

(1956) 10 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 227, 281, 282, 286, 324, 327, 342, 343, 393, 397, 402, 418, 419, 430, 434, 479, 480, 503, 505, 520, 522, 523, 524, 532, 533, 539, 540, 556, 576, 578, 582, 650, 699, 725, 726, 766, 854, 878, 944, 945, 947, 1068, 1070, 1071,

Kunwar Murli Manohar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 29-10-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 245, 254(1)
Industries (Development and Regulation) Act, 1951 — Section 2, 9
Uttar Pradesh Sugarcane Cess Act, 1956 — Section 1(3), 3, 3(1), 3(3), 9(2)

Citation : AIR 1957 All 159

Hon'ble Judges : Mootham, C.J.; M.L. Chaturvedi, J

Bench : Division Bench

Advocate : G.S. Pathak and Shanti Bhushan, for the Appellant; A.G. and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mootham, C.J.—These are petitions in which the validity of a cess or tax imposed by the State Government on sugarcane entering the premises of sugar factories in the Uttar Pradesh is challenged.

2. Section 29(2) of the United Provinces Sugar Factories Control Act, 1938, (hereinafter called the 1938 Act) empowered the Governor, after consulting a Sugar Control Board established under the Act, by notification to impose a cess on the entry of sugarcane into any local area specified in the notification for consumption, use or sale therein.

Notifications were issued under this section at the commencement of each crushing season imposing uniform cess of three annas a maund on sugarcane entering the premises of all vacuum pan sugar factories as defined in the Act within the Province or State. The last notification under this Act was published on

the 15-11-1952.

In 1953 the 1938 Act was replaced by the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, (hereinafter called the 1953 Act) Section 20 (1) of which was in substantially the same terms as Section 29(2) of the earlier Act save that the levy is now described as a tax. Thereafter notifications were issued under the 1953 Act imposing a tax at the same rate in respect of sugarcane entering factory premises in the crushing seasons 1953-54, 1954-55 and 1955-56.

3. Payment of the cess or tax was demanded from the petitioners; they have however, with the exception of the petitioners in Petitions Nos. 539 and 540, declined to pay on the ground that the demand is unlawful, and in some cases proceedings have been commenced and warrants of attachment issued for the recovery of the sums demanded under those sections of the two Acts which provide for realisation of the amounts due as though they were arrears of land revenue. It was in these circumstances that these petitions have been filed, the principal reliefs sought being, first, the quashing of the Notifications under the 1938 and 1953 Acts relating to those years in respect of which the levy has not been paid and, secondly, the quashing of the warrants of attachment in those cases in which such have been issued.

4. The facts in Petitions Nos. 434, 539, 540 and 1824 are in some respects different. In Petition No. 434 the claim of the State Government for payment of cess under the 1938 and 1953 Acts in respect of the years 1949-50 to 1954-55 amounted to Rs. 8,58,893/5/6, and as this amount was not paid the properties of the factory were sold by public auction by the Collector of Deoria on 10-11-1955 for a sum, it appears, of a little less than Rs. 26 lakhs.

The petitioner challenges the validity of the notifications under which the cess has been demanded, and in addition to asking that these notifications be quashed the petitioner seeks an order directing the Collector, Deoria, not to transfer to the State Government the aforesaid sum of Rs. 8,58,893/5/6 which is still in his hands.

5. In Petitions Nos. 539 and 540 the petitioning factories paid the cess demanded as and when it fell due and they seek now an order directing the State Government to refund the amounts so paid after 26-1-1950, amounting respectively to Rs. 13,21,987/ 9/3 and Rs. 7,89,255/7/-.

6. Petition No. 1824 of 1956 I propose to consider separately at the end of this judgment.

7. During the pendency of the petitions the U. P. Sugarcane Cess Act, 1956, (hereinafter called the impugned Act) came into force. This Act, unlike the 1938 and 1953 Acts, does not purport to regulate the supply and purchase of sugarcane required for use in sugar factories its purpose being limited to the amendment and consolidation of the law relating to the imposition of a cess on

sugarcane intended for use and consumption in or sale to a factory. It repealed Section 20 of the 1953 Act, and it is the case of the first respondent the State Government that as the provisions of this Act empowering the State Government to impose a cess have been made retrospective and are to be deemed to have come into force on 21-1-1950, and as notifications issued after that date under the 1938 and 1953 Acts are deemed to be notifications issued under the 1956 Act, neither their validity nor that of recovery proceedings which are now pending can any longer be challenged & that the present petitions must accordingly fail.

This view of the matter is not accepted by the petitioners who contend that the impugned Act is itself invalid on a number of grounds. In these circumstances leave has been given to the petitioners to amend the grounds stated in their respective petitions upon which the validity of the demands now made upon them are challenged, and we have heard argument on the question of the validity of the impugned Act.

8. The argument has covered a wide field. Objection to the validity of the impugned Act has been taken on a number of grounds which may be grouped broadly under the following heads:

I. Section 3 (1) of the impugned Act contravenes the provisions of Article 14 of the Constitution;

II. Section 3(1) of the impugned Act is void as it exceeds the permissible limits of delegated legislation;

III. the impugned Act is beyond the legislative competence of the State Legislature;

IV. the impugned Act is repugnant to the "provisions of Section 9 of the Industries (Development and Regulation) Act, 1951, and to the extent of such repugnancy is void;

V. Section 1(3) of the impugned Act so far as it purports to make the tax retrospective is invalid;

VI. Section 9(2) of the impugned Act is invalid as being beyond the power of the State Legislature; or is ineffective;

VII. It was not within the competence of the State Legislature to make Sub-sections (3) and (5) of Section 3 retrospective in operation, and

VIII. the retrospective operation of the impugned Act is unreasonable and oppressive and contravenes Article 19(1)(g) of the Constitution.

It is convenient to consider the objections in this order.

9. I. Article 14

It is the contention of the petitioners that Section 3 (1) of the impugned Act

contravenes the provisions of Article 14 of the Constitution, and this is said to be so on two grounds; first, that the State Government has a wholly unfettered power to determine upon which factory or factories the cess shall be imposed and, secondly, that it has a similar unfettered power to determine the amount of cess which shall be paid provided the latter does not exceed the prescribed maximum of four annas a maund.

10. Sub-section (1) of Section 3, so far as is material, provides that

"3(1). The State Government may by notification in the official Gazette impose a cess not exceeding four annas per maund on the entry of the cane into the premises of a factory for use, consumption or sale therein:

Provided that the State Government may likewise remit in whole or in part such cess in respect of cane used or to be used in factory for any limited purpose specified in the notification.""

To this Sub-section there is appended an "Explanation" to which it is not necessary at present to refer.

11. The cess is imposed on "the entry of the cane into the premises of a factory". "Cane" and "factory" have, by Section 2 of the impugned Act, the same meaning as are assigned to them in the 1953 Act; and items (c) and (j) of Section 2 of that Act define "cane" as meaning

""sugar-cane intended for use in a factory;" and "factory" as meaning

"any premises, including the precincts thereof... in any part of which any manufacturing process connected with the production of sugar by means of vacuum pans is being carried on or is ordinarily carried on with the aid of mechanical power;"

12. The argument on the first point is that "a" factory means a single factory or "any" factory, and that it does not and cannot mean, as the State contends, all factories; and that therefore the State Government can if it so chooses impose a tax on some factories or even on a single factory, and not on other.

In my opinion this is not the proper way to construe this Sub-section. In my judgment the expression "premises of a factory", means "factory premises, and the power conferred on the State Government is to impose a cess on the entry of cane into factory premises. The State Government, as I read the sub-section, has no power to pick and choose, but has power only to impose or not to impose a cess on cane entering factory premises that is to say, the premises of all factories as defined in the Act.

The Court will incline towards the constitutionality of an enactment, and if this sub-section is in law capable of two interpretations the Court will presume that that interpretation which renders the enactment constitutional is the interpretation intended by the legislature.

13. On the second point the argument is similar; it is that the State Government has a right to Impose a cess of such an amount not exceeding four annas, a maund as in its uncontrolled and unfettered discretion it thinks fit. It is conceded (for the purposes of this part of the argument) that had the legislature empowered the State Government to levy a cess of four annas a maund, neither more nor less, the enactment could not have been challenged on the ground, now advanced.

In these circumstances I find it hard to accept the view that the vesting of a discretion in the State Government to impose a cess of lesser amount, the exercise of which can only be to the advantage of the person on whom the cess is imposed is unconstitutional. This objection is closely connected with the further contention that the power conferred on the State Government to fix the amount of the cess involves an unwarranted delegation of legislative authority, and the point now raised can be more conveniently considered in relation to that topic.

14. II. Delegation.

The contention is that the conferment on the State Government of the power to determine the amount of the cess exceeds the permissible limits of delegated legislation. The imposition of a tax or cess is essentially a legislative function which cannot, it is said, be delegated to the State Government. What however is the position? The only object of the Act is to impose a cess on sugarcane for revenue purposes. The legislature has determined by whom the cess should be paid, namely by the owners of factories as defined in the Act, and (in my view) the State Government has no power to discriminate between such owners either with regard to who should pay the cess or with regard to the amount: the cess if payable at all is payable by all.

The legislature has fixed the maximum rate at which the cess may be levied, the only discretion left to the State Government being to determine the rate. Mr. Pathak argues that the legislature has not laid down any principle or policy by which the State Government is to be guided in fixing the rate. It is true that it has not done this in so many words; but I do not feel any difficulty in holding that the purpose of the Act being the augmentation of the State revenues the legislature intended that the rate should be so fixed as would best serve that purpose.

In my opinion it was intended that the State Government should, in exercising the powers conferred on it, take into account such factors as are relevant for this purpose the most important of which are presumably the needs of the State and the economic condition of the vacuum pan sugar factory. In my opinion Section 3 (1) neither permits discrimination nor does it exceed the permitted limits of delegated legislation.

