
(1985) 04 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 3188 of 1980

Amrapali Films Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-04-1985

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1986) 34 BLJR 124 : (1985) PLJR 539

Hon'ble Judges : Satya Brata Sanyal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satya Brata Sanyal, J.—This writ application relates to an order under the Bihar Entertainments Tax Act, 1948, hereinafter to be referred to as "the Act" it seeks to quash an order dated 3.12.80, (Annexure 6) and annexure "A" by which the respondent Commissioner of Commercial Taxes cancelled the composition of entertainment tax with respect to the Cinema Hall known as "Mona" u/s 3(5) of the Act and directed pasting of adhesive stamp on all tickets on and from the 6th of December, 1980 (Annexure 7). The order cancelling the compounding arrangement was made effective from 17-7-1980.

2. One of the questions involved in this writ petition for the payment is what could be the duration of composition arrangement for the payment of tax u/s 3(5) (b) of the Act in view of Rule 18(4) of the Bihar Entertainments Tax Rules, 1949, hereinafter referred to as "the Rules".

3. On 27-11-79 an application through the Assistant Commissioner, Commercial Taxes, Patna, East, in the prescribed manner for compounding of its tax liability under the Act for the period up to 31-3-81 was made by the petitioner. The application was recommended by the Assistant Commissioner on 5-12-79 suggesting to compound the tax liability at a fixed rate of Rs. 14,00,000/- per year as it is a new cinema house. The Joint Commissioner in his turn forwarded

the said recommendation stating therein that in view of the guidelines of the Government, which are applicable only to old cinemas, composition cannot be done in the instant case but if the Government so desires the tax liability can be compounded at Rs. 3.75 lacs per month. On 24-1-80 Commissioner, Commercial Taxes, submitted the matter to the Minister of Finance through the State Minister. In view of the cinema house being new, he proposed certain basis for composition and suggested that the Government can compound the tax liability of the petitioner at the rate of fifty percent of the tax payable on full seating capacity of four shows from the date of commencement of the show till 31-3-81. This was approved by the State Minister of Finance on 30-1-1980 and then by the Minister of Finance on 10-2-1980. On 18-2-1980 (Annexure 9) the Deputy Commissioner wrote to the Joint Commissioner (Administration) that the State Government had directed to arrive at a compounding agreement from 15-2-1980 to 31-3-1981 on the condition that the tax liability be compounded at the rate of fifty percent of the tax payable on full capacity of four shows. If there were more shows than four it would be calculated on the basis of twenty-five percent of the capacity. The cinema proprietor shall not be entitled to increase the number of seat during the period of composition and if he does so he must notify the same to the department and consequent increase of the tax liability would be made. The tax must be paid regularly and in advance . In case of violation of the terms aforesaid the composition arrangement will be revoked. In the meantime on 17-2-80 the Assembly was dissolved and the President's rule was proclaimed in the State and directions were issued that before implementing the order of the previous Government, the matters may again be referred to Government for the approval. Accordingly the composition arrangement, which was directed by the State Government, was referred to the Finance Commissioner for reconsideration. The Finance Commissioner by his order dated 5-3-80 after having reconsidered the matter approved its implementation without any modification.

4. On 12.3.80 (Annexure 3) the petitioner was asked to accept the composition arrangement. It was accepted by the petitioner on 13.3.80 (Annexure 5) and a Certificate in Form V bearing Certificate No. 1 of 1980-81 was issued permitting to compound the tax payable under the Act under Registration No. ENT-5/79-80 on percentage basis for the period 18-1-80 to 31.3.81. Condition 10(i) of the Certificate laid down that permission may be revoked at any time without reason being assigned and no compensation there for shall be paid by the Government on account of any loss caused to the proprietor by reason of such revocation. Condition 10(i) and Clauses VII and VIII of the Certificate read as hereunder:

10(f) This permission may be revoked at any time without reason being assigned and no compensation shall be payable by Government on account of any loss caused to the proprietor by reason of such revocation.

VII. Yis Samahitkaran ki Awadhi Dinank 18-1-80 se 31-3-81 Tak Prabhawi Rahegi Aur Pratayak Chhah Mah Par Kar Samahitkaran Pra-man Patra Ka Nawikaran

Kama Hoga.

