
(1983) 09 KAR CK 0001

In the Karnataka High Court

Case No : W.P. Nos. 18224 & 18225/82 & connected matters. 15/26th
September, 1983 and

M/s. Jyothi Home Industries and Others.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-09-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) 28 KarLJ 77

Hon'ble Judges : K. A. Swami, J;M. N. Venkatachalaiah, J

Judgement

Venkatachalaiah, J.-These 72 writ petitions are amongst the large batch of about 3000 writ petitions challenging the provision of the Karnataka Tax on Entry of Goods into Local areas for Consumption, Use or Sale therein Act, 1979 Thereinafter to be referred to as the "Principal Act" as amended by:

(i) The Karnataka Tax on Entry of Goods into a local area for Consumption, use or sale there in (Repeal) Act, 1981 (Act 10 of 1981) "Repealing Act 10 of 1981 for short;

(ii) The provisions of Karnataka Act, 12 of 1981 "Amending Act 12 of 1981" for short and;

(iii) The provisions of S. 7 of Karnataka Taxation and certain other laws (Amendment) Act, 1982 (Act 13 of 1982). Amending Act 13 of 1982" for short.

The Principal Act received the assent of President on 17-5-1979. It was published in the Gazette on 1-6-79 and came into force that day.

All the petitions in the batch were listed for hearing and head together. The points raised in these 72 petitions cover, comprehensively, all the contentions raised in the course of the arguments and could be said to be representative of the whole batch. The rest of the cases in the batch could be disposed of separately on the basis of this pronouncement.

2. The tax under the "Principal Act" is an impost envisaged by Entry-52 of List II of the Seventh Schedule to the Constitution and was intended to be a substitute for the "Octroi" which, prior to 1979, was being levied by the various Local-Authorities and Municipal-bodies in the State of Karnataka as authorised and empowered under the relevant statutes.

From 1-4-1979 the levy of Octroi was abolished in the State. Owing to the consequent loss of revenue, the local authorities become financially crippled. The State, therefore, contemplated the raising of the necessary financial-resources by the imposition of the Entry-Tax to give those local-authorities the needed financial aid. The State, accordingly, brought fourth the Principal Act to enable the levy and collection of a tax on the Entry of goods into local-areas for consumption, use or sale therein.

Unfortunately, from the very inception, this legislative measure has had a viscittidinous career. Its enforcement and implementation was not smooth; but was marked by succesive challenges on one ground or the other. The present batch of writ petition is indeed, the third round of challenge.

3. The General scheme of the Principal Act is this:

S. 2(f) defines specifically "Local-Area", by confining it to the area with in Municipal Corporations and Municipalities in the State. S. 3 authorises the levy of the tax on the entry of goods these items were specifically enumerated in the schedule to the Principal Act into a local-area for "consumption, use or sale" therein at such rates not exceeding 2 percent ad-valorem as the State Government may by notification specify. S. 4 requires every dealer in scheduled goods to get himself registered under the "Act" in the prescribed manner S. 7 requires every dealer to file monthly statements of the scheduled goods brought by him into the local-area during the month and remit the tax computed on that basis S. 5 deals with the filing of returns and the final assessment.

The point to notice is that both the concept of "local area" and "scheduled-goods" are determinate and specifically defined by the statute itself. In the "Principal Act" the scheduled-goods were limited to three items viz., (i) All varieties of Textiles Etc., (ii) Tobacco and all the products" and (iii) Sugar, other than sugar-candy, confectionary and the like.

State Government, in exercise of powers under S. 3 of the Principal Act, issued a Notification bearing No. FD 66 ESL 79 dt. 3-5-1979 specifying the "local areas", the "goods" and the "Rates of Tax". A flood of writ petitions challenging the constitutional validity of that enactment followed. Writ Petition No. 7039 of 1979 preferred by M/s. Hansa Corporation I.L.R. (1980) 1 Kar. 165, was one amongst that batch of 1590 cases. The validity of the entry tax was challenged on as many as 24 grounds. A Division-Bench of this Court, by its order dt. 24-8-1979, negatived all but two grounds. The two contentions accepted by the Court were that S. 3 of the Act does not empower the State Government to apply the provisions of the Act to certain local areas only and to exclude other local areas

and that the Act in not exempting petty dealers, imposes unreasonable restriction on their trade. The Division-Bench, accordingly declared the Principal Act as unconstitutional and also quashed the Notification dt. 31st May 1979.

4. The State Government, inexplicably as it may seem and that is the genesis of one of the contentions here-chose to prefer only one appeal before the Supreme Court in C.A. 3094 of 1979 against the order in W.P: No. 7039 of 1979 of M/s. Hansa Corporation, though there were 1590 writ petitions in that batch. Supreme Court by judgment dt. 25-9-1980 in State of Karnataka-Vs-Hansa Corporation AIR 1981 S.C. 463 allowed the State's appeal and set-aside the judgment of this Court and dismissed W.P. No. 7039 of 1979 filed by M/s. Hansa Corporation in this Court.

(5) Before we advert to the second-round of the litigation, it is necessary to notice certain legislative changes brought in the Principal Act.

Before the State's appeal in M/s. Hansa Corporation's case was decided by the Supreme Court, the Legislature enacted "The Karnataka Tax on Entry of Goods into a Local Area for Consumption, Use or Sale therein Act, 1980. (E.T. Act 21 of 1980 for short) replacing an earlier ordinance of 8-6-1980. This was a fresh piece of legislation intended to be a substitute for and to fill the void created by this Court striking down the Principal Act. Quite obviously teis E.T. Act 21/80 was not intended to operate cumulatively with the Principal Act. The result was that after the judgment of the Supreme Court, two enactments viz., the "Principal Act" and the "E.T. Act. 21 of 1980" were in force covering the same field. With a view to removing this redundancy, the E.T. Act, 21 of 1980 was repealed by the "Repealing Act 10 of 1980, which replaced an earlier ordinance in this behalf. This "Repealing Act 10 of 1981" by its second section repealed E.T. Act. 21 of 1980 with effect from its inception i.e., 8-6-1980. By its third section it declared that "E.T. Act. 21 of 1980" shall be deemed never to have been enacted. The said S. 3 also proceeded to declare that the "Principal Act", "shall, notwithstanding anything contained in any judgment, decree order of any Court be deemed always to have been valid and shall continue to be in force".

The next amendment was by the "Amending Act 12 of 1981" which replaced an earlier ordinance in that behalf. It came into force with effect from 18-2-1981 and amended certain provisions of the "Principal Act". By one of the amendments, the "Principal Act" was made operative only from 1-10-1980 as against the 1-6-1979 earlier notified. Another amendment was to S. 3 of the Principal Act by which the State Government was authorised and empowered to issue notifications under S. 3 "Whether prospectively or retrospectively". Item No. 1 of the Scheduled to the Principal Act was also substituted by a new item.

