
(1988) 05 PAT CK 0056

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2883 of 1986.

M/s. Amrapali Films Ltd

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 23-05-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 207, 213, 213(1), 226

Citation : (1989) PLJR 199

Hon'ble Judges : S.B. Sinha, J;N.P. Singh, J

Bench : Division Bench

Advocate : Shreenath Singh, G.C. Bharuka, Navniti Prasad Singh, Ramesh Kumar Agrawal and S.D. Sanjay, for the Appellant; Ram Balak Mahto, Kamlapati Singh and Miss Sangita Das Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ application the petitioner, inter alia challenges the validity of Ordinance No. 16 of 1986, commonly known as "Bihar Entertainment Tax (Amending & Validating) Ordinance. 1986" (hereinafter to be referred to as "the Ordinance") and subsequent Ordinances promulgated by the Governor of Bihar in exercise of the powers conferred upon him under Article 213 of the Constitution of India, whereby and whereunder certain validating provisions have been inserted therein evidently in order to get rid of the judgment of this Court rendered in C.W.J.C. No. 3188 of 1980. The petitioner in this writ application has further prayed for quashing the order dated 9.5.1986 passed by the Deputy Commissioner of Commercial Taxes, North Circle, Patna (respondent No. 3), as contained in Annexure-8 to the writ application, whereby and whereunder he refused to refund the amount, in view of the aforementioned ordinance No. 16 of 1986 as contained in Annexure-9 to the application and the subsequent ordinances. The basic facts involved in this writ application are not at all in dispute. The petitioner carries on business of exhibiting cinematographic films in a hall situated at West Gandhi Maidan, Patna, known as "MONA 70 MM" and is

also the proprietor of the said establishment. After the establishment of the aforementioned theatre, the petitioner who admittedly is liable to pay Entertainment Tax in terms of the Bihar Entertainment Tax Act, 1948 (hereinafter to be referred to as "the Act") and the rules framed thereunder, entered into an agreement of composition in relation to payment of tax in terms of Section 3 (5) (b) thereof. Under the aforesaid provision of the Act, the petitioner filed an application on 27.11.1979 for composition of its entertainment-tax liability for the period up to 31.3.1981, and the proposal to that effect was made by the Commissioner of Commercial Taxes on 30.1.1980 fixing the tax liability of the petitioner to the extent of 50% of the house full capacity, and the said proposal was accepted by the State Minister of Finance vide his order dated 10.2.1980. However, as a consequence of the dissolution of the State Assembly, the aforementioned matter was referred to the Finance Commissioner who also approved the said proposal on 5.3.1980. Pursuant to and in furtherance of the aforementioned approval of the proposal, a certificate of compounding in the prescribed form (Form V) was granted to the petitioner for the period 18.1.1980 to 31.3.1981. Although the period covered in the aforementioned composition scheme was from 18.1.1980 to 31.3.1981 but in terms of condition No. 8 of the certificate of composition granted in Form V aforementioned, the same was required to be renewed every six months. Under the aforementioned composition scheme, power was also conferred upon the authorities concerned to revoke the said agreement at any time as would appear from Clause (10) thereof.

2. In terms of the aforementioned condition No. 8 of the certificate of compounding, the petitioner filed an application for renewal of the said agreement for composition which was considered by the Commissioner of Commercial Taxes, who by his order dated 3.12.1980 held that although the permission of composition granted to the petitioner was for a period of more than six months, but the same being in contravention of Rule 18 (4) of the Bihar Entertainment Tax Rules, he refused to renew the said agreement after 17.7.1980. The aforementioned order dated 3.12.1980 is contained in Annexure-12 to the supplementary affidavit filed on behalf of the petitioner on 12.1.1987.

3. However, it may be mentioned that the authorities concerned treated the aforementioned order dated 3.12.1980 as purporting to be in order of revocation of the certificate of composition and proceeded on that basis.

4. The petitioner thereafter, filed a writ petition in this court challenging the aforementioned order dated 3.12.1980, being C.W. J.C. No. 3188 of 1980. The aforementioned writ petition was ultimately heard by this court and S.B. Sanyal, J., by his judgment dated 30.4.1985, as contained in Annexure-1 to the writ petition, allowed the said application holding, inter-alia therein that Rule 18 (4) of the Bihar Entertainment Tax Rules 1949 had no application in the facts of the case. It was further held therein that as the petitioner had not violated any terms and conditions of the permission, the purported order of revocation dated

3.12.1980 was illegal. By reason of the said judgment, the respondents were further directed to refund the excess amount paid by the petitioner. On or about 22.8.1985, the petitioner in terms of the aforementioned judgment made a demand upon the concerned respondents claiming refund of the excess amount deposited by it, and in reply to the petitioner's aforementioned demand, respondent No. 3 on 29.8.1985 directed the petitioner to produce evidence of payment of money for purchase of adhesive stamps from the treasury. Pursuant to the aforementioned order of the respondent No. 3, the petitioner furnished the details thereof on 31.8.1985, along with the certificate of the Treasury Officer, as contained in Annexures 3 and 4 to the writ petition.

5. As inspite thereof as the respondent No. 3 did not refund the amount claimed within a reasonable time, the petitioner wrote a letter on 11.12.1985 to the respondent No. 2 the Commissioner of Commercial Taxes again giving details, of purchase of adhesive stamps, and further claimed refund of the amount allegedly deposited by it in excess, together with interest at 12% P.M. But as the respondents, however, did not pass any order refunding the amount to the petitioner, in terms of the judgment dated 30.4.1985 passed by this Court in the aforementioned C.W.J.C. No. 3188 of 1986, the petitioner filed another writ petition in this Court on 28.1.1986, which was marked as C.W.J.C. No. 487 of 1986.

6. It appears that in the meanwhile the State of Bihar filed a SLP in the Supreme Court of India against the aforesaid judgment of this Court dated 30.4.1985 passed in C.W.J.C. No. 3188 of 1980, which was marked as SLP (Civil) No. 1740 of 1986.

7. By an order dated 12.2.1986, a Division Bench of this Court in the aforementioned C.W.J.C. No. 487 of 1986 directed the respondents to refund the amount as claimed by the petitioner by 30.5.1986, as contained in Annexure-6 to the writ application. On 19.3.1986 notices were issued to the petitioner- showing the following amounts refundable to it:--

Period

Amount

1.10.1980 to 31.12.1980

Rs. 11,698-80 p.

1.1.1980 to 31.2.1981

Rs. 1,65,530-35 p.

Total Rs. 1,67,229-15 p. (sic)

The aforementioned notices are contained in Annexure-7 and 7/A to the writ application.

8. On 1.5.1986 the SLP filed by the State of Bihar, being SLP (Civil) No. 1740 of

1986 was dismissed by the Supreme Court of India. Thereafter the Governor of Bihar as stated hereinbefore, promulgated Ordinance No. 16 of 1986, a copy of which is contained in Annexure-9 to the writ petition. By reason of the aforementioned Ordinance, two new sub-sections, being sub-section 3(a) and 3(b) were inserted after sub-section (2) of Section 21 A of the Bihar Entertainments Tax Act, 1948 (Bihar Act 25 of 1948). On the eve of expiry of the said ordinance the Governor of Bihar again promulgated an Ordinance known as Bihar Entertainments Tax (Amending and Validating) Second Ordinance, 1986 (Bihar Ordinance 21 of 1986). By reason of the aforementioned Ordinance (Annexure-11 to supplementary affidavit), three provisos were inserted after Section 3 of the said Act. By reason of Section 2 of the said Ordinance, the said provisos would be deemed always to have been so inserted. By reason of section 3 of the said Ordinance instead of second proviso appended to Section 3A of the said Act, the proviso contained therein was substituted. By reason of Section 4 of the aforementioned Ordinance proviso to Section 3B of the said Act was substituted by a new proviso as mentioned in the Ordinance. By reason of section 5 of the Ordinance, Section 3C of the said Act was amended by substituting a new table as appended to Section 5 of the said Ordinance. By reason of Section 6 of the said Ordinance, Section 7A of Bihar Act 35 of 1948 was deleted. In terms of section 7 of the Ordinance, in sub-section (5) of Section 9 of the said Act, after the words "Compounded tax under", the words and figures, "section 3A of or "3B of" was inserted. By reason of section 8 of the said Ordinance, various validating provisions, being sub-sections 3 (a), 3 (b), 4 (a) and 4 (b) were added after sub-section (2) of Section 21 A of the said Act.

