
(1991) 09 KAR CK 0058
In the Karnataka High Court
Case No : Writ Petition No. 16568 of 1990

Indian Aluminium Co. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)
Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 1990 — Section 8 A, 8 A (a)

Citation : (1991) ILR (Kar) 3789 : (1991) 3 KarLJ 609

Hon'ble Judges : Rajendra Babu, J

Bench : Single Bench

Advocate : K. Parasaran and K.R.D. Karanth, for the Appellant; Adv.-General for R-1 and H.B. Datar, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, J.—Petitioner No. 1 is a company engaged in the manufacture of aluminium metal and has a smelter complex at Belgaum, It is alleged that in response to "An Invitation to Investors in Industry" published by the Government of Karnataka in 1966, the petitioners set up a smelter complex and an aluminium plant at Belgaum on the basis of the assurances given by the State Government in the said brochure. An agreement was entered into between the 1st petitioner, the State Government and the State Electricity Board (hereinafter referred to as the Board) on 26-3-1966 for supply of electric power at a fixed rate for the duration of the agreement. In the said agreement provision was made for supply of power at a fixed rate with electricity tax at stipulated rate for a period of 25 years with an option for renewal for a further period of 25 years. On the basis of the terms and conditions of the aforesaid agreement, it is claimed by the 1st petitioner, that it set up the complex making investment of several crores of Rupees. After the announcement of Aluminium Policy by the Government of India on 15-7-1975 a new agreement was entered into between the State, the Board and the 1st petitioner on 7-8-1976 in which Clause 6(c) provided freezing the

rate of electricity tax on the electricity supplied to the petitioners at 3% of the invoice amount for the first 25 years which ends on 21-10-1994 and thereafter at a rate not exceeding 6% of the invoice amount during the next 25 years. The State Government also agreed to reimburse the 1st petitioner in respect of excess payments to be made by the 1st petitioner towards any tax, duty, cess etc., which is in excess of 3% for the first 25 years and at 6% for the next 25 years on the invoice amount. This agreement resulted in a right to the petitioners for reimbursement from the State Government in respect of excess tax paid or payable by ft. The Board was collecting the price of electricity supplied to the petitioners as also levied the tax limiting the same to the rates mentioned in Clause 6(c) of the aforesaid agreement.

2. The Electricity (Supply) (Karnataka Amendment) Ordinance 1980, replaced by Karnataka Act 33 of 1981 came into force with effect from 21-11-1980, which amended Section 49 of the Electricity (Supply) Act, 1948, providing for a consumer of electricity to pay the price towards the electricity supplied calculated in accordance with the uniform tariff framed or modified from time to time and applicable to the category to which such consumer belongs irrespective of contracts that may have been entered into with parties. On 18-8-1981 the State Government issued a notification revising the rate of electricity tax on units of energy consumed by different classes of consumers in exercise of its power u/s 3 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 and the Board demanded taxes from the petitioners at the revised rate. To this demand of higher taxation the 1st petitioner lodged its objection as being contrary to Clause 6(c) of the agreement and sought for confining the rate of tax at 3% of the invoice amount, the Board took the stand that that agreement stood abrogated by reason of the amendment made to the Electricity (Supply) (Karnataka Amendment Act). The petitioners thereafter called in question the constitutional validity of the provisions of the Karnataka Electricity Supply (Amendment) Act and also for a declaration that the said provisions do not apply to the petitioner-Company, before this Court. This Court on a consideration of the contentions raised therein dismissed the petition holding that the Aluminium industry belongs to that class of industry falling within HT-1A and the promissory estoppel pleaded cannot be applied and the contention as to the consent given by the Chairman was also rejected. It is stated that this matter is in challenge before the Supreme Court. The 1st petitioner-Company also filed another Writ Petition wherein the petitioners sought to restrain the enforcement of the revised rates of electricity tax with effect from 18-8-1981 and or for a direction to the 1st respondent to reimburse the petitioners the amounts paid in excess of 3% of the invoice amount as specified in Clause 6(c) of the agreement between the parties. It was held in that Decision that the Electricity (Supply) (Karnataka Amendment) Act 1981 operates in a different field and does not cover the questions of taxation and therefore the terms governing reimbursement and indemnification are not nullified by that enactment although the contract in other respects was not enforced in relation to the rates. On this aspect it was stated as follows:

"22. Nowhere in the Amendment Act, the law purports to touch the Taxation Act and the terms governing the reimbursement of and indemnification towards, a hike in the rate of tax. The law, does not nullify the solemn undertaking given by the State Government in this regard. If the contention of the respondents is accepted, to hold that the entire agreement stood superseded by the Amendment Act, several clauses in the agreement governing various other aspects of the supply and purchase of electricity for the petitioners' factory will be nullified, which may lead to unexpected results. It is not possible to accept this contention of the State and the Board. The tripartite agreement is still in operation except to the extent modified by the Amendment Act regarding the price payable by the petitioner to the Board for the electricity consumed by the petitioner."

