

(1971) 01 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition No. 574D of 1966

Lachmi Narain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-01-1971

Acts Referred:

Citation : (1971) ILR Delhi 107 : (1971) 28 STC 21

Hon'ble Judges : V.S. Deshpande, J

Bench : Single Bench

Advocate : Ashok Sen K. Dayal and B. Kirpal, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The nature and scope of delegated power to modify a Statute and the circumstances in which the exercise of such a power may be questioned are the general aspects of the questions arising in this and the other connected writ petitions.

(2) u/s 2 of the Union Territories (Laws) Act 1950 "the Central Government may, by notification in the Official Gazette. extend to the Union Territory of Delhi, Himachal Pradesh, Manipur or Tripura or to any part of such Territory with such restrictions and modifications as it thinks fit, any enactment which is in force in a State at the date of the Notification."

(3) Accordingly by notification No. SRO-615 dated 28th April 1951. the Central Government extended the Bengal Finance (Sales Tax) Act 1941 to the Union Territory of Delhi with the restrictions and modifications laid down in the said notification. u/s 6(1) of the Bengal Finance (Sales Tax) Act 1941 "no tax shall be payable under this Act on the sale of goods specified in the Second Schedule, subject to the conditions and exceptions, if any, set out therein." In the original Second Schedule "ghee" was exempted by item No. 16 from sales tax. .Item No. 17 originally exempted "cloth of such description as may from time to time be specified by notification in the Gazette, costing less per yard than Rs. 3.00 or

such other sum as may be so specified". The original section 6(2) of the Bengal Finance (Sales Tax) Act 1941 was as follows :-

"THE State Government, after giving by notification in the Official Gazette, not less; than three months" notice of its intention to do so may by like notification add to or omit from or otherwise amend the Schedule and thereupon the Schedule shall be deemed to be amended accordingly."

(4) By the Government of India, Ministry of Home Affairs Notification No. Sro 3908 dated 7th December 1957, the words "not less than three months" notice" in the original section 6(2) were replaced by the words "such previous notice as it considers reasonable". Item No. 17 was replaced with effect from 14th December 1957 by the Government of India. Ministry of Home Affairs notification No. D3212./57-J.II (SRO 3988) with the following:-

"ALL varieties of cotton, woollen, rayon or artificial silk fabrics but not including real silk fabrics."

(5) The cotton durries sold by the petitioners were thus exempted from sales tax for the first time from 14th December 1957. No notice u/s 6(2) had, however, been issued by the Government announcing its intention to amend the Second Schedule in the manner in which it was amended by the above mentioned notification dated 14th December 1957.

(6) On 16th June 1966 by Ministry of Home Affairs notification. No. GSR-964 the Government gave notice of its intention to delete item 16 and to replace item No. 17 with effect from 1st July 1966 as follows:-

"ALL varieties of cotton, woollen, nylon, rayon, pure silk or artificial silk fabrics, but excluding durries, druggist and carpets."

(7) Notification No. Gsr 1061 dated 29th June 1966 accordingly deleted item No. 16 and replaced old item 17 with the new item No. 17 as announced in the notice dated 16th June 1966 with effect from 1st July 1966.

(8) Two of the petitioners, who sell durries, and the other six, who sell ghee, have filed these writ petitions challenging the validity of the withdrawal of the exemption of durries and ghee from payment of sales tax on the following grounds, namely, (1) the power given by section 2 of the Union Territories (Law's) Act 1950 to the Central Government to extend enactments in force, in a State to a Union Territory with such restrictions and modifications as it thinks fit could be exercised by the Government only to make such modifications in the enactment so applied as were necessary in view of the peculiar local conditions. The modification in section 6(2) made by the Sro 3908 dated 7th December, 1957 was not necessitated by this reason. It was. Therefore, ultra virus section 2 of the Union Territories (Laws) Act 1950; (2) such a modification could be made only once when the Bengal Finance (Sales Tax) Act 1941 was extended to Delhi in 1951. No modification could be made after such extension; (3) the modification could not change the policy of the legislature reflected in the Bengal

Finance (Sales Tax) Act 1941. The impugned modification was contrary to it and (4) the notification No. Gsr 964 dated 16th June 1966 giving notice of intention. to withdraw the exemption from sales tax with respect to ghee and durries and the notification No, Gsr 1061 dated 29th June 1966 withdrawing the said exemption were void as the statutory notice of not less than three months as required by section 6(2) prior to its modification by the impugned notification of 7th December, 1957 had not been given- Learned counsel for the petitioners Shri Ashok Sen did not rest the challenge on the other grounds stated in the writ petitions.