9. The petitioner, has brought on record that after 7.5.1986 when Bihar Ordinance 16 of 1986 was promulgated; a memorandum was placed before the Cabinet for its ex-postfacto approval of the aforementioned Ordinance No. 16 of 1986. By an order dated 9.5.1986, as contained in Annexure-8 to the writ petition, respondent No. 3 refused to refund the amount to the petitioner in view of Bihar Ordinance 16 of 1986. This writ petition was filed on 4.7.1986. On 20.8.1986 the Bihar Legislative Assembly and the Bihar Legislative Council were summoned, and on 20th September, 1986, both the houses were prorogued. Thereafter, as stated hereinbefore, Bihar Ordinance 21 of 1986 was promulgated on 1.10.1986. Again on 9.3.1987 both the houses were summoned, which were prorogued on 21.2.1987. On 18.4.87 a third Ordinance, being Bihar Ordinance 11 of 1986 was promulgated. Thereafter both the houses were summoned on 9.2.1987 and were prorogued on 21.3.1987. The Government of Bihar again promulgated an Ordinance on 18.4.1987, being Bihar Ordinance 11 of 1987. The Legislative Assembly and the Legislative Council of the State of Bihar were again summoned on 26.6.1987, and prorogued on 28.9.1987, and in the meanwhile another Ordinance was promulgated on 7.8.1987 being Bihar Ordinance 17 of 1987. Bihar Ordinance nos. 11 of 1987 and 17 of 1987 have been brought on record by the petitioner by filing an application on 30.11.1987 for amendment of the writ petition wherein a prayer has been made also to declare the

aforementioned Ordinances as ultra vires of the Constitution of India. The aforementioned Bihar Ordinances No. 11 and 17 of 1987 are contained in Annexures 16 and 17 to the aforementioned application for amendment of the writ petition.

10. Mr. Shreenath Singh, learned Senior Counsel appearing on behalf of the petitioner has raised the following contentions:--

(i) The three provisos added to Section 3 of the Act under the purported validating provisions as contained in Section 8 of the said Ordinance 21 of 1986, are wholly illegal, and ultra vires the Constitution of India and the second proviso to Section 3 of the said Act inserted by the aforementioned Ordinance whereby and whereunder a power has been conferred upon the authorities to revoke the permission at any point of time is wholly unguided and un-canalised, and as such the same is ultra vires Article 14 of the Constitution.

(ii) In any event as there has been no order expressly revoking the said permission of the third proviso, inserted in the said Act by reason of the aforementioned Ordinances whereby and whereunder the tax levied, collected and paid, were to be considered to be a validly levied, collected and paid in accordance with law, the same would have no application to the facts of this case whatsoever.

(iii) In view of the pronouncement of this court in its judgment dated 30.4.1985 in C.W.J.C. No. 3188 (Annexure-1 to the writ application), the validating Act cannot have any application whatsoever in the facts and circumstances of this case, as the effect thereof has not been taken away by reason of the validating Act.

(iv) In the alternative, learned Counsel submitted that even assuming that the second and the third proviso have no application, to the facts and circumstances of the case, and the proviso (1) inserted to Section 3 has, still then, the impugned order could not have been passed on the basis thereof, as while passing the impugned order 3.12.1980 (Annexure-12), the Commissioner, Commercial Taxes, even assuming that he exercised his jurisdiction in terms of first proviso to Section 3, which was inserted retrospectively, it was incumbent upon him to consider the application of the petitioner for renewal of the permission, as the said power had expressly been conferred in this regard by virtue of the aforementioned first proviso to Section 3, and thus the State was bound to renew the said permission after expiry of the period of six months from 18.1.1980, i.e. with effect from 17.7.1980 relying on the basis of the doctrine of promissory estoppel.

(v) Learned Counsel further submitted that in any event, the object of the validating Ordinances being only to get rid of the judgment of this Court, as would be evident from the Bill prepared by the State of Bihar for introducing the Bihar Entertainment Tax (Amending & Validating) Ordinance, 1986, and as contained in Annexure-8 to the writ application, the same is wholly illegal and

without jurisdiction.

(vi) Learned Counsel lastly submitted that in any view of the matter, as the State of Bihar promulgated successive Ordinances, without placing the same before the Bihar Legislative Assembly & Council, although both the houses assembled and prorogued on various occasions as mentioned hereinbefore, the said Ordinance must be declared ultra vires the Constitution of India in view of the decision of the Supreme Court in the case of Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, .

11. Learned Advocate General appearing on behalf of the respondent, on the other hand submitted by reason of the validating Acts, the defects pointed out in the judgment of this Court in C.W.J.C. No. 3188 of 1980 were cured and the basis for realisation of the tax by putting adhesive stamps having been complied with in a case where tax has been paid in that manner in spite of composition scheme being in force, the impugned order is valid. The learned Advocate General has further submitted that as in terms of the first proviso appended to Section 3 of the Act by the Ordinance aforementioned, the period of six months has been mandatorily fixed, during which period the composition scheme remained valid, the question of the petitioner having any right to pay tax on the basis of such composition scheme upon expiry of the said period does not arise. The learned Advocate General further submitted that after expiry of six months from 18.1.1980, the period of composition having statutorily expired, it was incumbent upon the petitioner to deposit and/or pay tax in terms of the charging provision contained in Section 3 and 5A of the Act, and in that view of the matter, the impugned order based on validating Act cannot be assailed. It was further submitted on behalf of the respondents that even assuming that the third proviso appended to Section 3 of the Act cannot be taken recourse to, as no express order revoking the permission had been passed, but the effect of the judgment having been nullified the actions on the part of the State to realise the tax under the provisions of Sections 3 and 5A of the Act have been validated in terms of Section 8 of the Validating Ordinances. The learned Advocate General further submitted that in the facts and circumstances of the case the decision of the Supreme Court in Wadhwas"s case (supra) has no application in this case as the bill which was prepared could not be introduced before both the Houses in view of the difficulties mentioned in the supplementary counter-affidavit filed on behalf of the State of Bihar. The learned Advocate General submits that such extraordinary circumstances, as mentioned in the said counter-affidavit, come within the purview of the exceptions mentioned in the aforementioned decision of the Supreme Court itself.

12. Before advertng to the above questions in my opinion, it is necessary to take into consideration the different provisions of the said Act, and the relevant portions of the impugned ordinances:--

2. Definitions.--In this Act, unless there is anything repugnant in the subject or context:--

(d) "entertainment" includes any exhibition, performance, amusement, game, sport or races to which persons are admitted for payment;

"(E) "Entertainment Tax" includes tax levied under sections 3, 3A, 3B and 3C;"

"3. Tax on entertainments.--(1) Subject to the provisions of this Act, there shall be levied and paid to the State Government an entertainment tax at such rates not exceeding one hundred fifty per centum of the amount of payment chargeable for admission as the State Government may fix by a notification issued in this behalf and such tax shall be payable by the proprietor of an entertainment.

(2) There shall further be levied and paid to the State Government, a tax at such rate, not exceeding rupees one hundred for every show of an entertainment as the State Government may from time to time fix and notify and such tax shall be deemed to be part of the entertainment tax and shall be payable by the proprietor of an entertainment:

Provided that nothing in sub-section (1) or (2) shall preclude the State Government from fixing and notifying different rates of entertainment tax for different entertainments or different classes of an entertainment or entertainments of different places or areas.

(3) The amount of entertainment tax payable on any payment for admission shall not be less than five paise, and fractions of five paise in the amount of tax shall be rounded off to the next higher multiple of five paise.

(4) Where the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any person, or for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time, or for any privilege, right facility or thing combined with the right of admission to any entertainment or involving such right of admission without further payment or at a reduced charge, the entertainment tax shall be paid on the amount of such lump sum but where the Government is of opinion that the payment of a lump sum represents payment, for other privileges, rights or purposes besides the admission to an entertainment, or covers admission to an entertainment during any period for which the entertainments tax has not been in operation the tax shall be charged on such amount as appears to the Government to represent the right of admission to entertainments in respect of which the entertainments tax is payable.

(5) The State Government may, on the application of the proprietor of any entertainment in respect of which the entertainments tax is payable, permit the proprietor to pay, on such conditions as may be prescribed, the amount of tax due--

(a) by compounding, in the prescribed manner, the tax payable in respect of such entertainment for a fixed sum; or

(b) by a consolidated payment at such percentage of the gross proceeds received by the proprietor on account of payment for admission to the entertainments and on account of tax as the State Government may fix; or

(c) in accordance with the result recorded by any mechanical contrivance that automatically registers the number of persons admitted.

(6) The provision of sub-section (5) in so far as it relates to admission to a place of entertainment by stamped tickets, shall not apply to any entertainment in respect of which entertainments tax due is payable in accordance with the provisions of clause (a) or (b) of section 5.

25. Admission to entertainment:--Save as otherwise provided in this Act, no person, other than a person who has some duty to perform in connection with the entertainment, or a duty imposed upon him by or under this Act or any other law, shall be admitted to any entertainment tax in respect of which entertainment tax is payable u/s 3 except with:--

"5A. Levy and collection:--Subject to the provisions of this Act and such rules as may be prescribed, entertainments tax shall: --

(i) be levied in respect of such person admitted to the entertainment;

(ii) be paid in case of admission by stamped tickets as provided in section 5, by means of stamp on such tickets;

(iii) be calculated and paid in the case of admission otherwise than by stamped tickets, on the number of persons admitted, and

(v) be recoverable from the proprietor in the case of admission otherwise than by stamped tickets.

13. However, it is necessary to mention here that prior to coming into force of the said Act before the same stood amended by Act No. 5 of 1973 and the Rules framed thereunder which were framed in the year 1949, the matter relating to the composition of tax was provided for u/s 5 (2) (a) and 5 (2) (b) as it then stood. The aforementioned two sections as they stood earlier are:--

5.(2) The State Government may, on an application by the proprietor of any entertainment in respect of which the entertainments tax is payable, permit the proprietor to pay, on such conditions as may be prescribed, the amount of the tax due:--

(a) by compounding in the prescribed manner the tax payable in respect of such entertainment for a fixed sum; or

(b) in accordance with the results recorded by any mechanical contrivance that automatically registers the number of persons admitted."