Therefore, this Court took the view that the tax levied being on the consumption of electricity is an independent impost and Board collects from the petitioner the same, as it charges, to facilitate the collection of tax and it is not levied on the Board but passed on to the consumer and allowed the Writ Petitions declaring that the petitioner is entitled to the relief of reimbursement and indemnification from the State towards payment of tax which is in excess of the percentage of Clause 6(c) of the agreement dated 7-8-1976 entered into between the petitioner, the State and the Board and also issued a mandamus directing reimbursement and indemnification of the petitioner towards the quantum of tax as envisaged under the aforesaid clause. Thereafter the State Legislature amended the Karnataka Electricity (Taxation on Consumption) Act 1959 by Karnataka Act 13/1990 known as Karnataka Electricity (Taxation on Consumption) (Amendment) Act 1990. In that enactment Section 8A was introduced to the original Act by Section 2 and it reads as follows:

"8A. Dispensing with the performance of certain contracts -Notwithstanding anything contained in any law for the time being in force or in any Judgment, decree or order of any Court or in any contract or instrument having force by virtue of any such law, but subject to Section 8,

(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;

(b) No Civil Court, shall entertain any suit or proceeding against the State Government or the licensee for the recovery of any amount by way of such reimbursement or indemnification including interest, if any;

(c) all suits and proceedings (including appeals, revisions, attachments or execution proceedings) pending on the said date against the State Government

or the licensee for the recovery of any such amount shall abate;

Provided that nothing in this Section shall entitle the State Government or the licensee for refund of any amount already paid by way of reimbursement or indemnification before the commencement of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 1990."

The validity of this enactment is called in question in this Writ Petition and the petitioners seek for a Writ to strike down Karnataka Act 13/1990 as ultra vires of the powers of the legislature and Constitution of India as violating the fundamental rights under Articles 14 and 19(1)(g) and 300A of the Constitution of India and to issue a Mandamus to continue the reimbursement notwithstanding the enactment impugned herein.

3. It is contended on behalf of the petitioners that:

(1) the impugned Act is arbitrary and unreasonable and is enacted with a view to deny the mandamus issued by the Court;

(2) the impugned Act does not remove the defect or invalidity pointed out by this Court and also does not provide for retrospective operation of such removal of defect and hence a mere validation clause introduced is a direct confrontation with the judiciary by a legislative Judgment;

(3) a contractual right having crystallised into a mandamus of this Court, it cannot be neutralised or defeated even by legislature and therefore the impugned Act is ultra vires the powers of the

legislature;

(4) when this Court had held that there is no unjust enrichment on the part of the petitioners in the matter of collection of tax and had held that the contract has not come to an end even with the enactment of the Electricity (Supply) (Karnataka Amendment) Act referred to earlier and the clause in relation to indemnification or reimbursement under Clause 6(c) of the agreement was still in force and the said Clause 6(c) was enacted pursuant to powers under the Electricity (Taxation on Consumption) (Amendment) Act making a provision under the Act is contrary to the findings recorded by this Court in the earlier Writ Petition and therefore a direct interference with the Judgment of this Court;

(5) even legislative enactment must pass the muster of arbitrariness and reasonableness as envisaged under Article 14 of the Constitution and this Court having found that there is no unjust enrichment on the part of the petitioners and Clause 6(c) is entered into by way of an exemption Clause and the contract was still subsisting it was irrational, unreasonable and arbitrary on the part of the legislature to have made this enactment and therefore beyond the scope of validation powers of the State;

(6) even otherwise, the respondents are estopped from enforcing the provisions of the impugned Act against the petitioners on the doctrine of promissory

estoppel;

(7) It was lastly contended that at any rate even if the mandamus issued can be nullified by the impugned enactment the same could be given effect to only prospectively and not retrospectively and until then the respondents are bound to reimburse and indemnify the petitioners.

4. Shri H.B. Datar, learned Senior Advocate for the Board addressed detailed arguments and unfortunately the learned Advocate-General except to state that he would adopt arguments of Shri Datar could not be of any assistance in deciding this case.