(9) The defense by the Government and the Sales Tax Commissioner to the above grounds urged by the petitioners was as follows :-

(1)The impugned modification of section 6(2) of the Bengal Finance (Sales Tax) Act 1941 was covered by the authority given by section 2 of the Union Territories (Laws) Act 1950. (2) Such modifications can be made validly by the Government from time to time even after the Bengal Finance (Sales Tax) Act 1941 was extended to Delhi. (3) The modification made a minor change without contravening the legislative policy reflected in the Bengal Finance (Sales Tax) Act 1941. (4) The original exemption granted to durries by the notification dated 14th December 1957 was itself not preceded by any notice as required by section 6(2) of the Bengal Finance (Sales Tax) Act 1941. The petitioners, who are sellers of durries cannot. Therefore, base their right of exemption of durries on the said notification. They cannot, Therefore, complaint if the said invalid exemption was withdrawn by the notifications dated 16th June 1966 and 29th June 1966.

(10) Let us consider the contentions of the petitioners in the order in which they are set out above. (1) The nature of the power to modify the Bengal Finance (Sales Tax) Act 1941 must be deter- mined entirely with reference to the language of section 2 of the Union (Territories Laws) Act 1950 which conferred the power on the Central Government. Section 2 was primarily concerned with empowering the Central Government to extend to the Union Territories enactments which were in force in the States. As observed by Mukherjea J. in re The Delhi Laws Act 1912, etc. 1951-SCR 747 at page 1001 (1) " the policy behind the Delhi Laws Act [as also behind the Union Territories (Laws) Act 1950] seems to be that in a small area like Delhi which was constituted a separate province only recently and which had neither any local legislature of its own nor was considered to be of sufficient size of importance to have one in the near future, it seemed to the legislature to be quite fit and proper that the laws validly passed and in force in other parts of India should be applied to such area, subject to such restrictions and modifications as might be necessary to make the law suitable to the local conditions."

(11) The Statutes made by the State legislatures used language appropriate to the States. The Constitutional structure of the Union Territory was different. The States had a Governor. Ministries, Legislatures and a certain official set up. The

Union Territory of Delhi had only a Chief Commissioner; no Ministry, no legislature and had officials whose designations may be different. The State Statutes could not, Therefore, be applied to the Union Territory of Delhi literally. They had to be applied mutates mutans. This is why Fazi Ali J. observed at page 846 of the decision in Delhi Laws case as follows:-

"I will now deal with the power of modification which depends on the meaning of the words "with such modifications as it thinks fit". These are not unfamiliar words and they are often used by careful draftsmen to enable laws which are applicable to one place or object to be so adapted as to apply to another. The power of introducing necessary restrictions and modifications is incidental to the power to apply or adapt the law..... The power to modify certainly involves a discretion to make suitable changes, but it would be useless to give an authority the power to adapt a law without giving it the power to make suitable changes."

(12) The basis of the majority decision (Fazi Ali, Patanjali Sastri, Mukherjea, Dass and Bose JJ) holding the, first part of Section 2 of the Part C States Laws Act 1950 (which became the Union Territories (Laws) Act 1950 by adaptation in 1956) in the Delhi Laws Act case was the. decision of the Privy Council in Queen v. Burah (5 1.A.578) (2) For the Privy Council had also given the same reason why the legislature had to confer the power of modification on the Government in the following words :-

"THE legislature determined that, so far, a certain change should take place; but that it was expedient to leave the time and the manner, of carrying it into effect to the discretion of the Lieutenant-Governor; and also, that the laws which were or might be in force in the other territories subject to the same Government were such as it might be fit and proper to apply to this district also; but that, as it was not certain that all those laws, and every part of them, could with equal convenience be so applied, it was expedient, on that point also to entrust a discretion to the Lieutenant-Governor."