The matter of composition, however, was amended in the year 1973 by Act 5 of 1973 and by reason of the said amendment, the matter of composition was to be

dealt with u/s 3 (5) of the said Act. The provision relating to composition as it stood after Bihar Act 5 of 1973 are as follows: --

"3 (5). The State Government may, on the application of the proprietor of any entertainment in respect of which the entertainments tax is payable, permit the proprietor to pay, on such conditions as may be prescribed, the amount or the tax due: --

(a) by compounding in the prescribed manner, the tax payable in respect of such entertainment for a fixed sum; or

(b) by a consolidated payment at such percentage of the gross proceeds received by the proprietor on account of payment for admission to the entertainments and on account of tax as the State Government may fix, or

(c) in accordance with the results recorded by any mechanical contrivance that automatically registers the number of persons admitted."

Rule 18 sub-rule (2) of the Bihar Entertainments Rules refers to Section 5 (2) (a) and not to Section 3 (2) (a) of the said Act and after coming into force of Act 5 of 1973 the said Rule was not amended.

14. Now the relevant provisions which are material for the purpose of decision of the present writ application as brought in by the relevant Ordinances may be taken note of. By the first validating Ordinance (Bihar Ordinance 16 of 1986) as noticed hereinbefore only sub-section 3 (a) and sub-section 3 (b) were sought to be added after Section 21A (2) of the said Act which read as follows:--

(3) (a) Notwithstanding any permission under sub-section (3) of Section 3, if any proprietor has collected the amount of entertainment tax under clause (ii) of section 5A in accordance with the provisions of clause (c) of sub-section (1) of section 5, the amount of entertainment so collected, levied and paid shall not be refundable in spite of any judgment, decree or order of any court, Tribunal or Authority; and

(b) Notwithstanding any judgment, decree or order of any court. Tribunal or Authority such levy, collection and payments shall be deemed always to have been validly made and no court. Tribunal or authority shall order for refund of the amount of tax so collected, levied and paid.

15. However, by reason of Ordinance 21 of 1986 extensive amendments in the parent Act were made. In effect and substance the amendments made by reason of said Ordinance No. 21 of 1986, are the same as in Ordinance nos. 11 of 1987 and Ordinance 18 of 1987 as contained in Annexures 16 and 17 to the petition dated 3.11.1987 filed on behalf of the petitioner. The material provisions of the said Ordinance are as follows:--

2. Amendment of section 3 of the Bihar Act 35 of 1948:--in the Bihar Entertainment Tax Act, 1948 (Bihar Act 35 of 1948) (hereinafter referred to as the said Act) in clause (b) of sub-section (5) of section 3 the following provisos

shall be inserted and shall be deemed always to have been inserted, namely:--

Provided that the permission granted under this clause shall remain in force for a period not exceeding six months at a time and thereafter it may be renewed for another period of six months or for a shorter period:

Provided further that any permission granted under this clause may be revoked, at any time;

Provided also that if any proprietor collects the amount of Entertainment Tax under clause (ii) of section 5A in accordance with the provisions of clause (c) of sub-section (1) of sections, as a result of such revocation, the amount of Entertainment Tax levied, collected and paid shall be deemed to have been validly levied, collected and paid in accordance with law.

15. Amendment of section 21 A of Bihar Act 35 of 1948:--In the said Act, after sub-section (2) of section 21A the following new sub-section shall be added, namely:--

(3)(a) Notwithstanding any permission under clause (b) of sub-section (5) of section 3, or as a result of revocation of such permission, if any, proprietor has collected and paid the amount of entertainment tax under clause (ii) of Section 5A in accordance with the provisions of clause (c) of sub-section (1) of section 5, the amount of entertainment tax so levied, collected and paid, shall not be refunded in spite of any judgment, decree or order of any Court, Tribunal or Authority, and

(b) Notwithstanding any judgment, decree or order of any Court, Tribunal or Authority, such levy, collection and payment shall be deemed always to have been validly made, and no, Court, Tribunal or Authority shall order for refund of the amount of tax so levied, collected and paid.

(4) (a) Notwithstanding any judgment, decree or orders of any Court, Tribunal or Authority, any levy, collection and payment in accordance with the second proviso to section 3A of the proviso to sub-section (1) of Section 3B shall be deemed always to have been validly made; and

(b) Notwithstanding any judgment, decree or order of any Court, Tribunal or Authority, any amount of entertainment tax, levied, collected and paid, in accordance with the second proviso to section 3A or the proviso to subsection (1) of Section 3B of the Bihar Entertainments Tax Act, 1948 shall not be refundable and no Court, Tribunal or Authority shall order for refund of any such amount.

17. Mr. Shreenath Singh, as noticed hereinbefore submitted that Commissioner of Commercial Taxes (respondent No. 2) in its order dated 3.12.1980 in (Annexure-12 to the writ petition), the parties as well as this Court in C.W.J.C. No. 3188 of 1980 have proceeded on the basis that the permission granted to the petitioner by the State of Bihar in terms of Section 3(5) (b) of the said Act was revoked by the aforementioned order, and as contained in Annexure-12 to

the writ application. He further submitted that such a clause of revocation was existing by way of condition of permission being condition No. 10 (1) thereof. According to the learned counsel, the said condition having been declared ultra vires by this Court in its judgment on the basis of the principles applied therein, the second proviso append to Section 3 of the said Act must also be declared ultra vires, as thereby unbridled, uncanalised and wide power has been conferred upon the authorities concerned without laying down any guidelines therefor. Learned Counsel in this connection has referred to the decisions reported in A.I.R.1985 S.C.251 (Workmen of Hindustan Steel Limited and another vs. Hindustan Steel Limited & others), A.I.R.1985 S.C.722 (West Bengal State Electricity Board and others vs. Desh Bandhu Ghosh & others), AIR 1986 S.C. 1571 (Central Inland Water Transport Corporation Ltd. & another vs. Tarun Kanti Sengupta), AIR 1954 S.C. 224 (Messers Dwarka Prasad Lakshmi Narain vs. State of Uttar Pradesh & others), AIR 1955 S.C. 188 (Ganesh Singhji vs. State of Ajmer & another), AIR 1964 S.C. 2179 (The Corporation of Calcutta vs. Calcutta Tramway Co. Ltd., Calcutta) and AIR 1967 S.C. 1490 (B. Shama Rao vs. Union Territory of Pondicherry).

18. This Court in the aforementioned C.W J.C. No. 3188 of 1980 has held that condition No. 10(1) of the Certificate granted in statutory Form (i.e. Form V) was ultra vires the Constitution of India. Incoming to the aforementioned decision the Court relied upon the cases of Workman of Hindustan Steel Ltd. and West Bengal State Electricity Board (supra). The learned judge in paragraph 8 of the said judgment has held as follows:--

In my opinion, it confers a power which is capable of vicious discrimination and completely naked in nature. Conferment of such arbitrary, drastic uncanalised and blanket power is not sustainable in the teeth of Article 14 of the Constitution of India. It is violative of the basic requirement of natural justice since an order can be passed without hearing and without recording reason therefor.

19. Learned Counsel submitted that if the second proviso appended to Section 3 of the said Act is declared ultra vires by this Court, the question of applicability thereof in this case does not arise. He further submitted that in any event, as there had been no order expressly revoking the permission granted in favour of the petitioner, the third proviso to section 3 of the said Act also would have no application.

20. There cannot be any doubt that the vires of the second proviso is capable of being questioned on the grounds raised by the learned counsel, but in my opinion and for the reasons mentioned hereinafter the said proviso, in the facts and circumstances of this case has no application.

21. The petitioner in the instant case proceeded on the basis that even under the certificate granted to it in Form V, although the period of composition was for the entire period i.e. 18.1.1980 to 31.3.1981 but the same was to be renewed every six month. In sub-paragraph (ix) of paragraph 2 of the application filed by the

petitioner on 12.1.1987, it has clearly been stated that after expiry of the first six months, in pursuance of condition No. VI, of the agreement it applied for renewal thereof. It was further stated that the renewal application was ultimately considered by the Commissioner of Commercial Taxes on 3.12.1980. From the order dated 3.12.1980 as contained in Annexure-12 to the supplementary affidavit filed by the petitioner, the Commissioner of Commercial Taxes directed that the composition agreement will not be renewed after 17.7.1980. Even in the judgment of this Court as contained in Annexure-1 to the writ application, the learned Judge has noted the aforementioned fact, in paragraph 4 thereof. The parties to the aforementioned writ application and the learned Judge, however, used the word "revocation" in the sense that, according to the contentions of the parties, the entire period of composition was from 18.1.1980 to 31.3.1981, and as such the said period could not have been curtailed except by an order of revocation passed in this regard by the competent authority. Further, as noticed hereinbefore in the aforementioned judgment this Court proceeded on the basis that Rule 18 (4) of the Bihar Entertainment Rules had no application whatsoever and as such it was permissible for the authorities of the respondent No. 2 to grant permission for composition of entertainment tax for a period exceeding six months at a time.