5. In order to appreciate the principal contentions advanced on behalf of the petitioners, the competence of the legislature to override a judicial decision and to make a Validating Act has to be necessarily considered. In India it is competent for the Legislature to put an end to the finality of Judicial Decision and to pass a Validating Act to declare to be a valid law which has been pronounced to be void by the Court. By so enacting it has been held in *SAKSENA v. STATE OF M.P.* AIR 1976 SC 2250 ; *Hari Singh and Others Vs. The Military Estate Officer and Another*, ; *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, the Legislature does not exercise a Judicial function. The validity of a Validating Act is judged by reference to whether the Legislature enacting the Validating Act has competence over the subject matter, has removed the defect which the Courts have found in the previous law, and is consistent with the provisions of Part III of the Constitution. Legislature is not conferred with the power of adjudicating a case by virtue of the enactment without leaving it to the Judiciary to decide with reference to the law enforced. Thus the Legislature though cannot directly overrule a Decision, what is competent to the Legislature is to render ineffective the Judgment of a competent Court by changing the basis of the legislative enactment on which the Judgment had been founded and thus remove the causes of ineffectiveness of the proceedings in which the Decision had been made. Without resorting to a validating enactment as aforesaid the Legislature cannot nullify the effect of a final Judgment such as a Mandamus issued by merely declaring the law. This position becomes clear by reference to the Decision in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, and the other Decisions referred to earlier.

6. In this background of law, what has to be considered at the forefront is the scope and effect of the impugned Act and the background in which it was enacted. The preamble to the Act merely states that it is necessary for amending the Karnataka Electricity (Taxation on Consumption) Act, 1959. By Section 2 thereof a new Section 8A is inserted into the Act which would be effective from 21st November 1980. Section 8A has a marginal heading to state that it proposes to dispense with performance of certain contracts. The opening part provides for a non-obstinate clause to make the provisions effective despite a Judgment, decree or order or any contract to the contrary. Clause (a) thereof states that the performance of any contract by the State Government in so far as

it provides for reimbursement or indemnification in favour of the consumer, of or for any amount levied on or collected from him as tax under this Act shall be and shall always be deemed 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. The rest of the provisions are not very relevant for our purpose. The scope of the provision is that it displaces a clause in the contract for reimbursement or indemnification in favour of a consumer if any tax is collected under the Act. The scope of Clause 6(c) of the agreement dated 7-8-1976 came up for consideration before this Court in *INDIAN ALUMINIUM CO. LTD. v. STATE OF KARNATAKA* ILR 1988 Kant 2452 and a Division Bench of this Court held that this clause of reimbursement or indemnification is entered under a contract by an executive function which has nothing to do with the enforcement of the legislative mandate to levy and collect tax. The object behind Clause 6(c) being to offset any raise in the cost of production in aluminium due to high tax rates. The reimbursement or indemnification would come from the funds of the State and not only from the amounts collected as tax under the Taxation Act. It is also stated therein that the Karnataka Act 33/1981 which amended Electricity Supply Act, 1948 does not cover the provisions of the Electricity Supply (Taxation on Consumption) Act and the terms governing reimbursement and indemnification in the hike in the rate of tax and the law did not nullify the undertaking given by the State Government in that regard. It was also held that the entire agreement did not stand superseded by the Amendment Act but only certain Clauses in the agreement governing the various other aspects of supply and purchase of electricity for the petitioners' factory will be nullified, which may lead to unexpected results and the tripartite agreement was still in existence except to the extent of modification regarding the price payable by the petitioners to the Board for the electricity consumed by the former. And therefore the argument that by reason of the enactment made the entire contract itself stood cancelled was not accepted, but on the other hand it was pointed out in regard to levy and collection of tax whatever concessions had been given and whatever reimbursement had been agreed upon was not touched. Indeed, this Court in the Decision in the case of the first petitioner and the Board, the State and the Union of India upheld the provisions of the Karnataka Act 33/1981 in Writ Petition 6257/1981 (DD 19-4-1988) and notwithstanding whatever may have contained in the contract the terms of the contract stood varied. These two Decisions disclose that while the clause in the contract in relation to contract could be varied by an enactment unless the same is covered by a specific enactment, the same could not be done. In the reported Decision in *Indian Aluminium Company's* case what is held by this Court is that the law did not abrogate or nullify the effect of the contract in regard to reimbursement or indemnification of taxes paid in excess of the amounts mentioned in Clause 6(c) of the agreement. By reason of Section 8A what is sought to be done now is to nullify the effect of the clause providing for reimbursement or indemnification. In fact, the substance of the transaction