VIII. Ouparyukat Kisi Bhi Sarat ke Oulanghan Kiye Jana par kar Samahitkaran ko subidha Wapas le li Jayagi.

After the expiration of six months pursuant to Clause VII, the petitioner applied for renewal which came to be considered by the respondent Commissioner on 3-12-80. In the meantime the petitioner had paid advance tax of December 1980 according to the composition rate on 28-11-80. The Commissioner held that in view of the specific provision contained in Rule 18(4) of the Rules the compounding agreement for the period 18.1.80 to 31-3-81 for a period of more than one year is in breach of the statutory rule since there cannot be a composition agreement at a stretch more than six months. He directed that the composition agreement arrived at cannot operate beyond 17-7-80 and is not fit to be renewed after the said date. The assessment since 17-7-80 shall have to be made in accordance with law on the basis of the books of account and other relevant documents maintained by the proprietor and also on the basis of inspections carried out by the local officers (Annexure 6). The petitioner was further directed by the Deputy Commissioner by his letter dated 4.12.80 that it should paste adhesive stamp from the 6th of December, 1980, on all cinema tickets sold (Annexure 7). The petitioner filed a representation against the said order, Annexure 8, which was disposed of on 10-12-80 (Annexure "A" to the counter-affidavit) after hearing the petitioner, it was observed therein that "In view of the legislative intent, the composition could be permitted only for a maximum period of six months" and the promise cannot be implemented in view of statutory bar, there being no estoppel against statute. The earlier order passed on 3.12.80 was not interfered with.

5. It is manifest from Annexure 6 and Annexure A, the two orders passed by the respondent Commissioner that there has been no breach of the conditions and the clauses appended to the certificate of composition. The composition arrangement was recalled/revoked for the sole reason that it violated the statutory period envisaged under Rule 18(4) being for more than one year instead of "a period of six months or for such shorter period as may be specified therein and thereafter it may be renewed on receipt of an application not less than a fortnight before the expiry of the period for which it was valid previously."

6. Mr. Shreenath Singh appearing for the petitioner contended that--

(a) Condition No. 10(i) conferring power to revoke a compounding agreement without any reason and without payment of any compensation on account of loss caused by such cancellation is arbitrary and ultra vires Article 14 of the Constitution.

(b) The State Government having permitted the compounding in exercise of the statutory powers conferred u/s 3(5), the respondent Commissioner had no jurisdiction to cancel it. The power of the State Government to act u/s 3(5) of the Act is untrammelled by the Rules; therefore the period of six months

prescribed under Rule 18(4) is inapplicable to the impugned certificate of compounding.

(c) The Commissioner has not been delegated as required u/s 20 of the Act with the powers to deal with matters u/s 3(5)(b), inasmuch as the delegation notification dated 20th December, 1949 (Annexure A) manifests delegation of powers of the Provincial Government on amongst others the power conferred u/s 5(2) of the Act as it stood prior to incorporation of Clause (b) in Section 3(5). Therefore, compounding on percentage basis could not have been dealt with by the Commissioner of Commercial Taxes.

(d) Rule 18(4) prescribing a period of six months or for such shorter period has no application to Section 3(5)(b) of the Act which requires consolidated payment on percentage basis inasmuch as when the rules were framed there was no provision of composition on percentage basis. On insertion of Clause (b) in Section 3(5) corresponding change in the Rules, even though required, was not effected.

(e) Renewal under Clause VII every six months is as a matter of right in the absence of any violation of the terms and conditions of the certificate.

7. Mr. Rameshwar Prasad, learned Government Pleader appearing for the State, on the other hand, submitted that the instant compounding is of a fixed sum and, therefore, within the sweep of Rule 18. Both the State as well as the authorities constituted under the Act are competent enough to compound the tax liability for a period of six months; any compounding beyond six months is without authority of law and, therefore, the petitioner has no legal right to maintain the writ petition. Rule 18 which was enacted on 1-7-1949 in relation to old Section 5(2) relates to compounding of tax liability under the Act. Therefore, it would be deemed rule u/s 3(5) of the amended Act and this being, a free-size-rule can adopt itself to any change in the Act. The delegation notification (Annexure A/1) issued u/s 20 will also be applicable to all the clauses of Section 3(5). Alternatively, it was contended that in view of condition 10(1) permission can be revoked at any time without assigning any reason and, therefore, there is no lack of power in rendering the decision impugned in this writ petition, and if such a power is there in the authorities then reference to a wrong provision will not vitiate the order passed. Lastly, learned Counsel submitted that the compounding agreement was under the signature of the Commissioner which was communicated to the petitioner and the same was recalled by the Commissioner. Therefore, it was wrong to submit that the compounding agreement was at the instance of the State, which cannot be revoked by the Commissioner.