In my considered view, after the insertion of the first proviso to Section 3 of the said Act by reason of the Amending and validating Ordinances of 1986 and 1987, the initial period during which permission to pay compound tax can be granted, has statutorily been fixed, i.e. only for a period of six months. By reason of the first proviso aforementioned, the owner of a cinema hall is bound to file an application for renewal of permission on expiry of six months. Admittedly in the instant case the petitioner did file such an application and the same was considered by respondent No. 2 while passing the aforementioned order dated 3.12.1980, (Annexure-12). Further the first proviso, as noticed hereinbefore, has been given retrospective effect and retro-active operation from the date of coming into force of the said Act itself. In such a situation, in this judgment I have to proceed on the basis that such a provision existed at all material times which included the date on which the petitioner filed an application in the prescribed manner for compounding its entertainment tax liability in terms of Section 5(3) of the said Act, and the order dated 3.12.1980 (Annexure-12) was passed. Further a word used in document has to be considered taking into consideration the facts of the case and the surrounding circumstances existing at the material time. In *Municipal Board, Pratapgarh & another v. Shri Mahendra Singh Choura* reported in 1982 U.J. (S.C.) 626 an order of reinstatement was held to be actually an order of reappointment.

22. In *General Electric Co. Vs. Renuagar Power Co.*, it has been held by the Supreme Court that a word used in a judgment should not be read in the same manner as is done in a statutory provision. In this view of the matter, and in the facts and circumstances of the present case, the order dated 3.12.1980, was not an order revoking permission granted to the petitioner for discharging its liability

to pay the entertainment tax under the composition scheme, but in fact, was an order of non-renewal of such permission granted to the petitioner on 8.3.1980 as contained in Annexure-10 to the petition dated 12.1.1987. In this view of the matter, it is not necessary to consider the question that the second proviso appended to Section 3 of the said Act is ultra vires the Constitution.

23. Mr. Shreenath Singh, however appears to be right when he submitted that the third proviso to Section 3 of the said Act applies only in a case where an order of revocation is passed. The phraseology used in the third proviso to Section 3 of the said Act is important. In terms thereof such taxes levied, collected and paid shall be deemed to have been validly levied, collected and paid in accordance with law, which have been collected by the proprietor under clause (ii) of Section 5A, in accordance with the proviso to clause (c) of sub-section (1) of Section 5 of the said Act as a result of such revocation. The order of revocation which might have been passed by the authorities in terms of the second proviso appended to Section 3, therefore, is a condition precedent for applicability of the third proviso.

24. The learned Advocate General, however, contended that the third proviso has to be read as if the tax had been collected by the proprietor under clause (2) of Section 5A of the said Act in accordance with the provision of clause (c) of sub-section (1) of Section 5, either by reason of the order of revocation or non-renewal. According to the Advocate General it is permissible for this court to read the third proviso in the aforementioned manner in order to give a true and effective meaning thereto.

In my opinion it is not possible to do so. It is now well known that a statute has to be construed *Ex-viceribus actus*, i.e. within the four corners of the Act, and in that view of the matter it is not possible to construe the words in the manner as suggested by the learned Advocate General. The reason for using the two different words i.e. "renewal" and "revocation" in the said provision is clear from the fact that whereas the first proviso deals with renewal, the second proviso deals with the matter relating to revocation of permission, and thus the same is a clear pointer to the fact that the aforementioned terms were used in the Ordinance in two different context.

25. In this connection it is useful to refer to a recent Supreme Court decision in *Cooperative Bank Ltd. vs. Babubhai Shanker Lal Pandya & others*, 1987 Supreme Court Cases, Vol-I page 606 wherein it has been held that the principle that a Statute must be read as a whole equally applies to a Section. Hence, in my opinion, no part of Section can be read in such a fashion so as to read some new words therein which would carry a different and distinct meaning.

26. It is now a cardinal principle of law that a literal meaning has to be given to the provisions of an Act. In *Sutter v. Briggs* (1922)Appeal Cases, Page-1, at page 8 Viscount Brickenhead L.C. held as follows:--

Where, as here, the legal issues are not open to serious doubt, our duty is to

express a decision and leave the remedy (if one be resolved upon) to others.

It is also well known that when the language of a Section is clear, the Court cannot legislate, nor is it open to it to put any other interpretation, which may violate the phraseology used therein, vide *Km. Sonia Bhatia Vs. State of U.P. and Others*, and (1984) 4 S.C.C. 746 (para 6), (*State of Kerala vs.. Mathai Verghese & others*).

In *Craies on Statute Law*, 7th Edition, the learned author at page 65 has stated the law in the following terms:--

If the words of the Statutes are themselves precise and unambiguous, then no more can be necessary than to expound those in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver.

In *Halsbury's Laws of England*, 4th edition, Volume-44 at page 940, it has been stated by the learned author that it is the province of the legislature to enact statutes and of the court to construe the statute, which the legislature has enacted.

It is now well known that re-writing of statute should be avoided. It has been further held in the aforesaid decision that the statutes should not be read in such a manner which would not be in consonance with the object of the statutes. It is further well known that it is not within the province of the court to legislate nor can it supply *causus omissus*.

27. In view of the clear and unambiguous language used in the first proviso appended to section 3 of the said Act, in my opinion, there is absolutely no doubt that the same applies only in a case where an order has been passed revoking the permission in terms of the second proviso to section 3 of the said Act and the same (*sic*) no application in relation to an order refusing to renew such a permission in terms of the first proviso appended thereto. It is also well known that there is a presumption that the legislature does not leave any lacuna while enacting a statute, vide *M.G. Wagh and Others Vs. Jay Engineering Works Ltd., .*

28. In the aforementioned circumstances, there is no other option but to proceed on the basis that by reason of the order dated 3.12.1980 (Annexure-12) the respondent No. 2 would be deemed to have refused to renew the permission granted to the petitioner for paying the entertainment tax under the composition scheme after 17.8.1980.

29. Mr. Shreenath Singh submitted that even if it be held that the respondent No. 2 exercised his power in terms of the first proviso appended to section 3 of the said Act in that event as the petitioner had already filed an application for renewal of the agreement on the expiry of six months, it was incumbent upon the Commissioner of Commercial Taxes to exercise his power of renewal in terms of the first proviso to section 3 of the said Act itself. Learned counsel submitted that the very fact that a power of renewal had been conferred upon the authority

after the expiry of the period of six months, it was permissible for such authority to give permission to the petitioner for the entire period, i.e. 18.1.1980 to 31.3.1981.

30. Learned counsel further submitted that the action on the part of the authority in refusing to renew the said permission, although the competent authority exercised its discretion in favour of the petitioner by allowing it to pay its liability under the composition scheme for the period of 13 months, the impugned order, as contained in Annexure-8 was hit by the doctrine of promissory estoppel. Learned counsel in this connection has referred to the well known decisions of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , and *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*,

31. The doctrine of promissory estoppel is a branch of law which has developed a lot during the last 40 years. The doctrine of estoppel previously was in the realm of law of evidence.

Doctrine of estoppel in England had all along been permitted to be used only as a shield and not as a sword.

However, in India it has been held that the promissory estoppel/estoppel equitable confers a right which can be enforced in a court of law which includes a writ application under Articles 226 and 227 of the Constitution of India, in the High Court.

In *Corpus Juris Secundum* volume 31 page 283 the law with regard to an estoppel by representation has been stated in following terms:--

Generally an estoppel by misrepresentation arises when and if a false representation is knowingly or negligently made by the person to another ignorant of the facts with the intention that such other act thereon and such other does reasonably rely and act thereon in his prejudice. Where a person willfully makes a representation intended to induce another to act on the faith of it or where, whatever his intention, a reasonable man in the situation of that other would believe that it was meant that he should act on it, and in either case that other does not act on it as true and alters his position, there is an estoppel in pais (sic) to conclude the former from averting against the latter a different state of things as existing at the same time. An estoppel arising out of an express misrepresentation being an equitable estoppel, all of the essential elements of such an estoppel, considered in sections 66-67 (supra), must be present. Hence, for an estoppel by misrepresentation to arise there must exist a false representation by the person sought to be estopped made with knowledge, actual or constructive of its falsity, to the person seeking the benefits of the estoppel, with the intent that such person act in reliance thereon, and that he actually did reasonably rely and act on such representation to his prejudice.

For estoppel may be predicated on representations not made with fraudulent

intent if the person making the same should have known of their falsity, and if of such character as to induce a reasonably prudent man to believe that they were intended to be acted on. If the representations not such as should induce a prudent person to rely thereon, the person making it will not be estopped thereby.

In some jurisdictions it is essential that the party to whom the representation is made must have in good faith been ignorant of the fact and have had no convenient opportunity of ascertaining the fact. In this connection diligence in using means at command to learn the truth is essential except where a confidential relation exists between the parties.

A representation which is uncertain and vague cannot serve as a basis for estoppel.

In American Jurisprudence 2nd Volume 28. S. 28 at page 630 it has been stated as follows:--

The proper function of equitable estoppel is the prevention of fraud, actual or constructive and the doctrine should always be so applied as to promote the ends of justice and accomplish that which ought to be done between man and man. Such an estoppel cannot arise against a party except when justice to the rights of others demands it, and when to refuse it would be inequitable. The doctrine of estoppel should be applied cautiously and only when equity clearly requires it to be done. Hence, in determining the application of the doctrine the counter requites of the parties are entitled to due consideration. It is available only in defence of a legal or equitable right or claim made injustice, or wrong of any character. Estoppel is to be applied against wrong doers, not against the victim of a wrong, although estoppel is never employed as a means of inflicting punishment for an unlawful or wrongful act.