appears to be one in the nature of an incentive given to an industry. In giving such incentive various procedures are provided for a reduced rate of tax or in certain cases by way of postponing the payment of tax over a period either resulting in a holiday in taxation or that such amounts are treated to be loans given to the concerned entrepreneurs to make good the same at a later date. It is also provided in certain cases for refunds or reimbursement. The present case falls in the last category. Though the incentive given in the present case may or may not be arising u/s 8 of the original Act but one under which it is provided for exemptions and reduced rates of taxation but may also fall in the category of an executive action granting a concession by way of reimbursement or indemnification. Whichever way the matter is looked at it is certainly a tax incentive. Therefore, if the State had the power to grant such a concession by executive action either in exercise of its executive powers or under any Taxation Act as a power incidental to the power of levy of tax or granting exemption though not strictly come within that power it is certainly open to the Legislature to displace a contract by legislation. Contractual rights and obligations are not immune from legislative interference as long as they do not violate Part III of the Constitution or otherwise competent. Thus the legislative competence is not fettered by the terms of any grant of exemption made by the State as has been held by the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, . Therefore it was competent for the Legislature to have interposed a clause dispensing with the same in an enactment upon an obligation arising under a contract. The competence of the Legislature is not in doubt. The defect pointed out by this Court in its earlier Decision in *Indian Aluminium Company's* case is cured by reason of Clause (a) of Section 8A and as demonstrated above is within the Legislative competence. Hence, it cannot be said that the Legislature in making this provision and enacting the validating provisions has not cured the defect but has merely declared the law. This criticism is not well founded.

7. The next question that has to be considered is whether this enactment amounts to an interference with the judicial direction by a legislative arbitration. On this aspect of the matter strong reliance is placed upon the Decision of the Supreme Court in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, and also the Decision in *Madhav Prasad Jatia Vs. Commissioner of Income Tax, U.P. Lucknow*, . In the *Ahmedabad Corporation* case it was stated that the Legislatures in this Country have no power to ask the instrumentalities of State to disobey or disregard the Decisions given by the Courts. There, the finding given was that the provision did not empower the Corporation to retain the amounts illegally collected as property tax. By that provision the Corporation was empowered to refuse to refund the amount illegally collected even by disobeying the orders of the High Court and the Supreme Court and was therefore held to be a direct inroad into the judicial powers of the Courts. It was indicated in that Decision the manner in which a Judgment of a Court could be nullified by stating that the Legislature can remove the basis of a Decision rendered by a competent Court thereby rendering that Decision ineffective and

thereafter referred to the Decision in Prithvi Cotton Mills case to which already reference has been made by me. In the present case the clause with which we are concerned is entirely different. It does not merely render the collection that has already been made to be valid and directs the authority not to make reimbursement but Clause 6(c) relating to reimbursement so far it obligates the State to reimburse or indemnify the tax in excess of the limits prescribed therein holds it to be nugatory or nullified. Therefore, the Decision in Madhav Prasad Jatia Vs. Commissioner of Income Tax, U.P. Lucknow, will have to be distinguished.

So far as the Decision in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, is concerned, it requires a little more detailed consideration. The effect of this Judgment has been considered in more than one Decision of the Supreme Court and also of this Court. In P.S. Mahal and Others Vs. Union of India (UOI) and Others, (as he then was) referring Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, and Shri Prithvi Cotton Mills" case stated as follows:-

"It will be seen that by Section 3 of the impugned Act the Legislature retrospectively imposed tax on building or land on the basis of capital value and if the tax was already imposed, levied and collected on that basis, made the imposition levy, collection and recovery of the tax valid, notwithstanding the declaration by the Court that as "rate", the levy was incompetent, This was clearly permissible to the Legislature because in doing so, the Legislature did not seek to reverse the decision of this Court on the interpretation of the word "rate", but retrospectively amended the law by providing for imposition of tax on land or building on the basis of capital value and validated the imposition, levy, collection and recovery of tax on that basis. The decision of this Court holding the levy of tax to be incompetent on the basis of the unamended law, therefore, became irrelevant and could not stand in the way of the tax being assessed, collected and recovered on the basis of capital value under the law as retrospectively amended. That is why this Court held that the Validation Act was effective to validate imposition, levy, collection and recovery of tax on land or building on the basis of capital value...."

In Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, Fazal Ali and P.N. Shinghal, JJ took the view that the impugned Act violated the provisions of Article 31(2) of the Constitution and therefore held it to be void. Their Lordships expressly stated that they did not want to express any opinion on the effect of the Judgment of the Calcutta High Court in Writ Petition No. 371/1976. Chief Justice Beg, concurred with the view expressed by Bhagwati, Krishna Iyer and Desai, JJ that the rights of the citizen against the State which had passed on to those omitted in the Judgment and became the basis of a mandamus could not be taken away in indirect fashion by enacting an ordinary Act of Parliament, while Bhagwati, Krishna Iyer and Desai, JJ held that irrespective of whether the Act was constitutionally valid or not the L.I.C. was

bound to obey direction to pay bonus for the period 1st April 1975 to 31st March 1976.