(13) As pointed out by Bose J. seeking for a unanimous Constitution Bench in Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, while Kania CJ and Mahajan J held that the power to modify a Statute could not be given to the executive, Patanjali Sastri and Dass JJ took a more liberal view and upheld the power of the legislature to confer such authority on the executive. While Dass and Patanjali Sastri JJ thought that the legislature could delegate almost all its powers to the executive for this purpose, Fazi Ali J. did not go so far as would appear from his views already quoted above. Mukherjea and Dass JJ, Therefore, swung the balance but placed a very restricted meaning on the words "restriction" and "modification" and as they swung the balance their opinion must be accepted as the decision of the Court in The Delhi Laws Act because their opinion embodied the greatest common agreement among the seven Judges. Mukherjea J's opinion is already quoted above. The opinion of Bose J, at page 1124 of The Delhi Laws Act (1) was as follows:-

"THE power to "restrict and modify" does not import the power to make essential changes. It is confined to alterations of a minor character such as are necessary to make an Act intended for one area applicable to another and to bring it into harmony with laws already in being in the State, or to delete portions which are meant solely for another area."

(14) The majority decision of the Supreme Court in *The Delhi Laws* is construed by the unanimous Court in *Rajnarin Singh* (3) is, Therefore, an authority for the proposition that the power to modify can be given by the legislature and exercised by the executive only to make the statute (which was originally intended for a State) applicable to a Union Territory. It is significant that section 2 of the Union Territories (Laws) Act 1950 does not give two separate powers to the Central Government, namely, (1) to extend a State Law to a Union Territory and (2) to modify or restrict such a State Law. On the contrary it confers only one power, namely, that of extending a State law to the Union Territory. It is for the purpose of exercising such a power that the Government is allowed to restrict or modify the State law in its application to the Union Territory. This is why the language of section 2 uses the expression "extend. . . with such restrictions and modifications". The power of modification is thus an integral part of a power of extension. It cannot, Therefore, be exercised except for the purpose of extension. The power of extension in itself is simply to transplant the State law to the Union Territory. It does not comprise any other thing. But it is absolutely necessary to make the State law inapplicable and applicable in Union Territory that some of the nomenclature should be adapted to the different set up of the Union Territory. Otherwise, the State Act will not make sense as applied to the Union Territory. Secondly, as pointed out by Mukherjia J. at pages 1004-1005 in *The Delhi Laws Act* (1) "the "restriction" does not present much difficulty. It connotes limitation imposed upon a particular provision so as to restrain its application or limit its scope. It does not by any means involve any change in the principle". It seems to me that in the context, and used along with the word "restriction" the word "modification" has been employed also in a cognate sense and it does not involve any material or substantial alteration. The dictionary meaning of the expression "to modify" is to "tone down" or "to soften the rigidity of the thing" or "to make partial changes without any radical alteration". It would be quite reasonable to hold that the word "modification" in section 7 of the Delhi Law Act means and signifies changes of such character as are necessary to make the statute which is sought to be extended suitable to the local conditions of the province." The word "modify" thus takes its colour from the word "restrict and according to the well known rule of interpretation "Noscitur a Sociis" has itself to be used in a restricted sense. It does not, Therefore, enable the Government to make any modification in the Bengal Finance (Sales Tax) Act 1941 which is not necessary for the purpose of applying the said Act to the Union Territory of Delhi.

(15) In *Arnold Rodricks and another v. State of Maharashtra and others* (1966 Supreme Court 1738) (4) also the delegation by the State Legislature to the

State Government to confer powers on the Commissioners under different enactments by suitably modifying those enactments was upheld only because the modification could be only with the purpose of enabling the Commissioner to exercise those powers.