Point No. (a);

8. This condition finds place in Form V prescribed under Rule 18 of the Rules. This is the form of statutory certificate under Rule 18(2). Forms bear the same relation to Rules as Schedules do to Acts. The proprietor is required to comply

with all the terms and conditions, laid down therein, if it chooses the assessment to be done u/s 3(5) of the Act. There is no personal volition of the proprietor in relation to these conditions of the certificate. If a proprietor is agreed to compound his tax liability under the statute for a particular period, he is to abide by the prescribed terms and he has no option in this regard. A proprietor, therefore, may be unsettled during the currency of the certificate even though he has not violated any of the terms and conditions of the certificate. This may result in economic loss and upsetting and disarrangement of the business plans of the proprietor. This condition can be resorted to for reasons unknown to the proprietor. In my opinion, it confers a power which is capable of vicious discrimination and completely naked in nature. Conferment of such arbitrary, drastic, unanalysed and blanket power is not sustainable in the teeth of Article 14 of the Constitution of India. It is violative of the basic requirement of natural justice since such an order can be passed without hearing and without recording reasons there for. The Supreme Court in the cases of *Workmen of Hindustan Steel Ltd. v. Hindustan Steel Ltd* 1985 (50) F.L.R. 14 and *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, struck down similar provision in the Standing Order of the Companies and instrumentalities of the Government, terminating service of an employee without assigning any reason what so ever. It is true these cases related to master and servant but I have no hesitation to hold that the principle which prompted their Lordships to strike down such an unreasonable of law. A compounding agreement under the Act is only one of the modes of assessment and payment of tax provided by the Legislators. It is open to a proprietor to adopt this convenient mode for the sake of his trade. But the proprietor by a delegated legislation cannot be subjected to the rigour of the conditions contained in condition No. 10(1). Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. It is rightly said that while equality belongs to the rule of law, the other to the whim and caprice of an absolute monarch. Cases governed by rule of contract stand altogether on a different footing than constitutionality of the binding character of the impugned condition in a rule. It is now firmly established that a citizen cannot waive a breach of the fundamental right which is indirectly conferred on him by the constitutional mandate directed to the State. See *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, .

I, therefore, hold that this condition is ultra vires Article 14 of the Constitution of India and I have no hesitation in striking down condition 10(1) of Form V of the Rules under which certification for composition is issued. The alternative argument of the Government Pleader that resort to this clause of the certificate for composition is also punishable in law, is justification of the impugned order is not acceptable to me and is accordingly rejected. I further hold that unless there is any violation of the terms and conditions of the certificate, composition

agreement cannot be revoked during the period of its operativeness.

Point Nos. (b) & (c);

9. I will take up these two points together as they are interlinked. The argument of the learned Counsel of the petitioner that the impugned compounding agreement could not have been revoked by the Commissioner but only by the State Government, however, does not impress me. The application for compounding the tax was made by the proprietor to the Assistant Commissioner of Commercial Taxes (Annexure 1). On 22-2-1980 the Commercial Taxes Department intimated to the proprietor that as per direction of the Department he should deposit a sum of Rs. 92,808/- pursuant to his application for composition (Annexure 2). The proprietor was communicated about composition by the concerned Department. The certificate for composition was issued by the Commissioner of Commercial Taxes, Bihar. Merely because the application for composition was also considered at the Government level by the Finance Department, therefore, it would be deemed to have been a composition arrived at by the State Government appears to be misconceived. The Department might have taken concurrence of the State Government as would be manifest from Annexure "9" but that by itself cannot be construed to be a compounding by the State Government. The opening sentence of section 3(5) reads:

The State Government may, on the application of the proprietor of any entertainment...permit the proprietor to pay...

