

(1987) 08 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 605 of 1982

Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd.,
Birlagram, Nagda (M.P.) and Another

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 25-08-1987

Acts Referred:

Constitution of India, 1950 — Article 14

Madhya Pradesh Electricity Duty Act, 1949 — Section 3B

Citation : AIR 1988 MP 129 : (1989) ILR (MP) 596

Hon'ble Judges : N.D. Ojha, C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : A.K. Chitale, for the Appellant; S.L. Saxena, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.—The petitioner 1 is a Company with limited liability governed by the Companies Act, 1956 having its registered office at Birlagram, Nagda (M.P.) It is engaged, inter alia, in manufacture of staple fibre and for this purpose has established a factory at Birlagram. Petitioner 2 is a shareholder as well as an officer in the employment of petitioner 1. Two generating units were established by petitioner No. 1 in its new power plant at Birlagram, one on 28th Sep. 1977 and the other on 18th Dec. 1978. The generation of electricity by these two units, according to the petitioners, commenced on these two dates. The State of Madhya Pradesh, respondent No. 1, in exercise of the power conferred on it by Section 3-B of the M. P. Electricity Duty Act, 1949 (hereinafter referred to as the Act), issued a notification No. F.10-7-XIII-81, dt. 13th March 1981, published in the Madhya Pradesh Rajpatra dt. 8th May 1981, granting exemption to certain producers from payment of electricity duty. This notification hereinafter shall be referred to as the notification. Since the relief claimed in the writ petition depends on the interpretation of this notification, the same along with its English translation as published in the aforesaid Rajpatra is reproduced as hereunder :

fo|qr foHkkx

d-,Q- 10&7&rsjg&81 Hkksiky] fnukad 13 ekpZ 1981

pwafd jkT; ljdkj dh ;g jk; gS fd mu mn;ksxksa dh tks ,sls mn;ksxksa }kjk fo|qr "kfDr ds miHkkx ds iz;kstuksa ds fy;s Lo;a vius fo|qr mRiknu dsUnz LFkkfir djrs gSa fof"k"V ifjLFkfr;ksa dks /;ku esa j[krs gq,] yksx fgr esa ,slk djuk vko";d rFkk lehphu gSA

vr,o e;/izns"k bysDV?hfIVh M;wVh ,DV] 1949 ??ekad 10 lu 1949? dh /kkjk 3&ch }kjk iznRr "kfDr;ksa dks iz;ksx esa ykrs gq, jkT; ljdkj ,rn }kjk mu leLr mRikndksa dks] tks mn;ksx pykrs gS] muds }kjk pyk;s tk jgs mn;ksxksa ds iz;kstu ds fy;s ,sls mRikndksa }kjk mi;ksx dh xbZ fo|qr "kfDr ds laca/k esa "kqYd ds Hkqxrku ls] uhps nh xbZ vuqLwph ds dkye ?1? esa rFkk fofufnZ"V dkykof/k ds nkSjku rFkk mlds ?vuqLwph ds? dkye ?2? dh rRLFkkuh izfof"V;ksa esa rFkk fofufnZ"V lhek rd NwV rkjh[k 10 fnIEcj 1980 ls nsrh gS %&

vuqLwph

fo|qr "kfDr ds mRiknu dh dkykof/k NwV dh lhek

?1? ?2?

?d? fo|qr "kfDr dk mRiknu izkjaHk gksus ds rkjh[k ls izFke nks o"kZ- iw.kZr%

?[k? fo|qr "kfDr dk mRiknu izkjaHk gksus dh rkjh[k ls rhljs o"kZ- lqlaxr dkykof/k ds nkSjku ns; "kqYd dk 75 izfr"kr-

?x? fo|qr "kfDr dk mRiknu izkjaHk gksus dh rkjh[k ls pkSFks o"kZ- lqlaxr dykof/k ds nkSjku ns; "kqYd dk 50 izfr"kr-