15. The learned Advocate-General submitted that as there has been no discrimination in fact (which is admitted) the petitioners have no present grievance and therefore no right to contend that there has been any violation of

Article 14. As however Section 3(1) of the infringed Act does not in my view allow of any discrimination the question does not arise and I think it unnecessary to express an opinion on it.

16. III. The competence of the State Legislature

It is argued that the impugned Act is ultra vires the State Legislature. It is common ground that the tax will not be within the powers of that Legislature unless the enactment falls within the ambit of Entry 52 of List 2 of the 7th Schedule to the Constitution: unless it is, that is to say, a tax "on the entry of goods into a local area for consumption, use or sale therein." The petitioners contend that it is not such a tax on two grounds; first, that the cess is levied on the entry of goods into an area which is not a "local area" within the meaning of Entry 52, of the State List and, secondly, that the cess is either a duty of excise which falls within Entry 84 of the Union List or, in the alternative, is a law in respect of a controlled industry, namely the sugar industry, and falls within Entry 52 of the Union List, and is therefore in either case a matter which is within the exclusive power of Parliament.

17. (i) Local Area.

On the first of these submissions Mr. Pathak's argument is that the expression "local area" as used in Entry 52 of the State List means a local government area, and that as the premises of a factory are not such an area the State Legislature has exceeded its powers. The argument is that the word "area", which means a place, will not be qualified by the word "local" unless the latter has a technical meaning derived from the concept of local self-Government, and our attention was invited to the employment of the phrase "district or other local area" in Article 277 of the Constitution.

18. The expression "local area" is defined in the concise Oxford Dictionary as "a limited region", but if it be found that this expression has consistently been used in legislative enactments as meaning "a local administrative area it may, I think, be presumed (in the absence of anything to show to the contrary) that the same meaning is to be attached to the expression when used in the Constitution. Learned Counsel has however been unable to show that the legislature has used the words "local area" in this sense. On the other hand Section 3(1) (a) of the U. P. Municipalities Act 1916, which empowers the State Government to "declare any local area to be a municipality" and Section 2 Clause (8) of the U. P. Town Areas Act, 1914, which defines a town area as "any local area which the State Government has declared or defined u/s 3 to be a town area" show clearly, in my opinion, that "local area" has not the restricted meaning which learned counsel seeks to place upon it. The learned Advocate General has also brought to our notice a number of Acts of the Central Legislature in which the expression "local area" has not been used as meaning a local administrative area (1).

19. The meaning of the words "local area" in the corresponding Entry (No. 45) of List II in the 7th Schedule to the Government of India, Act 1935 was also

considered by Dar J. in *Emperor v. Munna Lal* 1942 Cri LJ 112: (AIR 1942 All 156 (A)). The learned judge rejected the contention that these words referred only to a governmental or administrative unit and was of opinion that they meant any limited area or any area peculiar to a place. In the course of his judgment Dar J. said, at p. 124 (of All LJ): (at p 165 of AIR.

"Indeed I cannot see why it is not open to Provincial Government or provincial Legislature to make an industrial survey of the Province and to divide up the entire province into industrial "areas or factory areas or mill areas or in any other kind of areas, and each one of these areas may be notified and be treated as a local area. And once such areas come into existence and remain in operation they can be regarded as local areas within the meaning of Entry No. 45 of List II in which a cess may be levied." With respect, I agree. In my opinion the expression "local area" in Entry 52 of the State List includes any limited or restricted area within the State and will therefore include the premises of a factory. I do not therefore think that the petitioners' contention can be sustained.

20. (ii) Duty of Excise.

The first branch of the second contention is that the cess imposed by the impugned Act is a duty of excise and consequently ultra vires the State Legislature. It is not contended that the cess is an excise on sugarcane: the submission is that it is an excise on sugar, and the argument is that as the procurement of sugarcane is an integral part of the process of the manufacture of sugar the levy is a tax on the product.

21. Now a duty of excise, within the meaning of Entry 45 of List I of the Seventh Schedule to the Government of India Act 1935, which is, save for a variation not now material, in the same terms as Entry 84 of the Union List, is primarily a duty levied on a manufacturer or producer in respect of the commodity manufactured or produced: AIR 1939 1 (Federal Court) AIR 1945 98 (Privy Council) No authority has been cited to us in which it has been held that a tax on an article which is subsequently incorporated in a manufactured product is duty of excise on that product. Mr. Pathak has placed reliance on certain observations made by Gwyer, C. J. in his opinion in *Central Provinces*" case (B). At p. 41 (of FCR): (at p. 6 of AIR) of the Report the learned Chief Justice says:

"The ultimate incidence of an exercise duty, a typical indirect tax, must always be on the consumer, who pays as he consumes or expends; and it continues to be an excise duty, that is, a duty on home-produced or home-manufactured goods, no matter at what stage it is collected", and at page 47 (of FCR): (at p. 9 of AIR) the learned Chief Justice says:

"In my opinion the power to make laws with respect to duties of excise given by the Constitution Act to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles, or at least at the stage of, or in connexion with manufacture or production, and extends no further."

On the basis of these observations Mr. Pathak argues that an excise duty includes a levy "in connection with manufacture" which may be imposed at any stage of production or manufacture. I do not think that the observations of Gwyer, C. J. can bear the interpretation which learned Counsel seeks to place on them.

The question at issue in the Central Provinces" case (B) was whether an Act of the Provincial Legislature levying a tax on retail sales of motor spirit and lubricants was a tax on the sale of goods (and thus within the competence of that Legislature) or a duty of excise within the meaning of Entry 45 of List I.

No question arose as to the levy of the tax at any point of time prior to the sale by the retail dealer and in my opinion the learned Chief Justice, when he referred to the stage at which an excise duty may be collected referred only to the period of time between production and consumption. This is stated in so many words in a passage at the top of page 41 (of FCR): (at p. 6 col 2 of AIR) & it is I think clear from the first paragraph on page 42 (of FCR): (at p. 7 col 1 of AIR) that the argument which the learned Chief Justice was considering was that an excise duty was a tax on manufacture or production only, and could not therefore be levied at any later stage.

In my view the Chief Justice's observations do not assist the petitioners.

22. In my judgment the learned Advocate-General is right when he says that an excise duty on sugar is a tax on the manufactured product and does not include a tax on the raw materials required in the process of manufacture. Excise duty is a duty "on" goods and not "in respect of" them. I do not think that an octroi, for example, on timber entering the municipality of Bareilly is, within the meaning of Entry 84 of List I, a duty of excise on matches manufactured within the municipal limits.

23. (iii) Legislation with respect to a controlled industry.

The second branch of the argument is that the impugned Act, being legislation with respect to an industry the control of which the Union has been declared by law to be expedient in the public interest, fell within Entry 52 of List I and was therefore ultra vires the State Legislature.

24. In 1951 Parliament enacted the Industries (Development and Regulation) Act 1951-Act 65 of 1951--whereunder, by virtue of Section 2 read with item (8) of the First Schedule, the sugar industry was declared to be an industry the control of which by the Union was expedient in the public interest. Mr. Shanti Bhushan's argument is that in these circumstances the impugned Act by imposing a tax on the entry of sugarcane into the factory premises is, in pith and substance, a law with respect to the sugar, industry and consequently within the exclusive province of Parliament.

In support of his proposition learned counsel relies on the Lahore. Municipality v. Daulat Ram 1942 4 FCR 31: AIR 1942 FC 14 (D) but I think that that case is clearly distinguishable. The question before the Court was whether the Lahore

Municipality had power to impose an octroi on salt entering municipal limits. The Federal Court held that it could not do so, as only the Central Legislature had been given power under the Government of India Act, 1935, to make laws with respect to salt. So also, argues learned counsel, has Parliament as a result of Act 65 of 1951 the exclusive power to legislate with regard to sugar.

The analogy is not however a true one. The relevant entry in List I of the Constitution Act, 1935, Entry No. 47, consisted of one word only "salt", & from this it was permissible to infer, and the Federal Court did infer, that all legislation with regard to salt (except perhaps legislation which might only incidentally affect salt) was the exclusive province of the Central Legislature. The entry in Item 52 of the Union List is not however the manufactured product, in this case sugar, but the industry engaged in its manufacture, and the question which therefore arises is whether a tax on sugarcane is, legislation with respect to the sugar industry.

25. This question has recently been considered by the Supreme Court in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, and answered against the petitioners. In *Tika Ramji's* case (E) the validity of the 1953 Act was challenged on a number of grounds, of which the first was that the Act was ultra vires the State Legislature as it was with respect to the subject of an industry--the sugar industry--the control of which by the Union had been declared by Parliament by law to be expedient in the public interest within the meaning of Entry 52 of List I.

Now the 1953 Act differs from the impugned Act in that in addition to making provision (or the imposition of a tax on sugarcane (as in the impugned Act) it contained a provision designed to regulate the supply and purchase of sugarcane required for use in sugar factories, and the Court had therefore to consider whether the presence of these provisions brought the enactment within the ambit of Entry 52 of List I of the Union List.

It held that they did not. The Court pointed out that industry in the wide sense of the term is capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The Court then proceeded to state that, in the case of a controlled industry, whereas the process of manufacture or production would be comprised in Entry 24 of the Union List, the raw material (in our case sugarcane) and the product of the industries (in our case sugar) would be comprised in Entry 33 of the concurrent List. "In no event" then said the court

"could the legislation in regard to sugar and sugarcane be thus included within Entry 52 of List I."