On the face of it, the application of the proprietor was not to the State Government but to the concerned Department. Even Annexure "9". which is a letter dated 18th February, 1980, by the Deputy Commissioner of Commercial Taxes to the Joint Commissioner (Administration), the sheet anchor of Mr. Singh's contention, does not unmistakably carry his point to the said conclusion. Learned Counsel for the petitioner has not placed before me any communication of State Government to him permitting him and/or asking him to enter into a compounding arrangement. Interdepartmental letter (Annexure 9), to my mind appears to be merely an approval of the arrangement by the State Government on the basis of the recommendation made by the Department on an application by the proprietor to the Department about compounding arrangement. I, therefore, reject the submission of learned Counsel for the petitioner on this score. In view of my finding aforesaid, the contention that the Commissioner was not delegated with the power to compound u/s 20 will be self-defeating of compounding (Annexure 4) is under the signature of the Commissioner which is sought to be enforced. Further the delegating notification refers to old Section 5(2) which related to payment of tax on the basis of compounding. Merely because the delegating notification did not state in so many words the different clauses of Section 5(2) or for that matter Section 3(5) of the amended Act is immaterial. The subject matter of delegation is the substance of the matter which is clearly discernible from the delegating notification. This ground is sought to be raised without being taken in the main writ petition or in the copious

amendment petition. Had it been raised at the appropriate time, the respondent State would have got opportunity to bring on record some other notifications in this regard. As it is, Annexure A-1 is a very old notification and it would not be safe to allow the petitioner to raise this point without pleading at the original stage. I, therefore, reject this argument of the learned counsel for the petitioner as well.

10. Since I have already held that the compounding agreement u/s 3(5) was not by the State Government, consideration of point No. (c) is not called for.

Point No. (d);

11. The substance of the contention on this point is that when the Rules were framed in the year 1949, Section 3(5)(b) was not incorporated in the Bihar Act, 1948. At that time the compounding was provided u/s 5(2)(a) and (b). By Bihar Act 5 of 1973 Section 3(5)(b) was for the first time introduced in the Act. I would like to quote Section 5(2)(a) and (b) as it stood earlier and the same provision as it stood after Bihar Act 5 of 1973:

Section 5(2) (a) & (h) as it stood earlier:

5(2) The State Government may, on the application of the proprietor of any entertainment in respect of which the entertainments tax is payable, permit the proprietor to pay, on such conditions as may be prescribed, the amount of the tax due:

(a) by compounding in the prescribed manner the tax payable in respect of such entertainment for a fixed sum; or

(b) in accordance with the results recorded by any mechanical contrivance that automatically registers the number of persons admitted.

The same provision as it stood after Bihar Act 5 of 1973.

3(5) The State Government may, on the application of the proprietor of any entertainment in respect of which the entertainments tax is payable, permit the proprietor to pay, on such conditions as may be prescribed, the amount of the tax due:

(a) by compounding, in the prescribed manner, the tax payable in respect of such entertainment for a fixed sum; or

(b) by a consolidated payment at such percentage of the gross proceeds received by the proprietor on account of payment for admission to the entertainments and on account of tax as the State Government may fix; or

(c) is accordance with the results recorded by any mechanical contrivance that automatically registers the number of persons admitted.

From a comparison it would be found that Section 5(2)(a) and (b) became Section 3(5)(a) and (c) under the amended Act. Rule 18(2) in spite of the

amendment refers to old Section 5(2)(a) and not Section 3(5)(a). It is firstly contended by the learned Counsel that Rule 18 can have no application at all to Section 3(5). There is no mention of the said section in the rule and it still refers to Section 5(2) which is no more in the statute book. Secondly, it is contended that even assuming that Rule 18 applies to Section 3(5), as both earlier and the new section dealing with the same topic and Section 3(5) is only new arrangement for the old section, Rule 18 has to be confined to Section 3(5)(a) alone as Rule 18(2) refers to Section 5(2)(a). In substance, the contention of learned Counsel is that when the Rules were published on 1-7-1949 Section 3(5) (b) was non-existent and, therefore, the said sub-section cannot be even under the contemplation of the rule making authority and to provide provision there for in the Rules.