??k? fo|qr "kfDr dk mRiknu izkjaHk gksus dh rkjh[k ls ikapos o"kZ lqlaxr dkykof/k ds nkSjku ns; "kqYd dk 25 izfr"kr-

e;/ izns"k ds jkT;iky ds uke ls rFkk vkns"kkuqlkj "ks[kj nRr] milfpo

d- ,Q- 19&7&rsjg&81 Hkksiky] fnukad 13 ekpZ 1981

Hkkjr ds lafo/kku ds vuqPNsn 340 ds [kaM ?3? ds vuqlj.k esa bl foHkkx dh vf/klwpuk d- ,Q- 10&7&rsjg&81 fnukad 13 ekpZ 1981 dk vaxzsth vuqokn jkT;iky ds izkf/kdkj ls ,rn }kjk izdkf"kr fd;k tkrk gSA

e;/ izns"k ds jkT;iky ds uke ls rFkk vkns"kkuqlkj "ks[kj nRr] milfpo

Bhopal, the 13th March 1981 No. F. 10-7-XIII-81.-- Whereas the State Government is of the opinion that having regard to the particular circumstances of the industries establishing their own generating station for purposes of consumption of electrical energy by such industries, it is necessary and expedient so to do in the public interest;

Now, therefore, in exercise of the powers conferred by Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 (No. X of 1949), the State Government hereby

exempts with effect from the 10th Dec. 1980 all producers who run industries from payment of duty during the period as specified in column (1) of the Schedule below and to the extent as specified in the corresponding entries in column (2) thereof, in respect of the electrical energy consumed by such producers for the purpose of the industries run by them : --

SCHEDULE

Period of generation of Electrical Energy

Extent of Exemption

(a) First two years from the date of commencement of generation of electrical energy.

In whole.

(b) Third year from the date of commencement of generation of electrical energy.

75 per cent of the duty payable during the relevant period.

(c) Fourth year from the date of commencement of generation of electrical energy.

50 per cent of the duty payable during the relevant period.

(d) Fifth year from the date of commencement of generation of electrical energy.

25 per cent of the duty payable during the relevant period.

By order and in the name of the Governor of Madhya Pradesh, Shekhar Dutt. Dy. Secy. The petitioners claimed exemption from payment of electricity duty under the aforesaid notification. Their claim, however, was repelled by the respondents on the ground that it is only those industries which had established their own generating units after 10th Dec. 1980 which were entitled to the exemption under the aforesaid notification and since the petitioner 1 had established its two generating units on 28th Sept. 1977 and 18th Dec 1978, i.e. much prior to 10th Dec. 1980, it was not entitled to exemption. The petitioner 1 was informed about this stand taken by the respondents Vide letters dt. 9th Sept. 1981. 13th Oct. 1981 and 2nd Mar 1982, copies whereof have been attached as Annexures B.D. and E. respectively, to the writ petition. Aggrieved by this stand taken by the respondents, the petitioners have filed this writ petition with the prayer for quashing these letters (Annexures B, D and E). They seek a declaration that petitioner 1 is entitled to exemption under the notification and a prohibition directing the respondents to grant exemption to the petitioner 1 and not to demand or take proceedings for recovery of electricity duty from it in contravention of the said notification. Return has been filed on behalf of the respondents. It has been reiterated in the return that the petitioner 1 was not entitled to the exemption granted by the notification inasmuch as the said exemption had been granted only to such industries which had established their generating units after 10th December

2. The first question which, therefore, falls for consideration in the present writ petition is as to which of the two stands taken by the petitioners and the respondents is borne out by the notification. According to the learned counsel for the petitioners, the exemption granted by the notification was available not only to those industries which were producers of electricity from generating units established by them after 10th Dec. 1980 but also to those industries which were producers of electricity from the generating units established even prior to 10th Dec. 1980. The respondents on the other hand, as already noticed above, assert that it is only such industries which are producers of electricity from their own generating units which were established after 10th Dec. 1980 who are entitled to the exemption under the notification. In support of this stand, the respondents rely not only on the language of the notification but also on a Cabinet decision dt. 10th Dec. 1980 in pursuance whereof the notification was issued. A copy of this Cabinet decision has been attached along with the additional return, For the sake of convenience is reproduced hereunder :