The Court then proceeds to point out that whereas the 1938 Act included both sugar and sugarcane within its compass, the 1953 Act was concerned only with the regulation of the supply and purchase of sugarcane required for use in sugar

factories; and consequently

""there was no question whatever of its trenching upon the jurisdiction of the Centre in regard to the sugar industry."

26. Now it might be argued that a tax on sugarcane entering the factory premises, is a law with respect to the supply of foodstuffs within the meaning of Entry 33 of List III, in which case the Union and the State Legislatures had concurrent jurisdiction, but I am unable to accept the view that such a tax is, a law relating to the process of manufacture or production of sugar within the meaning of Entry 52 of List I or the Union List. The tax, it is said, has a direct bearing on the manufacturing process; but no more, it appears to me, than the price which the manufacturer has to pay for the sugarcane which is also fixed by the Central Government. In my opinion the impugned Act is not ultra vires the State Legislature, on the ground now advanced.

27. IV. Repugnancy.

Section 9 of the Industries (Development and Regulation) Act, 1951 (Act 65 of 1951) empowers the Central Government to levy a cess for the purposes of the Act on "all goods manufactured or produced" in a controlled industry, and it is contended by Mr. Shanti Bhusan that as Section 3(1) of the impugned Act is repugnant to this provision it is void under Article 254(1) of the Constitution.

The argument appears to me not to be well founded, and for two reasons. In the first place repugnancy must exist in fact, and our attention has been drawn to none. Secondly, it has been held in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, that the field of sugarcane is not covered by Act 65 of 1951 as amended by Act 26 of 1953 and the legislative powers of the State Legislature in regard to sugarcane are not affected by it in any manner.

28. V. Retrospective nature of tax. Section 1(3) of the impugned Act provides that:

"(3) This section shall come into force at once, and the provisions of Sections 2, 3 and 5 to 8 shall be deemed to have come into force on and from 26-1-1950."

The argument is that the nature of the tax is such that its imposition must precede the entry of the sugarcane into the factory premises. Emphasis is laid on the word "on" in the phrase "on the entry" in Entry 52 of List II and in Section 3(1) of the Act which implies, it is argued, that the law must be prospective. Although a tax on property can be made retrospective, that cannot be done, it is contended, in the case of a tax on the entry of goods, and there can be no fiction which leads to an evasion of this provision.

29. Now Section 1(3) says that, inter alia Section 3 "shall be deemed" to have come into force on and from the 26-1-1950. "Deeming" something to be other than what it is or was is a legislative device well known to lawyers. As Viscount Dunedin said in AIR 1930 54 (Privy Council)

"..... When a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were."

In reality Section 3 of the impugned Act did not become law until 23-6-1956, but the Legislature has expressly stated that that section is to be treated as if it had become law on 26-1-1950. It appears to me to follow therefore that the petitioner's liability for payment of the tax imposed by that section is to be determined on the assumption that the section was in force since 26-1-1950, and I am unable to see that it makes any difference whether the tax is levied on goods or on their entry.

In either case the charging section must be considered in law to have been in force prior in time to the entry of the sugarcane in respect of which the State Legislature seeks now to recover the tax from the petitioners.

30. VI. Invalidity of section 9(2).

Section 9(2) of the impugned Act is challenged on the ground that it is beyond the competence of the State Legislature to validate the notifications made under the 1938 and 1953 Acts which were themselves (it is said) unconstitutional. If indeed Section 9(2) purports merely to validate notifications which were ineffective because the enactments under which they were made infringed the provisions of the Constitution I would not dispute the correctness of learned counsel's contention, but Section 9(2) reads thus:

""9(2). Without prejudice to the general application of Section 24 of the U. P. General Clauses Act, 1904, every notification imposing cess issued and every assessment made (including the amount of cess collected) under or in pursuance of any such notification shall be deemed a notification issued, assessment made and cess collected under this Act as if Sections 2, 3 and 5 to 8 had been in force at all material dates".

In my opinion Section 9(2) does not purport to enact that the earlier notifications shall be valid but it enacts that such notifications are to be treated for all purposes as notifications made under the impugned Act. That is a very different thing, for if the impugned Act be a valid piece of legislation (as for the purpose of this part of the petitioner's case is assumed to be so) then all notifications duly made under it, or deemed to be so made, will also be valid.

31. It is then argued that Section 9(2) is ineffective as the earlier notifications have not been reissued, and that such reissue is necessary because u/s 3 (1) notifications can be issued only by the State Government which has not considered whether the earlier notifications ought to be reissued.

32. I think that short answer to this argument is that the impugned Act must be read as a whole, and that in construing Section 3(1) the provisions of Section 9(2) cannot be ignored or disregarded. The State Government is vested u/s 3(1) with the power to issue notifications; but it is at the same time, by virtue of

Section 9(2), obliged to take into consideration the fact that earlier notifications are, in law, notifications made under the impugned Act, which it can no doubt "modify or abrogate but cannot ignore. In my opinion the submission must be rejected.

33. VII, Retrospective operation of Sub-sections (3) and (5) of Section 3.

Sub-sections (2), (3) & (5) of Section 3 of the impugned Act read thus:

"3(2) The cess imposed under Sub-section (1) shall be payable by the owner of the factory and shall be paid on such date and at such place as may be prescribed."

"3(3) Any arrear of cess not paid on the date prescribed under Sub-section (2) shall carry interest at 6 per cent per annum from such date to date of payment."

"3(5) Where any person is in default in making the payment of the cess, the officer or authority empowered to collect the cess may direct that in addition to the amount of the arrears and interest a sum not exceeding 10 percent thereof shall by way of penalty be recovered from the person liable to pay the cess,"

and by virtue of Section 1(3) these sub-sections, inter alia, are deemed to have come into force on and from the 26-1-1950.

34. It is conceded that the legislature may ordinarily provide for the payment of interest on amounts due as tax and for the imposition of penalties In the event of non-payment such provisions being ancillary to the power to impose the tax; but it is contended that the legislature is incompetent to require payment of interest from a past date on unpaid tax when the tax is made retrospective, or to impose a penalty in default of payment on a past date.

35. I do not think that the provision for payment of interest on unpaid tax can be regarded otherwise than ancillary to the provision for payment of the tax, and if the latter can be made retrospective in operation so also, it appears to me, can the former. The tax imposed must I think be regarded as a cess at the rate of three annas a maund with interest thereon at 6 per cent per annum from the date prescribed u/s 3(2) until payment.

36. I am however disposed to think that the penalty provision stands on a somewhat different footing. No exception can be taken with regard to a provision for payment of a penalty when the default occurs after the date upon which the impugned Act became law, but I find difficulty in agreeing with the view of the learned Advocate General that the provision is valid under Entry 52 of List II when the default occurred at an earlier date.

I think however that it is unnecessary for me to express a concluded opinion on this question for the learned Advocate General has informed the Court that no such penalty has in fact been imposed in the case of any of the petitioners and presumably no such penalty will be imposed without the defaulter being first given a further opportunity to pay. The default in that event will have occurred

after the impugned Act became law and the power in such circumstances to impose a penalty is not challenged by the petitioners.

37. VIII. Article 19(1)(g).

Finally it is argued that the retrospective operation of the provisions of the impugned Act is oppressive and constitutes an unreasonable restriction on the petitioners' right to carry on their trade or business; and it is accordingly bad as contravening Article 19(1)(g) of the Constitution.

38. The argument, as I understand it, is put in two ways. First, it is said that the petitioners cannot carry on their business without adequate finance, and that if the tax is levied now with retrospective effect they will be deprived of funds with which they would otherwise have been able to purchase sugarcane and their business will accordingly suffer. Secondly, it is contended that the retrospective operation of the tax is oppressive because the subject of taxation, the entry of the sugarcane into the factory premises was a voluntary activity on the petitioners part in which they might never have engaged had they had any inkling that that activity might later be made subject to tax.

39. I confess to some difficulty in appreciating the argument. The fact that, as a consequence of the cess being made retrospective, the petitioners may now have to pay in one year a sum of money, representing accumulations of tax for past years does not appear to me to infringe Article 19(1)(g). The argument is tantamount to saying that a heavy tax is, per se, unconstitutional. Learned counsel relied on *Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another*, but that case is in my opinion distinguishable as the question for decision was whether the imposition of a particular licence fee offended against Article 19(1)(g).

The Court pointed out that there exists a difference between a tax (such as income tax) and a licence fee for carrying on a business. A license fee on a business not only takes away the licensee's property but also operates as a restriction on his right to carry on his business for without payment of the fee the business cannot be carried on at all. A tax, as has been said in an American case, is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burden.

The distribution of the burden of a tax among the citizens of the State may be challenged on the ground that there has been an infringement of Article 14; but I am not at present prepared to accept the view tentatively advanced by learned counsel, that the solidity of the tax can be challenged on the ground that it is confiscatory; for that would appear to ignore the decision of the Supreme Court in *Ramjilal Vs. Income Tax Officer, Mohindargarh*, and the provisions of Article 31, Clause (5) (b) (i) of the Constitution.

40. In support of his argument that the retrospective operation of the tax is oppressive and therefore void, learned counsel referred to certain cases cited in

Welch v. Henry, (1938) 305 US 134: 83 Law Ed 87 (I) in which the Supreme Court of the United States of America had held invalid a taxation of gifts made and completely vested before the enactment of taxing statute on the ground that the nature or the amount of the tax could not reasonably have been anticipated at the time of the particular voluntary act which the statute later made the taxable event.

As in each of these cases the donor might have freely chosen to give or not to give, the taxation after choice was made was held to be so arbitrary and oppressive as to amount to confiscation. The Court distinguished these cases from then before it, which was whether an Act passed by State Legislature in 1935 imposing a tax on dividends received by the appellant in 1933 was valid.

The Court held the tax to be valid, and it pointed out that even a retrospective gift tax had been upheld where the donor had some warning of the possibility of such a levy.

