
(1995) 10 KAR CK 0035
In the Karnataka High Court
Case No : W.A. No. 2646 of 1991

Indian Aluminium Co. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-10-1995

Acts Referred:

Karnataka Electricity (Tax on Consumption) (Amendment) Act, 1990 — Section 8, 8 A

Citation : (1995) ILR (Kar) 3013 : (1996) 1 KarLJ 92

Hon'ble Judges : M.L. Pendse, C.J.;B. Padmaraj, J

Bench : Division Bench

Advocate : R.N. Narasimha Murthy and K. Sachindra Karanth, for the Appellant;
D'Sa, Government Advocate for R-1 and S.G. Sundaraswamy, Senior Advocate
for KEB, for the Respondent

Judgement

Pendse, C.J.—Indian Aluminium Company is a Company registered under the Companies Act and engaged in the manufacture of aluminium metals at Smelter Complex at Belgaum in the State of Karnataka. In the year 1966, the Government of Karnataka had undertaken the construction of the Sharavathi Valley Hydro Electricity Project and plant for drawing Hydro Electric generating system to generate large quantity of electric power. The State Government was anticipating generation of large surplus power. The aluminium industry and particularly, the Smelter plant requires large quantity of power for manufacturing operation. The Karnataka State Electricity Board and the State of Karnataka invited the Company to establish Aluminium Smelter Plant at Belgaum by assuring uninterrupted supply of electricity. The Company accepted the invitation and set up a Complex by investing large amount of over Rs. 50 crores.

2. A Tripartite Agreement was entered into between the Company, the Board and the State on March 26, 1966. The Agreement inter-alia provided for uninterrupted supply of power and the power was to be supplied for a duration of 25 years. The Agreement also provided for renewal for a further period. On July 15, 1975 the Government of India announced Aluminium Policy and thereupon a

fresh Tripartite Agreement was entered into between the parties on August 7, 1976. The second Agreement was almost identical except some minor modifications as to the price for supply of electricity. Clause 6 of the Agreement deals with basis of payment for the consumption of power. Clause 6(c) reads as follows:

"Clause 6(c). The consumer shall bear or pay, on the invoice amount payable by it to the Supplier in terms of this agreement, electricity tax or duty at the rate of three per cent (3%) of such invoice amount during the first twenty-five (25) year period commencing from the Start-up date, that is, upto and including the 21st day of October 1994 PROVIDED THAT during the second twenty-five (25) year period (that is, on and from the 22nd day of October 1994 and until the expiry of this agreement) the rates for power prevailing on the 21st day of October 1994 in accordance with the provisions of Clauses 6(a) or 6(b) hereof shall be adjusted by multiplying each such rate by a factor of 0.9717 (zero point nine seven one seven) and the said electricity tax or duty shall be raised to six per cent (6%) of the invoice amount calculated on the basis of such adjusted rates PROVIDED FURTHER that if the Consumer is required to bear or pay during the first twenty-five year period and/or the second twenty-five year period on account of electricity tax or duty any amount in excess of the said three per cent (3%) or six per cent (6%), as the case may be, of the invoice amount by reason of the provisions of any existing statute or as a result of amendment of any subsisting electricity tax or duty or on account of any additional imposition, on the consumers of electricity in the State of Karnataka of any tax, duty, fee, surcharge, levy, toll, cess or any other imposition on their electric power consumption then the Government shall reimburse the Consumer in respect of all such excess payments and shall also keep the Consumer indemnified against all claims and demands of any authority for such excess payments."

This clause creates a liability in the State of Karnataka to reimburse the Company in respect of payments in excess of 3% or 6% as the case may be and also to keep the Company indemnified against all claims and demands of any authority for such excess payments. The Karnataka Electricity Board is a collecting agency.

3. The Electricity (Supply) Act, 1948 is a piece of Central legislation to provide for establishment of the production and supply of electricity and generally for taking measures for electrical developments. Section 49 of the Act deals with the provisions of the sale of electricity by the Board to persons other than Licencees and prescribes the factors to be taken into consideration while fixing the uniform tariffs. On November 21, 1980 the Governor of Karnataka published an Ordinance for amendment of Section 49 of the Electricity (Supply) Act, 1948 and Ordinance became an Act called the Electricity (Supply) (Karnataka Amendment) Act, 1981. Sub-section (5) was added to Section 49 which inter-alia provided that the party to an agreement or any other arrangement entered into prior to the commencement of the amendment Act and providing for supply of electricity

by the Board shall notwithstanding anything contained in the agreement, pay in respect of electricity so supplied, price calculated in accordance with the uniform tariff framed from time to time.