(16) What is the purpose of the modification in section 6(2) made by the Government by notification dated 7th December 1957 ? Certainly it has nothing to do with applying the State law to the Union Territory. Its purpose is entirely different, namely, to change the rigid limit of three months fixed by the legislature as the minimum period for which a notice of the intended alteration in the Second Schedule has to be given satisfied that the notice is reasonable. If the legislature had intended to give the Government the power to make a modification unconnected with the application of State law to the Union Territory, it would have said so. It would have then used words signifying that in addition to or apart from the power to extend a State law to the Union Territory, the Government would also have the power to modify it. Firstly, the legislature has not said so. Secondly, the language of section 2 has to be construed according to the ""two can one of interpretation" as pointed out by Cardozo J. in his famous dissenting opinion (which is now regarded as the correct law) given in *Panama Refining Co. V. Ryan* (1935) 293 U.S. 388 :-

"ONE is that the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view. The other is that when a statute is reasonably susceptible of two interpretations, by one of which it is unconstitutional and by the other valid, the court prefers the meaning that preserves to the meaning that destroys."

(17) If we were to construe, the power to modify as including the making of modifications unconnected with the extension of the State Act to a Union Territory then the only guideline or standard laid down by the legislature for the exercise of the power or modification by the Government would be lost and the Government would be left to exercise the power arbitrarily without any fetter whatsoever. As we shall see later. such a power would enable the Government to modify an Act even contrary to the policy of the legislature. This would make section 2 itself ultra virus for excessive delegation. Such a construction is, Therefore, to be avoided. The conclusion is, Therefore, inescapable that the modification made by the Government in section 6(2) of the Bengal Finance (Sales Tax) Act 1941 by notification dated 7th December 1957 was not permissible by the language of section 2 of the Union Territories (Laws) Act 1950. As it was unrelated to the purpose for which the power was given by the legislature and unconnected with it, the modification was unauthorised and, Therefore, illegal and void. (2) The second contention is closely connected with the first. Normally the act of extending State law to the Union Territory is complete when such a law is applied with necessary restrictions and modifications. A future modification is not easy to conceive in as much as the extension of the Act has already become complete. It may, however, be that

some changes in the constitutional structure of the Union Territory may bring about further change of nomenclature etc., and may again necessitate a further modification of the State law to make it applicable to the Union Territory after such change. Therefore, while theoretically a future modification may be conceivable in actual practice it would not occur unless it is called for by a subsequent change in the constitutional set up or structure of the Union Territory. In the present case, there has been in 1957 no such change in the structure of the Union Territory as would necessitate a further modification of the Bengal Finance (Sales Tax) Act 1941 u/s 2 of the Union Territories (Laws) Act 1950.

(18) Learned counsel for the respondent Shri B. N. Kirpal referred to section 21 of the General Clauses Act which runs as follows :-

""WHERE, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to amend, vary or rescind any notifications orders, rules or bye-laws so issued."

(19) I may further add that the Central Government can also invoke in a suitable case the provisions of section 14 of the said Act which is as follows:-

"(1)Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires. (2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

(20) But as observed by the Supreme Court in Gopi Chand Vs. The Delhi Administration, "section 21 of the General Clauses Act, embodies a rule of construction, the nature and extent of the application of which must inevitably be governed by the relevant provisions of the statute which confers the power to issue the notification but the said power must inevitably be exercised within the limits prescribed by the provision conferring the said power." It follows, Therefore, that the answer to the question whether the Central Government can exercise the power of modification repeatedly depends not so much on section 21 of the General Clauses Act but on section 2 of the Union Territories (Laws) Act 1950. Normally section 2 does not so contemplate. Exceptional, this may be permitted but as stated above the exceptional circumstances have not come into being. This is equally in tune of section 14 also.

