake market driven production plan and adoption of modern marketing practices. If agricultural markets are to be developed in private and cooperative sectors and to be provided a level competitive environment vis-à-vis regulated markets, the existing framework of State APMC Acts will have to undergo a change.

6.24 That the State has to facilitate varying models of ownership of markets to accelerate investment in the area and enable private investment in owning, establishing and operating markets. Working of existing Government regulated markets also need to be professionalized by promoting public private partnership in their management. Appropriate legal framework is also required to promote direct marketing and contract farming arrangements as alternative marketing mechanism.

6.25 Therefore, there is a need to strength the existing APMC Act, 2003 for agricultural market and Legalised the Minimum Support Price (in short MSP) in the interest of farmers. MSP should be implemented in letter in spirit, so that no one can cheat the farmers of the country and at least farmers may not get their food grain price below than the MSP.

6.26 That it is submitted that agricultural markets in India are mainly regulated by state Agriculture Produce

Marketing Committee (APMC) laws. APMCs were set up with the objective of ensuring fair trade between buyers and sellers for effective price discovery of farmers' produce. APMCs can: (i) regulate the trade of farmers' produce by providing licenses to buyers, commission agents, and private markets, (ii) levy market fees or any other charges on such trade, and (iii) provide necessary infrastructure within their markets to facilitate the trade.

6.27 That the Standing Committee on Agriculture (2018-19) observed that the APMC laws are not implemented in their true sense and need to be reformed urgently. Issues identified by the Committee include: (i) most APMCs have a limited number of traders operating, which leads to cartelization and reduces competition, and (ii) undue deductions in the form of commission charges and market fees. Traders, commission agents, and other functionaries organise themselves into associations,

which do not allow easy entry of new persons into market yards, stifling competition. The Acts are highly restrictive in promotion of multiple channels of marketing (such as more buyers, private markets, direct sale to businesses and retail consumers, and online transactions) and competition in the system.

6.28 That during 2017-18, the central government released the model APMC and contract farming Acts to allow restriction-free trade of farmers' produce, promote competition through multiple marketing channels, and promote farming under pre-agreed contracts. The Standing Committee (2018-19) noted that states have not implemented several of the reforms suggested in the model Acts. It recommended that the central government constitute a Committee of Agriculture Ministers of all states to arrive at a consensus and design a legal framework for agricultural marketing. A High Powered Committee of only seven Chief Ministers was set up in July 2019 to discuss, among other things: (i)

adoption and time-bound implementation of model Acts by states, and (ii) changes to the Essential Commodities Act, 1955 (which provides for control of production, supply, and trade of essential commodities) for attracting private investment in agricultural marketing and infrastructure.

6.29 That the central government in COVID-19 period promulgated the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 on 05.06.2020. True copy of the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 dated 05.06.2020 is annexed herewith and marked as **ANNEXURE P/2.** (Pg. no.)

6.30 That the central government in COVID-19 period promulgated the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020 on 05.06.2020. True copy of the Farmers' Produce Trade and Commerce (Promotion and

Facilitation) Ordinance, 2020 dated 05.06.2020 is annexed herewith and marked as **ANNEXURE P/3.** (Pg. no.)

6.31 That the central government in COVID-19 period promulgated the Essential Commodities (Amendment) Ordinance, 2020 on 05.06.2020. True copy of the Essential Commodities (Amendment) Ordinance, 2020 dated 05.06.2020 is annexed herewith and marked as **ANNEXURE P/4.** (Pg. no.)

6.32 That the Ordinances collectively seek to (i) facilitate barrier-free trade of farmers' produce outside the markets notified under the various state APMC laws, (ii) define a framework for contract farming, and (iii) impose stock limits on agricultural produce only if there is a sharp increase in retail prices. The three Ordinances together aim to increase opportunities for farmers to enter long term sale contracts, increase availability of buyers, and permits buyers to purchase farm produce in bulk.

6.33 That the Essential Commodities (Amendment) Bill, 2020 introduced in Lok Sabha, on Sept. 14, 2020 passed in Lok Sabha on Sep 17, 2020 Passed in Rajya Sabha on Sept. 20, 2020 in haste manner without following the constitutional provisions of discussion and voting. This Bill replaces the Essential Commodities (Amendment) Ordinance, 2020. True copy of the Essential Commodities (Amendment) Bill, 2020 dated 07.09.2020 is annexed herewith and marked as **ANNEXURE P/5.**
(Pg. no.)