12. I would first like to deal with the question, namely, if the rules are made under a statute, sections of which are later repealed or re-enacted in another form, can the prior rules be made applicable to the re-enacted section? Section 21 of the Act provides the power to make rules. It states that the State Government may make rules consistent with the Act for securing the payment of entertainments tax and generally for the purpose of carrying into effect the provision of the Act. Section 21(2)(d) requires "In particular and without prejudice to the generality of the foregoing power, the State Government may make Rules (d) prescribing the conditions subject to which and the manner in which the tax shall be compounded under Sub-section (5) of Section 3." It may be noticed that Clause (d) expressly referred to Section 3(5) and has been amended by Bihar Act 5 of 1973. The rules, therefore, have been made for carrying out the purposes of Section 3(5) of the Act. By the amending Act of 1973 the Act as a whole was not repealed but certain sections were re-arranged and same sections or sub-sections were inserted. It is true that the rules were framed prior to the amendment of the Act. Can it be said that the rules became inapplicable to such of the provisions which came to be incorporated after the framing of the rules; and thus the rules as a whole become incompetent for no consequent amendment therein and/or what is the effect of the rules in such a situation. From the very opening words of Section 21 it is manifest that the rules are framed for securing payment of tax and to carry into effect the provision of the Act. To my mind the rules in a situation of that kind can still continue to operate to the extent indicated here. If the rules become inconsistent with the amended provision of the Act, Courts will cut down the rules so as not to conflict with the amended provisions of the Act because it is well settled that if a statute is repealed and re-enacted in a wider form the old rules so far as they are continued are not thereby enlarged. See *Canadian Pacific Steamships Ltd. v. Bryers* 1958 A.C. 485 (H.L.). Similarly if rules are made under a statute, sections of which are later repealed and re-enacted! in a narrower form, the rules must be cut down so as not to conflict with the narrower statute, See *In re Simpkin Marshall Ltd.* 1959 Chancery 229. It is, therefore, laid down that the rule making power is limited to what is stated in the section of the Act. See *Sant Saran Lal v.*

Parasuram 1966 B.L.J.R. 127. It is common knowledge that in spite of complete amendment of the Act the old rules are continued in force by incorporation of a saving clause and if it is not so done by operation of Section 27 of the Bihar and Orissa General Clauses Act 1917, which lays down that where any enactment is repealed and re-enacted by a Bihar and Orissa Act, then unless it is otherwise expressly provided, any rule, bye-law etc., issued under the repealed enactment shall so far as it is not inconsistent with the provisions re-enacted, continue in force and will be deemed to have been made by or issued under the provisions so re-enacted unless and until it is superseded by issuance of a new rule under the provisions so re-enacted. As a logical corollary the rules cannot be attacked as being inoperative or ultra vires since the rule making authorities did not have before them, while framing the rules, the amended provisions of the new Act. The 1949 Rules, therefore, did not come to an end by virtue of amendment of certain provisions of the main Act. However, the constitutionality of a rule and/or a regulation has to be adjudged by a three fold test, namely, (1) whether the provisions of such a regulation fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegates are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. In considering the first test what is required to be seen is whether a broad principle of delegated legislation, be that a rule or regulation or any other type of statutory instrument or instruction, is in excess of the power of subordinate legislation conferred on the delegate, by referring to the specific provision embodied in the relevant statute conferring the power to make rules, regulations etc , and also the object and purposes of the Act can be gathered from the various provisions of the enactment. It does not require any meticulous examination but broadly to find out whether the rules fall within the scope and ambit of the power conferred by the statute on the delegate--See Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .

13. Applying the test aforesaid, I do not find That Rule 18 in any way transgresses or is inconsistent with the provisions of Section 3(5) as the said rule is prefixed with the words "Payment of fixed sum in lieu of tax payable under the Act" Section 3(5)(b) provides one of the modes only for the payment of the same. It envisages the payment of the said fixed sum on percentage basis of the gross proceeds received by the proprietor. By virtue of the amendment of Section 21(d) the rules have been made applicable to amended Section 3(5) The rules, therefore, still continue to be in force with respect to what they lay down under Rule 18. Section 3(5) has been re-enacted in a wider form. In view of the case of Canadian Pacific Steamship Ltd. (supra), the rules so far as they are continued cannot be enlarged but confined to what they expressly lay down. I, therefore, do not agree with the broad principle of Mr. Singh that merely because Section 3(5) came to be incorporated long after the framing of the rules, therefore the

rules will not apply to the amended provision.