The last of the legislative activities was the "Amending Act 13 of 1982 which came into force on 1-4-1982. By this Act, which was a composite legislation, amendments to several taxation-laws including the "Principal Act" were introduced. S. 7 which has 15 sub-sections pertains to the Principal Act. Inter-

alia, it seeks to expand the definition of "Local-Area"; expand the definition of "dealer" and also and 13 new items to the schedule to the Act namely:

"4. Iron and steel, that is to say-(i) pig iron and cast iron including ingot moulds bottom plates, iron scrap, cast iron scrap, runner scrap and iron scrap;

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

(iii) shelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;

(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

(v) Steel structural (angles, joints, channels, tees, sheet piling sections, Z sections or any other rolled sections);

(vi) Sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straightlengths and in coil form as rolled and in rivetted condition;

(vii) Plates both plain and chequered in all qualities;

(viii) discs, rings, forgings and steel castings;

(ix) tool, alloy and special steels of any of the above categories;

(x) steel melting scrap in all forms includings steel skull, turnings and bearings.

(xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;

(xii) tin-plates, both hot dipped and electrolytic and tinfree plates;

(xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails heavy and light crane rails;

(xiv) Wheels, tyres, axels and wheels sets;

(xv) wire rods and wires rolled, drawn, galavanised, aluminised, tinned or coated such as by copper;

5. Cement.

(6) All kinds of paper including carbon paper, blotting paper, water proof paper, PVC coated paper, ferro paper, ammonia paper, stencil paper, pulp boards, art boards, duplex boards, triples boards, card boards, corrugated boards and the like but excluding newsprint.

7. Industrial machinery and parts and accessories thereof.

8. Alluminium ingots.

9. Industrial gases other than LPG.
10. Coal and Coke (excluding charcoal).
11. All petroleum products, that is to say-Petrol, diesel, crude oil, lubricating oil, transformer oil, brake or clutch fluid, bitumin (asphalt), tar and others but excluding LPG Kerosene and naphtha for use in the manufacture of fertilisers.
12. Refrigerators, air conditioners and parts and accessories thereof.
13. Electrical goods that is to say, electrically operated motors, fans, geysers, hot-plates ovens, heaters, mixers and grinders including parts and accessories thereof and such other items as may be notified by the State Government from time to time.
14. All kinds of automobiles excluding passenger buses, tractors, tractor-trailers and power tillers.
15. All kinds of ores.
16. Jute."

One of the contentions now urged is that the Amending Act 13 of 1982, imposed new and additional restrictions-both as to areas and as to new items of goods-violative of Art. 301 and that even assuming that those additional restrictions are reasonable and in public interest, the Amending Act had to comply with the requirements of Art. 3C4(b) proviso.

6. "Repealing Act. 10 of 1981" brought forth a spate of writ petitions with the filing of the batch of writ petitions viz., W.Ps. 21048, 21756, 21973, 22587 and 23373 of 1980 and W.Ps.1 and 7040 of 1981 by Traders, amongst whom were petitioners in the first batch of 1590 writ petitions in whose cases the writs of mandamus issued by this Court had not been appealed against. One of the grounds urged in this second round was that the judgment of the Supreme Court in M/s. Hansa Corporations case, confined as it was to W.P. 7039 of 1979, did not affect the petitioners in the earlier writ petitions; that accordingly those writs issued by this Court had become final and that the legislature could not, by its declaration in S. 3 of the Repealing Act 10 of 1981, nullify the effect of these writs issued under Art. 226 of the Constitutions. Puttaswamy, J. by his order dt. 2-11-81 dismissed the writ petitions. Against this order, Writ Appeals Nos. 662 to 668 of 1982 were preferred by the petitioners. The appeals came to be dismissed by the Division Bench by judgment dt. 2-4-1982 (vide) Narasimha Kamath & Co., v. Entry Tax Officer, Mandya (1983) 1 Kar. L.J. 135. The Division Bench concurred with the conclusions of the learned single Judge but on a different reasoning. The Division Bench did not accept the contentions of the petitioners that the legislature could not undo the effect of the writs issued under Art. 226 of the Constitution and that the legislative declaration in S. 3 of the Repealing Act 10 of 1981 that the Principal Act was valid notwithstanding any judgment as such a declaration amounted to an impermissible legislative over-ruling of judicial

decisions. The Division Bench held that S. 3 of the Repealing Act 10 of 1981 should be construed as "re-enacting" the "Principal Act" after the obstacle to its validity had disappeared pursuant to the judgment of the Supreme Court.

It is stated that the aforesaid Judgment of the Division Bench in Narasimha Kamath's Case is taken up in appeal before the Supreme Court. This marks the second round of challenge.

7. We now come to the present the third round of challenge. The present petitioners are not those who had filed writ petitions which culminated in the appellate decision in Narasimha Kamath's Case.

8. We may now turn to the successive notifications issued, from time to time, under S. 3. The first was the one dt. 31-5-1979. There was a supplemental notification dt. 16-12-1980 under S. 3 extending the provisions of the "Act" to areas not covered by the notification dt. 31-5-1979. Notification dt. 2-3-1981 superseded the earlier two. The notification dt. 2-4-1982 superseded the one dt. 2-3-1981.

9. Sriyuths: K. Srinivasan, Indrakumar, B.P. Gahdhi and Kashinathrao Patil, learned Counsel, addressed arguments on behalf of the petitioners. The rest of the Counsel appearing for the petitioners adopted the arguments of these learned Counsel. Shri M.R. Achai learned Government Advocate, addressed arguments on behalf of the respondents.

10. A wide range of contentions were raised and urged at the hearing. They admit of being formulated as follows:

Point (i): That S. 3 of the "Repealing Act, 1981" having been held in Narasimha Kamath's case to have re-enacted the "Principal Act" such reenacted law in the absence of the prior sanction or subsequent assent of the President is void.

Point (ii): That S. 3 of the "Repealing Act of 1981" is without legislative competence as its avowed object was to nullify the writs of mandamus issued by this High Court in exercise of its Constitutional power under Art. 226 directing the State and its functionaries to forbear from enforcing the provisions of the Act.

Point (iii); That as the date of commencement of "Principal Act" from 1-6-1979 originally declared was postponed by the Amending Act 12 of 1981 to 1-10-1980, the Notification No. FD 66 ESL 79, dt. 31-5-1979 issued under S. 3 is without the authority of law, as the "Principal Act" was itself not in force on 31-5-1979.