In Halsbury's Laws of England, Volume 16 at page 1082 "Estoppel by Conduct" have been dealt with in para 1809 and in para 1528 at page 1073 "representation induced by party complaining have been dealt with. It has been pointed out therein that a representation would be deprived on any effect as an estoppel if the making of it has been contributed to by some by breach of duty on the part of the person seeking to take advantage of it. It has further been mentioned that it is not necessary that the representation should be false to the knowledge of the party making it, though in the earlier cases it had been held such representation must have been acted upon as true by the party to whom it was made. A representation made to one person and acted on by him cannot be taken advantage of by another to whom it was not made and who has not acted on it.

It is further well known that for attracting the principle of estoppel by representation it must be shown that in acting upon the representation the party to whom it was made should have altered his position.

32. In "Estoppel by Representation" by Turner, 3rd Edition in Chapter XIV of the said treatise, the learned author has considered in details the development in the branch of law of promissory estoppel and the author further says that the new estoppel does not give rise to a permanent modification of the rights of the parties (inter se). It has further been stated that in general their original rights inter se are modified only for so long as is equitable, and the representor may revert to the status quo, claiming on the original basis in respect of obligations falling due thereafter either by giving sufficient notice, or by restoring the represented to a relative position equivalent to that which he originally occupied.

This last may be brought about by act of the representor or may take place by the happening of some event outside the control of the parties, or by efflux of time.

33. The doctrine of promissory estoppel has, however, undergone a radical change in the recent years in our country. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , the Supreme Court has held that "promissory estoppel" is available as, no cause of action is necessary to satisfy the equity and in order to attract the applicability of the doctrine of promissory estoppel with the promisee acting in reliance on the promise, need not suffer a detriment, what is necessary is only that promisee should have altered his position in reliance on the promise.

It has further been held in the aforementioned case that the said doctrine is applicable also as against the Government and in a special case the burden of proof would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court insists on a highly rigorous standard of proof in discharge of this burden.

It has further been held that even where there is no such overwhelming public interest the Government may resile from the promise on giving reasonable notice.

The aforementioned doctrine of promissory estoppel has further been reiterated in various recent decisions e.g. in *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, ; *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, *Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others*, ; *Union of India and others v. Godfrey Philip India Ltd.* (1985 Vol. 4 S.C.C. 359); *Karnataka State Road Transport Corporation, Bangalore & anr. v. Rajeev Alwa & ors.* (1987 L.I.C. 1362 at page 1371) and *Inder Mohan Lal v. Ramesh Khanna* AIR 1987 S.C. 1986 at page 1991).

However, in my considered view, regard being had to the facts and circumstances of the case, the petitioner cannot take advantage of the doctrine of promissory estoppel.

34. In the instant case, the petitioner has not pleaded that it altered its position

pursuant to or in furtherance of any representation made by the respondents. Alteration of position is a sine qua non for invoking the doctrine of promissory estoppel. Further as held by the Supreme Court in the aforementioned decisions the doctrine of promissory estoppel will have no application, where notice in that regard is issued by the State. The said doctrine will also have no application in a case where the same would be violative of any provisions of a statute.

In the instant case, the law has undergone a radical change in view of the Ordinances promulgated whereby and whereunder the said Act was amended.

In C.W.J.C. No. 3188 of 1980 it has been held by this Court that previously there was no statutory provisions imposing bar upon the authorities concerned to grant permission for paying the entertainment tax under a composition scheme for a period exceeding six months, but as such statutory period has been brought in for the first time by insertion of the first proviso appended to section 3 of the said Act under the provisions of the Ordinances aforementioned. Before the coming into force of the ordinances the authorities of the State therefore, had the power to grant permission for payment of tax under a composition scheme for a period exceeding six months and in that state of affairs, it was permissible for the petitioner to invoke the principles of promissory estoppel. But such is not the position now.

In the instant case the authorities of the state of Bihar could not have granted such permission in view of the insertion of the first proviso aforementioned, which as stated hereinbefore, has been given retrospective effect and retroactive operation. If by reason of the legal fiction created in terms of the first proviso, it is presumed that the authority had no statutory power to grant permission to the petitioner for payment of its liability by way of composition scheme, it necessarily follows that the authorities acted beyond the scope of and contrary to the statutory directions. In the case of *Chetlal Sao v. State of Bihar* (1986 PLJR 149:1986 BBCJ 109) a Full Bench of this Court considered both the principle and precedence in this regard and held as follows: --

To conclude on this aspect, the answer to question No. 3 is rendered in the negative and it is held that the State is not bound by the doctrine of promissory estoppel for the acts of its subordinate done in violation of its directions or administrative instructions.

The ratio of the aforementioned Full Bench decision has been reiterated in *Rita Mishra vs. Director of Primary Education* reported in 1987 P.L.J.R. 1090, wherein it has been held as follows:--

...No concept of promissory estoppel arises against the State of its servants either act beyond the scope of their duty or contrary to its directions or standing administrative instructions...

If the doctrine of promissory estoppel has no application in relation to an act of a subordinate in violation of administrative instruction, needless to add, the same

will certainly have no application in relation to the action on the part of the servant of State in violation of the express provisions of the State.

35. The Supreme Court in the Express Newspapers Private Limited (supra) has quoted with approval the law on promissory estoppel from Professor H.W.R. Wade's Administrative Law. The said learned author at page 232 stated the law in the following terms:--

In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an overriding power which it does not in law possess. In other words no estoppel can legitimate action which is ultra vires...

Reference in this connection may also be made to the cases reported in Ramatara State Road Transport Corporation, Bangalore vs. Rajiv Alka & others (1987 L.I.C. 1362 (1371), and Inder Mohan Lal vs. Ramesh Khanna AIR 1987 S.C. 1986 (1991).

36. In Woodhouse A.C. Israel Cocoa SA and another vs. Nigerian Produce Marketing Co. Ltd. (1972 2 All England Law Reporter 271) LORD HAILSHAM OF ST. MARYLEBONE LC. has warned about the indiscretion used in applying the doctrine of promissory estoppel and has administered a caution in the following terms: --

I desire to add that the time may soon come when the whole sequence of cases based on promissory estoppel since the war beginning with Central London Property Trust Ltd. vs. High Trees House Ltd., may need to be reviewed and reduced to a coherent body of doctrine by the courts. I do not mean to say that any are to be regarded with suspicion. But, as is common with an expanding doctrine, they do raise problems of coherent exposition which have never been systematically explored.

37. Mr. Shreenath Singh, thereafter submitted, in view of the Bill introduced by the State, the purpose of the enactment of the Bihar Entertainments Tax (Amending & validating) Act, 1987, as contained in Annexure A to the counter affidavit filed on behalf of respondent No. 2 dated 13.11.1987 would be explicit. It has been mentioned in the object and reasons of the said Bill that the object of the said validating Act was to get rid of the judgment rendered in C.W.J.C. No. 3188 of 1980. The learned counsel, therefore, contended that the purported Ordinances are colourable pieces of legislation. In this connection reference has been made to the cases of B. Shama Rao Vs. The Union Territory of Pondicherry, . The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc., and D. Cawasji and Co., Mysore Vs. State of Mysore and Another, .

Learned counsel has placed strong reliance upon paragraph 16 of the decision of the Supreme Court in D. Cawasji's case (supra), the relevant portion of which is quoted hereunder:--

...It may or may not have been competent for the State Legislature to validly

remove the lacuna and remedy the defect in the earlier levy by seeking to impose sales tax through an amendment on excise duty education cess and health cess but in any event, the State Government has not purported to do so through the Amending Act. As a result of the judgment of the High Court declaring such levy illegal, the State became obliged to refund the excess amount wrongfully or illegally collected by virtue of the specific direction to that effect in the earlier judgment. It appears that the only object of enacting the amended provision is to nullify the effect of the judgment which became conclusive and binding on the parties to enable the State Government to retain the amount wrongfully and illegally collected as sales tax and this object has been sought to be achieved by the impugned amendment which does not even purport or seek to remedy or revoke the defect and lacuna but merely raises the rate of duty from 6 1/2% to 45% with retrospective effect is in the facts and circumstances of the case clearly arbitrary and unreasonable. The defect or lacuna is not even sought to be remedied and the only justification for the steep rise in the rate of duty by the amended provision is to nullify the effect of the binding judgment...

38. There cannot be any doubt that the legislature has the power to cure the defect pointed out by reason of any judgment, and validate the levy and collection of tax which prior to said validating Act, was invalidly done. The same can be done either by curing the defect as pointed out by the court or by amending the provisions of the Statute.