This Court in *JYOTHI HOME INDUSTRIES AND ORS. v. STATE OF KARNATAKA AND ORS.* 1984 (1) KarLJ 394 held as follows:

"However, if there is a pronouncement of the Highest Court of the land declaring a law to be bad for some constitutional infirmity noticed in it and a consequential writ issued, there can be no question of a further appeal from it and the subsequent Act of the legislature curing the defect and validating the law with retrospective effect would only imply legislature's recognition of the efficacy and finality of the judicial pronouncement. In the altered circumstances brought about by the retrospective change in the law earlier judicial declaration the consequential writ issued become irrelevant and unenforceable. There is no legislative overruling of a judicial decision in such a case. It cannot be said that in such a case the legislature does not legislate but adjudicates. In such validating Acts the legislature accepts both the correctness and finality of judicial pronouncements and proceeds granting legislative competence and conformity with other constitutional limitations on legislative power either to remove the lacuna or to supply the omission in the law pointed out by the judicial pronouncement. The law is thus validated and resurrected. Such a validating law can be given retrospective operation as the legislature, which has competence to make a law, can make it either prospectively or retrospectively. In such a case the getting rid of the effect of the judicial pronouncement a mere incident and consequence of the altered circumstances brought about by retrospective change in the law. Otherwise, a judicial pronouncement would operate as a permanent limitation on legislative power.

As to the general proposition that the effect of a writ issued under Article 226 cannot be overcome by legislature at all, the following observations of the Constitutional Bench of the Supreme Court in *State of Orissa Vs. Bhupendra Kumar Bose*, is worth recalling:

"We will now deal with the two additional grounds urged before us by Mr. Chetty. He contends that the Governor was not competent to issue an Ordinance with a view to override the Judgment delivered by the High Court in its jurisdiction under Article 226 of the Constitution. This argument is obviously untenable, for Judgment delivered by the High Court under Article 226 has the same status as the provisions in the Constitution itself. In substance, the contention is that just as a provision in the Constitution like the one in Article 226 cannot be amended by the Governor by issuing an Ordinance, so a Judgment under Article 226 cannot be touched by the Governor in his ordinance making power. It is true that the Judgment delivered by the High Court under Article 226 must be respected but that is not to say that the legislature is incompetent to deal with problems raised by the said Judgment if the said problems and their proposed solutions are otherwise within their legislative competence. It would, we think, be erroneous to equate the Judgment of the High Court under Article 226 with Article 226 itself

and confer upon it all the attributes of the said constitutional provision."

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-parties, 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 crystallised into and enforceable through the writ.

Pronouncement of the Supreme Court in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, , *The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.*, , *I.N. Saxena v. State of M.P.* AIR 1976 SC 2250 and then *Mistilal Misrilal Jain v. State of Orissa* AIR 1977 SC 1636 illustrates the former principle. 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 classes 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 ground of distinguishment of the relevance of the decision on validation of

laws was this:

"...It is difficult to see how this decision given in the context of a validating statute can be of any help to the Life Insurance Corporation. Here the Judgment given by the Calcutta High Court which is relied upon by the petitioners, is not a mere declaratory Judgment 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 tax. 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 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..."

Sri Srinivasan does not dispute that in the present case we are dealing with a case of validation of a tax-law.

After the Supreme Court reversed the decision of this Court in M/s. Hansa Corporation's case, there was no defect in it to be cured, no omission to be supplied and no lacuna to be filled up and the legislature had merely to declare so. The legislative device and expedience reflected in Section 3 of the Repealing Act 10 of 1981 merely recognises the altered circumstances brought about by the pronouncement of the Supreme Court. And in those altered circumstances, so recognised by Section 3 of the Repealing Act 10 of 1981, the decisions in the Writ Petitions, even though they had not been appealed against, because irrelevant and incapable of coming in the way of the enforcement of the provisions of the "Principal Act".

In this view of the matter, with the utmost respect to the learned Judges of the Allahabad High Court, we are unable to bring ourselves to fall in line with the view taken by them in the Indian Milk Products case."

The present case is one which clearly comes in the category of cases covered by Shri Prithvi Cotton Mills case⁴ rather than the Decision in Pathak's case. What is done in the present enactment is to retrospectively discharge the liability arising under the contract under Clause 6(c) of the agreement dated 7-8-1976 and that tax that has been levied and collected already, could be retained by the State and not to be reimbursed. Earlier attempt of the State to refuse reimbursement is held to be incompetent for want of legislative approval That defect having been cured it is clearly permissible to the Legislature and in doing so the Legislature has not sought to reverse the Decision of this Court.