Point: (iv); That amendment of S. 3 authorising retrospective notification came into force on 18-2-1981 and that Notification No. FD 14 CET 81, dt. 2-3-81, is ultra-vires as its retrospective operation and effect projects itself anterior to 18-2-1981.

Point (v): That Notification No. FD 14 CET 82, dt. 2-4-1982 is also bad in law, as it does not really specify local areas at all. The expression "into a Local Area" in the notification is vague and fails to signify to which local area the notification

seeks to apply the provision of the Act.

Point (vi): That S. 3 of the "Principal Act" as amended by the "Amending Act 12 of 1981" empowering the State Government to issue notifications retrospectively, has the effect of authorising a retrospective-tax, and is violative of Art. 19(1)(g) of the Constitution.

Point (vii): That even if S. 3. enabling retrospective notification is not unconstitutional at all events the Notification dt. 2-3-1981, being retrospective in operation, brings about an unreasonable restriction on the rights guaranteed under Art. 19(1)(g) of the Constitution.

Point (viii): That the policy and the scheme of taxation made manifest by S. 3 read with S. 30(2)(f) is that the taxable event is not merely entry of goods for consumption, use or sale but entry of goods coupled with actual consumption, use or sale in the local area; and that therefore, S. 7 which compels the dealer to file returns and to pay the tax even before the taxable event takes, constitutes an-unreasonable restriction on the fundamental rights guaranteed by Art. 19(1) (g) of the Constitution.

Point (ix): Alternatively, S. 7 must be read down as merely authorising collection of a deposit "on account" towards the probable-tax to be appropriated towards tax, when the actual consumption, use or sale within the local area occurs.

Point (x): That S. 3 of the "Principal Act" as amended by the Amending Act 12 of 1981 being applicable only to dealers in scheduled-goods and not to the dealers in non-scheduled goods and not also to non-dealers, although all the three cause entry of goods into a local area for consumption, use or sale therein, the differentia of classification, though intelligible, has no nexus to the object of the legislation and that, therefore, S. 3 brings about an unconstitutional discrimination and is violative of Art. 14 of the Constitution.

Point (xi): That in view of Art. 277 of the Constitution, the State legislation is not competent to enact the "Principal Act".

Point (xii): That during the debate in the legislature on the "Principal Act", it was allegedly assured by the Finance Minister that Entry Tax would be levied, only on such goods not attracting sales-tax, that inclusion in the schedule, by Act 13 of 1982, of items which are liable to Sales Tax also is not permissible.

Point (xiii): That notifications issued under S. 3 are bad for not complying with the procedure of prior publication; and that the proceeds of the tax being intended for the benefit of and assignable to local authorities, ought not to be levied directly by the State but should only empower the local authorities to levy and collect the same.

Point (xiv): That Karnataka Act. 13 of 1982, in so far as it introduces new items Nos. 4 to 16 into the Schedule and expands the definition of "local area" in S. 2(5) results in the imposition of additional restrictions on the freedom of trade

and commerce; that the imposition of the tax, which is non-compensatory in character, has the direct and immediate effect of impeding free flow of trade and violative of Art. 301. At all events, even if the additional restrictions can be said to be reasonable and in public interest, the legislative measure by which the additional restrictions were imposed not have been introduced or moved in the legislature with the previous sanction of the President and not having also subsequently received the assent of the President, is unconstitutional and void.

11. We may now proceed to examine the merits of these contentions. We may notice here a preliminary point raised by Sri Achar. He said some of the petitioners here who had filed the earlier petitions not having raised these contentions then, stand precluded to do so now. As there are a large number of other petitions who are not under any such disability the contention loses its edge.

12.Re. Point (i): Sri K. Srinivasan urged that the legislative technique of S. 3 of the "Repealing Act 10 of 1981" which, inter-alia, sought to resurrect the "Principal Act" has been held by this Court in Narasimha Kamath's case, to amount to a re-enactment of the "Principal Act"; and that the idea of re-enactment introduces two sequential concepts, namely, first, the invalidity of a legislation either by repeal or by judicial declaration; and secondly, the statute being brought back on the statute-book by fresh legislation. As an inevitable concomitant and incident of re-enactment and having regard to the nature of the provisions sought to be re-enacted, namely, that they impede free flow of trade and commerce, the "Repealing Act 10 of 1981" would require prior sanction or subsequent assent of the President even granting the restrictions to be both reasonable and in public interest.

13. The assumptions basic to this argument, in our opinion, suffer from a fundamental fallacy. S. 3 of the "Repealing Act 10 of 1981" while repealing the "E.T. Act 21 of 1980" and declaring that the E.T. Act 21 of 1980 shall be deemed never to have been enacted, proceeds to declare that the "Principal Act" shall be deemed always to have been valid and in force and shall continue in force.

Adverting to the effect of this proposition the Division Bench in Narasimha Kamath's case said:

"...as stated earlier, S. 3 of the Repealing Act, 1981 should be regarded as having re-enacted the Entry Tax Act, 1979 after the basis for its invalidity, as held by this Court in Hansa Corporation case, was removed by the Supreme Court which reversed that decision of this Court. By such re-enactment, the writ of mandamus issued by this Court in Hansa Corporation case became ineffective."

14. This observation of the Division Bench cannot, in our opinion, be read as a pronouncement that the legislative activity in enacting S. 3 of the "Repealing Act, 1981" amounted to a formal re-enactment of the "Principal Act" with all that goes with a formal re-enactment. The Division Bench was merely referring to what in the opinion, was the legal effect of S. 3 of the Repealing Act, 1981, and

its observations must be understood to mean that, in its opinion, the effect and consequences of the said S. 3 were analogous and comparable to those that flow from a re-enactment.

Indeed, a statute held to be constitutional by the Supreme Court does not need to derive its efficacy by any process of re-enactment. The concept and purposes of validation of laws is entirely different from those of re-enactment. In American Jurisprudence, Constitutional Law, Vol. 16 at Para 179, it is stated:

"A statute once declared unconstitutional, and later held to be constitutional, does not require re-enactment by the legislature to restore its operative force,"

15. Sri, M.R. Achar, however, stated that in Narasimha Kamath's case, it was nobody's stand that S. 3 of the "Repealing Act 10 of 1981" had re-enacted the "Principal Act". Sri Achar submitted that if the Court, on its own discussed an aspect which had not been raised by either party and expressed any opinion on that aspect that opinion would not operate as a precedent. Sri Achar referred to certain observations of Fazal Ali, J., *Rajpur Ruda Mehta v. State of Gujarat*, AIR 1980 S.C. 1707. It is not necessary to dilate on this point, as, in our opinion, upon a proper reading of the appellate judgement in Narasimha Kamath's case, we do not understand the learned Judges to have laid down that the "Principal Act" had formally come to be re-enacted. The observations relied upon by Sri. Srinivasan are taken out and read out of context. Understood in their true context, they do not support the very premise of Sri Srinivasan's argument.