41. An argument founded on the assertion that the petitioners could not reasonably have anticipated that they would be required to pay a tax on sugar-cane purchased by them in the years 1953-54, 1954-55 and 1955-56 seems to me to be untenable. The present tax was first imposed in the year 1938, and it has been paid, it appears, until 1953. Provision for the levy of a similar cess or tax is to be found in the 1953 Act as well as in the impugned Act. The petitioners, it seems to me, had ample warning that it was the intention of the legislature to continue to require payment of the levy and a prudent man would, even if he doubted the legality of the tax, have made provision for its payment in the event of his doubt being proved later to be unfounded.

The price at which the petitioners could sell the manufactured sugar was and is fixed by the Central Government which, I think the Court is entitled to presume, took into account the fact that factory owners were required to pay a cess under the 1938 and 1953 Acts. If the petitioners did not pay the cess their profits increased by the amount not paid, and in such circumstances I can see nothing unreasonable in the legislation now seeking to recover the unpaid cess by an enactment having retrospective effect.

42. Petition No. 1824 of 1956: The facts in this case differ from those in the petitions which have been considered. The petitioner's factory is situated in Ambala District in the Punjab, and on the 3rd August, 1956, the petitioner received a letter, dated the preceding day, from the District Magistrate of Saharanpur requiring payment of the sum of Rs. 3,18,000/- as cess payable under the impugned Act in respect of the 1955-56 crushing season. It is contended that this demand is wholly illegal and the prayer is, first, that the demand dated the 2nd August, 1955 be quashed and, secondly, that a mandamus be issued commanding the State not to realise cess from the petitioner;

The learned Advocate-General has informed the Court that no notification

purporting to impose a cess on this factory has been issued u/s 3 of the impugned Act or Section 20 of the 1953 Act, and he conceded that the demand of the 2nd August, 1955, is invalid so far as it purports to be a demand under the impugned Act. He has further given the Court an undertaking that no steps would be taken to recover, as cess due under the impugned Act, the amount now claimed by the State as payable to it by the petitioner.

The Advocate-General has stated that the sum now sought to be recovered is claimed by the State Government on the basis of a contract entered into between that Government and the petitioner; but that is not a matter upon which we are now called upon to express an opinion. In the circumstances it is in my opinion unnecessary to direct the issue of a formal order quashing the notice.

43. Learned counsel for the petitioner sought also to contend that the Explanation to Section 3(1) of the impugned Act was ultra vires. The Explanation reads thus:

""Explanation--If the State Government, in the case of any factory situate outside Uttar Pradesh, so declare, any place in Uttar Pradesh set apart for the purchase of cane intended or required for use, consumption or sale in such factory shall be deemed to be the premises of the factory."

44. I do not however think that we can consider the validity of this provision in the present petition as not only has no declaration been made under it but the affidavit accompanying the petition discloses no facts from which it can be inferred that Explanation is applicable; and in the circumstances it appears to be uncertain whether any such declaration as is contemplated in the Explanation will ever be issued affecting the petitioner.

45. I am, therefore, of opinion that the impugned Act is not invalid on any of the grounds which have been advanced. It is not in dispute that in these circumstances the petitions must fail.

M.L. Chaturvedi, J.

46. This petition is by the Managing Agent of a company known as Dhampur Sugar Mills Co. Ltd. which carried on the business of manufacture of sugar by means of vacuum pans.

47. By a notification dated November 15, 1952 the Governor of Uttar Pradesh, acting u/s 29 (2) of the U. P. Sugar Factories Control Act, 1938, imposed a cess at the rate of three annas per maund on the entry of sugarcane into the premises of this factory as well as of the other factories situate in U. P., which were manufacturing sugar by means of vacuum pans. The cess was imposed for the crushing season 1952-53.

A similar notification was issued for the next year on the 5th December 1953 imposing a cess at the same rate; but before this notification was issued the U. P. Sugar Factories Control Act, 1938, had been repealed and was substituted by the

U. P. Sugarcane (Regulation of Supply and Purchase) Act of 1953. Similar notifications imposing a cess on the entry of the sugarcane at the same rate for the crushing seasons, 1954-55 and 1955-56 were issued on the 23rd October 1954 and 9th November 1955 respectively.

The total amount payable by the petitioner under all these notifications was a sum of Rs. 12,51,867-8-0, and on the 10th January 1956 the Collector of Bijnor issued a warrant of attachment of the moveable properties belonging to the company for the recovery of the above amount.

The petitioner is said to have made a representation to the Collector not to recover the money, but the Collector turned down the representation; and, as a result, the present petition was filed in this Court praying for the issue of a writ of mandamus directing the State of Uttar Pradesh and the Collector of Bijnor "not to enforce" the notification mentioned above, and to refrain from executing the warrant of attachment issued by the Collector on the 10th January 1956.

48. A number of such petitions have been filed by the owners of sugar factories situate in this State. The petitions were all heard together, as the points that arise in them are substantially the same. In Writ Case No. 1824 of 1956, which is by the owner of a sugar factory situate in the East Punjab, a further point arises which would be dealt with later.

49. Before the Government of India Act of 1935 came into force, the Central Legislature enacted the Sugar Industry (Protection) Act, 1932, and the Sugarcane Act, 1934. The Government of India Act, 1935, effected a distribution of legislative powers between the Dominion Legislature and the Provincial Legislatures. As a result of this distribution the entire subject matter of the Central Sugarcane Act of 1934 fell within the Provincial Legislative list.

The Bihar and U. P. Legislatures subsequently passed Acts to deal with the subject, and the U. P. Legislature on 10-2-1938 enacted the U. P. Sugar Factories Control Act, 1938, providing for the licensing of sugar factories, regulating the supply of sugar-cane to these factories, the minimum price for sugar-cane, and a tax and a cess on the sale of sugarcane intended for use in vacuum pan sugar factories. On 31-10-1951 the Parliament enacted the Industries (Development and Regulation) Act, 1951, being Act No. LXV of 1951, to provide for the development and. regulation of certain industries. By Section 2 of this Act it was declared that the Union should take control of the industries specified in the 1st Schedule and sugar industry was mentioned at Item No. 8 of the Schedule.

This Act was brought into force with effect from 8-5-1952 and, in view of its provisions, some of the provisions of the U. P. Act of 1938 became inoperative. The U. P. Act was amended in 1952 and the said provisions were deleted. Soon after the U. P. Legislature thought of repealing the Act of 1938, because it was no longer concerned with the sugar industry as such and decided to confine its legislation to the regulation and supply of sugarcane to the sugar factories. It accordingly enacted the U. P. Sugarcane (Regulation of Supply and Purchase) Act

of 1953, being Act No. XXIV of 1953. The impugned notifications were issued under the Acts of 1938 and 1953.

50. After these petitions had been filed in this Court, Section 20 of U. P. Act No. XXIV of 1953, which permitted the imposition of a tax and a cess on sugarcane, was repealed and a fresh Act was passed dealing with the subject. This Act is known as the U. P. Sugarcane Cess Act, 1956, being Act No. XXII of 1956 (hereinafter called the impugned Act), and it was published in the U. P. Gazette Extraordinary dated 23-6-1956. Section 1(3) of this Act makes the provisions of Sections 2, 3 and 5 to 8 retrospective in operation from 26-1-1950. Sub-section (1) of Section 3 of the Act authorises the State Government by notification in the official Gazettee to impose a cess not exceeding four annas per maund on the entry of sugar-cane into the premises of a factory for use, consumption or sale therein.

Sub-section (2) provides that the cess imposed under Sub-section (1) shall be payable by the owner of the factory and shall be paid on such date and at such place as may be prescribed. Sub-section (3) provides that if a cess is not paid on the prescribed date, the amount is to carry interest at 6 per cent per annum from such date and Sub-section (5) provides that the officer authorised to collect the cess may direct, on non-payment of the cess, the imposition of a penalty not exceeding 10 per cent. of the cess. Section 4 makes default in payment of cess or contravention of any provision of the Act or Rules made thereunder, punishable with imprisonment upto six months or with fine or both. Section 5 provides for the institution of proceedings u/s 4; and Section 6 names the classes of Magistrates who are authorised to take cognizance of such cases. Section 8 lays down the persons who can be prosecuted if the owner is a firm or a company.

Section 9 is then important and it provides that every notification imposing cess and every assessment made under or in pursuance of such a notification shall be deemed to be a notification issued and assessment made under the impugned Act, as if Sections 2, 3 and 5 to 8 had been in force at all material dates. This section also repeals Section 20 of the U. P. Sugarcane (Regulation of Supply and Purchase) Act of 1953. Section 10 authorises the State Government to make rules for carrying out the provisions of the Act.

51. During the hearing of the petition, an application was made for its amendment by adding certain grounds in it challenging the validity of the impugned Act, as the same had been passed during the pendency of the petition. The application was not opposed and it was accordingly granted.

52. This and other petitions have been argued on the assumption that the sections in the Acts of 1938 and 1953 corresponding to Section 3 of the impugned Act were invalid, and the notifications issued under them were not enforceable against the petitioners, though the learned Advocate-General did not admit this. If the impugned Act is held to be valid, it would be absolutely

immaterial whether the corresponding provisions in the previous Acts were valid or not. We think the impugned Act is valid and we consequently did not hear arguments on the validity or otherwise of the Corresponding provisions in the previous Acts.

53. The learned Counsel for the petitioner have urged the following points in support of the petition:

(1) That Section 3 of the impugned Act is invalid as it permits discriminatory treatment of different factories by the State Government, and denies to the petitioner equal protection of the laws which is guaranteed by the Constitution under Article 14.

(2) That the said section is further invalid as it contains an unauthorised delegation of power on the State Government to impose or not to impose the tax which is essentially a legislative function.