8. On the power of the State to retain the tax collected by it, I must state that it retrospectively amended the law by providing for discharge of obligation under the contract; if the Decision of this Court is based on unamended law the same became irrelevant and could not stand in the way of retaining the amounts collected and recovered on the basis of Clause 6(c) which stood discharged. That

is why the Validation Act is effective to validate the retention of levy or tax collected already,

9. The argument that a right arising under a contract stood crystallised by reason of the Mandamus-issued by this Court and the Judgment of this Court is not merely declaratory but gives a positive direction does not advance the case of the petitioners. A careful reading of the Judgment will make it clear that it first declares that the petitioner is entitled to the relief of reimbursement and indemnification in terms of Clause 6(c) and consequently the other relief of reimbursement and indemnification is ordered. If the first relief could not have been granted the latter relief obviously does not arise at all. Therefore the Judgment is basically one of declaration and the same having been rectified by the impugned Act, it becomes clear that the defect having been cured by the enactment, the argument to the contrary must fail.

10. It was next argued that Articles 14 and 21 of the Constitution have received very expansive treatment at the hands of the Supreme Court and every action of State whether legislative or administrative must pass the scrutiny of the Courts as to its reasonableness. It was argued that although at one time it was thought that arbitrariness is a ground available only with reference to administrative action and not extended to legislative enactments, now the trend is to apply the same even to legislative actions of the State. Reliance in this regard is placed on two Decisions of the Supreme Court in *I.E. Newspapers (Bombay) Private Ltd. v. Union of India* (1), (1986) 159 ITR 856 (SC) . My attention is drawn to certain passages therein which refer to the principle that it is possible that the "Courts might invalidate a statutory instrument on the ground of unreasonableness or uncertainty, vagueness or arbitrariness. But the specific conclusions reached by the Court indicate the contrary. At para 73 of the Judgment this is how Their Lordships summed up the position in law:

"73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires". The present position of law bearing on the above point is stated by Diplock L.J. in *Mixnam Properties Ltd. v. Chertsey U.D.C.* (1964) 1 QB214 thus:-

"The various grounds upon which subordinate legislation has sometimes been said to be void...can, I think, today be properly be regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be

shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalidates a bye-law is not the antonym of "reasonableness " in the sense of which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a Court would say: "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires...". If the Courts can declare subordinate legislation to be invalid for "uncertainty", as distinct from unenforceable...this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain..."

"76. A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind taking irrelevant matters into consideration, failure to take relevant matters into consideration etc., etc.....This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 of Article 19(1)(a) of the Constitution. It cannot, no doubt be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

Thus, this Decision itself makes a distinction between subordinate legislation and plenary legislation as such. These questions came up for consideration before the Supreme Court in the context of arguments on behalf of the State that a notification issued u/s 25 of the Customs Act granting, modifying or withdrawing an exemption from duty is in the nature of a subordinate legislation; its validity cannot be tested by the Courts by applying the standards applicable to an administrative action. It was stated that the rationale of this view is that in cases what is not reasonable could not have been intended to have been authorised so far as delegated authority is concerned and therefore such an action is unreasonable and ultra vires. Extending this principle the learned Counsel for the petitioner submitted that Constitution could never have intended the Legislature to enact a law which is unreasonable or manifestly arbitrary because Constitution never intended the Legislatures to make such laws. But this argument ignores the actual principles of law stated in the Decision. It is well settled that a Decision is an authority for what it decides and not for what falls from it by inference. That is what the teamed Counsel for the petitioner wants me to do, which I am afraid is not permissible.

11. However, the learned Counsel pursuing this line of argument relied upon another Decision in SUPREME COURT EMPLOYEES WELFARE ASSOCIATION v. UNION OF INDIA AIR 1990 SC 368 . That was also a case of one making a subordinate legislation. Their Lordships were concerned in that case with Article 14 -of the Constitution which empowers the Chief Justice to frame Rules for

determining the service conditions of the officers and servants of the Supreme Court and when such Rules had been framed they required the approval of the President to become effective. And any arbitrary exercise of power by a public authority whether or not in the nature of a subordinate legislation is liable to be condemned as violation of Article 14 of the Constitution and thereafter referred to the Decisions in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, ; *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and *D.S. Nakara and Others Vs. Union of India (UOI)*, . It was held in paras 106 and 107 of *S.C. Employees Welfare Association*:

"The true position thus appears to be that, just as in the case of an administrative action, so also in the case of subordinate legislation (whether made directly under the Constitution or a Statute), its validity is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it."

"Even if it were to be assumed that Rules made by virtue of power granted by a provision of the Constitution are of such legislative efficacy and amplitude that they cannot be questioned on grounds ordinarily sufficient to invalidate the generality of statutory instruments, they are nevertheless liable to be struck down if found to be intrinsically arbitrary or based on an irrational classification or otherwise repugnant to constitutional principles."

Thereafter reference is made to *E.P. Royappa Vs. State of Tamil Nadu and Another*, and passages thereof are quoted in support of the above conclusion. Ultimately this is how their Lordships summed up the position:

"108. These are some of the general principles which must guide the repository of power in all his actions. They apply with equal force to the exercise of power contemplated under Article 146(2) including its proviso. These principles must, therefore, necessarily weigh with the Court whenever the action of a constitutional or statutory authority is under challenge. These principles are, however, subject, as stated earlier, to the overriding consideration as to the amenability of the impugned subject matter to judicial review. That of course is a question which must in each case, when challenged, be decided by the Court with reference to the facts in issue."