39. It is now a well settled principle of law that the power to legislate for validating actions taken under the Statute, is only ancillary or subsidiary power and such validating acts cannot be struck down merely because the Courts of law have declared such action taken earlier as invalid for want of jurisdiction. In the instant case by reason of the insertion of the first proviso to section 3 of the said Act together with insertion of sub-section 3 (a) after sub-section (2) of section 2A by section 8 of the Ordinance, the defect has been cured and the same has been given retrospective effect. In the instant case not only the defect has been cured with retrospective effect, but the legislature has expressly directed that notwithstanding any judgment, decree or order of any Court, the amount of tax which might have been paid in terms of clause (2) of Section 5A. in accordance with the provisions of section 4 (1) (c), the same shall not be recovered. The decisions cited by the learned counsel for the petitioner as referred to hereinbefore, have, therefore, no application to the facts of the instant case. In the cases referred to by the learned counsel the defect in realising the tax as held by the judgment of the High Court was not cured. The ratio of the said decision has to be read in the context of the facts and circumstances thereof. In the said decision the State Legislature has not validly removed the lacuna nor remedied the defect in the earlier levy, but purported to invalidate the judicial pronouncement only on the ground of steep rise in the rate of duty. In the said decision it has been pointed out:--

...The vice of illegal collection in the absence of the removal of the illegality which led to the invalidation of the earlier assessments on the basis of illegal levy, continue to taint the earlier levy. In our opinion, this is not a proper ground for imposing the levy at higher rate with retrospective effect. It may be open to the Legislature to impose the levy at the higher rate with prospective operation but levy of taxation at higher rate which really amounts to imposition of tax with retrospective operation has to be justified on proper and cogent grounds...

40. Under the provisions of the said Act, a proprietor of an entertainment is bound to pay the tax in terms of the provisions thereof. Such tax has to be paid in terms of the collections made therefor by reason of admission of persons who are sought to be entertained. By reason of section 5 of the said Act, the tax which is so collected has to be paid in advance by the owner of the entertainment. Section 5 (3) (b) of the said Act, however, merely provides for different mode of assessment. By reason of the aforementioned provision only a privilege is conferred upon the owner of the theatre to pay tax on the basis of a composition scheme. The liability to pay tax in terms of the charging provisions contained in the said Act, therefore, continues so far as the owner of the theatre is concerned. By reason of the composition scheme merely an alternative mode of assessment is provided for. In this situation, in my opinion, it was permissible for the authority to refuse to refund the amount which has been collected by way of entertainment tax by putting adhesive stamps on the tickets for admitting persons into the theatre. Secondly in the instant case the defect pointed out by this Court in its judgment as contained in Annexure-1 to the writ petition has been cured by insertion of the first proviso to section 3 of the said Act.

41. It is evident that after the expiry of the period of six months, in the event permission is not renewed, the owner of the cinema/ theatre is bound to pay tax in accordance with the general provisions of the law. He cannot escape his liability in relation thereto. In this view of the matter it has to be held that the decisions cited by the learned counsel has absolutely no application to the facts and circumstances of the present case.

42. Further, in my opinion, the object of a validating Act/curative Act is always to validate an action which has been declared to be invalid or to cure a defect as pointed out by the Court. Such a validating and/or curative Act, regard being had to the facts and circumstances of each case, can have retrospective operation if the legislation validly directs in that regard. Such validating and/or curative Act when operates retrospectively nullifies the effect of a judgment. In such an event, even a review of the judgment is permissible vide J.B. Sharma Vs. State of Madhya Pradesh and Another, .

43. Further the statements and reasons contained in the bill which is yet to be enacted, in my opinion, is wholly irrelevant for the purpose of findings as to the object of such validating Act. The object of the Act contained in the objects and reasons appended to the bill (which is yet to be enacted) is not a safeguard for the purpose of providing materials on the basis whereof it can be said that a

fraud has been committed by the State on its legislative power.

44. It is now well known that a statute can be struck down on the ground of colourable exercise of legislative power only when the legislature acts beyond its legislative competence or the same is hit by Article 14 of the Constitution of India. Reference in this connection may be made to the decision of the Supreme Court in the case of K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, . In paragraph 9 of the said decision it has been held as follows:--

9. It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of "bona fide" or "mala fides" on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power-*vide* Cooley's Constitutional Limitations, Vol. I page 379-A distinction however exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by which could not be challenged on the ground of incompetency, and a legislature which enjoys only a limited or a qualified jurisdiction.

The submission of Mr. Shreenath Singh that the ordinances should be struck down on the aforementioned ground, in my opinion, has no substance.

45. Mr. Shreenath Singh thereafter contended that in the instant case sub-section 3(a) inserted after sub-section (2) of Section 21A as inserted by section 8 of the Amending Ordinance will have no application in the instant case. According to the learned counsel, the words used therein "notwithstanding any permission under clause (b) of sub-section (5) of Section 3", means a valid permission. According to the learned counsel after the insertion of the first proviso to section 3 of the Act a legal fiction has been created. In view of the aforementioned deeming provision, the permission granted in favour of the petitioner automatically came to an end on or from 17.7.1980. In this connection, learned counsel has referred to a well known decision in the case of East End Dwellings Co. Ltd. v. Finsbury Borough Council reported in 1951 (2) England Law Report 857:1952 Appeal Cases 109 (132-33).

46. In the aforementioned celebrated judgment Lord Asquith has laid down the law relating to legal fiction in these words:--

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must evidently have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, must cause or permit your imagination to boggle when it comes to inevitable corollaries of that state of affairs.

The aforementioned decision has been cited with, approval in *State of Bombay v. Pandurang Vinayak* AIR 1953 S.C. 244 (246) *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, and *The Additional Income Tax Officer, Salem Vs. E. Alfred*, . The Supreme Court in the case of *Additional Income Tax Officer (supra)* at paragraph 7 at page 665 has held as follows: --

No doubt fiction made the respondent, an assessee for the purpose of assessing the total income of Ebenzer. But the question is whether the fiction came to an end after the assessment, so that he remained a mere debtor thereafter of the Department. The answer of this question would determine the further application of the other sections of the Act. When a thing is deemed to be something else, it is to be treated as if it is that thing, though, in fact it is not...

And at page 666 the learned Judges have observed as follows:--

A legal representative, who, by fiction is deemed to be assessee, therefore, comes within this definition because he is a person by whom income tax is payable, though out of the assets left by a deceased person nor can the fiction in that sub-section (sub-section 2) of section 24B of the Income Tax Act, 1922 be limited by provisions of law for a totally different situation.

47. Learned counsel on the basis of the aforementioned decisions submitted that if the word "permission" is not read as a "valid permission legal permission", full affect cannot be given to the legal fiction created by reason of insertion of the first proviso to section 3 of the Act by section 2 of the Amending Ordinance, as the same has been given retrospective effect.

48. There is quarrel with the aforementioned principle of law. However, it is also well known that a contextual meaning has to be assigned so far as context of the statute is concerned. The word "permission" referred to in section 3 (a) has to be read in the context of the statute and on the basis of the object and intent of the legislature. Admittedly the ordinances are validating and/or the curative legislations. The word "permission" read in the context of the statute must, in my opinion mean a factual permission. By reason of the judgment rendered in C.W.J.C. No. 3188 of 1980 (Annexure 1 to the writ petition) the permission granted in favour of the petitioner for payment of tax in the composition scheme was to operate for the period 18.1.1980 to 31.3.1980. The validating Act had to be enacted obviously to cure the defect pointed out by the Court in the aforementioned judgment to the effect that Rule 18 (4) which purported to prescribe the period of limitation for granting permission in respect of composition scheme had no application, in spite of the order passed u/s 5 (3)(b) of the Act, after coming into force of the Bihar Act V of 1973. This defect pointed out by this Court in the aforesaid mentioned judgment is sought to be remedied by insertion of the first proviso to section 3 of the said Act. In my opinion, therefore, the words notwithstanding any permission has to be read in the context of the statute which, as noticed hereinbefore is a remedial one. In this connection reference may be made to *S. Mohan Lal Vs. R. Kondiah*, and the case

of Reserve Bank of India vs. Peerless Co. reported in (1987) 1 S.C. C. 424 paragraph 33). Paragraph 33 in Reserve Bank's case reads thus:--

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may make colour and appear different than when the statute is looked at without the glasses provided by the context. With these flashes we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa Enterprises, Represented by the Managing Partner, Peddi Venkateswarlu and Others Vs. Union of India (UOI), Represented by Ministry of Law, Justice and Company Affairs and Others, and we find no reason to depart from the court's construction.

49. Further, as noticed hereinbefore, the very intent and object of the Act being to validate an invalid Act by curing the defects pointed out by this Court, the word "permission" in my opinion, has to be read as a factual permission and not as legal or valid permission. The very fact that a tax collected by affixing adhesive stamp in spite of permission has been declared non-refundable by the legislatures, reflects its object and intent and in this situation, the word "permission" has to be construed as a permission, which was granted prior to the insertion of the first proviso of section 3, and not in the context that its having become invalidated by reason of the provisions of the impugned ordinances.

50. If the submission of the learned counsel is accepted, no useful meaning can be assigned to the words "notwithstanding any permission", as in that event such words become a surplus age and in any event wholly redundant. As noticed hereinbefore, it is not permissible for this Court to add or subtract any words from the statute. It is also a well known rule of interpretation of the statute that the statute should not be read in such a way so as to render some words of the section wholly inoperative. Such interpretation, in my opinion, shall lead to a manifest absurdity.