16. We accordingly, hold and answer point (i) against the petitioners.

17.Re: Point (ii) The argument for the petitioners proceeds somewhat on these lines:

That in the 1590 earlier writ-petitions this Court struck-down the law as unconstitutional and issued writs of mandamus against the State and its officers to forbear from enforcing the provisions of the "Principal Act". The State Government preferred appeal only in W.P. No. 7039/79 of M/s. Hansa Corporation. Though the judgment of this Court was reversed by the Supreme Court and the constitutional validity of the Principal Act was upheld however, the writs of mandamus issued in favour of the rest of the petitioners, not having been appealed against, became final and remained undisturbed, S. 3 of the "Repealing Act 10 of 1981" in effect seeks to set at naught these writs of mandamus is issued in exercise of the constitutional power under Art 226. The decision of the High Court in exercise of the constitutional power under Art. 226 cannot be equated to an ordinary adjudication or proceeding. The legislature has no competence by a legislative Act to set at naught writs issued under Art. 226.

For the above contention strong reliance is placed on the decisions of the Supreme Court in *State of Punjab v. Joginder Singh* AIR. 1963 S.C. 913 M.M. Pathak v. Union of India AIR 1978 S.C. 802; *Maru Ram v. Union of India* AIR 1980 S.C. 2147; *A.V. Nachane v. Union of India* AIR 1982 S.C. 1126; and of the

Allahabad High Court in *Indian Milk Products v. State of U.P.* 48 STC 197.

18. Sri. Achar, learned Government Advocate, however, says that this proposition is concluded by the pronouncement of this Court in *Narasimha Kamath's Case* itself and again *M/s. Shantilal & Bros. v. State of Karnataka* W.Ps. 19200/82 & C/w. Ps. dt. 27-7-1983.

In the former case, though S. 3 of the "Repealing Act 1981" was not, in terms, challenged, the contention of the petitioners that the writs of mandamus issued in the earlier batch could not be done away with by the said S. 3, rested on this very contention. That contention was not accepted and it was held that ratio the in *Pathak's case* and *A.V. Nachane's case* was not applicable.

19. Again this question, more directly arose in *M/s. Shantilal's case* where a similar contention in the context of S. 6B of the *Karnataka State Sales Tax Act, 1957*, was considered. *Jagannatha Setty, J.* speaking for the Division Bench, found the contention unsubstantial. Distinguishing *Pathak's case* it was observed.

"I...It may be noted that the Mandamus issued by the Supreme Court did not rest on the ground that the Parliament has no power to Supercede the decision of the Calcutta High Court given in the exercise of powers under Art. 226 of the Constitution. The relief was granted on the basis that the Modification Act did not at all disturb that decision of the Calcutta High Court and therefore it was binding on the LIC."

That the pronouncements in *Narasimha Kamath's Case* and *Shantilal's Case* fully answer the present contention is not disputed. Indeed during the argument of the present batch of cases before us it was stated before us that this very question had been raised and urged before the Division Bench in *Shantilal's Case* and accordingly, we deferred this pronouncement to await the decision.

20. Sri Srinivasan, however, urged that the ground on which the Division Bench in *Shantilal's Case* rejected this argument was itself one which had been rejected by the Supreme Court in *Pathak's Case* itself. Sri Srinivasan said that the Division Bench distinguished the effect of *Pathak's case* on the ground that the Legislation concerned in that case had not even referred to let alone seek to get over the decision of the Calcutta High Court. Sri Srinivasan said that even if the Legislature had expressly sought to get over the pronouncement of the Calcutta High Court it would have been to no effect for, it was not competent for the legislature to do away with the writ of mandamus issued by the Calcutta High Court. Sri Srinivasan sought to derive support from the following observations in *Phathak's case*:

"I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force

from Art. 226 of the Constitution itself. These could not be touched by an ordinary Act of Parliament. Even if S. 3 of the Act seeks to take away the basis of the Judgment of the Calcutta High Court without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights." (vide para-9). Sri Srinivasan strongly urged that the ground on which Pathak's case was sought to be distinguished in Shantilal's case requires reconsideration.

21. In Pathak's case certain Class III and Class IV employees in the Life Insurance Corporation of India (LIC) challenged the validity of the Life Insurance Corporation of India (Modification of settlement) Act, 1976, which sought to withhold payment of bonus payable in accordance with certain earlier settlements entered into between the L.T.C. on the one hand and its Class III and IV employees on the other and, in particular, the one reached on 24-1-1974. However, before that Act, was passed, on a writ petition filed by the Insurance Employees' Association, Calcutta, the Calcutta High Court had, on 21-5-1976, issued a writ of mandamus directing the LIC to implement and effectuate the settlement dt. 24-1-1974 for the particular period concerned in that petition. The Letters Patent Appeal preferred by the L.I.C. against that order having been, reportedly, withdrawn, the order in the writ petition became final and binding.

22. Referring to the effect of mandamus issued by the Calcutta High Court, justice Bhagwati said:

"We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1st April, 1975 to 31st March 1976 Class III and Class IV employees" (vide para-26).

As to the effect of the Modification on the mandamus issued by the Calcutta High Court, the Supreme Court observed.

"...It is, no doubt, true, said the petitioners, that the impugned Act, if valid, struck at clause 8(ii) of the Settlement and rendered it ineffective and without force with effect from 1st April, 1975 but did not have the effect of absolving the Life Insurance Corporation from its obligation to carry out the writ of mandamus ...This contention of the petitioners requires serious consideration and we are inclined to accept it" (vide para-24).

23. In A.V. Nachane's Case Supreme Court considered the effect of the decision in Pathak's case and LIC of India v. D.J. Bahadur AIR. 1980 S.C. 2181 and held that the settlement of 1974 in relation to the payment of bonus could be interfered with only by a fresh settlement, award or a relevant legislation, but any such proposition could only have a prospective effect.

In Pathak's case all the learned Judges subscribed to the view that the

Modification Act was void as offending Art. 31(2). Four of the learned Judges were also of the view that the Modification Act did not have the effect of superseding the mandamus issued by the Calcutta High Court.

24. As an instance as to how the principle and effect of Pathak's case and Nachane's case would require to be understood, Sri Srinivasan referred to a decision of the Allahabad High Court in Indodan Milk Product's Case.