(21) Shri Kirpal relied on the decisions of the Supreme Court in Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, and in Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh and others (1959 Scr 427) (8) in support of his argument that the Government could exercise the power of modification even after the extension of the State Act to the Union Territory had already become complete. In my view these decisions do not support Shri Kirpal's argument. The amount of land revenue or rent cannot be fixed once and

for all time to come but has to be varied according to the changes in the productivity of the land, in the value of money, etc. Therefore, the power to fix the rent could be exercised repeatedly, as held in *Vasantlal Manganbhai Sanjanwala* (7). Similarly, the power to exempt goods from tax cannot be exercised once and for all the time to come. Exemptions have to be added to or withdrawn according to the changing state of the economy. The power concerned in *Pandit Banarsi Das Bhanot* (8) was similar to the power exercisable u/s 6(2) of the Bengal Finance (Sales Tax) Act 1941. Both of them are to be exercised from time to time unlike the power given by section 2 of the Union Territories (Laws) Act 1950 which is exercisable only for one purpose and is not, Therefore, exercisable again unless, in exceptional circumstances, it is necessary to do so again for the same purpose. As no change and no exceptional circumstances have arisen in the present case the Government was not competent to exercise the power to modify the Bengal Finance (Sales Tax) Act 1941 after the interval of so many years after the said Act was extended to Delhi in 1951, (3) It is established by the decisions in *The Delhi Laws Act*, *Rajnarain Singh and Arnold Rodricks* and another cases, referred to above, as also by several other decisions of the Supreme Court culminating in the majority decision in the *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills. Delhi and another* (1968-3 Scr 251) (9) that to quote *Wanchoo Cj* at page 261, "it is open to the legislature to delegate to subordinate authorities the power to make ancillary rules for the purpose of carrying out the intention of the legislature indicated in the law which gives power to frame such ancillary rules. The legitimacy of delegation depended upon its being used as an ancillary means to the "essential legislative function". . . .that the essential legislative function is one which the legislature considered to be necessary for the purpose of exercising its legislative powers effectively and completely.

(22) The legislature must retain in its own must at least consist of the determination of the legislative policy". In *Rajnarain Singh*. cited above, it was held that one of the essential features of the Bihar and Orissa Municipal Act 1922 was that no municipality could impose a tax on the inhabitants of a locality without giving them a chance of being heard after the giving of a statutory notice and of being given an opportunity to object to the levy of the tax. The Government was under a statutory duty to listen to the objections. "This is a matter of policy: a policy imposed by the legislature. The application of section 104 of the said Act to the Patna Administration areas without applying sections 4, 5 and 6 was held to be ultra vires inasmuch as this kind of modification of the Act so extended to the Patna Administration areas was not authorised by the legislature". The language in which the authority to modify the Act was given to the Government by section 3(1) (f) of the Patna Administration Act 1915 was the same as the language of section 2 of the Union Territories (Laws) Act 1950. The decision in *Rajnarain Singh* is, Therefore, an authority that it is a matter of legislative policy to give hearing to the persons on whom the tax is to be imposed before the tax is imposed and the executive cannot modify the taxing

statute in such a way as to deprive the would-be tax-payer of this opportunity.

(23) The policy underlying section 6(2) of the Bengal Finance ;(Sales. Tax) Act 1941 is clear. A minimum notice of three months must be given before a tax is imposed. Shri Kirpal argued that the object of section 6(2) was not to give a hearing to the would be tax-payers but was rather to enable them to register themselves under the Bengal Finance (Sales Tax) Act 1941 inasmuch as section 7(1) prohibited a dealer from carrying business while being liable to pay tax. unless he has been registered and possessed a registration certificate. The giving of time to arrange his sales and other affairs and to get himself registered before the tax is imposed may be one of the purposes of the notice u/s 6(2). It cannot be said, however, that to hear objections against the imposition of tax by the withdrawal of exemptions cannot be another object of the notice u/s 6(2). On the contrary, the Government is always interested in hearing objections from tax-payers and. Therefore, the opportunity to be heard given by such a notice must also be considered to be an object underlying section 6(2). The legislature thought in its wisdom that for giving effect to both these objects the notice u/s 6(2) should not be less than three months. The Government was not authorised by section 2 of the Union Territories (Laws) Act 1950 to change this legislative policy. The modification made by the Government in section 6(2) is that the Government would give only such notice as it thinks fit and reasonable. While the original section 6(2) embodied the judgment of the legislature that the notice shall not be less than three months, the modified section 6(2) cancels the decision of the legislature altogether. In its place it gives the discretion to the Government which was totally denied by the legislature to it in the original section 6(2). Even the discretion given to the Government is not guided by any objective considerations. It is completely subjective. It cannot be said. Therefore, that the modification was made for the purpose of giving effect to the legislative policy. On the contrary it has completely changed the legislative policy as shown above.