6.34 That the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020 introduced in Lok Sabha, on Sept. 14, 2020 passed in Lok Sabha on Sep 17, 2020 Passed in Rajya Sabha on Sept. 20, 2020 in haste manner without following the constitutional provisions of discussion and voting. This Bill replaces the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Ordinance, 2020. True

copy of the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020 dated 09.09.2020 is annexed herewith and marked as **ANNEXURE P/ 6.** (Pg. no.)

6.35 That the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 introduced in Lok Sabha, on Sept. 14, 2020 passed in Lok Sabha on Sep 17, 2020 Passed in Rajya Sabha on Sept. 20, 2020 in haste manner without following the constitutional provisions of discussion and voting. This Bill replaces the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020. True copy of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 dated 11.09.2020 is annexed herewith and marked as **ANNEXURE P/7.** (Pg. no.)

6.36 That the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020 of Parliament received the assent of the President published in the gazette notification dated

27.09.2020. True copy of the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 dated 27.09.2020 is annexed herewith and marked as **ANNEXURE P/8.** (Pg. no.)

6.37 That the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 of Parliament received the assent of the President published in the gazette notification dated 27.09.2020. True copy of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 dated 27.09.2020 is annexed herewith and marked as **ANNEXURE P/9** (Pg. no.)

6.38 That the Essential Commodities (Amendment) Bill, 2020 of Parliament received the assent of the President published in the gazette notification dated 27.09.2020. True copy of the Essential Commodities (Amendment) Act, 2020 dated 27.09.2020 is annexed herewith and marked as **ANNEXURE P/10.** (Pg. no.).

6.39 That the Section 18 and 19 of The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, embodied therein detract from or abrogate judicial review under the Constitution of India in so far as infirmities based on violations of constitutional mandates, mala-fides, non-compliance with Rules of Natural Justice and perversity are concerned. The concerned sections of the Act, 2020 is as under:

18. No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Registration Authority, the Sub-Divisional Authority, the Appellate Authority or any other person for anything which is in good faith done or intended to be done under the provisions of this Act or any rule made thereunder.

19. No civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any dispute which a Sub-Divisional Authority or the Appellate Authority is empowered by or under this Act to decide and no injunction shall be granted by any court or other authority in respect of any action

taken or to be taken in pursuance of any power conferred by or under this Act or any rules made thereunder.

7. Aggrieved by the manner in which parliament has passed the three Farmers bills, 2020 is being breached the basic structure of the Constitution of India, the Petitioner herein prefer the present Writ Petition in public interest challenging the Acts of Parliament received the assent of the President and published in the gazette notification dated 27.09.2020 *inter alia* on the following grounds :-

GROUND

- A. Because the abovementioned three Acts, 2020 completely violates the Constitutional norm as has been laid down by this Hon'ble Court in I.T.C. Ltd. Etc vs State Of Karnataka & Ors, 1985 SCR, Supl. (1) 145 and Kihoto Hollohan vs Zachillhu and Others, 1992 SCC Supl. (2) 651. As such the three Acts of Parliament received the assent of the President published in the gazette notification dated 27.09.2020 is vulnerable and ought to be struck down as it merely negates a binding judgement of this Hon'ble Court.

B. Because the parliament have no power to make law on the agriculture produce, which is the pure domain of the State list-II. The question is not free from doubt. It has been laid down that the various entries found in the three Lists of the Seventh Schedule of the Constitution of India are demarcated fields of legislation and their contours and limits have been expressly described in the entries mentioned in the said three Lists. Each State is free and independent to legislate on the field which is covered by the State List (List II) or the Concurrent List (List III). So far as List I is concerned that is reserved purely for Parliament for any legislation to be made.

C. Because it is well-settled principle that Article 246 recognized the principle of Parliamentary supremacy in the field of legislation in case where both legislatures have competence to legislate. The constitutional scheme is that Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. A State Legislature has exclusive power to legislate with respect to matters in List

II, excluding the matters falling in List I and has also concurrent power to legislate with respect to matters falling in List III excluding the matters falling in List I. The dominant position of the Central Legislature with regard to matters in List I and List III is established.

D. Because the Parliament have no power to pass legislation under article 246 (4) of the constitution of India relating to the Seventh Schedule of List II - State Entry No. 14, 18, 30, 46, 47 and 48. The Parliament cannot be said to have legislative competence to make law in relation to The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and The Essential Commodities (Amendment) Act, 2020 must be held to be invalid and unconstitutional.

E. Because the provisions of the Central Acts, 2020 passed by the respondents dated 27.09.2020 repugnant to the State Act on the subject matter of Constitution of India, Seventh

Schedule of List II - State List Entry No. 14, 18, 30, 46, 47 and 48.