51. It is further well known that the construction which advances the object and purpose should be accepted (vide (1987) 2 Supreme Court Cases 654) Skandia

Insurance Co. Ltd. v. Kokilaben Chandravadan & others (supra) (para 13). It is also well known that the legislative futility is to be ruled out so long as interpretative possibility permits. In this connection reference may be made to paragraph 18 of the decision of the Supreme Court reported in S.P. Jain Vs. Krishna Mohan Gupta and Others, : --

18. We are of the opinion that law should take pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capacities of technology and life style of the community. It is well settled that the purpose of law provides a good guide to the interpretation of the meaning of the Act. We agree with the Justice Krishna Iyer in Busching Schmitz Private Limited Vs. P.T. Menghani and Another, that legislative futility is to be ruled out so long as interpretative possibility permits. Residentiality depends for its sense on the context and purpose of the statute of the project promoted.

52. It is also, well settled that deeming provisions cannot be pushed too far so as to result in most anomalous and absurd situation.

It is also well known that a construction which lead to manifest injustice or absurdity should be avoided (vide Commissioner of Sales Tax, State of Gujarat Vs. Union Medical Agency,), (AIR 1961 Supreme Court 1047 (Commissioner of Sales Tax, U.P. v. Moti Sugar Mills), (AIR 1968 Supreme Court 413) M/s Braithwait & Co. (India) Ltd. v. Employees State Corporation) and American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another, .

53. In my opinion, the legislative intent and object in inserting section 21A (3) (a) of the Act is that if a proprietor has collected and paid the amount of entertainment tax by purchasing adhesive stamps during the continuance of permission u/s 5 (3) (b) or after revocation of the permission, which on a proper reading of this clause shall include the period after the expiry of permission in view of insertion of the first proviso to section 3 of the said Act, such amount of tax, so paid, shall not be refunded.

54. However, section 8 of the Amending Ordinance No. 11 of 1987, cannot have any application and in relation to the period 18.7.1980 to 31.12.1980 inasmuch as what is cured and saved is payment of such tax by a owner of a Cinema Hall which has been done by reason of putting adhesive stamps and not by any other mode. It is an admitted fact that after the passing of the order by the respondent No. 2 on 3.12.1980 (Annexure-12), the petitioner filed C.W.J.C. No. 3188 of 1980, and in the said writ petition a prayer for interim order was made and this Court by order dated 11.12.1980, directed the petitioner to put adhesive stamps on the tickets, with effect from 1.1.1981. The petitioner, therefore, evidently did not put adhesive stamps on the tickets before 1.1.1981 i.e. up to 31.12.1980.

55. The learned Advocate General conceded that the period 18.7.1980 to 31.12.1980 does not come within the purview of section 8 of Ordinance No. 18 of 1987 (Annexure 17), but he submitted that the purpose of getting rid of the effect of the judgment passed in C.W.J.C. No. 3188 of 1980 has been achieved

by giving retrospective effect to the said Ordinance whereby and whereunder the defect pointed out in the judgment has been cured. Elaborating his argument, learned Advocate General further submitted that in terms of the first proviso to section 3 of the said Act, as inserted by section 2 of Ordinance No. 18 of 1987, the petitioner was bound to follow the normal rule of payment of entertainments tax by putting adhesive stamps on the cinema tickets upon expiry of six months from 18.1.1980 i.e. from 18.7.1980. According to the learned counsel as the said proviso is couched in a mandatory form, the composition scheme comes to an end on the expiry of six months and in that view of the matter, thereafter the petitioner's case came within the purview of the charging section as contained in section 3 of the said Act, and as such was bound to be assessed in normal course.

56. Learned Advocate General in this connection has placed strong reliance upon the case of Uday Ram Sharma v. the Union of India reported in AIR 1968 Supreme Court 1138. From a perusal of the aforementioned decision, it is evident that it was not necessary for the legislature to enact provisions to cure the defect for the future and also provide that all actions taken on notifications issued must be deemed to have been taken or issued under the new provisions so as to give them their retrospective effect. It will be useful to refer the following paragraphs of the aforementioned decision: --

(19). The effect and validity of retrospective legislation has to be considered by the Federal Court of India and this Court on a number of occasions. In the case of the AIR 1941 16 (Federal Court) a question arose as to whether the Regularisation of Remissions Act, 1938 of the United Provinces Legislature was within its competence. There was an Act in force, namely, the Agra Tenancy Act, 1926 the purpose whereof was to consolidate and amend the law relating to agricultural tenancy and certain other matters. Section 73 of that Act provided that "when for any cause the Local Government or any authority empowered by it, remitted or suspended for any period the whole or any part of the revenue payable in respect of any land, a Collector might order that the rents of the tenants should be remitted or suspended to any amount which shall bear the same proportion to the whole of the amount payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of such land." In 1931 there was a catastrophic fall in agricultural prices followed by threats on the part of tenants to withhold rent on a large scale. The Government of the United provinces devised a scheme for the systematic reduction of rents, varying with the circumstances of the different districts, followed latter by consequential adjustments in land revenue. The Allahabad High Court had held in Muhammad Abdul Qaiyum Vs. Secretary of State that the remissions made in pursuance of the orders of the Government had no legal effect. In 1938 the Provincial Legislature passed the Regulation of Remissions Act which precluded any question as to the validity of the orders of remission being raised in the court of law. The Allahabad High Court took the view that the Act was contrary to the provisions of S. 292 of the Government of India Act, 1935 because it amounted to an attempt to legislate retrospectively. S. 2 of the Act

1938 provided that--

"Notwithstanding anything in the Agra Tenancy Act, 1926 or in any other law for the time being in force where rent has been remitted on account of any fall in the price of agricultural produce which took place before the commencement of this Act, under the order of the Provincial Government or any authority empowered by it in that behalf, such order, whether passed before or after the commencement of this Act, shall not be called in question in any civil or revenue court."

Referring to the case of (1977-78) 4 Ind. App. 178 (FC) (supra) Gwyer, C.J., said that there was nothing in S. 292 which suggested any intention on the part of Parliament to impose a fetter against retrospective legislation. According to the learned Chief Justice the impugned Act was an act with respect to "remission of rents. Although it might also be an act with respect to something else, that is to say, the validation of doubtful executive order. The learned Chief Justice said:

"It is true that "validation of orders" or any entry even remotely analogous to it is not to be found in any of the three lists, but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued."

His Lordship further opined that the powers of the court were not affected merely because certain executive orders were not allowed to be questioned in any court.

.....

(25). All these decisions lay down that the power to legislate for validating actions taken under statute which were not sufficiently comprehensive for the purpose is only ancillary or subsidiary to legislate on any subject within the competence of the legislature and such validating Acts cannot be struck down merely because courts of law have declared actions taken earlier to be invalid for want of jurisdiction. Nor is there any reason to hold that in order to validate action without legislative support the Validating Act must enact provisions to cure the defect for the future and also provide that all actions taken on notifications issued must be deemed to have taken or issued under the new provisions so as to give them full retrospective effect. No doubt legislatures often resort to such practice but it is not absolutely necessary that they should do so, so as to give full scope and effect to the Validating Acts. By way of illustration reference may be made to the following Acts. (1) The Professions Tax Limitation (Amendment and Validation) Act, 1949 where S. 3 (1) provided that--

"Notwithstanding anything to the contrary to any other law for the time being in force,--(1) no tax on circumstances and property imposed before the commencement of this Act under clause (ix) of sub-section (1) of Section 128 of the United Provinces Municipalities Act, 1916 or clause (b) of Section 108 of the United Provinces District Boards Act, 1922, shall be deemed to be, or ever to

have been invalid merely on the ground that the tax imposed exceed the limit of Rs. 50/- per annum prescribed by said Act, and the validity of the imposition of any such tax shall not be called in question in any court."

(2) The Hindu Marriages (Validation of Proceedings) Act, 1960 (Act 19 of 1960) was passed to obviate the shortcoming in the Hindu Marriage Act pointed out by the Punjab High Court in Janak Dulari-vs-Narain Das, AIR 1959 Punjab 50. There the High Court held that the court of an Additional Judge cannot be regarded as a principal court of civil jurisdiction within the meaning of the Hindu Marriage Act and that a District Judge to whom a petition under the Act is presented cannot transfer it to an Additional Judge for trial. The object of the Validation Act was to validate all proceedings taken and decrees and orders passed by any of the Courts specified in clause (2) exercising or purporting to exercise jurisdiction under the Hindu Marriage Act. S. 2 (1) run as follows:--

"All proceedings taken and decrees or orders passed before the commencement of this Act by way of the Courts referred to in "sub-section (2) exercising or purporting to exercise jurisdiction under the Hindu Marriage Act, 1955 shall notwithstanding any judgment, decree or order of any court, be deemed to be as good and valid in law as if the Court exercising or purporting to exercise such jurisdiction had been a district court within the meaning of the said Act."

The courts referred to in sub-section (1) are the court of an Additional Judge, Additional District Judge, etc.

(26). In our opinion the contentions raised about the invalidity of the Amending Act on the ground that S. 3 thereof was not made expressly retrospective or that it encroached upon the domain of the judiciary by seeking to nullify judicial decisions cannot be sustained. The American doctrine of well defined separation of legislative and judicial powers has on application to India and it cannot be said that an Indian statute which seeks to validate invalid actions is bad if the invalidity has already been pronounced upon by a court of law.