In that case, S. 4(1) of the U.P. Sales Tax Act, 1948 had exempted milk and such other goods which the State Government may exempt. Later the State Government issued a notification exempting certain goods including milk products, but excluding those sold in sealed tins. A question having arisen in the same assessee for the year 1965-66 "whether or not condensed milk is milk within the meaning of S. 4(1) and therefore exempt", a full-bench of the Allahabad High Court held that condensed milk was "milk" within the meaning of the exempting provision. For a subsequent assessment year i.e., 1967-68 the assessee filed a writ petition against an assessment bringing condensed milk to tax and the High Court, following its earlier Full Bench ruling allowed the writ petition and directed the assessing authority to modify the assessment.

The U.P. Sales Tax (Amendment) Act 1974, which was enacted for the purpose of getting over the interpretation of the Full-Bench, repealed and re-enacted S. 4, with retrospective effect from 31-3-1956, which exempted, inter-alia, "milk other than condensed milk, milk powder or baby-milk". S. 12 of the Amending Act, sought to validate the assessments notwithstanding any judgment, decree or order of any Court. In the writ petition filed by the assessee challenging the amendments, one of the contentions urged, relying upon Pathak's Case was that the amending Act did not and could not take away the effect of the decision of the High Court in the writ petition.

The High Court, while holding that the substratum of the Full-Bench decision had been taken away by the retrospective amendments and that decision was not, in the altered circumstances brought about by the retrospective change in the law, binding and enforceable, however, took a different view of the effect of the amendment so far the order in the writ petition relating to the assessment year 1967-68 was concerned. It held that the amendment did not and could not affect the judgment in the writ-petition given in exercise of the Constitutional Power under Art. 226. The High Court held:

"The position with respect to the High Court's Judgment given in the writ petition under Art. 226 of the Constitution is, however, different.....The mandamus issued by this Court under Art. 226 of the Constitution cannot be countermanded merely by retrospectively amending the Sales tax Law. S. 12 which validates the assessment notwithstanding any judgment, decree or order of any Court, will not apply to judgments rendered under the constitutional power under Art. 226 of the Constitution. No State Legislature can affect the constitutional power vested under Art. 226 of the Constitution. No State Legislature can affect the

constitutional power vested under Art. 226 of the Constitution, in relation to a judgment actually rendered by it in between certain parties. The judgment of this Court in the aforesaid writ petition, having become final, operated in between the present petitioner and the Sales Tax authorities. A similar situation arose in *Madan Mohan Pathak v. Union of India* (AIR. 1978 S. C 802).....

This pronouncement, it is true, does help Sri Srinivasan's contention.

25. On a careful consideration of the matter, we are of the opinion that the conclusion reached by the two Division Benches on this point is correct. The thrust of Sri Srinivasan's arguments is that when there is a judicial pronouncement in exercise of the ex-ordinary constitutional jurisdiction under Art. 226 by the High Court and a writ is issued, its efficacy and effect cannot be nullified by any legislative declaration. The effect of the writ, it is urged, can be altered or modified only in judicial proceedings of appeal or review.

This proposition of Sri Srinivasan incurs the criticism of being stated too broadly and not opposite in all contexts. It is true that where a law is declared unconstitutional and struck down by the Courts, the effect of such judicial pronouncements cannot be rendered nugatory by a mere subsequent legislative declaration that the law shall, notwithstanding the judicial verdict invalidating it, be deemed to be valid. Such legislative over-ruling of and interference with the finality of a judicial verdict is impermissible having regard to the limitations on the legislature implicit in the separation of powers amongst the three organs of the State.

26. However, if there is a pronouncement of the Highest Court of the land declaring a law to be bad for some constitutional infirmity noticed in it and a consequential writ issued, there can be no question of a further appeal from it and the subsequent Act of the legislature curing the defect and validating the law with retrospective effect would only imply legislature's recognition of the efficacy and finality of the judicial pronouncement. In the altered circumstances brought about by the retrospective change in the law earlier judicial declaration the consequential writ issued become irrelevant and unenforceable.

There is no legislative over-ruling of a judicial decision in such a case. It cannot be said that in such a case the legislature does not legislate but adjudicates. In such validating Acts the legislature accepts both the correctness and finality of judicial pronouncements and proceeds-granting legislative competence and conform ability with other constitutional limitations legislative power either to remove the lacuna or to supply the omission in the law pointed out by the judicial pronouncement. The law is thus validated and resurrected. Such a validating law can be given retrospective operation as the legislature, which has competence to make a law, can make it either prospectively or retrospectively. In such a case the getting rid of the effect of the judicial pronouncement a mere incident and consequence of the altered circumstances brought about by retrospective change in the law. Otherwise, a judicial pronouncement would

operate as a permanent limitation on legislative power.

As to the general proposition that the effect of a writ issued under Art. 226 cannot be overcome by legislature at all, the following observations of the Constitutional Bench of the Supreme Court in *State of Orissa v. Bhupendra Kumar Bose* AIR. 1962 S.C. 945 is worth recalling:

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

27. Consistent with this permissibility of validating retrospective legislation, the fundamental distinction, relevant to the present situation, that requires to be kept clearly distinguished is this: If the judicial decision is merely a declaratory judgment and the issue of a writ of mandamus is merely consequential to that declaration, it would be permissible for the legislature to remove the defect or supply the basis, as the case may be noticed in the judicial pronouncement and this validate the law. If, on the other hand the judgment, inter-parties, is rendered on the basis of the substantive pre-existing rights of the parties which are crystallised in the writ-issued, and the issuance of the writ is a mode of enforcing such adjudicated pre-existing rights-as in the case of a judgment and decree interparties-then the effect of such adjudication cannot be interfered with except in a judicial process such as appeal, review etc.

In the former case the judgment is merely declaratory of the law and the writs issued are merely consequential; but in the latter case the decision is adjudicatory of pre-existing rights of parties and the right's are crystallised into and enforceable through the writ.

Pronouncement of the Supreme Court in *Prithvi Cotton Mills Ltd., v. Broach Borough Municipality* AIR 1970 S.C. 192 *Ahmedabad Corporation v. New Shrock Spg. & Wvg. Co. Ltd.*, AIR. 1970 S.C. 1292 *I.N. Saxena v. State of M.P.* AIR 1976 S.C. 2250 & then *Mistilal Misrilal Jain v. State of Orissa* AIR 1977 S.C. 1636 illustrate the former principle. We are unable to agree with Sri Srinivasan that

after Pathak's case all these pronouncement are denuded of their authority. On the other hand, Pathak's case, Bahadur's case, and Nachane's case are illustrative of the latter class of cases.

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

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

". . .Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion". [vide para-9 (Underlining supplied).

The ground of distinguishment of the relevance of the decision on validation of laws was this:

"....It is difficult to see how this decision, given in the context of a validating statute can be of any help to the Life Insurance Corporation. Here the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgement holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a writ of mandamus directing the Life insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation..." (vide para 26) (Underlining supplied in italic).