Their Lordships held that on the basis of these principles the exercise of power contemplated under Article 146(2) is also amenable to the supervision of the Courts and whenever the action of the constitutional authority is under challenge each case must be decided with reference to the facts of the case. The learned Counsel also referred to me a Decision in *State of U.P. and Others Vs. Renusagar Power Co. and Others*, in which it was held that exercise of power whether legislative or administrative will be set aside when there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. That was a case where a consumer of electrical energy had applied for exemption from

Electricity Board of UP on the energy consumed by him from its own source of generation on the basis that if cheap electricity was not made available the cost of indigenous aluminium would go up. The exemption was not granted by the Government. In that case a contention was raised that grant of exemption by an administrative authority is legislative in character and therefore was beyond the purview of Court's jurisdiction. In repelling this contention the Supreme Court made the observations referred to above. Therefore, at any rate, it can be safely stated that if the legislation is valid otherwise, it cannot be struck down on the basis that the policy is unwise or in the opinion of the Court is not correct. The wisdom of the legislation cannot be questioned, but such legislation is certainly bound by the provisions contained in Part III of the Constitution and Article 14 cannot be understood in the sense in which it is urged before me by the learned Counsel for the petitioners to include the concept of declaring a law that the policy behind such a legislation is unreasonable because what the Courts may think in such matters may not necessarily be the view of the Legislature and Legislature does not have to give reasons for its enactment. Hence, this contention also cannot be accepted.

12. It was next contended that this Court in *Indian Aluminium Company's* case has held that the fact-situation being that the petitioner had established its factory and has been fulfilling all the conditions agreed upon by it, it would be inequitable to relieve of the obligation arising under Clause 6(c) of the agreement by which reimbursement and indemnification of taxes collected in excess of the amounts stated therein is barred by the principles of promissory estoppel and cannot be refused on grounds other than statutory. Though in the present case as the statute itself has relieved the obligation the amounts collected in excess of those stipulated under Clause 6(c) of the Act towards the tax arising under the Act, are liable to be refunded on the doctrine of estoppel which is attracted even in an area covered by legislation and reliance was placed on the Decision of the Supreme Court in *Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir*, . In that case the Supreme Court held that the right to exploit or utilise part of forest under Government orders and contracts would amount to property and is entitled to protection under Article 19(1)(f) and 31(2) of the Constitution. However, at para-25 it was stated as follows:

"25. Petitioners in Writ Petition No. 794/1986 had claimed that pursuant to the arrangement entered into between them and the State following the invitation by the State they had invested Rs. 1.68 crores in shape of plant and machinery and 63 lacs of rupees by way of land and building. The petitioner in the other two cases stated that investments had been made by them as well. The petitioners were invited to set up industries by assuring them supply of the raw material. They changed their position on the basis of representations made by the State and when the factories were ready and they were in a position to utilise the raw material, the impugned Act came into force to obliterate their rights and enabled the State to get out of the commitments. We are inclined to agree with the submissions made on behalf of the petitioners that the circumstances gave rise

to a fact situation of estoppel. It is true that there is no estoppel against the legislature and the vires of the Act cannot be tested by invoking the plea but so far as the State Government is concerned the Rule of estoppel does apply and the precedents of this Court are clear. It is unnecessary to go into that aspect of the matter as in our considered opinion the impugned Act suffers from the vice of taking away rights to property without providing for compensation at all and is hit by Article 31(2) of the Constitution."

Though at first sight what the learned Counsel for the petitioner has stated may appear to be the conclusion reached by the Supreme Court, but a careful or close reading thereof will reveal that while Supreme Court was inclined to agree with the submission made on behalf of the petitioners that the circumstances gave rise to a fact situation of an estoppel it is also noticed that it is true that there is no estoppel against the Legislature and the vires of the Act cannot be tested by invoking that plea. But so far as the State Government is concerned, the Rule of estoppel does not apply and the precedents of the Courts are clear. But it is unnecessary to examine that aspect of the matter as the Decision in that case rested upon another ground. It cannot be taken that the Supreme Court by these observations stated that the doctrine of estoppel could be applied even in the face of a legislative provision to the contrary. In *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, it was stated that there can be no promissory estoppel against the legislature in the exercise of its legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition and such instrumentality cannot be compelled to carry out a representation or promise which is contrary to law or which is outside the authority and power of the Government or the public authority to make. The relevant portion reads as follows:

"14. Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills case* (AIR 1978 SC 621) that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt

with fully in Motilal Sugar Mills case and we find ourselves wholly in agreement with what has been said in that decision on this point."