(27) In view of the discussions of the Judicial Committee the Federal Court and this Court referred to above, it must be held that the absence of the provisions in the Amending Act to give retrospective operation to S. 3 of the Act does not affect the validity of S. 4 as contended for. It was open to Parliament to adopt either course, e.g. (a) to provide expressly for the retrospective operation of S. 3, or (b) to lay down that no acquisition purporting to have been made and no action takes before the Land Acquisition (Amendment and Validation) Ordinance, 1967 shall be deemed to be invalid or ever to have become invalid because inter alia of the making of more than one report under S. 5-A or more than one declaration under S. 6 of the Land Acquisition Act, notwithstanding any judgment, decree or order to the contrary. Parliament was competent to validate such actions and transactions, its power in that behalf being only circumscribed by the appropriate entries in the Lists of the Seventh Schedule and the fundamental rights set forth in Part III of the Constitution. As shown above,

there have been instances where the latter course had been adopted by the Indian Parliament in the past.

Reference in this connection may also be made to the case of Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, and M/s Hindustan Guin Chemicals Ltd. v. State of Haryana (AIR 1985 S.C. 1863).

57. In view of the aforementioned authoritative pronouncements of the Supreme Court, there cannot be any doubt that in view of the fact that the first proviso appended to section 3 of the said Act, as inserted by the said Ordinances, which has been given retrospective effect and retroactive operation, it must be held that on the expiry of six months from 18.1.1980, the composition scheme came to an end and in that view of the matter the petitioner was bound to be assessed thereafter till 31.10.1981, in accordance with the ordinary law of assessment as contemplated u/s 3 of the said Act, in spite of the judgment rendered by this Court in C.W.J.C. No. 3188 of 1980 (Annexure-1).

58. Mr. Shreenath Singh, however, submitted that in the event if it be held that the petitioner was liable to undergo the process of assessment for the period 18.7.1980 to 31.3.1981, then the petitioner is entitled to adjustment of the amount which has already been paid by it in view of the compounding of the entertainment tax. Learned counsel further submitted that if after the order of assessment, it is found that the petitioner has paid any amount in excess of what was lawfully payable by it, in such event, the respondents would also be liable to pay interest in this regard. Learned counsel in this connection has referred to the case of Saved Jamilur Rahman v. State of Bihar (1986 PLJR 562), and the case of Hirachand Kothari v. State of Rajasthan (AIR 1985 S.C. 998) (Paragraph 11). The contention of the learned counsel is absolutely correct. There cannot be any doubt that in the event upon proper assessment it is found that the petitioner has deposited any sum in excess to what was lawfully payable by it, it will be entitled to get a refund of the excess amount so paid together with interest at the rate of twelve percentum, per annum.

59. Mr. Shreenath Singh, however, submitted that the impugned ordinances be declared ultra vires in view of the well known decision of the Supreme Court in the case of Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, . For the purpose of deciding the issue, the following facts are required to be noticed:--

By reason of amending Ordinance No. 16 of 1986, only section 8 of the Ordinance nos. 11 and 17 of 1987 was inserted. The said ordinance was promulgated on 7th May, 1986 (Annexure-9). Before the aforementioned date, both the houses were summoned on 27.2.1986 and were prorogued on 12.3.1986. The petitioner filed this writ petition on 4.7.1986 and the same was admitted on 3.9.1986. Meanwhile both the houses were summoned on 20.8.1986 and were prorogued on 12.9.1986. Thereafter Ordinance No. 21 of 1986 was promulgated on 1.10.1986.

60. The State of Bihar in its affidavit in reply to the petition for amendment of

the writ petition has asserted that steps were taken to get the bill containing the same provisions as Ordinance No. 21 of 1986 for the purpose of its enacted in March, 1987 sessions, but it could not be done. From the bill appended to the said reply it appears that the bill was presented on 18.3.1987, (Annexure-A to the said reply). From Annexure B to the said reply it appears that on 18.3.1987 steps were taken for introduction of the bill in terms of clauses (1) and (3) Article 207 of the Constitution. From Annexure C to the said reply it appears that on 19.3.1987, the Chief Minister had sent proposal to the Speaker of the Bihar Legislative Assembly to be placed before the two Houses.

Ordinance No. 11 of 1987 was thereafter promulgated on 18.4.1987. Both the houses were thereafter summoned on 26.6.1987 and were prorogued on 27.7.1987 (vide Annexure B to the said reply). A notice, as contained in Annexure E to the said reply, in that regard was issued on 30.7.1987.

Mr. Shreenath Singh on the basis of the aforementioned facts submitted that there was absolutely no reason as to why proper steps could not be taken by the respondents to place the bill within a reasonable period.

61. Learned Advocate General, on the other hand, drew our attention to the aforementioned reply and various annexures appended thereto and contended that this is not a case where no step whatsoever was taken by the State of Bihar to place the Ordinance before the two houses and re-promulgated the same ordinance successively without bringing them before the legislatures.

62. Learned counsel further submitted that the first ordinance (i.e. ordinance No. 16 of 1986), as contained in Annexure 9 to the writ petition contained only a provision similar to section 8 of Ordinance 11 and 17 (Annexure 11 and 18 to the petition for amendment of the writ petition), and some more provisions were inserted in Ordinance No. 21 of 1986 (Annexure 11 to the petition dated 12.1.1987 filed on behalf of the petitioner), and more comprehensive provisions were inserted in the subsequent Ordinance No. 11 and 18 of 1987.

63. The Supreme Court in the case of Dr. D.C. Wadhwa (supra) observed as follows:

Of course there may be a situation where it may not be possible for the Government to introduce and push through in the legislature a bill containing the same provision as in the Ordinance, because the legislature may have too much legislative business in a particular session, or the time at the disposal of the legislature in a particular session may be short, and in that event the Governor may legitimately find that it is necessary to re-promulgate an Ordinance.

Where such is the case re-promulgation of the Ordinance may not be open to attack.

By way of justification for not getting the Ordinance placed before the two houses, the respondents have stated as follows:

3. That with regard to the statements made in paragraph No. 2 of the petition under reply, it is stated that Ordinance No. 21 of 1986 is altogether a different Ordinance than Ordinance 16 of 1986. It is true that by section 9 of Ordinance 21 of 1986, Ordinance 16 of 1986 has been repealed still from the perusal of the provisions of the two Ordinances, it would be apparent that the two Ordinances are different. Ordinance No. 21 of 1986 is not a repetition of Ordinance No. 16 of 1986.

4. That it is stated and submitted that the case law reported in AIR 1987 Supreme Court 579 (Dr. D.W. Wadhwa and ors. vs. State) does not apply to the facts of this case. The Court held that the Government cannot bypass the legislature and without enacting the provisions of the Ordinance into an Act of Legislature, repromulgate the Ordinance as soon as the legislature is prorogued. Of course, there may be a situation where it may not be possible for the Government to introduce and push through in the Legislature a bill containing the same provisions as in the Ordinance, because the Legislature may have too much business in a particular session or the time at the disposal of legislature in a particular session may be short, and in that event the Governor may legitimately find that it is necessary to repromulgate the Ordinance. Where such is the case, repromulgation of the Ordinance may not be open to attack. In the instant case, steps were taken to get the bill containing the same provisions as in Ordinance No. 21 of 1986, enacted in the March 1987 session, but it could not be enacted."

6. That by statements made in the amendment petition the writ petitioner has tried to challenge the Ordinance on the basis of the decision given by the Supreme Court in Dr. Wadhwa's case, but it is submitted and stated that ratio of that case has got no application to the instant case.

7. That it is submitted that the Government took every possible step to get the bill enacted but it could not be so done as the date earmarked for consideration of Government bill were cut short by three days in June-July session 1987 and the session was prorogued with effect from 28.7.1987.

64. It appears that the statement aforementioned suffers from some vagueness. It is true that the State should make an endeavour to place the Ordinance before the Legislature in terms of the provisions of Article 213 of the Constitution of India. The action of the State in not doing so must be deprecated. However, there cannot be any doubt whatsoever that in the instant case, there appears to be some justification for not placing the Ordinance before the Legislature in time. As seen hereinbefore, by Ordinance No. 16 of 1986 only one provision was inserted. Thereafter, by other Ordinances being Ordinance nos. 11 and 17 extensive amendments were carried out and the State sought to plug the loopholes of Ordinance No. 16 of 1986. In this situation, it cannot be said that the State had been repromulgating the same Ordinance. Further, in this case, the State has made an endeavour to place the legislation before the Legislature in June-July session. The State ought to have, however, taken all possible steps so

as to see that the bill is placed before both the Houses of Legislature. But it cannot be said that the State has not made any effort in this direction at all. In this view of the matter, in my opinion, it cannot be said that Ordinance No. 21 of 1986 and Ordinance No. 11 of 1987 were promulgated by the Governor in colourable exercise of his power conferred upon him under Article 213 (1) of the Constitution of India. In view of the discussions made hereinbefore, in my opinion, the impugned Ordinance is not liable to be struck down on that ground. In the result, this application is dismissed but without any order as to costs.

N.P. Singh, J.--I agree.