F. Because the principles of repugnancy in Indian Constitution are well-settled by this Hon'ble Court in I.T.C. Ltd. Etc vs State Of Karnataka & Ors on dated 03.05.1985, cited in 1985 SCR, Supl. (1) 145. That a legislation, which in its pith and substance, falls within any of the entries of List I of the Seventh Schedule to the Constitution, would be exclusively within the competence of the Parliament, A legislation falling exclusively, in its pith and sub stance, within any of the entries in List II of the Seventh Schedule, would be within the exclusive competence of the State Legislature, A Central law which in its pith and substance, falls within any entry in List I would be valid even though it might contain incidental provisions in List II which may contain ancilliary provisions which might touch on an entry of List I incidentally, A State law, which in its pith and substance, within any entry in List II would be valid even though it might incidentally touch upon a subject falling within List

I., A Central law, which in its pith and substance, dealt with a subject falling within List II would be bad and ultra vires the Constitution. Similarly, a State law which in its pith and substance dealt with a matter falling within List I would be invalid and ultra vires the Constitution.

G. Because the concept of repugnancy arises only with regard to laws dealing with subjects covered by the entries falling in List III in respect of which both parliament and State Legislature are competent to legislate. Under Article 254 of the Constitution, a State law passed in respect of a subject matter comprised in List III would be invalid if its provisions were repugnant to a law passed on the same subject by Parliament. The repugnancy arose only if both the laws could not exist together. Repugnancy does not arise simply because Parliament and the States pass' law on the same subject. There cannot be any repugnancy in respect of State laws passed in respect of matter falling pith and substance in List II or in A respect of Central laws passed on subject falling I.T.C. Ltd. Etc vs State Of Karnataka & Ors on 3 May, 1985 in List I. Parliament

cannot legislate on a State subject and State cannot legislate on a Central subject. If either trenches upon the field of the other, law will be ultra vires.

H. Because Section 18 and 19 of The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, embodied therein detract from or abrogate judicial review under the Constitution of India in so far as infirmities based on violations of constitutional mandates, mala-fides, non-compliance with Rules of Natural Justice and perversity are concerned?

I. Because this Hon'ble Court held in *Kihoto Hollohan vs Zachillhu and Others*, 1992 SCC Supl. (2) 651 that the word "Courts" is used to designate those Tribunals which are set up in an organised State for the administration of justice. By Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the *vinculum juris*, which is disturbed. Where there is a *lis* an affirmation by one party and denial by another-

and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. That authority is called a Tribunal, if it does not have all the trappings of a court. Thus, the Speaker or the Chairman, acting under Paragraph 6(1) of the Tenth Schedule is a Tribunal. Associated Cement companies Ltd. v. P.N. Sharma and Anr., [1965] 2 SCR 366 and Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala & Ors., [1962] 2 SCR 339, referred to. 5.1. A finality clause is not a legislative magical incantation which has the effect of telling off Judicial Review. Statutory finality of a decision presupposes and is subject to its consonance with the statute.

- J. Because the principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. An action can be ultra vires for the reason that it is in contravention of a mandatory provision of the law conferring on the

authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by mala fides or is colourable exercise of power based on extraneous and irrelevant consideration.

K. Because there is a need to strengthen the existing APMC Act, 2003 for agricultural market and Legalised the Minimum Support Price (in short MSP) in the interest of farmers. MSP should be implemented in letter and spirit, so that no one can cheat the farmers of the country and at least farmers may not get their food grain price below the MSP declared by the respondents.

L. Because the Parliament and the State Legislature in India enact the law and the Executive Government implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the Legislation sought to be implemented. One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights; for now it has been

repeatedly held that no constitutional amendment can be sustained which violates the basic structure of the Constitution.

M. Because the Hon'ble Court held in *Kesavananda Bharati Sripadagalayaru Vs. State of Kerala* [AIR 1973 SC 1461], *Smt. Indira Nehru. Gandhi v. Raj Narain* [1976 (2) SCR 347], *Minerva Mills Ltd. v. Union of India* [1981 (1) SCR 206] and in *S. P. Sampath Kumar v. Union of India*, [1987(2) SCALE 1414]. With this impressive expanse of judicial power, it is only right that the superior Courts in India should be conscious of the enormous responsibility which rests on them.