(3) That the U. P. Legislature was not competent to pass the impugned Act, as the Act provides for matters, which fall under entry No. 84 of List I of 7th Schedule (duty of excise on tobacco and other goods manufactured or produced in India.....)

It is also said that the impugned Act is outside the purview of entry No. 52 of List II, which permits taxation in the nature of octroi duty.

(4) That the U. P. Legislature was further in competent to legislate with respect to this tax, as it is a tax imposed in effect upon sugar industry the control of which by the Union has been declared by the Parliament in pursuance of the Industries (Development and Regulation) Act of 1951, and legislation with respect to this industry is now covered by entry No. 52 of List I.

(5) That the impugned Act is repugnant to the Industries (Development and Regulation) Act of 1951, and it is accordingly an ineffective piece of legislation.

(6) That Section 1(3) of the impugned Act is invalid as it purports to give retrospective operation to a tax which in its very nature was such that no retrospective operation could be given to it, as it is a tax on an activity and not on goods. It is said that an activity cannot be taxed with retrospective effect. It is also urged that by giving retrospective operation to Section 3 of the Act an unreasonable restriction has been put on the petitioner's right to carry on his trade guaranteed to him by Article 19(1)(g) of the Constitution.

(7) That Section 9(2) of the Act is invalid as it purports to validate notifications which were invalid on the date that they were issued, and also because the power to issue the notification u/s 3(1) is vested in the State Government and the Legislature cannot say that a notification issued by a previous State Government should be taken to be a notification issued by the present State Government.

(8) That Sub-sections (3) and (5) of Section 3 of the impugned Act are ultra

vires the State Legislature, as the subject matter of entry No. 52 of List II does not authorise a legislation imposing interest or penalty on the amount of tax levied under the entry. It is also said that the levy of interest or penalty operates harshly on the petitioner and it imposes an unreasonable restriction on his right to carry on his trade, because the petitioner is being asked to pay this year the dues of the last three years.

54. In Writ Case No. 1824 of 1956, which is a petition by the owner of a factory situate in the East "Punjab, some further points have been urged but, in view of the statement made by the learned Advocate-General, it does not appear to be necessary to consider them. I shall refer to this matter again after dealing with the above points.

55. Point No. (1)

Mr. G. S. Pathak argued that Section 3(1) of the impugned Act permits the State Government to impose the tax on some factories and not on others, to impose it at different rates on different factories, not to impose it at all on any factory or to impose the tax at the same rate on all of them. He says no guiding principles have been laid down in this section and an arbitrary and uncontrolled power has been conferred on the State Government to act as it likes. Such an enactment, he argues, denies to the citizen equal protection of the laws and is inconsistent with Article 14 of the Constitution.

The learned Advocate-General countered this argument by saying that the impugned Act has given no power to the State Government to impose the tax only on some of the factories, nor has it permitted the State Government to impose the tax at different rates on different factories. The only discretion that has been conferred on the State Government is that it may not impose a tax at all and to determine the rate of tax, if it decides to impose one, and this much power could be conferred on the State Government and it leads to no discrimination. He has further contended that the petitioners have no right to challenge the validity of the impugned Act because no discriminatory order has ever been passed against any factory since the assumption of this power by the State Government in 1938.

He says that all the vacuum pan sugar factories in the State of Uttar Pradesh have, been uniformly taxed at the same rate, which has been three annas per maund of sugarcane. He says that no discriminatory notification having been issued u/s 3(1) of the impugned Act, the petitioners can have no legitimate grievance and have no "locus standi" to question the validity of the impugned Act. I am inclined to agree with the first contention of the learned Advocate-General.

56. While considering the question of its interpretation it may be useful to quote Sub-section (1) of Section 3 (excluding Explanation) of the impugned Act, which is as follows:

"3(1)--The State Government may by notification in the official Gazette impose a cess not exceeding four annas per maund on the entry of the cane into the premises of a factory for use, consumption or sale therein:

Provided that the State Government may likewise remit in whole or in part such cess in respect of cane used or to be used in factory for any limited purpose specified in the notification."

The use of the letter "a" before the word factory" made the sub-section open to a criticism that the sub-section permits the levy of the cess on some factories to the exclusion of others and this criticism led to another to the effect that different rates of cess could be assessed on the entry of sugar cane into different factories. The learned Advocate-General argued that the letter "a" was used to signify the idea of the factories in general. It did not mean that the tax could be imposed on a particular factory.

He emphasised the fact that Section 20 of Act No. 24 of 1953 and Section 29 of the Act of 1938 contained similar words, but they were always interpreted by the Government to mean factories in general, and it never happened that any factory was excluded from the cess or there was any differentiation in the rates of-cess imposed on the different factories. I am inclined to agree with him because the basic idea is the imposition of cess on the entry of sugarcane, and the language is of entry No. 52 of List II, which authorises such a tax. Entry 52 is in the following words :

"Taxes on the entry of goods into a local area for consumption, use or sale therein."

57. Section 3 (1) authorises the imposition of a cess on the entry of cane, but instead of saying "into a local area" it says "into the premises of a factory". The proviso also supports this interpretation, because the power conferred on the State Government by the proviso is confined to remission of the cess in whole or in part in respect of the cane used or to be used for any limited purpose.

If, for example some factories were engaged in the manufacture of glucose, the State Government has been given the power to remit the whole or part of the cess on sugarcane used for the purpose of manufacturing glucose. This remission would be on all the factories engaged in the manufacture of glucose and not on any particular factory.

If the Legislature had contemplated the conferment of absolute powers on the State Government in the matter of imposing the cess or rate of cess, it would not have been necessary to put in this proviso in the section.

58. Since the date of coming into force of the U. P. Act, No. 1 of 1950, which permits the U. P. Legislature to enact laws in Hindi language, the State Legislature has mostly been passing the Acts in Hindi.

They are then translated and an authorised English version of the enactment is

also published in the Gazette. The language of the Act, as passed in Hindi, further supports the view that no such absolute power was conferred on the State Government as is contended for by the learned counsel for the petitioners. Leaving out the proviso and Explanation, Sub-section (1) of Section 3 is worded in Hindi as follows:

"Rajya Sarkar, Sarkari gazette men vigyapati prakashit kar, ke factory men prayog upbhog athwa bikri ke nimitt laye gaye ganne par 4 anna prati man se anadhik upkar (cess) laga sakti hai."

59. The Hindi version, in my opinion, makes it clear that the State Government has been authorised to impose a cess not exceeding four annas per maund of sugarcane, which sugarcane has been brought into factory premises and brought, for the purpose of use, consumption or sale therein. There is nothing there to indicate the existence of a power to discriminate between factories, and it appears that the idea was to permit the Government to impose cess on sugarcane, which is brought into factory premises, as distinguished from sugarcane used, consumed or sold elsewhere.

The English version, which is the authorised version, would perhaps have brought out the meaning of the Hindi version better if instead of saying "'the premises of a factory" it had said "factory premises."

60. The learned counsel for the petitioners strongly contended that a court could not look into the Hindi version of the Act, because under Article 348 of the Constitution it is the English version which is the authoritative text of the legislation. It is true that the English version is the authoritative text, and if there were any inconsistency between the authoritative text and the Hindi version, it may be that the authoritative text in English should prevail over the Act as passed in Hindi language; but there is no question of any inconsistency here and the only point is of the interpretation of the authoritative English text.

In the matter of interpretation of a statute the history of the legislation and the surrounding circumstances, which existed at the time and demanded a change of law or the enactment of a new one, can all be taken into consideration and I do not see any reason why the version in the regional language in which the Act was passed should not be taken into consideration at all in trying to interpret the authoritative English version.

Another rule of interpretation of a statute is that if two interpretations of it are equally possible, the one which would avoid unconstitutionality of the legislation should be preferred. The Hindi version very much favours the contention of the learned Advocate-General and, if the English version had said "factory premises" instead of "the premises of a factory", I think it would have been difficult to argue that the section was discriminatory in character.

61. For the above reasons I hold that Section 3 (1) of the Act does not permit the State Government to discriminate between different factories in the matter of

the imposition of cess or the rate of it. If the Government decides to impose the cess, it must do so on all factories and at uniform rates. There is thus no denial of equal protection of the laws, and the provisions of Section 3 (1) of the impugned Act are not inconsistent with Article 14 of the Constitution.

62. The decision on the above question is sufficient for disposing of the contention of the learned counsel for the petitioners that Section 3 (1) is inconsistent with Article 14 of the Constitution; but as the learned Advocate-General further argued that the petitioners had no right to challenge the constitutionality of Section 3 (1), I may briefly deal with that point as well. His argument is that, assuming that Section 3 (1) is inconsistent with Article 14 of the Constitution, the petitioners can have no legitimate grievance till the State Government has issued some notification actually exercising improper discrimination between owners of different factories.

With this contention I am unable to agree. If an enactment passed by a Legislature is inconsistent with Article 14 of the Constitution and, in the exercise of a power conferred by such an enactment a Government or a public officer issues a notification demanding payment of money from a citizen or directing him to deal with his property in a certain manner, I think the citizen can come to a Court and say that the State Government or the public officer is applying an unconstitutional law to him and the Court should relieve him of the liability imposed by the notification issued under such a law. He is entitled to say that action is being taken against him under a law which is void being inconsistent with the Constitution and the Court should grant him relief.

It is not necessary that apart from the Act the action of the executive authority must also be discriminatory before a citizen can come to a Court to have the validity of the law determined.

63. But I am very doubtful if even on the interpretation put by Mr. G. S. Pathak on Section 3 (1) of the impugned Act, the section itself can be said to be inconsistent with Article 14 of the Constitution. It applies equally to owners of all vacuum pan factories in the State and does not discriminate between them.