14. This, however, does not resolve the moot question whether Rule 18(4), which lays down that a compounding certificate shall remain in force for a period of six months or for such shorter period, would be applicable to a consolidated payment at such percentage of the gross proceeds received by the proprietor as envisaged u/s 3(5)(b) of the Act. Rule 18(4) laying down the period of operation of a compounding certificate to a period of six months cannot be read in isolation. Rule 18(4) refers to Rule 18(2). Rule 18(2) in its turn expressly states "permit the proprietor to pay fixed sum in accordance with Clause (a) of Sub-section (2) of Section 5 and issue a certificate in Form V to the proprietor, and the proprietor shall comply with all the terms and conditions specified therein." Section 5(2) (a) referred to in Rule 18(2) is *pari materia* with the amended Section 3(5)(a). The said Rule 18(2) does not refer to even the old Section 5(2) (b), which is another mode of compounding agreement. Mr. Rameshwar Prasad, learned Counsel appearing for the State, wants me to read under Rule 18(2) not only the amended Section 3(2)(a), which is equal to old Section 5(2)(a) but to read it widely so as to include Section 3(2)(b) as well. It may be remembered here that even under the old section there were two Sub-clauses (a) and (b) but still the rule making authority confined it to Section 5(2)(a). The omission of reference to Section 5(2)(b), in my opinion, is significant. Courts will not re-enact the rule but will give effect to its plain and natural meaning, Rule 18(4) having expressly stated six months" life of a certificate of compounding issued under Rule 18(2), that is, under old Section 5(2)(a), which is now Section 3(5) (a), I am constrained to hold that the time prescribed under Rule 18(4) is not obtainable to a compounding certificate granted u/s 3(5)(b). There is no question of inconsistency of the Act with the rules. Enlargement of Rule 18(2), as proposed by Mr. Ramshwar Prasad so as to embrace Section 3(5) (b) also in view of re-enactment of the said provision in a wider form, as indicated earlier, is impermissible in law. Court cannot include a sub-section in Rule 18(2) if the delegate has not so done and preferred to confine it only to one sub-section of the provision of compounding.

I, therefore, hold that six months" period will not apply to the instant certificate of compounding as admittedly it has been granted u/s 3(5)(b). In other words, a certificate granted u/s 3(5)(b) cannot be subjected to the restrictions contained in Rule 18(4), Rule 18(4) having expressly mentioned the words "the certificate granted under Sub-rule (2) shall remain in force for a period of six months", which again in its turn refers only to the old Section 5(2)(a), which means Section 3(5)(a) of the present Act.

15. The reason assigned by the respondent Commissioner that there is a statutory bar to the operation of the period of the compounding certificate granted to the petitioner therefore is completely under a mistaken notion of law. The further reason of the learned Commissioner that the representation and promise held out to the proprietor is inconsequential and the principle of

promissory estoppel is inapplicable to a situation of this kind is clearly unacceptable. The refusal to renew the certificate after six months for the aforesaid reasons consequently is in excess of jurisdiction and arbitrary. The revocation of the certificate granted u/s 3(5)(b) of the Act on 3-12-80, when the certificate has passed through major part of its life and making the revocation order retrospective from July 1980 is wholly illegal.

16. In that view of the matter, the orders contained in Annexures 6 and A have to be quashed and set aside and the compounding arrangement must be allowed to remain operative from 18.1.80 to 31.3.81 as it has originally issued in favour of the proprietor. I direct the respondent Commissioner to work out the liabilities and the tax realised contrary to the composition till up to 31.3.81. In the event the proprietor is liable to pay more tax, the Department shall be entitled to realise the difference. Similarly, if the Department has realised more tax than what was due under the certificate of composition, the same must be refunded to the proprietor and/or adjusted towards the subsequent liabilities arising under the Act.

17. In view of my decision aforesaid, it is not necessary for me to decide point No. (e), that is, whether renewal under Clause VII every six months is as a matter of right in the absence of any violation of the terms and conditions of the certificate.

18. In the result, the writ petition is allowed and Annexures 6 and A were quashed with the aforesaid directions in paragraph 16 above. In the circumstances, I make no order as to costs.