N. Because Section 18 and 19 of The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, embodied therein detract from or abrogate judicial review under the Constitution of India in so far as infirmities based on violations of constitutional mandates, mala-fides, non-compliance with Rules of Natural Justice and perversity are concerned. The concerned sections of the Act, 2020 is as under:

18. *No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Registration Authority, the Sub-Divisional Authority, the Appellate Authority or any other person for anything which is in good faith done or intended to be done under the provisions of this Act or any rule made thereunder.*

19. *No civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any dispute which a Sub-Divisional Authority or the Appellate Authority is empowered by or under this Act to decide and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any rules made thereunder.*

O. Because the scope of judicial review under Civil Procedure Code and Articles 136, 226 and 227 of the Constitution in respect of an order passed by the SDM/DM under section 14 of the Act, 2020 would be wrongly confined, viz., infirmities based on violation of constitutional mandate,

mala fides, non-compliance with rules of natural justice and perversity. Section 14 of The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 says;

14. (1) Where, the farming agreement does not provide for conciliation process as required under sub-section (1) of section 13, or the parties to the farming agreement fail to settle their dispute under that section within a period of thirty days, then, any such party may approach the concerned Sub-Divisional Magistrate who shall be the Sub-Divisional Authority for deciding the disputes under farming agreements.

(2) On receipt of a dispute under sub-section (1), the Sub-Divisional Authority may, if—

(a) the farming agreement did not provide for conciliation process, constitute a conciliation board for bringing about settlement of such dispute; or

(b) the parties failed to settle their dispute through conciliation process, decide the dispute in a summary manner within thirty days from the date of receipt of such dispute, after giving the parties a reasonable opportunity of being heard and pass an order for recovery of the amount under dispute, with such penalty and interest, as it deems fit, subject to the following conditions, namely:—

(i) where the Sponsor fails to make payment of the amount due to the farmer, such penalty may extend to one and half times the amount due;

(ii) where the order is against the farmer for recovery of the amount due to the Sponsor on account of any advance payment or cost of inputs, as per terms of farming agreement, such amount shall not exceed the actual cost incurred by the Sponsor;

(iii) where the farming agreement in dispute is in contravention of the provisions of this Act, or default by the farmer is due to force majeure, then, no order for recovery of amount shall be passed against the farmer.

(3) Every order passed by the Sub-Divisional Authority under this section shall have same force as a decree of a civil court and be enforceable in the same manner as that of a decree under the Code of Civil Procedure, 1908, unless an appeal is preferred under sub-section (4).

(4) Any party aggrieved by the order of the Sub-Divisional Authority may prefer an appeal to the Appellate Authority, which shall be presided over by the Collector or Additional Collector nominated by the Collector, within thirty days from the date of such order.

(5) The Appellate Authority shall dispose of the appeal within thirty days.

(6) Every order passed by the Appellant Authority under this section shall have same force as a decree of a civil court and be enforceable in the same manner as that of a decree under the Code of Civil Procedure, 1908.

(7) The amount payable under any order passed by the Sub-Divisional Authority or the Appellant

Authority, as the case may be, may be recovered as arrears of land revenue. (8) The Sub-Divisional Authority or the Appellate Authority shall, while deciding disputes under this section, have all the powers of a civil court for the purposes of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed by the Central Government.

8. The Petitioner has no other better or more efficacious remedy available than to file the instant Writ Petition in public interest under Article 32 of the Constitution since the issue concerns a un Constitutional Acts, 2020 that affects the whole country and is of overarching importance which requires the urgent intervention of this Hon'ble Court.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Issue a writ of mandamus or any other appropriate writ quashing the unconstitutional Acts, 2020 of Parliament received the assent of the President vide gazette notification dated 27.09.2020 i.e (1) The Farmers

(Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and; (3) The Essential Commodities (Amendment) Act, 2020 as violates the basic structure of the Constitution;

- b. Issue a writ of mandamus or any other appropriate writ staying the abovementioned unconstitutional Acts, 2020 of Parliament received the assent of the President published in the gazette notification dated 27.09.2020 pending the hearing and disposal of the present Writ Petition;
- c. Issue a writ of mandamus or any other appropriate writ to strengthen the existing Agriculture Produce Marketing Committee (in short APMC) Act, 2003 for agricultural market;
- d. Issue a writ of mandamus or any other appropriate writ to Legalised the Minimum Support Price (in short MSP) in the interest of farmers;
- e. Issue a writ of mandamus or any other appropriate writ to implemented MSP in letter and spirit in the interest of

farmers, so that no one can cheat the farmers of the country and at least farmers may not get their food grain price below the MSP, and;

- f. Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the present case.