(24) In Gopi Chand case, referred to above, section 36(1) of the East Punjab Public Safety Act 1949 authorised the Government to direct that offences mentioned therein and committed in the area declared to be dangerously disturbed area u/s 20 of the said Act should be tried under the summons procedure. The said Act was a temporary one. The Government issued notifications seeking to do two things. Firstly, it sought to continue the application of the expired statute as respect things done or omitted to be done before the issue of notification. Secondly, it sought to save pending proceedings from lapsing by the expiry of the Act. it was arguable that the modification of the statute attempted by these notifications was eminently reasonable and was made with a view to cure the defects in the statute- Nevertheless, the Supreme Court held that the notifications were wholly outside the authority conferred on the Government by sections 20 and 36(1) of the Act and must be held to be invalid. For, the Government was not authorised to issue a notification in regard to the trial of any specified case or Ceases but only with respect to offences.

Further, if through inadvertence the statute did not contain an appropriate saving section, the defect could not be cured by way of modification. At page 100 the Court observed "in issuing the said notification the competent authority was taking upon itself the functions of the legislature and that clearly was outside its authority as a delegate either u/s 20 or u/s 36(1) of the Act."

(25) The same reasoning applies to the present case. If the minimum period of three months fixed by the Legislature in section 6(2) is considered to be rigid then only the legislature can amend section 6(2) with a view to change the policy underlying section 6(2). The authority given to the Government by section 2 is confined firstly to modifications which may be made only with a view to apply the State Act to the Union Territory. Secondly, if it is assumed for the sake of argument that the "Government could make some modifications in the Bengal Finance (Sales Tax) Act 1941 which is not concerned with its application to a Union Territory even then such a modification has to" be of a minor character and ancillary one. It must be directed to effectuate the legislative policy, in no case can it change the legislative policy. Such an attempted change would be a substantial one and" was not. Therefore, covered by section 2. For. as observed by Ernst Freund in his "Administrative Powers over Persons and Property" "the appropriate sphere of delegated authority is where there are no controverted issues of policy or of opinion". To construe section 2 of the Union Territories (Laws) Act to give the Government an authority to make such a substantial change in the policy of the legislature would be to make it ultra virus on the ground of excessive delegation.

(26) It is true that section 2 of the Union Territories (Laws) Act 1950 enables the Government to apply the said law with such restrictions and modifications "as it thinks fit". These words may appear to be very wide. But in fact they have to be construed so narrowly as to confine to the power to modify within the limits stated above. If construed widely, they would amount to excessive delegation and would invalidate section 2. Such a construction is not warranted. The notification issued by the Government on 7th December, 1957. is. Therefore, ultra virus for this reason also.

(27) The effect of the above findings is that the old section 6(2) of the Bengal Finance (Sales Tax) Act 1941 remained as it was. namely, a notice of at least three months had to be given before an exemption given by the Second Schedule could be withdrawn. The notice period given by the notification of 16th June 1966 was much less than the statutory period of three months prescribed by section 6(2). The withdrawal of the exemption on 29th. June 1966 was, Therefore, invalid. (4) Shri Kirpal contends that the grant of the ?exemption to the durries by the notification dated 14th, December 1957 was itself invalid as the said notification had not been preceded by any notice whatsoever. Shri Sen replies that the exemption granted on 14th December 1957 was preceded by representations made by the tax-payers and further that the notice was for the benefit of the taxpayers who could waive it.