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

After the Supreme Court reversed the decision of this Court in M/s. Hansa Corporation's case, there was no defect in it to be cured, no omission to be supplied and no lacuna to be filled up and the legislature had merely to declare so. The legislative device and expedience reflected in S. 3 of the Repealing Act 10 of 1981 merely recognises the altered circumstances brought about by the

pronouncement of the Supreme Court. And in those altered circumstances, so recognised by S. 3 of the Repealing Act 10 of 1981, the decisions in the writ-petitions, even though they had not been appealed against, because irrelevant and incapable of coming in the way of the enforcement of the provisions of the "Principal Act".

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

28. We, accordingly, hold and answer point (ii) also against the petitioners.

29.Re. Point (iii): The Principal Act came into force on 17-5-1979. The Notification No. FD 66 ESL 79 under S. 3 was issued on 31-5-1979. This notification is challenged on the ground that when by the "Amending Act 12 of 1981" the date of commencement of the Act was made effective only from 1-10-1980, the legal basis of the notification dated 31-5-1979 was taken away as on the day that notification was issued, the Principal Act could not be said to be in force at all.

30. But, this question is virtually academic in these cases. By the subsequent notification, dt. 2-3-81 issued under S. 3 the earlier two notifications including the one dt. 31-5-79 were superseded. Therefore the question of the validity or otherwise of the notification dt. 31-5-1979 covered by point (iii) is of no practical consequence.

31. Sri Srinivasan, however, urged that a decision on the validity or otherwise of the notification dated 31-5-1979 would be relevant in the context of the provisions of S. 5(4) of the "Amending Art 12 of 1981" which inter alia, provide for recovery of taxes actually collected or "deemed to have been collected" by any dealer for the period between 1-6-1979 and 1-10-1980, and for the period between 1-10-1980 and 18-2-1981 in excess of 1 percent. But, none of the petitioners have challenged here any such proceedings for recovery.

We agree with the learned Government-Advocate that in the facts of these cases this question is purely academic. We therefore decline to go into and decide it.

32. Point No. (iii) is disposed of accordingly.

33.Re. Point (iv): This relates to the validity of the notification dt. 2-3-1981. Petitioners' contention is this ;

The amendment of S. 3 of the Principal Act authorised the issue of retrospective notification was introduced on 18-2-1981; that any exercise of that power cannot relate to a period anterior to 18-2-1981 and that since the retrospectivity of the notification dt. 2-3-81 projects anterior to 18-2-1981, the notification is ultra-vires.

34. This contention is in our opinion, unsound. On 2-3-81 when the notification promulgated, there was power to issue it retrospectively. S. 4 of the Amending

Act 12 of 1981 had substituted the words "Whether prospectively or retrospectively" into S. 3 of the Principal Act. The power of the State Government to make the notification retrospective is to be determined on the basis of its powers existing as on the date of the exercise of the power and not with reference to the period to which the retroactivity relates. The principle is that, Legislature can delegate its legislative power within, of course, the recognised limits of permissible delegatee in exercise of that power it will be possible for it to exercise that power with retrospective effect if the language of the statute, either expressly or by necessary implication, empowers such retro-active exercise. But, where no such language is to be found, the authority exercising subordinate legislative functions cannot give it retrospective effect. In the present case, as on the date of the issue of the notification, by virtue of the amendment, S. 3 expressly provide that a notification could be issued whether prospectively or retrospectively by the State Government. In this view of the matter, it is not possible to accept petitioners" contention.

35. Point (iv) is, accordingly, held and answered against petitioners.

36.Re. Point (v): This point relates to the validity of the notification dt. 2-4-1982. The infirmity in this notification, according to the petitioners, is that no "local area" can be said to have been specifically predicated at all. To put this contention in its proper prospective, it is necessary to refer to the language of the notification itself. The notification, after recapitulating the source of the power and stating that it supersedes the earlier notification dt. 2-3-1981, proceeds to say.

".....the Government of Karnataka hereby specified that with effect from the 1st day of April, 1982 the tax shall be levied and collected under the said Act at the rates specified in Column (3) of the Table below on the Entry of the scheduled goods specified in the correspondent entries in column (2) thereof, into a local area;

TABLE

Sl. No. Description of the scheduled goods Rate of Tax

* * *

(underlining supplied in italic)

The expression "local area" is defined in S. 2(5) of the Act.

The argument is that article "a" in the notification does not connote "every" local area and when article "a" qualifies "local area" is, the specification is vague and it would not be possible to predicate with any certainty to which "local area" the notification was intended to or does apply. It is contended therefore that the expression "into a local area in the notification cannot mean "every local area. Sri Srinivasan sought to sustain this argument with reference to two circumstances.

37. First, he referred to a fresh notification dt. 31-3-1983 issued under S. 3 in

which the expression into every local area is used which would, according to Sri Srinivasan, show that a different intention is implicit in the designedly different language occurring in the earlier notification.

Secondly, Sri Srinivasan says that the expression "a" local area has been interpreted by the Supreme Court in M/s. Hansa Corporation case as not to amount to "every" local area and that it is not therefore permissible to give a different meaning to that expression now.

38. It is difficult to accept both these contentions. On the first aspect, the circumstance that in a later notification. Government used the word "every" does not, ipso-facto, compel a construction that the words "into a local area" in the earlier notification excluded its application to "every" local area if, otherwise, in the context they mean the same thing.

39. On the second aspect as to what the Supreme Court said on the import of the expression "a" local area in S. 3 those observations require to be understood in the precise context in which it was examined. In that case, the High Court had so interpreted the expression "a local area" in S. 3 as not to admit of and choice of local areas to the Government in applying the provisions of the "Act" and that Government could not pick and choose any particular "local area". The Supreme Court did not approve of this interpretation of S. 3. Supreme Court held that the expression "a" local area in S. 3 need not necessarily mean "every" local area and the State Government could chose certain local areas and exclude other local areas in applying the provisions of the Act.

40. Relying on the observations made by the Supreme Court in this context, Sri Srinivasan says that Supreme Court had held that the expression "a local area" did not mean "every local area". That, in our opinion is not the correct way of understanding the observations of the Supreme Court. All that the Supreme Court said was that "local-area", need not necessarily mean "every local area", and that law did not compel the State Government to apply the provisions of the Act to all local areas, simultaneously. It is implicit in the logic of the situation that "a local-area" did not also necessarily exclude "all" or every" local area and that the State Government could, if it so chose, apply the provisions to every or all local areas as well. In that case, Government had sought to apply the provisions of the Principal Act to certain local-areas alone and that was up-held.