The cases cited by him are cases where there were two parallel enactments under which persons similarly situate could be dealt with, and the provisions of one enactment were more onerous than the provisions of the other. There the onerous piece of legislation which was applied to the citizen was held to be discriminatory. But that is not the position here.

The section itself not being; discriminatory in character, it cannot be said to be void. If any discriminatory order were passed under it, that order could be held to be void. I do not propose to discuss the matter further, as the point does not arise for determination in this case. Point No. 2.

64. Connected with the first point is the second point taken by Mr. G. S. Pathak, which raises the question whether Section 3 (1) delegates power to the State

Government, which the Legislature was not authorised to delegate, the power being to impose a cess on sugarcane entering a factory. I have already held, while interpreting Section 3 (1) of the impugned Act, that it confers no power on the State Government to discriminate between different factories in the matter either of the imposition of the cess or in the matter of the rate of the cess. The only power that has been delegated is the power to impose or not to impose a cess at all, and if it decides to impose the cess, to impose it at a uniform rate.

I think such a delegation of power is permissible. The Legislature has enunciated the policy that cess can be levied on sugarcane entering a vacuum pan factory at a rate not exceeding four annas per maund. There may be some lean years for the industry when the imposition of cess may cause the industry incalculable harm, and in different years the rate of cess may have to be varied according to the prevailing conditions, taking into consideration the interest of the industry.

65. On the power of delegation, I may refer to the well known recent case of *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, . In this case the decisions of the learned Judges in *re Constitution of India and Delhi Laws Act (1912)* etc. In *Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, were summarised. It is stated at page 298 (of SCR): (at p. 573 of AIR), of the Report that the Legislature could delegate to the executive authority power to apply without modification the whole of any Central Act already in existence in any part of India, and that the executive authority could also be delegated power to select and apply a Provincial Act to the specified area.

These powers are much larger than the power to impose or not to impose a tax in any particular year or to impose it at a rate not exceeding the maximum specified. I think the objection to the validity of Section 3 (1) of the impugned Act on this ground, also cannot be upheld. Point No. 3.

66. The learned counsel for the petitioners argued that the imposition of the cess on sugarcane is in reality an imposition of excise duty on sugar though levied before its manufacture. The cess consequently falls under Entry No. 84 of List I and not under Entry No. 52 of List II. The State Legislature was not competent to pass the impugned Act and the said Act is a colourable piece of legislation. It has been urged that the liability for the payment of the cess has been imposed by the impugned Act on the manufacturer of sugar and not on the person who brings it within the premises of the factory and that the liability is confined to cane which is used, consumed or sold in the factory.

It is said that an excise duty may be levied at any stage of the manufacture of goods, and the levy in the instant case is at the stage of the purchase of the raw material. Reference in this connection was made to the decision in *AIR 1939 1 (Federal Court)* The question in the case was whether the Provincial Legislature was entitled to impose a sales tax on the sale of motor spirit produced in the province.

The Central Government's case was that the tax was in the nature of excise duty, and the Provincial Legislature was not competent to impose it, and the learned Judges had to consider the scope of the expression ""excise duty". In the course of his judgment Mr. Justice Jayakar quoted certain passages from Findlay Shirras' book on "Science of Public Finance", Vol. II, 3rd Edition, page 654,

"Excises or taxes on commodities of domestic manufacture may be levied on the raw materials or at an intermediate stage of their production or when the articles are ready for consumption."

Similar observations have been made at page 670 of the book. But the learned Judges have expressed the view that the wide meaning given to the word ""excise" in England and also in America would not apply in India where we have a constitution dividing the subjects on which the different Legislatures can legislate. After quoting the above passages, from Findlay Shirras' book, Mr. Justice Jayakar observed,

""These are quotations from recent authors and they make clear inter alia that the stage at which an excise tax is levied and collected is a matter dependent on the nature of the commodity and the facility of collecting the tax. It is not a vital element affecting the nature of the tax as an excise."" There are other passages in the judgments of the learned Judges, which go to support the contention of the State that the tax or cess imposed by the impugned Act does not fall under Entry No. 84 of List I. Chief Justice Gwyer while dealing with the point observed,

"It was then contended on behalf of the Government of India that an excise duty is a duty which may be imposed upon home-produced goods at any stage from production to consumption; and that therefore the Federal Legislative power extended to imposing excise duties at any stage. This is to confuse two things, the nature of excise duties and the extent of the Federal Legislative power to impose them."

While considering the extent of the amplitude of the subjects given in the different legislative lists, Jayakar, J. referred to Entry No. 49 of List II (which was the same as Entry No. 52 of the present List II excepting that instead of the word "cess" the word now used is "tax") and observed,

"It relates to "cesses on the entry of goods into a local area for consumption, use or sale therein." The word "goods" in that item includes, u/s 311, Government of India Act, 1935, all materials, commodities and articles. The expression is therefore wide enough to include goods which fall under Item 45 of List I. If so, "cesses" on commodities ordinarily excisable by the Centre under Item 45 (List I) would be within the exclusive competence of the Provincial Legislature, if levied on the entry of the goods into the local area for the purpose of consumption, use or sale therein."

67. The above observation covers the point under consideration. All the learned Judges were unanimous in holding that the sales tax, though it may fall in the

wider definition of "excise duty" was a subject within the exclusive jurisdiction of the Provincial Legislatures, and such a tax did not come under "excise duty", which was an exclusive Federal subject.

In that case the learned Judges had to consider whether sales tax imposed on manufactured goods was really excise duty or not, and in the instant case I have to see whether a tax in the nature of octroi duty is included in the expression "excise duty" which is an exclusive Union subject. The reasons given in that case, I think, help the contention of the State.

68. A similar question again came up for consideration before the Federal Court in the case of the Province of Madras v. Boddu Paidanna & Sons, 1942 4 FCR 90: AIR 1942 FC 33 (L). In this case the Madras Legislature had imposed sales tax on, the first sale of goods manufactured in the State, and the assessee contended that the tax was in the nature of excise duty and the Act was ultra vires, the Provincial Legislature. This contention was again overruled by the Federal Court on the grounds similar to those taken in the Central Provinces Act case (B). In the course of the judgment their Lordships observed,

"They (Federal Court) recognised that the expression "duty of excise" is wide enough to include a tax on sales; but where power is expressly given to another authority to levy a tax on sales, it is clear that duty of excise must be given a more restricted meaning than it might otherwise bear. On the other hand the fact that "duty of excise" is itself an expression of very general import is no reason at all for refusing to give the expression "tax on sales" the meaning which it would ordinarily and naturally convey."

69. This case went up in appeal to the Privy Council and the Privy Council upheld the decision of the Federal Court in AIR 1945 98 (Privy Council)

70. As observed by the learned Chief Justice in the Central Provinces Act case (B), it is one thing to say that a particular levy is covered by the expression "excise duty" and quite another to say that the power of the Federal Legislature extends to the entire extent of the meaning of the expression. This would be confusing the meaning of the expression with the power of the Legislature to impose a tax with respect to it, The power of one Legislature may not extend to the entire field and may be limited by the power conferred on a different Legislature with respect to a part of that field. The mere fact that such a tax may fall within the definition of "excise duty" is not enough for showing that the Union Legislature has exclusive power to impose a tax at every stage of the manufacture of the commodity including the raw material stage.

71. A well established rule of construction, in constitutions where the fields of legislation are divided between different Legislatures, is that an attempt must be made to reconcile their powers if it is possible to do so. Adopting this principle of interpretation, I think it must be held that the power of imposing octroi duty or tax of that nature is in the exclusive State field and whether the tax may strictly fall within the definition of "excise duty" or not, the State Legislature has power

to impose such a tax. The power of the Union Legislature to impose excise duty must be taken to have been reduced to the extent that it included octroi duty on raw material. I do not mean to say that octroi duty on raw material must always be taken to be included in excise duty. The nature of both the taxes is essentially different, though in some respects the two may overlap.

72. In the instant case it is true that the tax is payable by the purchaser and not by the person who brings the goods in the factories, but the circumstances of the case make it obvious that it is the purchaser or the owner of the factory, who is responsible for getting the goods in the factory, and the goods would not be there if the owner was not prepared to purchase them. The Legislature naturally considered it more convenient to recover the duty from the factory owner rather than the thousands of growers of sugarcane who take their produce to the factory. "For purposes of administrative convenience it is the purchaser who has been taxed. The burden of octroi duty ultimately falls on the consumer and it really makes no difference whether it is collected from the person who brings the goods in the local area or the person who consumes them in that area. In the case of octroi duty or tax the levy is because the goods enter a particular area, and in the case of excise duty the tax is on the manufacture of goods in the State. The true distinction between an excise duty, a sales tax and a tax on entry of goods lies in the fact whether the tax is on the act of production or the act of sale or on the act of introducing goods in a particular area and not in the fact by whom the tax is payable or that the tax is on goods. It is not to be easily presumed that an enactment is a colourable piece of legislation, and in the instant case I do not find any element of such a legislation in the impugned Act. The tax has been imposed on the entry of sugarcane in a local area for use, consumption or sale therein and is fully covered by Entry 52 of List II.

73. The learned counsel for the petitioners further contended that whether Section 3 (1) of the Act fell within Entry 84 of List I or not, it certainly does not fall within the ambit of Entry 52 of List II. The learned counsel argues that in order to be taxable the entry of goods must be in a local area and¹ he says the expression "local area" can only apply to an area which is subject to a local administration like the Municipal Board or the District Board.

He says that this expression connotes an area which is a local self-government area, and every area in a locality is not called a "local area". It is true that areas under local self-government administration are known as local areas, but I find no reason for limiting the meaning of the expression "local area" to those areas which are under a local self-government.