(28) The object of section 6(2) of the Bengal Finance (Sales Tax) Act 1941 was two-fold, namely. (1) to add to the list of goods exempted from sales tax in the Second Schedule and (2) to omit goods from the list of exempted goods in the Second Schedule and thus to make the omitted goods taxable. It is well established that a power conferred on the Government or a local authority to impose a tax after previous publication of the tax proposal so as to enable persons likely to be affected by the proposed tax to file objections or representations is not properly exercised if the tax proposal is not duly published as required by the statute and if the non-compliance with the statute deprives the tax-payers from the opportunity of representing against the tax proposals- *Radha Kissan v. Municipal Committee Khandwa* Air 1934 Pc 620 *Municipal Council, Khurai and Another Vs. Kamal Kumar and Another, a and Bagalkot City Municipality v. Bagalkot Cement Co.* 1963 (Suppl.) Scr 710 . The failure to give the prescribed notice of three months before the withdrawal of the exemption being in contravention of the original section 6(2) of the Bengal Finance (Sales Tax) Act 1941 the said withdrawal of exemption was, Therefore, void.

(29) On the other hand, the grant of exemption did not impose any burden on any one and on the contrary benefited the hitherto tax-payers by exempting them from paying sales tax on the exempted goods. If no notice was given u/s 6(2) before the grant of the exemption, no one was entitled to complain as no one was aggrieved by such lack of notice. Grant of exemption by the notification dated 14th December 1957 to durries was. Therefore, not invalid though the exemption was granted without compliance with section 6(2). The reason why non-compliance of section 6(2) vitiates the withdrawal of exemption but does not vitiate the grant of exemption is that the prescribed notice is mandatory before an exemption can be withdrawn to impose the tax but is only directory before the exemption is granted. Though section 6(2) of the Bengal Finance (Sales Tax) Act 1941 deals with both the grant of exemption and withdrawal of exemption and prescribes the same procedure for both. the object and the effect of the two being different, the procedure is mandatory only for the imposition of the tax but not for exemption from the tax. The same provision of law dealing with two distinct matters can thus be mandatory regarding one and directory regarding the other. This is illustrated by the Supreme Court decision in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, . Section 131(3) of the U.P. Municipalities Act 1916 prescribes the same procedure for publication of the tax proposals as also for the publication of the draft rules laying down the procedure for the publication. A dissenting Judge (Mudholkar J) at page 988 found it difficult to construe section 131(3) as partly directory and partly mandatory inasmuch as the same verb "shall" govern both the publication as well as the manner of publication. The majority of the Constitution Bench, however, divided section 131(3) into two parts: the first dealing with necessity of publication and the second with the manner of publication. The publication of the first is to enable the public to make representations against the proposed tax. The object of the second was only to lay down the procedure of publication. It is, Therefore, only

the first which was held to be mandatory while the second one was held only to be directory. Following the same reasoning it would appear that the requirements of section 6(2) are mandatory only if the exemption granted to goods is to be withdrawn by omitting item from the second schedule but it is directory if exemption is to be granted by adding an item to the second schedule. For, imposition of tax is to be preceded by opportunity for making representation against it but no such opportunity is necessary before an exemption from payment of tax is to be granted. The grant of exemption by the notification dated 14th December 1957 was, Therefore, not invalid though it was not preceded by complying with section 6(2). On the other hand, the withdrawal of exemption by the notifications dated 16th June 1966 and 29th June 1966 was invalid for want of compliance with section 6(2) of the Bengal Finance (Sales Tax) Act 1941. There is, Therefore, no inconsistency in the stand taken by the petitioners in these writ petitions that the withdrawal of the exemption granted to durries was invalid for want of the prescribed notice even though the original grant of exemption to durries was not preceded by the same prescribed notice. They are, Therefore, entitled to succeed in these petitions.

(30) The conclusion, Therefore, is that section 6(2) of the Bengal Finance (Sales Tax) Act 1941 can be amended only by the legislature if the prescribed period of notice of three months is to be done away with. The Government cannot do so by purporting to modify section 6(2) by amending the notification by which the said Act was applied to Delhi.