ea=h ifj"kn vkns"k

^fo|qr miyC/krk dh orZeku fLFkfr dks ns[krs gq, vkSj izns"k esa vkS|ksxhdj.k esa xfr ykus ds fy;s fu.kZ; fy;k x;k gS fd tks futhm|ksx pykus ds fy;s Lo;a dk fo|qr mRiknu dsUnz LFkfkfr djsaxs mUgSa fu/kkZfjr frFkh ls izFke nks o"kksZa esa fo|qr "kqYd ls iw.kZr% NwV jgsxhA r`rh; o"kZ esa 25 izfr"kr] prqFkZ o"kZ esa 50 izfr"kr vkSj ikapos o"kZ esa 75 izfr"kr fo|qr "kqYd olwy fd;k tkosxkA iakp o"kksZa dh vof/k esa lekIr gksus ij iw.kZ fo|qr "kqYd olwy fd;k tkosxkA olwy djus ;ksX; fo|qr "kqYd dh ek=k r; djrs le; "kklu }kjk fu/kkZfjr rRle; izpfyr njksa dks vk/kkj ekuk tk;sxA

lgh@& ?xtxRifr? eq[; lfpo 10 fnlacj 1980

It has been urged by learned counsel for the petitioners that the first para of the notification is only in the nature of a preamble and the main or the operative part of the notification is contained in para 2 thereof. According to him the true nature of the exemption granted by the notification had consequently to be ascertained only from the language employed in para 2 of the notification. According to him, the notification being so construed clearly indicated that the exemption with effect from 10th Dec. 1980 was available to all producers who run industries during the period and to the extent as specified in the schedule to the notification. In this connection he invited our attention to the definition of the term "producer" contained in Section 2(d-1) of the Act. According to this definition, "producer" means a person who generates electrical energy at a voltage exceeding hundred volts for his own consumption or for supplying to others. One thing which transpires from the notification on which there is no dispute between the parties is that only such producer has been granted exemption under the notification who generates electrical energy at the requisite voltage "for his own consumption" and not that producer who generates it "for supplying to others". According to the petitioners, the exemption which is claimed by them is in regard to such electrical energy alone which is being used

by the petitioner 1 for its own consumption. Learned counsel for the petitioners has placed reliance on several decisions laying down the rules of interpretation in regard to the advisability of taking the aid of the preamble while interpreting an Act of Legislature. The rule of interpretation in this behalf is by now well settled Which, in substance, is that a preamble is a key to the interpretation of a Statute but is not ordinarily an independent enactment conferring rights or taking them away and cannot restrict or widen the enacting part which is clear and unambiguous. The motive for legislation is often recited in the preamble but the remedy may extend beyond the cure of the evil intended to be removed and that no resort to the preamble would be justified in interpreting the provision in the Act when the words used in it are clear and unambiguous. In this view of the matter, we do not find it necessary to refer to the decisions cited in this behalf by learned counsel for the petitioners.