The State of Karnataka erroneously assumed that Karnataka Electricity (Supply) Amendment Act, 1981 had the effect of modifying the Tripartite Agreement dated August 7, 1976 in respect of reimbursement of excess amount to the Company and declined to reimburse the Company. The Company filed Petitions to challenge the validity of the Amending Act, but the challenge was not accepted by this Court and the Supreme Court in the Judgment reported in *Indian Aluminium Company Limited and another Vs. Karnataka Electricity Board and others*,

The Company thereafter instituted Writ Petition Nos. 27361 and 27362/81 under Article 226 of the Constitution in this Court for a Writ of Mandamus directing the respondents to desist from levying or collecting electricity tax at a rate higher than 3% of the invoice amount as specified in Clause 6(c) of the Agreement dated August 7, 1976. The Company also sought Writ of Mandamus directing the respondents to forthwith reimburse the excess amounts realised in respect of the bills issued from November 21, 1980 and continue to make reimbursement of such excess amounts during the subsistence of the Agreement. The relief sought in the Petition was resisted by the respondents inter-alia claiming that the liability undertaken by Clause 6(c) of Tripartite Agreement stands abrogated by enactment of Karnataka Electricity (Supply) Amendment Act, 1981. The respondents pleaded that amended Section 49 of the Act entitles the respondents to recover duty as per the tariff rates and not to reimburse any part thereof to the Company. This Court by Judgment reported in *INDIAN ALUMINIUM CO., LTD. v. STATE OF KARNATAKA* ILR 1988 KAR 2452 negated the contention raised on behalf of the respondents. The Division Bench held that the rigours of Section 49 of Electricity (Supply) Act, ex-facie do not by any stretch of imagination wipe out the liability undertaken by the State of Karnataka to reimburse the excess duty as prescribed by Clause 6(c) of the Agreement. The Division Bench further held that the Agreement dated August 7, 1976 between the parties remains intact and the Government of Karnataka is bound to reimburse or indemnify the Company as per Clause 6(c) of the Agreement. In accordance with the findings, the Division Bench held that the Company is entitled to the relief of reimbursement and indemnification and issued Writ of Mandamus to the State to reimburse or indemnify the Company the quantum of tax which is in excess of the rate envisaged by Clause 6(c) of the Agreement dated August 7, 1976. The respondents accepted the Decision but failed to reimburse the excess tax collected. The Company thereupon filed Contempt Petitions Nos. 248 and 249 of 1989 against the Additional Chief Secretary of the State Government for disobedience of Writ of Mandamus. The Contempt proceedings were adjourned for a duration of three weeks on March 29, 1990 to enable the Government to comply with the Writ.

4. The Karnataka State Legislature had enacted the Karnataka Electricity (Taxation on Consumption) Act, 1959 to provide for the levy of tax on the consumption of electrical energy in the State of Karnataka. Section 3 is the charging Section, and inter-alia provides that there shall be levied and paid to the State Government on the units of energy consumed a tax calculated at certain rate as specified by the State Government, and different rates can be specified in respect of different classes of consumers. Section 8 of the Act confers power on the State Government to notify exemptions and reductions of tax. The State Government by Notification can exempt or reduce the rate of tax on energy supplied or consumed for any specified purpose or for any class of consumers. The State Government introduced a Bill called the Karnataka Electricity (Tax on consumption) (Amendment) Bill 1990. The Bill was approved and the Karnataka Electricity (Taxation on Consumption), (Amendment) Act, 1990 was passed and received the assent of the Governor on April 5, 1990. The Statement of Objects appended at the time of introduction of the Bill sets out that agreements were entered into for attracting industries in the State of Karnataka and these agreements provided for a very low concessional tariff rate and occasionally for reimbursement of the part of tax collected from the consumer. The statement further recites that the State of Karnataka had experienced acute shortage of power necessitating import of energy from other States at very high rates. The cost of generation, transmission and overall charges were also increased. The statement claims that it was noticed that instead of ploughing the concessions availed of for the purpose of rendering the products competitive the industries have desisted from passing on the benefits to the consumers of the products; and this has contributed to their unjust enrichment at the cost of the consumers of the products in a manner detrimental to public interest. The statement further claims that the amendment Bill was introduced in order to remedy the situation.