The learned Counsel for the petitioner also relied upon another Decision in STATE OF M.P. v. ORIENT PAPERS 1990 (1) SCC 177. That case arose out of an order made by the High Court of M.P. against an order refusing to grant an exemption from payment of electricity duty for certain periods and that demand was quashed. In that Decision the M.P. High Court took the view that the petitioner was entitled to invoke the doctrine of promissory estoppel in order to claim exemption from payment of duty for certain periods. But it was not for them to issue any writ directing the Government to grant exemption in terms of certain provisions under the M.P. Electricity Duty Act but in view of the unequivocal assurance given quashed the order of the State Government and also the demand notice and left the matter at that. This view was approved by the Supreme Court. No particular principle can be evolved from this Decision that even in matters where law barred an action an executive authority could be compelled to perform its obligation on the basis of the promise held out by it earlier although contrary to the express provisions in the law. This Decision cannot be of much assistance to the petitioners.

13. The learned Counsel for the petitioners urged that there must be good reasons to nullify a contract and such a Decision must be one informed by reason as has been held in DWARAKADAS MARFATIA & SONS v. BOARD OF TRUSTEES (PORT) BOMBAY AIR 1989 SC 164 and Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, as also the Decision in UP. GOVT PLEADERS CASE JT 1990(4) SC 204. None of these cases relate to a statute displacing a contract but all of them pertain to executive action taken either in entering into a contract or committing breach of contract which could be termed as arbitrary and unreasonable for the purpose of Article 14 of the Constitution. The powers of the Legislature in that regard cannot be limited by application of such principles. Though the conduct of the State should be above board in matters of fiscal policy wide latitude should be given to the Legislatures as has been held in any number of Decisions. Therefore, this argument also does not appeal to me.

14. It was lastly contended that the agreement having been made and given effect to till the impugned law was enacted it would not be fair to nullify the Mandamus that had been issued by this Court. It is submitted, at any rate the Mandamus issued by this Court must operate until the date of enactment of law. In this context, the learned Counsel for the petitioners relied upon a Decision of the Supreme Court in A.V. Nachane and Others Vs. Union of India (UOI) and Another, . In view of the special history of that particular case in spite of the law having superseded but a Mandamus having been issued and that Mandamus having been stated to override the legislation it was held that in so far they seek to abrogate the terms of settlement relating to bonus it should operate prospectively, that is from the date of promulgation under the Rules. But in the present case, that is not the position at all. The Act came into force from

7-8-1976. That was the date on which the agreement in relation to other clauses stood modified by reason of the enactment in relation to rate of energy charges payable by the petitioner. It is assumed by the State that the enactment took care of the entire contract including Clause 6(c). But this Court took a different view and in deference thereof accepting the law stated by this Court the State made the impugned enactment to nullify the effect thereof. In such an event when the law is retrospective this Court cannot by a judicial mandate postpone its effect to a later date. Hence, this contention also fails.

15. It was argued by the learned Counsel for the petitioners that in the Decision in Indian Aluminium Company's case between the very parties in this petition it has been held that there is no unjust enrichment on the part of the petitioners and Clause 6(c) of the agreement is not entered into as one arising out of the exemption clause while the Decision mandates the performance of an obligation arising out of the contract, the impugned enactment relieves such obligation. Such a Decision is uninformed by reason, wholly arbitrary and manifestly unjust. It is also submitted that in the objects and reasons attached to the Bill what is stated is that the petitioners have obtained unjust enrichment at the cost of consumer products and in a manner detrimental to public interest. These aspects fly in the face of the Decision of this Court and is a direct confrontation of the judicial verdict by legislative interference, if the law is otherwise valid merely giving a wrong reason in an enactment will not affect the validity of a legislation. This position is explained by the Supreme Court in *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, . This is what the Supreme Court stated:

"36. The argument of mala fides advanced by Shri A.T. Sampat, and adopted in passing by some of the other Counsel is without any basis. The burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously absent in these Writ Petitions. Besides, the ordinance-making power being a legislative power, the argument of mala fides is misconceived. The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of "transferred malice" is unknown in the field of legislation."

The Supreme Court has held that Legislature as a body cannot be attributed with malafides and whatever reasons may have been stated cannot render the law invalid on that ground. To the same effect is the Decision of the Supreme Court in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, . Therefore, whatever may have been stated in the Objects and Reasons attached to the bill can have no bearing on the validity of the legislation impugned herein.

On the question as to whether the Legislature has interfered with the Decision of

this Court in respect of matters decided by this Court has already been dealt with in the earlier part of this Order.

16. The petitioners having failed on their contentions, this petition is liable to be and is dismissed.