3. Having given our anxious consideration to the respective submissions made by the learned counsel for the parties, we find it difficult to agree with the submission made on behalf of the petitioners. The original notification, as seen above, is in Hindi and the English version is a translation thereof. It will, therefore, be appropriate to find out the extent and import of the notification from its Hindi version and to take assistance of the English translation if found necessary. Firstly, we are not inclined to agree with the submission made by learned counsel for the petitioners that para 1 of the notification is to be read as the preamble and is to be ignored inasmuch as, according to him, the main part of the notification is contained in para 2, the language of which is clear and unambiguous. In our opinion, in order to find out the true import of the notification, it has to be read as a whole and it cannot be dissected in two parts which is what in substance learned counsel for the petitioners wants us to do. The power to exempt contemplated by Section 3 of the Act vests with the State Government. A notification of exemption u/s 3-B is issued by the State Government when it is of opinion that the requirements of the said section make it necessary or expedient so to do in public interest. In a democratic set up it is the cabinet which takes policy decision and such decision constitutes the opinion of the State Government which is given effect to by issuing a notification contemplated by Section 3-B of the Act. Necessarily, therefore, the notification has to be drafted in such a manner as it makes out the ingredients of Section 3-B of the Act as also the opinion of the State Government. It is only when a notification is drafted in such a manner that the reason for exercising the power of granting exemption u/s 3-B as also the nature of the exemption which in the opinion of the State Government was necessary or expedient in public interest to be granted and was actually granted would become known. One important aspect in this connection has to be kept in mind. Unlike the various sections of a Bill, its preamble is not put to vote before the members of the Legislature and cannot obviously be placed on a footing as if it also had been passed by the Legislature in the same manner as the various sections of the Bill and it is in this view of the matter that a preamble is only treated as a key to the interpretation

of the statute. It is, however, not so in the case of a notification issued in exercise of a statutory provision, such as Section 3 B of the Act. Here the notification is drafted by one and the same person to give effect to the requirements of the relevant statutory provision. We are, therefore, of the opinion that in order to understand the true import of the notification, it has to be read as a whole and it is not possible to dissect it in the manner urged by learned counsel for the petitioners. Reading it as a whole, it is apparent that it grants exemption only to such industries which are producers within the meaning of the Act and which have established their generating units after 10th Dec. 1980. Indeed, given a literal interpretation, only such producers would really be entitled to exemption who have established their generating units after the issuance of the notification but since it is the case even of the respondents that the notification purports to grant exemption to all such producers who have established their generating units after 10th Dec. 1980 in respect of the electrical energy consumed by such producers for the purpose of the industries run by them and since 10th Dec. 1980 is the date on which the Cabinet took the decision which has already been quoted above, we are of the opinion that 10th Dec. 1980 deserves to be accepted as the cut off date in place of the date on which the notification was issued. Consequently, such of the industries which are producers but had established their generating units prior to 10th Dec. 1980 would not be entitled to the exemption granted by the notification even if the electrical energy generated by such industries was consumed by them for their own purpose. If the notification is construed as a whole, it indicates that it contains : (i) provisions of law in pursuance whereof the notification has been issued, (ii) the opinion which was formed by the State Government in regard to the "industry or class of industries" which would be entitled to the exemption contemplated by the notification, and (iii) the period for which and the extent to which the exemption would be admissible. The words "in exercise of the powers conferred by Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 (No. X of 1949)" refer to the provision of law whereunder the notification was issued. That having regard to the particular circumstances of the industries establishing which word in our opinion, for the reasons to be indicated shortly means who establish their own generating station for purposes of consumption of electrical energy by such industries, it is necessary and expedient so to do, namely, to grant exemption contemplated by Section 3-B in the public interest is the opinion which was formed by the State Government. The words "now, therefore." used in the beginning of the second para of the notification indicate that the period during which and the extent to which the exemption was to be granted has correlation with the opinion formed by the state Government in regard to the nature of industries which were entitled to exemption if they fall within the category of the term "producers" as contemplated by the second para of the notification. The opinion of the State Government as indicated in the first paragraph of the notification was that the exemption was contemplated in regard to such industries only who establish their own generating station for purposes of consumption of electrical energy by such industries as distinguished for the