By the Amending Act, Section 8A was introduced. The Section provides that notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court or in a contract or instrument having force by virtue of any such law, but subject to Section 8 of the Karnataka Electricity (Taxation on Consumption) Act, (a) the performance of any contract by the State Government or the licensee in so far as it provides for reimbursement or indemnification in favour of the consumer, or for any amount levied on or collected from him as tax under this Act shall be and shall be deemed always to have been dispensed with and any amount due or payable by the State Government or the licensee to a consumer by way of such reimbursement or indemnification under the contract, including the amount of interest, if any, shall be deemed to be wholly discharged;

Clause (b) of Section 8A issues a fiat restraining any Civil Court from entertaining suit or proceeding against the State Government for recovery of any amount by way of reimbursement or indemnification including interest.

Clause (c) of Section 8A provides for abatement of suits or proceedings pending against the State Government for the purpose of recovery. The Proviso to Clause (c) sets out that nothing in this Section shall entitle the State Government to claim refund of any amount already paid by way of reimbursement or indemnification. In view of the passing of this Amending Act, the State Government refused to obey the Writ of Mandamus issued by this Court and that gave rise to filing of Writ Petition under Article 226 of the Constitution at the behest of the Company to challenge the validity of Amending Act.

5. The Company claimed that the Amending Act introducing Section 8A in the Karnataka Electricity (Taxation on Consumption) Act, is violative of Articles 14, 19(1)(g) and 300A of the Constitution. The Company also sought Writ of Mandamus directing the State of Karnataka to reimburse the Company in respect of payments of electricity tax in excess of the percentage specified in Clause 6(c) of the Tripartite Agreement dated August 7, 1976 in terms of the Mandamus issued by this Court in W.P.Nos. 27361 and 27362 of 1991.

The grievance of the Company is that the legislative powers were used with a view to nullify the Judgment delivered by this Court and the issuance of Writ of Mandamus. The Company claimed that the effect of Writ of Mandamus was tried to be neutralised by the impugned Act and at the same time the Tripartite Agreement is not disturbed. The Company claimed that it is not permissible for the respondents to ignore the Writ of Mandamus and mere enactment of the legislation cannot wipe out the effect of Writ of Mandamus. It was asserted that the respondents are duty bound to comply with the Writ of Mandamus as the respondents have neither sought the review of the Decision of the Division Bench of this Court nor preferred any Appeal before the Supreme Court in pursuance of the Amending Act. The Company also claimed that the Amending Act is violative of Article 14 of the Constitution as the passing of the legislation is unfair and unreasonable. The State of Karnataka did not file any return to resist the relief sought by the Company and the Karnataka Electricity Board filed return sustaining the validity of the Act. The Electricity Board claimed that the legislation was passed with a view to put a stop to unjust enrichment by the consumers enjoying low concessional rates and action being taken in public interest, it was not open to challenge in Writ jurisdiction. The learned Single Judge by Judgment dated September 16, 1991 dismissed the Petition holding that the challenge to Amending Act was not justified. The learned Judge felt that the Amending Act was merely a validating Act and the provisions of Section 8A nullify the effect of Clause 6(c) of the Tripartite Agreement. The learned Single Judge further held that the Amending Act being a validating Act, not merely declares the law but cures the defect, and Act was passed not to make any laws on the Judicial Orders, but it was merely to cure the defects- noticed by the Court. The learned Single Judge further held that it was open for the Legislature to displace the contract by legislation. The Decision of the learned Single Judge is under challenge.