Giving this meaning would be adding words to the expression "local area" and thus limiting its significance without any justification for doing so. One of the meanings given to the word "local" in the shorter Oxford English Dictionary, Vol. I, is

"pertaining to or concerned with place or position in space".

This is the usual meaning of the word and I think it is difficult to say that a town having no local self-government is not a local area. Even a village or other place having defined limits may be a local area. If a number of sugar factories had been set up in a particular locality, the whole of this locality would have been called a local area and I do not see any reason why the premises of one factory cannot be called a local area.

Nor can it be said that the expression "local area" has always been used" by the different Legislature to denote a locality under a local self-government administration. In the U. P. Municipalities Act, the State Government has been given the power to declare any "local area" a "Municipality or to add a "local area" within the Municipal limits of an existing Municipality. The expression has been used for, a locality before it came under any local self-government administration.

74. In the U. P. Town Areas Act, "town area" has been defined in Section 2 (8) and the expression "local area" used in this definition also refers to an area which previously was not under a local self-government administration. Reference has been made on behalf of the State to Section 2 of the Central Act, 12 of 1950 (Kazi's Act), Section 3(2) of Act 7 of 1887 (The Suits Valuation Act), Section 4(6) of Act 8 of 1890 (The Guardians and Wards Act) and Sections 25, 74, 76 and 90 of Act 34 of 1948, where the expression "local area" has not been used in the sense contended for on behalf of the petitioners.

That contention seeks to impose limitations on the expression "local area", which are not to be found in the wording of Entry 52 of List II. Any defined area, in a locality can be called a local area, and the premises of a factory would be in such defined limits. They would therefore be covered by the expression.

75. I do not think that any new local area has been created by the notification under the impugned Act. The local area already existed and the notification has said that the premises of a factory shall be deemed to be a local area for purposes of the impugned Act. Assuming that the State Government has by this notification created a local area, I think it is within the power of the State Governments to create local areas of different kinds, and it is generally these Governments which create new local areas for different purposes.

76. For the above reasons I think that the tax could be imposed on entry of sugarcane into the premises of the factory, and Section 3 (1) of the impugned and is intra vires the powers of the State Legislature.

77. Point No. 4 : Mr. Shanti Bhushan, who appeared for some of the petitioners, contended that the Industries (Development and Regulation) Act, Act 65 of 1951, came into force on 8-5-1952, and Section 2 of this Act had declared that it was expedient in the public interest that the Union should take under its control the industries specified in the 1st Schedule. "Sugar" is one such industry and is mentioned against Item No. 8 in the 1st Schedule.

The argument is that since the date that the Act came into force, the Union Legislature obtained exclusive jurisdiction to legislate with respect to sugar industry. It is said that the expression "sugar industry" includes not only sugar which is the product of the industry but also sugarcane which is the raw material necessary for production of sugar. According to the learned counsel, legislation in respect of these subjects fell within Entry 52 of List I.

"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest,"

and the State Legislature had no power left in it to enact Section 3 of the impugned Act, because every legislation with respect to sugar industry, with respect to sugar and with respect to raw material, which is necessary for the manufacture of sugar, became an exclusively Union subject. In support of his argument he, referred to the decision of the Federal Court in the case of 1942 4 FCR 31: AIR 1942 FC 14 (D).

In that case the question for decision before their Lordships was whether the Municipal Board of Lahore had power to impose octroi duty on the entry of salt in the local area of the Municipal Board. The decision of the learned Judges was against the Municipal Board, because salt was held to be an exclusively Federal subject.

But the facts of that case are quite distinguishable and emphasis was laid by the learned Judges on the fact that express mention was made, in Section 140 of the Act of 1935 of "duties on salt" separately from "federal duties of excise" and "export duties". They observed,

"but it is nevertheless difficult to get rid of the impression that duties on salt were regarded as a category by themselves not comprised under the headings of excise or customs duties."

The reason for this differentiation was then given why salt was treated as specially an article within the exclusive Federal jurisdiction.

78. Reference was also made by learned counsel to Article 246(1) of the Constitution which says,

"Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule."

It was urged that the expression "with respect to" has a very wide connotation and if there was a legislation concerning the raw material out of which sugar is produced, it must be taken to be a legislation concerning sugar industry.

79. In my opinion the learned counsel is not right in attaching such a wide meaning to the subject of "sugar industry". This would be clear from a very recent decision of their Lordships of the Supreme Court given in the case of Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, . In this

case the petitioners before their Lordships had challenged the validity of the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, being U. P., Act 24 of 1953.

The first point taken was that sugar industry having been declared to be an Union subject falling under Entry 52 of List I, all legislation with respect to sugarcane was outside the competence of the State Legislature and U. P. Act 24 of 1953, was therefore, a void piece of legislation. The point was widely stated, but the argument was confined to those sections of the Act, which dealt with the regulation and supply of sugarcane.

After a detailed consideration (if I may say so with respect) of all the Union and U. P. State Legislations on the point their Lordships came to the conclusion that the contention was not correct and overruled it.

In view of this decision it is not necessary to enter into the facts of the case in any detail, and I shall content myself by quoting some of the passages from the judgment of the Supreme Court in order to show that the point taken by the learned counsel is covered by the reasoning of their Lordships and must, therefore, be decided against the petitioners. But in order to understand that decision I may refer here to the relevant entries.

List I Entry 52 "Industries, the control of which by the Union is declared by the Parliament by law to be expedient in the public interest";

List II Entry 24 "Industries subject to the provisions of Entry 52 of List I";

List II Entry 27 "Production, supply and distribution of goods subject to the provisions of Entry 33 of List III;"

List III Entry 33 (as it stood prior to its amendment) ""Trade and commerce in and the production, supply and distribution of, the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest";

List III Entry 33 (as it stood after the amendment by the Constitution (Thud Amendment) Act, 1954)

"Trade and commerce in, and the production, supply and distribution of;

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

80. It would appear from the above entries that the industries the control of which by the Union was declared by the Parliament to be expedient, became exclusive Union subjects and other industries were exclusive State subjects. Production, supply and distribution of goods was an exclusive State subject but it was subject to the provisions of Entry 33 of List III. By Clause (a) of Entry 33, as amended in 1954, the product of an industry, where the control of it by the Union was declared by the Parliament to be expedient, became a concurrent subject. So also would be sugarcane which might come under CL (b) of Entry 33.

A clear distinction was drawn between an industry and its products. The industry might be an exclusive Union subject, but the product was a concurrent subject of legislation. In paragraph No. 24 of the Report their Lordships are reported to have held,

"It is clear, therefore, that all the Acts and the notifications issued thereunder by the Centre in regard to sugar and sugarcane were enacted in exercise of the concurrent jurisdiction."

And about a page later they say,

"Before sugar industry became a controlled industry, both sugar and sugarcane fell within Entry 27 of List II but, after a declaration was made by Parliament in 1951 by Act LXV of 1951, sugar industry became a controlled industry and the product of that industry viz., sugar was comprised in Entry 33 of List III taking it out of Entry 27 of List II.

Even so, the Centre as well as the Provincial Legislatures had concurrent jurisdiction in regard to the same. In no event could legislation in regard to sugar and sugarcane be thus included within Entry 52 of List I."

81. In view of the law laid down above, I do not think it is any longer possible to contend that the legislation with respect to sugarcane was exclusively an Union subject falling under entry 52 of List I.

82. Point No. 5.

The next point argued by Mr. Shanti Bhushan was that Section 3 of the impugned Act was void because of the provisions of Article 254 of the Constitution, and it being open to the Union Legislature to legislate upon it, the field of this legislation was an "occupied field" and no legislation by the State Legislatures on the subject of sugarcane was possible. A similar point was taken before the Supreme Court also in the case cited above, and the Supreme Court came to a conclusion adverse to the petitioners.

It was not shown that there was in point of fact any inconsistency with any law made by Parliament and Section 3 of the impugned Act, and while dealing with the point whether legislation with respect to sugar-cane fell within Act No. LXV of 1951 their Lordships held,

"It (the provisions of Act No. LXV of 1951) did not involve the regulation of the

supply and purchase of sugarcane which, though it formed an integral part of the process of manufacture of sugar, was merely the raw material for the industry and as such not within the purview of the Act."

And again

""Raw materials for the manufacture or production of the articles or class of articles in the scheduled industry would certainly not be within this sphere and they would not be able to control the prices or regulate the distribution thereof within the meaning of Section 16 (of Act LXV of 1951)."

A little later they say,

"If the two fields (of sugar and sugarcane) were different and the Central legislation did not intend at all to cover that fields, the field was clear for the operation of State legislation and there was no repugnancy at all between Act LXV of 1951, and the impugned Act."

83. No repugnancy in point of fact having been pointed out and the argument that the field of legislation in respect of sugarcane was "an occupied field" having been rejected, this point also must be answered against the petitioners.

84. Point No. 6.

The next point argued by Mr. G. S. Pathak was that Sub-section (3) of Section 1 of the impugned Act has given retrospective effect, from 26-1-1950 to Sections 2, 3 and 5 to 8 and it was not possible to give retrospective effect to Section 3 of the impugned Act, because the tax under this sub-section was a tax on an activity, namely, the entry of goods in a local area and it was not possible to tax an activity retrospectively. It is not denied that a taxing statute may be given a retrospective operation, but it was argued that the tax generally being on goods, it was possible to tax the goods with retrospective effect, it was not possible to tax an activity with retrospective effect. I do not think that there is any such difference between the two taxes, as to lead to contrary conclusion in regard to the power of the Legislature to impose them retrospectively. Many of the goods are obtained because the owner has bestowed labour in an attempt to obtain them, and they are generally the product of an activity on the part of the persons who subsequently acquire them. The tax in the instant case is not fundamentally different, because it is a tax on sugarcane, though it is levied at the point when the goods enter a local area. The amount of tax would depend on the amount of goods entering the area, and it ultimately falls on the price of sugar. It having been conceded by the learned counsel that retrospective legislation in the matter of taxation is permissible, I need not cite any cases which lay down the law on the point. The instant case, I think, falls within the general rule and the distinction drawn by the learned counsel does not appeal to me.