Drawn by: K.K.L. GAUTAM
ADVOCATE

FILED BY

(SANJEEV MALHOTRA)
ADVOCATE FOR THE PETITIONER

NEW DELHI

FILED ON: 03.10.2020

WRIT PETITION (C) NO. OF 2020

1. That I am the General Secretary of Petitioner in the abovementioned matter, as such, am conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
2. That I have read and understood the contents of the accompanying List of Dates and Events [Pages B to] and Paragraphs 1 to of the Writ Petition comprising Pages 1 to .The contents of the same are true and correct.

The same has been drafted by my counsel on my instructions.

3. That I have read and understood the contents of the accompanying Writ Petition and Application(s) and the contents of the same are true and correct on the basis of records of the case.
4. That the Annexures annexed with the Writ Petition are true copies of their respective originals.
5. That I have not filed any other similar Writ Petition before this Hon'ble Court for the same cause of action or relief.

DEPONENT

VERIFICATION:

Verified at New Delhi, on this the day of October, 2020 that the contents of my above affidavit are true and correct to the best of my knowledge and belief. Nothing material has been concealed therefrom.

DEPONENT

WRIT PETITION (C) NO. OF 2020

BHARTIYA KISAN PARTY ...PETITIONER

UNION OF INDIA & ORS ...RESPONDENT

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED:

1) That present is an Application for ex-parte ad interim stay filed in the above petition which is arising out of enforcement of new Acts, 2020 of Parliament received the assent of the President vide gazette notification dated 27.09.2020 i.e (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm

Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and; (3) The Essential Commodities (Amendment) Act, 2020.

2. The contents of the accompanying Writ Petition may be read as a part of the present Application seeking urgent stay of the impugned three farmers Act, 2020 which has been passed in a hurry over barely in 7 days by both Houses of Parliament as a populist measure and which breach fundamental features of the Constitution. The three farmers bill, 2020 has been introduced in Lok Sabha on 14.09.2020, passed in Lok Sabha on 17.09.2020, Passed in Rajya Sabha on 20.09.2020 in haste manner without following the constitutional provisions of discussion and voting.
3. Ex-facie, there are violations of the basic structure of the Constitution. That the parliament have no power to make law on the agriculture produce, which is the pure domain of the State list-II. The question is not free from doubt. It has been laid down that the various entries found in the three Lists of the Seventh Schedule of the Constitution of

India are demarcated fields of legislation and their contours and limits have been expressly described in the entries mentioned in the said three Lists. Each State is free and independent to legislate on the field which is covered by the State List (List II) or the Concurrent List (List III). So far as List I is concerned that is reserved purely for Parliament for any legislation to be made.

4. It is well-settled principle that Article 246 recognized the principle of Parliamentary supremacy in the field of legislation in case where both legislatures have competence to legislate. The constitutional scheme is that Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. A State Legislature has exclusive power to legislate with respect to matters in List II, excluding the matters falling in List I and has also concurrent power to legislate with respect to matters falling in List III excluding the matters falling in List I.

The dominant position of the Central Legislature with regard to matters in List I and List III is established.

5. That the Parliament have no power to pass legislation under article 246 (4) of the constitution of India relating to the Seventh Schedule of List II - State Entry No. 14, 18, 30, 46, 47 and 48. The Parliament cannot be said to have legislative competence to make law in relation to The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and The Essential Commodities (Amendment) Act, 2020 must be held to be invalid and unconstitutional.
6. Even earlier, when the Central Educational Institutions (Reservations in Admissions) Act was challenged in this Hon'ble Court, the operative provision of the same was stayed at the interim stage pending the hearing of the final matter in Ashoka Kumar Thakur. This was also the case with the OMs impugned in Indira Sawhney. It is thus with

strong precedent value on the subject of Agriculture that the present impugned Acts, 2020 ought to be stayed.

7. It is submitted that if these unconstitutional provisions are not stayed, it would be irreparable and cause great injustice and disgruntlement to those who are justly entitled. It would be appropriate to keep it in abeyance until the hearing of the present petition is concluded.

PRAYER

In view of the facts and circumstances of the case mentioned above, this Hon'ble Court may graciously be pleased to:-

- a. Pass an ex-parte ad-interim order staying the enforcement of the three unconstitutional Acts, 2020 of Parliament received the assent of the President vide gazette notification dated 27.09.2020 i.e (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and; (3) The Essential Commodities (Amendment) Act, 2020 till the outcome

of the present Writ Petition before this Hon'ble Court;

and/or

- b. Pass any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

FILED BY

(SANJEEV MALHOTRA)
ADVOCATE FOR THE PETITIONER

NEW DELHI
FILED ON: 03.10.2020