6. Mr. R.N. Narasimha Murthy, learned Counsel appearing on behalf of the appellants, submitted that the trial Judge was in error in assuming that the Amending Act was a validating Act and the legislation was passed to cure the defect noticed by the Division Bench in the Judgment reported in *Indian Aluminium Co. Ltd., v. State of Karnataka*. Learned Counsel submitted that the Decision of the Division Bench merely observes that the amendment of Section 49 of Karnataka Electricity (Supply) Act, in no manner wipes out the liability of the State Government to reimburse or indemnify as agreed to under Clause 6(c) of the Tripartite Agreement. The Division Bench did not notice any defect in any legislation and consequently, it was erroneous to suggest that the impugned Amending Act was a validating Act. Mr. Sundaraswamy, learned Counsel appearing on behalf of the Board and Mr. D'Sa, learned Counsel appearing on behalf of the State Government, very fairly stated that the learned Single Judge was in error in assuming that the Amending Act was a validating Act and the legislation was passed to cure the defect noticed in the earlier Judgment, Mr. Narasimha Murthy submitted that Section 8A was introduced only with a view to nullify the Writ of Mandamus issued by this Court directing the State Government to reimburse the Company in accordance with the terms of Clause 6(c) of Tripartite Agreement. Learned Counsel appearing on behalf of the respondents, on the other hand, submitted that the Writ of Mandamus issued by this Court was merely declaratory in nature and not being executory, it was open for the Legislature to take away the basis of the Decision and consequently, the complaint that the amendment was effected to avoid implementation of Writ of Mandamus is not correct.

Section 8A(a) of the Act is in two parts. The first part provides that performance of any contract by the State Government in so far as it provides for reimbursement or indemnification shall be deemed always to have been dispensed with. The second part provides that any amount due or payable by the State Government by way of such reimbursement or indemnification shall be deemed to be wholly discharged. The introduction of Section 8A is for dispensing with the performance of certain obligations under the contract. The performance is deemed to have been dispensed with and that obviously was prospective in nature. The second part of Clause (a) deals with liability which had already accrued and Licencees and there the legislation provides that the said liability shall be deemed to be wholly discharged. It is obvious that the second part of Clause (a) of Section 8A is in respect of liability which has been determined by this Court by issuance of Writ of Mandamus. The expression "deemed to be wholly discharged" connotes that though the liability is not fulfilled in the eyes of law, it should be considered as being fully discharged.

7. In view of rival contentions urged two Questions squarely fall for Determination. The first question is whether it is open for the Legislature to provide that the liability already accrued shall be deemed to be wholly discharged in view of Writ of Mandamus issued by this Court directing the State Government to reimburse the Company. The liability to reimburse in accordance with the Writ

of Mandamus was from November 21, 1980 till the date of Decision, i.e., August 11, 1988, The second question which requires determination is whether the amended Section 8A is violative of Article 14 of the Constitution and is therefore liable to be struck down.

In support of the submission that it is not open for the Legislature to avoid compliance of Writ of Mandamus by legislative enactment, learned Counsel for the Company referred to three Decisions of the Supreme Court. The first Decision is reported in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, . In this case, the Central Government had issued order prescribing the pay scales, dearness allowance and conditions of service applicable to Class III and IV employees of the Life Insurance Corporation. The subsequent order of the Central Government directs that bonus other than profit sharing bonus shall be paid to the employees drawing salary not exceeding Rs. 500/- per month. On July 2, 1959 there was settlement between the Life Insurance Corporation and the employees providing for payment of cash bonus and which was to be effective from September 1, 1956 until December 31, 1961. Several settlements were thereafter entered into between the Corporation and the employees. On September 25, 1975 a Payment of Bonus Amendment Ordinance was promulgated and in view of the Ordinance the Corporation issued a Circular to withhold the payment of bonus for the year 1975-76, The employees filed Writ Petition in the High Court of Calcutta to challenge the Circular and the High Court recognised the right to payment of bonus for the year 1975-76 and issued a Writ of Mandamus directing the Corporation to pay the amount of bonus. The Decision of Calcutta High Court was challenged by the Corporation by filing Appeal. Pending disposal of the Appeal, the Central Government passed a legislation known as *The Life Insurance Corporation (Modification of Settlement) Act*". Section 3 of the said Act inter-alia provided that notwithstanding anything contained in the Industrial Disputes Act, 1947 the settlement entered into, in so far as it relates to the payment of annual cash bonus to Class III and IV employees at the rate of 15% of the annual salary, shall not have any force or effect and shall not be deemed to have any effect on and from 1st day of April 1975. In view of this Amending Act, the Corporation withdrew the Appeal before the Division Bench of the High Court. The validity of the Act was challenged by the employees as the Corporation refused to obey the Writ of Mandamus and the Petition under Article 32 of the Constitution was heard by the Bench of 7 Judges presided over by Chief Justice M.H. Beg. The majority Judgment was delivered by Justice Bhagwati, as he then was, and the learned Judge held that the Judgment given by the Calcutta High Court was not a mere declaratory judgment like holding an impost or tax to be invalid so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. The learned Judge observed that the Judgment of the Calcutta High Court was giving effect to the right of the employees to annual cash bonus under a settlement by issuing a Writ of Mandamus directing the Corporation to pay the amount of such bonus. It was then observed:

".....If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the Writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus....."

Chief Justice Beg in a concurring Judgment observed that the real object of the Act was to set aside the result of the Mandamus issued by the Calcutta High Court. The learned Chief Justice further observed that the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution and this could not be touched by the ordinary Act of Parliament. The Chief Justice further observed that the right to receive bonus was the pre-existing right and the Writ of Mandamus issued by the Calcutta High Court was executory in nature. Relying on the Decision Mr. Narasimha Murthy, submitted that the Writ of Mandamus issued by this Court against the State Government directing reimbursement to the Company could not be nullified by legislative enactment when Decision of this Court had acquired finality. There is considerable merit in the submission urged on behalf of the appellants.

8. The ratio of Pathak's case was approved in two later Decisions of the Supreme Court reported in A.V. Nachane and Others Vs. Union of India (UOI) and Another, and in P.S. Mahal and Others Vs. Union of India (UOI) and Others, In the case of A.V. Nachane, it was contended that the provisions of the Amending Act 1991 would nullify the effect of the Writ issued by the Supreme Court in the case reported in THE LIFE INSURANCE CORPORATION OF INDIA v. D.J. BAHADUR AND ORS. AIR 1984 SC 2181. The contention was negated by quoting the observation made by Justice Bhagwathi in Pathak's case and which has been set out herein above. In P.S. Mahal's case it was again observed that the Decision in A.K. Subraman's case delivered by the Supreme Court was not a mere declaratory judgment, but was a decision giving effect to the rights of the Executive Engineers promoted from the grade of Assistant Engineers to have their inter-se seniority determined on the basis of rule of length of continuous officiation. The Supreme Court observed that if by reason of retrospective alteration of the rule of seniority, the Decision is rendered erroneous, the remedy may be by way of appeal or review, but so long as the Judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Corporation. Reliance was placed on the Decision in Pathak's case to reach the conclusion. These three Decisions in our judgment entirely support the submission urged on behalf of the appellants that the amendment of Section 8A cannot nullify the effect of Writ of Mandamus issued by this Court and the respondents cannot decline to reimburse or indemnify the Company for the period commencing from November 21, 1980 and ending with August 11, 1988 when the Division Bench issued a Writ of Mandamus.