purpose "for supplying to others" one of the twin purposes mentioned in the definition of the word "producer" in Section 2(d-i) of the Act. The term "all producers who run industries" used in para 2 of the notification in view of the words "now, therefore" used in the beginning of the said para necessarily refer to "industries establishing their own generating station for purposes of consumption of electrical energy by such industries." It is the industries falling in this category, therefore, which alone would come within the purview of the term "all producers who run industries" used in para 2 of the notification. The starting point of the period of exemption is 10th Dec. 1980 and the extent and the period up to which the exemption would be permissible is to be found in the Schedule to the notification. The word "establishing" used in the English translation of the notification in para 1 thereof cannot obviously be read as "who have established." In the Oxford English Dictionary, one of the meanings given to the word "establishing" is "that establishes." The notification in the Hindi version uses the words "Sthapit karte hain." These words mean "who establish hereinafter." "Sthapit karte hain" cannot be read as "sthapit kiye hain" and in order to accept the submission made by learned counsel for the petitioners that the benefit of the exemption under the notification was available even to such producers who had already established their industries prior to 10th Dec 1980, the words "sthapit karte hain" will have to be substituted by the words "sthapit kiye hain." This in our opinion cannot be done by Courts while interpreting the notification. The Hindi version of the words "now, therefore," in the beginning of the second para is expressed by the word "atyev" which word is used in order to indicate that what is being stated after the said word is to give effect to that which has been stated earlier. If the intention of the notification was as has been urged by the learned counsel for the petitioners, it would have been sufficient to start the notification with the words "in exercise of the powers" used in para 2 of the notification and it was not necessary to incorporate all that which is contained prior to these words. The notification can be interpreted in the manner urged by learned counsel for the petitioners only if the entire para 1 thereof and the words "now, therefore", in the beginning of para 2 are completely omitted. This again is not possible to be done in the process of interpreting the said notification. The interpretation which we make of the notification finds support from the Cabinet decision dt. 10th Dec. 1980 which indeed was sought to be given effect to by the notification. The words "jo niji udyog chalane ke liye swayam ka vidyut utpadan kendra sthapit karenge unhe" are the relevant words which indicate the nature of the industries which alone would be entitled to the exemption contemplated to be granted by the said Cabinet decision. The word "karenge" is in the future tense and can by no stretch of imagination be read as "kiye hain". It certainly can be read as "karte hain" inasmuch as the words "karte hain" would convey the same meaning as the word "karenge". The words "karte hain" used in the notification, therefore, faithfully carry out the Cabinet decision. We are, therefore, clearly of the opinion that the notification has to be read as a whole and cannot be dissected in the manner urged by learned counsel for the petitioners and that if read as a whole, it is capable of only one interpretation

that it is only such industries which establish their generating units after 10th Dec. 1980 and thereby in the capacity of producers generate electrical energy are entitled to the exemption contemplated by the notification in respect of the electrical, energy consumed by them for the purpose of the industries run by them. We have referred to the Cabinet decision not as an aid to clear any doubt or ambiguity in the notification because in our opinion there is none and the notification is capable of only one interpretation as stated earlier, but only to indicate that the notification faithfully carries out the said Cabinet decision.

4. Now we shall refer to certain decisions relied on by learned counsel for the petitioners laying down rules of interpretation of notifications. The first such decision is the decision of the Supreme Court in *Hansraj Gordhandas Vs. H.H. Dave*, Assistant Collector of Central Excise and Customs, Surat and Others, where it was held that it is well established that in a taxing statute there is no room for any intendment. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority- In our opinion, on the facts of the instant case, our interpretation of the notification is in conformity with this decision inasmuch as what we have said about the import of the notification is on the basis of its plain language. Reliance was then placed on a decision of the Kerala High Court in *South India Rubber Works. Alleppey v. Assistant Collector of Central Excise, Trivendrum* 1979 ELT (J) 156. In that case it was contended for the Assistant Collector of Central Excise that the petitioner was liable to duty inasmuch as a mistake had occurred in the notification was no ground to hold the petitioner liable for duty. In our opinion, since it is not the case of the respondents in the instant case that any mistake has occurred in the notification, this decision is clearly inapplicable. Reliance was then placed by learned counsel for the petitioners on a decision of the Madras High Court in *Assistant Collector of Central Excise. Customs House. Pondicherry v. New Horizon Sugar Mills (p) Ltd., Pondicherry* 1980 ELT 10 where it was held that if the language is deficient to bring out the real intention of the authors who issued the notification, it is not for the court to supply the deficiency. This decision, in our opinion, is clearly not applicable to the facts of the instant case inasmuch as the language of the notification is in no manner deficient to bring out the real intention of the authors who issued the notification. Reliance was then placed by learned counsel for the petitioners on a decision of the Bombay High Court in *Haldyn Glass Works Pvt. Ltd. v. M.L. Badhwar* 1980 ELT 291 where it was held that while interpreting the exemption clause the exemption should be liberally construed provided no violence is done to the language employed in the section. As already indicated above, in the instant case the interpretation of the notification (sought) by learned counsel for the petitioners can be accepted only after doing violence to the language employed therein. Reliance was then placed on a decision of the Bombay High Court in *Jenson and Nicholson (India) Ltd. v. Union of India*. 1981 ELT 128 : (1928 Tax LR 2350) where it was held that the meaning of a