If, indeed the expression "a local-area" is understood in the way Sri Srinivasan wants it to be understood, it would then mean that the State Government would have no power to apply the provisions of the Act simultaneously to every local area even if it desired to do so.

41. In our opinion, a proper construction would show that the article "a" prefixing the "local area" used in the notification, is not used as a definite-numeral. The word "a" has varying meanings and uses. "A" may mean "one" or "any" depending on the context. It may mean one where only one is intended. It may mean "any" also, where the context is not repugnant to that import. It is

often used in the sense of "any" and then applied to more than one individual object. The word "any", constructively, would mean also everyone of the sort named.

It would therefore, appear that though the wording of the notification is somewhat inelegant and unhappy the intent made manifest in the notification is that the provisions of the Act are to be applied to every local area. If any absurdity or inconsistency resulting from reading of the notification in a particular way could reasonably be avoided on the basis of an alternative construction which is not unreasonable on the plain language, then the Court should not be astute to defeat the notification by accepting a construction which would reduce it to an absurdity. On a reasonable construction of the language of the notification, the words "into a local area" mean "every local-area" as defined in S. 2(5) of the Act, and will apply to all such local areas.

42. We, accordingly, hold and answer Point (v) also against the petitioners.

43.Re: Points (vi) and (vii): These two points admit of being considered and disposed of together.

Petitioners contend that the amendment of S. 3 of the Principal Act, by the "Amending Act 12 of 1981" empowering the State Government to apply its provisions by issuing notifications retrospectively offends Art. 19(1)(g) of the Constitution.

Point (vii) is that even if the Section authorising retrospective notification does not, by itself, offend Art. 19(1)(g), the exercise of the power in the form of the notification dt. 2-3-1981 applying the provisions of the Act retrospectively from 1-10-1980 with respect some areas and from 1-10-1982 with respect to other areas, amounts to and constitutes an unreasonable restrictions on petitioners right under Art. 19(1)(g).

Mere excessiveness of a tax does not, by itself, become an unreasonable restriction on the freedom of trade or business; unless it is shown to be confiscatory in effect. Equally, the mere imposition of a tax with retrospective effect is not, per-se, violation of Art. 19(1)(g). A citizens who challenges a retrospective tax as violative of Art. 19(1)(g) must demonstrate the actual manner the tax and its incidents hurt him and make inroads into the fundamental right. The petitioners have not laid the necessary particulars in this behalf in their pleadings. On this score alone these contentions ought to fail.

44. In considering the question as to the effect of a retrospective tax, it would be relevant to examine how that retrospectively operates. The period of retrospectivity is also a relevant and material consideration. But, the mere possibility of the retrospective application of the provisions of a taxing law operating harshly in some cases is no ground to hold the legislation itself unconstitutional. The effect of the actual exercise of the power would have to be examined.

45. It is to be noticed that as on 1-10-1980 to which date the retrospectivity of the notification extends, the Principal Act was in force and there were also earlier notifications applying its provisions from 1-6-1979 itself. Indeed, the law gave a concession to the dealers in making the law effective from 1-10-1980 as against 1-6-1979 earlier notified. In the case of law validating a tax, the scope of examination of its retrospectivity in the context of Art. 19(1)(g) is quite limited. In this case, the period of retrospectivity is only a few months during which period also the taxing power and a notification exercising that power both in operation. In the facts of this case, it is not possible to hold that the issue of the notification of 2-3-1981, with some retrospectivity of its operation, offends petitioners' fundamental rights under Art. 19(1)(g) of the Constitution.

By the notification, the State Government was seeking to effectuate the object of the taxing statute and was making, what may be called "small repairs" in the law. The following passage in 73 Harward Law Review 692, "Retractive Legislation" Charles B. Hochman 73 H.O.R. 692, referred to with approval in Asst. Commissioner of Urban Land Tax, Madras v. Buckingham & Carnatic Co. Ltd., AIR. 1970 S.C. 169 is worth recalling:

"It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called "small repairs". Moreover, the individual who claims that a vested right has arisen from the defect is seeking a wind fall since, had the legislature's or administrators action had the effect it was intended to and have had no such right could have arisen. Thus the interest in the retrospective curing of such a defect in the administration of Government out-weighs, the individual's interest in benefitting from the defectThe Court has been extremely reluctant to override the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount Governmental interest in obtaining adequate revenue, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of Government among those who benefit from it....."

46. We, accordingly, hold and answer Points (vi) and (vii) also, against the petitioners.

47. Re: Points (viii) and (ix): These two Points could be disposed of together.

The contention reflected in Point (viii) is that though Entry 52 of List II encompasses a levy on the entry of goods into local area for purposes of consumption, use or sale, however, under S. 3 read with S. 30(2)(f) of the present legislation, the taxable event, is designedly and as a matter of fiscal policy, not the entry of goods for purposes of consumption, use or sale but entry of goods coupled with actual consumption, use or sale.

Point No. (ix) is a corollary of Point No (viii). If the taxable event is entry of goods into a local area coupled with actual consumption, use or sale it follows, so goes the argument, that S. 7 to the extent it requires the filing of a statement

and the payment of taxes in advance on the basis of the scheduled goods brought into the local area in the preceding month would impose a tax independently of, and even before, the taxable event and would therefore constitute an unreasonable restriction on the freedom of trade. The argument proceeds to suggest that in order to avoid such unconstitutionality of S. 7. it must be read down to mean that what is collected under S. 7 is merely an "onaccount" payment to be appropriated towards tax to be levied after the actual consumption, use or sale.

48. Sri Gandhi says that his clients, who are wholesale dealers in textiles, purchase goods from up-country manufacturers and cause their entry into the local area with intent to re-export them out of the local area and there is, thus, no consumption, use or sale of the goods within the local area. Only a small part of the goods so entering the local area are consumed, used or sold within the local area. In para-2 of the petition (W. P. 23710/82), it is averred.

".....Major portion of goods purchased by petitioners and brought to their place of business at Bangalore is re-exported to persons outside the Corporation limit of Bangalore and outside the State of Karnataka. Petitioner's liability under Section 3 of the Act is therefore hardly 10 per cent of the total goods brought into the area. However, S. 7 of this Act seeks to oblige dealers to pay advance tax on the entire goods brought to the local area, irrespective of the fact whether such goods are meant for use or consumption or sale within the municipal area....."

Such transactions where goods are reexported, according to Sri Gandhi are not liable to tax for two reasons: First, the taxable event envisaged by the scheme of the law and the charging S. 3 is entry of goods coupled with actual consumption, use or sale, the goods entering a local-area for re-export are not liable to tax at all. It is accordingly, urged that S. 7 to the extent it makes the latter kind of goods also liable to tax is inconsistent with the charging section.