9. Mr. Sundaraswamy, contended that the Decision rendered by the Division Bench was merely declaratory in nature and not executory and consequently, the ratio laid down in Pathak's case is not applicable to the facts of the present case. It was urged by the learned Counsel that the Division Bench gave a declaration that the Company is entitled to the relief of reimbursement and indemnification towards payment of tax which is in excess of percentage in Clause 6(c) of the Tripartite Agreement. It was urged that declaration was really to the effect that the amended Section 49 of Electricity (Supply) Act does not obliterate the effect of Clause 6(c) of the Agreement. The submission is not accurate. The Company had approached the Court seeking enforcement of liability of the State Government to reimburse in accordance with the terms of Clause 6(c) of the Agreement. In defence to the relief claimed, the State Government asserted that the liability comes to an end by amendment of Section 49 of Electricity (Supply) Act. The defence was not accepted and the relief sought by the Company for issuance of Writ of Mandamus to the State Government to reimburse the Company was granted. We are unable to appreciate how it can be ever suggested that the Writ was not executory in nature, but was merely declaratory. Learned Counsel referred to the Decision of the Supreme Court reported in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, and urged that the contracts which provided for reimbursement of excess tax were set at naught by Section 8A of the Amending Act and consequently the basis on which the Judgment of the Division Bench proceeded was fundamentally altered and that rendered the Judgment ineffective and not binding on the parties. The submission cannot be accepted because identical contention urged before the Supreme Court in Pathak's case with reference to the Decision in *Prithvi Cotton Mills* was turned down. The Supreme Court observed that Judgment in the case of *Prithvi Cotton Mills* does not lay down any such wide proposition that whenever any factual or legal situation is altered by retrospective legislation, all Judicial Decisions rendered by the Court on the basis of such factual or legal situation prior to the alteration, straightaway ceased to be effective and binding on the parties. Learned Counsel then referred to the Decision of Division Bench of this Court reported in *JYOTHI HOME INDUSTRIES AND ORS. v. STATE OF KARNATAKA AND ORS* 1984 (1) KARLJ 394. Constitutional validity of the provisions of the Karnataka Tax on Entry of Goods into Local Areas for Consumption. Use or Sale Therein Act, 1979 was challenged before the Division Bench on various grounds. One of the contentions which required determination was whether Section 3 of the repealing Act, 1981 is without legislative competence as its avowed object was to nullify the Writs of Mandamus issued by this Court in exercise of its Constitutional power under Article 226 of the Constitution directing the State in its functions to forbear to enforce the provisions of the Act. Mr. Justice Venkatachalaiah, as he then was, speaking for the Bench referred to the Decisions of the Supreme Court in *Pathak* and *Mahal*'s cases and then in paragraph 27 of the Judgment observed:

"27. Consistent with this permissibility of validating retrospective legislation, the

fundamental distinction, relevant to the present situation, that requires to be kept clearly distinguished is this: If the judicial decision is merely a declaratory judgment and the issue of a Writ of Mandamus is merely consequential to that declaration, it would be permissible for the legislature to remove the defect or supply the basis, as the case may be, noticed in the judicial pronouncement and thus validate the law. If, on the other hand the judgment, inter-partes, is rendered on the basis of the substantive pre-existing rights of the parties which are crystallised in the writ-issued, and the issuance of the writ is a mode of enforcing such adjudicated pre-existing rights-as in the case of a Judgment and decree inter parties then the effect of such adjudication cannot be interfered with except in a judicial process such as appeal, review etc. In the former case the judgment is merely declaratory of the law and the writs issued are merely consequential; but in the latter case the decision is adjudicatory of pre-existing rights of parties and the rights are crystalised into and enforceable through the writ.We are unable to agree with Sri Srinivasan that after Pathak's case all these pronouncements are denuded of their authority. On the other hand, Pathak's case, Bahadur's case and Nachane's case are illustrative of the latter class of cases.

The recognition of the distinction between the two class of cases is implicit in Pathak's case itself. Referring to the nature and effect of the judgment of the Calcutta High Court and stressing the importance of the distinction that it was not merely declaratory of the law but was an enforcement of pre-existing substantive rights, Supreme Court said:

".....But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation...."

Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion".

The Decision instead of supporting the contention of the State of Karnataka goes entirely to sustain the submission urged on behalf of the appellants. The Decision of the Division Bench of this Court issuing Writ of Mandamus directing the State of Karnataka to reimburse the Company in accordance with the provisions of Clause 6(c) of the Tripartite Agreement, is a Judgment inter-partes and rendered on the basis of substantive pre-existing rights and which are crystalised in Writ Proceedings. A Writ of Mandamus was issued to enforce such adjudicated pre-existing rights and the effect of such adjudication cannot be interfered with except in Judicial Process such as Appeal, Review etc. In our judgment, Section 8A of the Amending Act in so far as it prescribes that the liability already accrued

shall be deemed to be wholly discharged is invalid and is required to be struck down. The State Government is bound to honour the Writ of Mandamus issued by this Court and reimburse or indemnify the Company for the period commencing from November 21, 1980 and ending with August 11, 1988, the date on which the Writ of Mandamus was issued. The State Government cannot take shield behind the provisions of Amended Section 8A of the Act and refuse to comply with the Writ of Mandamus.