notification must depend primarily on the terminology used in the notification. In the instant case, the meaning which we have given to the notification is, as already indicated above, on the terminology used therein. The other ease on which reliance was placed by learned counsel for the petitioners is again of the Bombay High Court in *Decan Sales Corporation v. R. Parthasarthy* 1982 ELT 885 where it was held that it is well settled that where a taxing or exemption provision is capable of more than one interpretation, then that interpretation must be put which would reduce the incidence of tax or enlarge the ambit of the exemption provision and that if two interpretations of a provision are permissible and one interpretation may render the provision subject to serious constitutional challenge, the other interpretation ought to be preferred. In other words, the provision must be read down and given a restricted meaning to protect it from a legal challenge as to its vires and validity. This case is also clearly distinguishable inasmuch as the notification here, in our opinion, is not capable of more than one interpretations. The next case relied on by learned counsel for the petitioners is of *Witco Match Works, Kalugumalai v. Union of India*. 1983 ELT 343 : (1983 Tax LR 56 (Bom)) where it was held by the Madras High Court that a provision in the exemption notification must normally be interpreted in its ordinary natural and grammatical sense and to impart any notion of policy or to enlarge the exemption to categories which are not expressly covered therein is not admissible in law, Suffice it to say so far as this case is concerned that our interpretation of the notification is in conformity with the principles of law laid down in this case. Reliance was also placed on another decision in the same volume of the Delhi High Court in *Indian Aluminium Co. Ltd. v. Union of India* 1983 ELT 349 where it was held that the exemption notification must be interpreted in a way so that the remedy provided by the legislature may be availed of by the tax-payer. As regards this case, suffice it to point out that since in our opinion the notification is capable of only one interpretation as put by us, it cannot be said that our interpretation is not in conformity with the principle laid down in this case. Lastly, reliance was placed by learned counsel for the petitioners on a decision of the Calcutta High Court in *Collector of Customs Vs. Mitsunry Electronic Works*, where it was held that it is well settled that if the interpretation of a fiscal enactment is open to doubt, the construction most beneficial to the subject should be adopted even if it results in his obtaining an advantage and that one can only look fairly at the language used but nevertheless fiscal law has to be interpreted reasonably and in consonance with justice and also that when two interpretations are possible, the view which is favourable to the assessee is always to be preferred. Since in the instant case, in our opinion, two views are not possible of the notification on its plain language, no question of applying principles of interpretation enumerated in the case of *Mitsunry Electronic Works* (1987) 30 ELT 345 (supra) arises.

5. Lastly, it was urged by learned counsel For the petitioners that in case the exemption granted by the notification is available only to such industries which had established their generating units after 10th Dec. 1980, it is violative of

Article 14 of the Constitution because fixing 10th Dec. 1980 as a cut off date is arbitrary. According to learned counsel, since both the sets of industries who had set up their generating units before 10th Dec. 1980 and those who had set then up after 10th Dec. 1980 were equally augmenting generation of electricity, no discrimination was justified in the matter of grant of exemption from electricity duty. In this connection reliance was placed by learned counsel for the petitioners on the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), . In our opinion, that case is clearly distinguishable. That was a case where the question of a cut off date with reference to "entitlement" and "payment" of pension under the Liberalised Pension Scheme came up for consideration. It was pointed out, relying on the decision of the Constitution Bench in Deokinandan Prasad Vs. The State of Bihar and Others, that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. In regard to the nature of payment which pension represents, it was held :

"Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service."