(31) During the arguments Shri B. N. Kirpal, learned counsel for the respondents, urged me to consider one new point. He said that section 6(2) had been amended by the Bengal Finance (Sales Tax) (Delhi Amendment) Act 1959 and on the principle that an amendment amounts to re-enactment of the said Act, I should hold that section 6(2) had been re-enacted by the legislature in 1959 with the effect that the invalid modification thereof made by the Government in 1957 was validated. Shri Kirpal relied upon the minority decision given by me in *P.L. Mehra, etc. Vs. D.R. Khanna etc.*, , decided by a Full Bench of this Court on 2nd September 1970 and the Supreme Court decisions in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, *Gour Chandra Rout and Another Vs. The Public Prosecutor, Cuttack*, and *Venkata Rao Esajirao Limbekar and Others Vs. The State of Bombay and Others*,).

(32) In *P. L. Mehra*, the question was whether the amendment of the Public Premises (Eviction of Unauthorised Occupants) Act 1958 could validate the said Act which had become void as being contrary to Article 14 of the Constitution. Before the amendment two different remedies, namely, one by way of suit and the other by way of eviction under the Act were available to the Government and, Therefore, the Government could discriminate between unauthorised occupants by resorting to suits to evict some and by resorting to the summary proceedings under the Act to evict others. This vice of discrimination was removed when the amendment made it clear that the only remedy available to

the Government was to proceed under the Act and not by way of a suit. The amendment was thus directed against the very provision of the Act which made it discriminatory. It was the removal of that provision from the Act which, in my opinion, made the Act constitutional. To meet the argument that the whole Act had to be re-enacted to make it constitutional I observed as follows :-

"THE true principal is that an amendment which changes the provisions of an unconstitutional statute with a view to make it constitutional is in effect re-enactment of such a statute."

(33) The amendment of section 6(2) by the Bengal Finance (Sales Tax) (Delhi Amendment) Act 1959 was not an amendment which changed the provisions of the Bengal Finance (Sales Tax) Act 1941 with a view to cure the validity of the modification made in section 6(2) by the Government in 1957. The amendment of 1959 was not concerned with section 6(2) at all except incidentally Section 2(b) of the Bengal Finance (Sales Tax) (Delhi Amendment) Act 1959 substituted the words "Central Government" for the words "State Government" everywhere in the Bengal Finance (Sales Tax) Act 1941 except in sub-section (3) of section 25 thereof. As the Amendment was not directed towards the cure of the invalidity of the modification made by the Government in 1957 in section 6(2), it could not have the effect of amending section 6(2) in that respect, much less an effect of re-enacting the Bengal Finance (Sales Tax) Act 1941.

(34) The Supreme Court decisions, referred to by Shri Kirpal, do not support his argument. The decision in *Devi Dass* is not relevant inasmuch as the amendment in that case was directed specifically towards the cure of the invalidity of section 5 of the East Punjab General Sales Tax Act 1948 and, Therefore, it was held that in substance the amendment had the effect of re-enacting the whole of section 5. In the decision in *Municipal Committee Amritsar* also the amendment removed the defect of vagueness from the impugned legislation. In *Venkatarao* case the assent given by the President to the amending Act was construed as being an assent to the parent Act also. In none of these decisions it was held that any amendment of an impugned statute could have the effect of curing the invalidity of a provision of that statute even though the said provision was not the subject-matter of the amendment at all.

(35) The writ petitions are, Therefore, allowed and it is declared that the purported modification of section 6(2) of the Bengal Finance (Sales Tax) Act 1941 by the Government of India notification No. SRO. 3908 dated 7th December 1957 was ineffective and section 6(2) continues to be the same as before as if it was not so modified at all. Consequently, the Government of India's notifications No. Gsr 964 dated 16th June 1966 and Gsr 1061 dated 29th June 1966 are quashed because they were not in compliance with the provisions of section 6(2) of the Bengal Finance (Sales Tax) Act, 1941. There shall be no order as to costs.

(36) This decision shall also dispose of Civil Writ Petitions 575-D, 669-D. 670-D.

671-D. 672-D, 673-D and 674-D of 1966.