85. The next point argued in this connection was that the legislation contained in Section 3 of the impugned Act imposes an unreasonable restraint on the petitioner's right to carry on his trade guaranteed to him by Article 19(1)(g) of

the Constitution. It is said that the result of it would be that under the impugned Act the petitioner would be forced to pay in one year the dues of last several years.

86. This at best may mean that the rate of cess was very high this year (though I think it is really not so). People earning large incomes, including some Advocates, may somewhat reasonably be thinking that the rates of super-tax imposed on the higher grade of income imposed an unreasonable restraint on their right to carry on their professions, but there has been no decision yet by any Court holding that the rates of super-tax imposed by the different Finance Acts were void as being inconsistent with Article 19(1)(g) of the Constitution.

In the matter of taxation one of the points considered by the Legislatures is the need of the public in general for raising the sum of money, and the Legislature being the best judge of the need of the general public, it would be very difficult to hold any legislation imposing a tax to be void on the ground that it is an unreasonable restraint on the carrying of a trade or profession.

87. The learned counsel in this connection referred to the case of Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, . In this case the Town Area Committee had framed certain bye-laws prohibiting every person from selling vegetables and fruits within the limits of the Town Area by wholesale or auction without paying the fee fixed by the bye-laws to the licensee appointed by the Town Magistrate.

The Committee had given a contract for sale of vegetables and fruits to a particular individual, and he had also the right of collecting the commission which he was entitled to charge from other wholesale dealers in these commodities. The bye-laws were held to have had the effect of creating a monopoly in favour of the Town Area or the person with whom it had entered into a contract for the collection of commission on the sale of vegetables and fruits.

The Supreme Court held that a bye-law creating a monopoly was inconsistent with Article 19(1)(g) of the Constitution, and as regards the licence fee it was held that the Town Area Committee had no right to impose it, as no authority to do so was conferred upon it by Sections 293(1) and 298(2) (J) (d) of the U. P. Municipalities Act of 1916, which had authorised the imposition only of a fee for the use and occupation of any property vested in the Town Area or entrusted to its management and not any other kind of fee.

The levy of fees in this case was held to be invalid because the Town Area had no authority to impose it and not on the ground that it was an unreasonable restraint on Mohammad Yasin's right to carry on his trade. The levy of the fees having been held to be illegal on other grounds, it was held that the recovery of such an amount from Mohammad Yasin was the imposition of an unreasonable restraint on his right to carry on his wholesale trade of selling vegetables and fruits.

It was held that an illegal impost was always an unreasonable restraint on the right of a citizen to carry on his trade or occupation. But the imposition must be held to be illegal before it can be said to be an unreasonable restraint on the right to carry on a trade. This case, therefore, does not help the learned counsel.

88. It was contended that unreasonableness lies in the fact that the combined effect of Section 1(3) and Section 3(1) of the impugned Act is that the petitioner will now have to pay the sums due on account of sugar-cane cess for the last 3 or 4 years. I have already said above that a taxing statute is not to be held invalid on the ground of excessive taxation; but in the instant case the facts are such that no question of any unreasonableness in the demand of the cess for the previous years can possibly arise.

The cess was imposed for the first time by the Act of 1938 and its validity was challenged in a criminal case in the year 1942 when a learned Judge of this Court held that the legislation was valid and not unconstitutional, see 1942 Cri LJ 112: (AIR 1942 All 156 It was not denied that the petitioners had been paying the cess before the Constitution came into force, and the validity of the imposition was not challenged after 1942 till 1956 in Criminal Revn. No, 1466 of 1953, D/- 9-1-1956 (All) (M). In this case, a Bench of this Court, as I have already stated above, held the corresponding section, namely, section 29 of the Act of 1938 to be a void piece of legislation. It is after this decision that the present petitions were filed.

89. The prices of sugarcane and sugar are both fixed by the Central Government and while fixing the price of sugar the Government must have taken into consideration the cess which the owners of factories had to pay under the impugned Act. The petitioners have presumably been benefited by this addition to the price and the U. P. Legislature has now enacted Section 3(1) with retrospective operation to recover the amount kept back by the factory owners. There are no equities in their favour, and the contention of unreasonableness in making Section 3(1) retrospective has absolutely no force.

90. Point No. 7.

The next point argued by the learned counsel for the petitioner is that Section 9 of the impugned Act is an ineffective piece of legislation, as it purports to validate notifications which were void on account of their inconsistency with the Constitution. Sub-section (2) of Section 9 is important. It is as follows:

""Without prejudice to the general application of Section 24 of the U. P. General Clauses Act, 1904, every notification imposing cess issued and every assessment made (including the amount of cess collected) under or in pursuance of any such notification, shall be deemed a notification issued, assessment made and cess collected under this Act as if Sections 2, 3 and 5 to 8 had been in force at all material dates."

91. The argument of the learned counsel is that the notifications previously

issued were mere waste paper having been issued under invalid enactments, and it was not possible for the U. P. Legislature to validate them by enacting Section 9(2). I do not think that this argument can be given effect to, because those notifications were in existence and instead of rewriting them u/s 3(1) of the impugned Act the Legislature has said that they should be deemed to have been issued u/s 3 of the impugned Act. This is in accordance with the legislative practice and I do not think that Section 9(2) of the impugned Act can be held to be invalid on this ground.

92. The learned counsel then urged that u/s 3(1) of the impugned Act it is the State Government which has the right to issue a notification and by enacting Section 9(2) it is the Legislature which, in effect, has issued those notifications.

It is true that u/s 3(1) of the impugned Act it is the State Government which is authorised to issue such notifications, but same was the position with respect to the previous Acts of 1938 and 1953 and only the State Governments had power to issue such notifications under those enactments. If they are to be deemed to be notifications issued u/s 3(1), they would still be notification issued by the State Government. The personnel of the Government may have changed after 1950 but that does not affect the matter as it was always for the State Governments to have issued the notifications, and the notifications which come under Sub-section (2) of Section 9 are all notifications issued by the State Government.

93. Point No. 8.

The learned counsel then argued that Sub-sections (3) and (5) of Section 3 of the impugned Act are invalid as Sub-section (3) provides for the imposition of interest with retrospective operation, and Sub-section (5) permits a penalty to be imposed, though it is for the first time in 1956 that the notifications demanding the cess have acquired a valid legal status.

As regards the imposition of penalty the learned Advocate-General said, and that statement was not challenged on behalf of petitioners, that no penalty has been imposed so far under any of the Acts of 1938, 1953 and 1956. Section 9(5) has, therefore, not been applied retrospectively and it has not been argued that its prospective operation is invalid. As regards interest, I do not find any good ground for holding that it could not be charged on sums claimed to have fallen due earlier.

94. He also argued that it was outside the competence of the State Legislature to impose interest and penalty because Entry 52 of List II authorised the Legislature only to impose a tax on the entry of sugar-cane into the factory premises and not to impose any interest or penalty if the tax was not paid. I do not think that it was necessary for the Constitution makers to have specifically mentioned interest and penalty also under Entry 52 of List II, because these matters are incidental to the imposition of the tax.

The method of recovery of a tax and the imposition of interest on non-payment or penalty on default are all ancillary to the power of taxation. It was also said that these impositions were unreasonable, but this question I have already discussed above and I do not think that, in point of fact, there is any unreasonableness in the provisions contained in Sub-sections (3) and (5) of Section 3 of the impugned Act.

95. These are all the points that are common to all the petitions argued before us, but an additional point was argued in Writ Case No. 1824 of 1956 which has been filed by the owners of a factory situate in East Punjab. A letter of demand was sent to these petitioners on 2-8-1956 requiring the petitioners to pay the amount of cess outstanding against them and threatening steps to realise the amount, in case of the default of payment, with penalty that could be imposed under the impugned Act. Mr. S. K. Kapur, learned counsel for these petitioners, argued that no notification has been issued at all with respect to this factory u/s 3 of the impugned Act, or under the corresponding sections of any prior enactments, and it was not open to the respondents, under these circumstances, to any proceedings against the petitioners under the impugned Act.

He urged some other points also, but it is not necessary to refer to them because the learned Advocate-General conceded that no action could be taken against the petitioners for the recovery of the cess under the impugned Act. He said that the liability of the petitioners arose under a contract into which they had entered with the State Government and the amount is due under that contract and not under any notification issued under the impugned Act or its predecessors.

He conceded that the demand notice dated 2-8-1956 was invalid in so far as it threatened any action under the impugned Act and gave an undertaking that it would not be so enforced. In view of this undertaking I do not think that it is necessary to issue any writ to the State Government not to enforce the demand in the manner contained in the said notice.

96. Mr. S. K. Kapur also argued that it was not possible to issue notification against the petitioners under the impugned Act, as the factory of the petitioners was situate outside the territory of the State of Uttar Pradesh. But I do not think that I am called upon to enter into this question, as no notification has admittedly been issued against the petitioners under the impugned Act or any previous Act, and it is not certain that any such notification would be issued in future. If one is issued, there would be time enough for the petitioners to approach this Court and the matter will then be considered on its merits.

97. For the above reasons, I think that all these petitions should be dismissed with costs but the cost of writ Cess No. 1824 of 1956 should be paid by the respondents to the petitioners.

98. BY THE COURT.

The petitions are dismissed with costs which we assess at Es. 200 in each case.

In the case of petition No. 1824 of 1956 we direct that these costs be paid by the respondents to the petitioners.