In this background it was held that the class of pensioners represented by those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension is not further divisible for the purpose of entitlement and payment of pension into those who retired by certain date and those who retired after that date. The anomaly of such division was high-lighted by observing that if retirement can be accepted as a valid criterion for classification, on retirement each Government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining age he had to retire so that if the date of retirement is a valid criterion for classification those who retire every month shall form a class by themselves. It was held that this was too microscopic classification to be upheld for any valid purpose.

6. It is thus apparent that a pensioner as contemplated by the decision in the case of D.S. Nakara and Others Vs. Union of India (UOI), was entitled to payment of pension as of right in lieu of his past services. Since the purpose of the Liberalised Pension rules was to ameliorate the financial position of the pensioners, it was pointed out that denying the said benefit to some pensioners

by fixing a cut off date was not reasonable. This is not so in regard to the grant of exemption such as was granted by the notification in the instant case. Dealing with the question of grant of exemption under the Gujarat Sales Tax Act, it was held by the Supreme Court in *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, that the State Government was under no obligation to grant exemption from sales tax and that the appellants could not, therefore, have insisted on the State Government granting exemption to them from payment of sales tax. It was pointed out that what consequently follows is that the exemption granted by the Government was only by way of concession and that once this position emerges it goes without saying, that a concession can be withdrawn at any time and no time limit can be insisted upon before the concession is withdrawn. An exception was, however, made by pointing out that the power of revocation or withdrawal would be subject to one limitation, namely, the power cannot be exercised in violation of the rule of promissory estoppel. In this view of the matter, no one including the petitioners could have claimed exemption from payment of electricity duty as of right and it was in the discretion of the Government to grant or not to grant the concession. In the matter of grant of concession the class of persons to whom the concession is to be given is to be in the very nature of things determined by the Government. Of course, after the Government has decided to grant exemption to a particular class of persons, no discrimination can be allowed to be practised among persons falling within that class. The class of persons can be determined by adopting various methods and one of the recognised methods is by fixing a cut off date and as regards a cut off date it was pointed out by the Supreme Court in *Union of India (UOI) and Another Vs. Parameswaran Match Works and Others*, .

"The concessional rate of duty can be availed of only by those who satisfy the conditions which have been laid down under the notification..... In the matter of granting concession or exemption from tax, the Government has a wide latitude of discretion. It need not give exemption or concession to everyone in order that it may grant the same to some. As we said, the object of granting the concessional rate of duty was to protect the smaller units in the industry from the competition by the larger ones and that object would have been frustrated if, by adopting the device of fragmentation the larger units could become the ultimate beneficiaries of the bounty. That a classification can be founded on a particular date and yet be reasonable, has been held by this Court in several decisions (See *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, ; *Dr. Mohammad Saheb Mahboob Medico Vs. The Deputy Custodian-general and Another*, ; *Bhikuse Yamasa Kshatriya (P) Ltd., and Another Vs. Union of India (UOI) and Another*, and *Daruka and Co. Vs. The Union of India (UOI) and Others*, . The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be

accepted unless we can say that it is very wide of any reasonable mark. See Louisville Gas & E. Co. v. Coleman (1927) 277 US 32".

Dealing with the fixation of a particular date as the cut off date to achieve the purpose of the notification it was held : "There can be no doubt that any date chosen for the purpose would to a certain extent be arbitrary. That is inevitable". We are accordingly of the opinion that the classification made in the instant case on the basis of a cut off date cannot be dubbed as arbitrary and violative of Article 14 of the Constitution.

7. In view of the foregoing discussion, we find no merit in this writ petition. It is accordingly dismissed with costs the amount of which is assessed at Rs. 2,500/-.