Learned Counsel for the State Government submitted that once the Legislature provided that the liability for reimbursement or indemnification is deemed to be wholly discharged, then that could be construed as compliance with the Writ of Mandamus issued by this Court. The submission is merely required to be stated to be rejected. It is futile to claim that the Writ of Mandamus is obeyed or honoured by providing that the liability is deemed to be wholly discharged. The expression "deemed" connotes that though the liability is not discharged in the eyes of law, it should be treated as discharged. It is not open for the State Legislature to defeat the Writ of Mandamus issued by this Court by making such provision and as held by the Supreme Court in Pathak's case, Nachane's case, Mahal's case and the Division Bench Decision of this Court in Jyothi Home Industries case, the only method of avoiding the consequences of Writ of Mandamus is by approaching the Appeal Court or filing Review Petition, and the orders passed by Writ Courts cannot be nullified by resort to the legislative provisions. It is not in dispute that Clause 6(c) of the Tripartite Agreement provided for reimbursement and that was not the exemption or reduction of tax notified by the State Government in exercise of the powers u/s 8 of the Act. The provisions of reimbursement or indemnification arose out of contractual obligations entered into by the parties and had no reference to the statutory power to grant exemption or reduction in payment of tax.

10. The next question to be determined is whether the provisions of the Amending Act are ultra vires the Fundamental Rights guaranteed under Article 14 of the Constitution. Mr. Narasimha Murthy, very fairly submitted that the legislation is passed to deal with the single entity, i.e., the appellant-Company and the legislation cannot be challenged on that count in view of catena of Decisions of the Supreme Court commencing from Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, State of Himachal Pradesh and Anr v. Kailash Chand Mahajan and Ors. Mr. Narasimha Murthy restricted his submission by urging that the legislation is unreasonable and unfair. It was urged that the Tripartite Agreement was a package deal and the Company entered into Agreement on the assurance that the State Government will reimburse the additional tax as prescribed under Clause 6(c) of the Agreement. Learned Counsel submitted that the respondents are desirous of continuing with the Agreement, but wants to deprive the Company of the benefit assured. The contractual obligation, urges the learned Counsel, is tried to be defeated by reference to the executive power and this exercise is both unfair and

unreasonable. Learned Counsel for the respondents, on the other hand, submitted that the Petition does not disclose any material to indicate, how the legislation is unfair or arbitrary. It is undoubtedly true that there is no data whatsoever to sustain the complaint. It is well settled that exercise of legislative powers cannot be questioned except on the ground of lack of legislative competence or violation of any Fundamental Rights. Learned Counsel for the appellants very fairly stated that the appellants are not challenging the legislative competency to pass the impugned legislation, but restricting the challenge only on the ground that the provisions of Article 14 of the Constitution are violated. It was also contended that the Statement of Objects takes into consideration certain facts which are not correct. It was urged that the assumption that the benefits given to the Company contribute to unjust enrichment at the cost of the consumers of the products is totally incorrect and that indicates that the legislation was passed arbitrarily and unreasonably to defeat the Decision of this Court. It is not possible to accede to the submission on this count. It is difficult to strike down the legislation as violative of Article 14 of the Constitution on such vague allegation of unreasonableness or arbitrariness. In our judgment it was open for the Legislature to provide that the obligation undertaken by Tripartite Agreement stands dispensed with even though the Agreement remains in force. The dispensation of the obligation to reimburse or indemnify can have only prospective effect and the State can very validly decline to reimburse from the date of enactment of Section 8A of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 1990. The challenge to Section 8A on the ground of violation of Article 14 of Constitution must therefore fail,

11. Accordingly, Appeal is partly allowed and Judgment dated September 16, 1991 delivered by the learned Single Judge in Writ Petition No. 16568/90 is set aside and it is declared that the latter part of Clause (a) of Section 8a of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 1990 which provides that any amount due or payable by the State Government by way of reimbursement or indemnification under the contract including the amount of interest, if any, shall be deemed to be wholly discharged is void and of no effect. The State Government is therefore directed to reimburse the Company in accordance with the Writ of Mandamus issued by this Court in Writ Petition Nos. 27361 and 27362 of 1981 for the period commencing from November 21, 1980 and ending with August 11, 1988. The rest of the provisions of Section 8A of the Act stand upheld. In the circumstances of the case, there will be no order as to costs.