49. For the first premise that the taxable event is not merely "entry of goods for consumption, use or sale,"but is entry coupled with actual consumption, use or sale, Sri. B.P. Gandhi relied upon certain observations of Puttaswamy, J., in *M/s. Ratho Textiles v. Chief Secretary, State of Karnataka* W.P. 21034/80 etc. dt. 2-5-1981 to suggest that the taxable event occurs upon actual consumption, use or sale.

50. The charging Section 3, inter-alia provides.

"3. Levy of Tax-(1) There shall be levied and collected a tax on entry of . scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding two per cent ad valorem... etc."

S. 7 provides that every person referred to therein:

".....shall send every month to the assessing authority a statement containing such particulars as may be prescribed and shall pay in advance the full amount

of tax payable by him on the basis of the scheduled goods brought by him during the preceeding month into the local area....."

S. 30(2)(f), which relates to rule making power, says:

"30 (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,-

* * *

(f) refund of tax collected if the scheduled goods has not been consumed, sold or used within the local area;"

51. As to what the taxable-event under S. 3 is, Supreme Court in Hansa Corporation's case said:

"The taxing event under the statute is entry of scheduled goods in a local area for consumption, use or sale therein at the instance of a dealer....." (vide para-20).

The argument, therefore, that though an impost on entry of goods for consumption, use or sale is permissible under 52 of List II, policy and schedule of the tax under the present act, renders goods entering a local area eligible to tax only upon actual consumption, use or sale cannot be countenanced. We do not understand the observations in W.P. 23701 to 23721 of 1987 to be susceptible of the construction that the taxable event was not entry of goods into a local area for consumption, use or sale, but the tax was eligible only on proof of actual consumption, use or sale. The taxable event is entry of goods for purposes of consumption, use or sale. The actual consumption, use or sale for the purposes of which the goods enter a local-area would indeed be subsequent to-and not contemporaneous with-the taxable event. For the coming into being of the taxable event it would be sufficient if the goods entered into a local area of the purpose of consumption, use or sale therein. The idea of consumption connotes the goods being used-up or wasted or destroyed or susceptible to use without being used-up in the course of their use. The expression "use" is of wider import than "consumption". The expression "sale" in S. 3 connotes merely a means for putting the goods in the way of consumption or use. The expressions "consumption" or "use" therefore imply the bringing in of the goods not with a view to taking them out again; but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses up the goods. The goods come to repose in the local area.

Indeed, in *Burmah-Shell Co., v. Belgaum Municipality*, Supreme Court held that when goods enter the "local-area" for purposes of consumption, use or sale, it is not an ingredient of the taxable event that there should be actual consumption, use or sale. It was observed.

"..... It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of

goods which are meant to reach an ultimate user or consumer in the area. Indeed, the consumer may never consume them, as for example, a motorist buys a tin of oil and finds that it does not suit his vehicle and leaves it lying on his shelf. The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume. In this process the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage the ultimate destination of the goods being "use or consumption"...(underlining supplied).

The essential distinction between a terminal-tax and octroi is that while the former is connected with the traffic of goods, the latter is leviable in respect of goods brought into the area for "consumption, use or sale."

52. However, where goods are merely carried through a local-area for purposes of onward movement across the high-ways without the goods "breaking their bulk" and in their "original package" and constitute what may be called "through consignment", it cannot be said that such goods enter the local area at all within the meaning of Entry 52. Even if the onward journey is intercepted in the local area by unloading, sorting and reloading as an incidental step to effectuate the onward journey, yet the goods cannot be said to "enter" the local area in the context of Entry 52, if such were not goods intended for consumption, use or sale within a local area but their entry is only incidental to onward journey.

53. This takes us to cases where the goods though brought into the local area initially for purposes of consumption, use or sale, but later re-exported outside the limits of that local area. The case of Sri Gandhi's clients falls within this category. This class of goods must be distinguished from goods which enter a local area with the avowed and specific purpose-not of consumption, use or sale therein-of re-export outside the local area. In such latter cases if the goods enter a local-area, remain there for an indefinite or unexplained period, they might attract a terminal-tax having regard to the character and incidents of that impost. However so far as entry-tax is concerned such goods brought into a local-area for re-export out of the local area would obviously not goods which enter the local-area for consumption, use or sale therein. Referring to such cases of re-export Supreme Court in *Burmah Shell* case observed:

".....The two expression use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up for consumption in a manner which destroys, wastes or use them up....." (vide para-20).

".....It was only when the goods were re-exported out of the area that the tax could not legitimately be levied and in this case the municipality has agreed to refund the amount of tax on goods reexported without being used or consumed in the municipal area...(vide para-22).

".....The company, was, however. not liable to octroi in respect of goods which it brought into the local area and which were re-exported. But to enable the company to save itself from tax in that case it had to follow the procedure laid down by sales for refund of taxes." ...(vide para-23).

In the circumstances of petitioners case, the goods at the time of their entry into the local-area they are meant for consumption, use or sale therein. It may, however, later turn out that some part of the goods or even a substantial part, is actually exported out side the local-area.

54. Re-export out of the local-area is negation of and detracts from the concept of consumption, use or sale therein. In respect of goods which, at the time of entry satisfy the requirements and attracts the taxable event but are, ultimately re-exported, the appropriate provisions are of exemptions and refunds. Referring to this aspect, the Taxation Enquiry commission said:

".....But the most important difference lies in the requirement peculiar to octroi that, for this tax to become leviable, the goods must not only enter the area, but must be "for the purpose of consumption, use or sale therein". Usually, this requirement is sought to be satisfied by (a) the ab initio exemption of the goods which merely pass through the area, whether the exist is immediate or after an interval, or (b) by the subsequent refund of the tax collected on such goods. Exemptions and refunds and therefore, are the distinguishing features of the octroi system." (vide Vo. 3 Chapter IV, para-4). (underlining is ours).

It, therefore, becomes necessary to examine the scheme of the Act and the Rules framed thereunder in this behalf. S. 3, 5, 7 read with the R. 7 of the Rules (as amended in 1982) and with amended Form III appended to the Rules would show that a combination of Rules of Exemption and refund operate in this area and govern cases where goods are actually reexported outside a local-area.

S. 7 requires that every "dealer" and every person liable to get himself registered as a dealer shall send to the assessing-authority monthly statements setting out the prescribed particulars and pay the amounts on the basis of the schedule goods brought into the local-area during the preceding month. R. 7 says that the statement required to be filed under S.7 shall be in Form No. III and shall be sent within 25 days after the close of the month to which such statements relates and shall be accompanied by the evidence of payment of "the full amount payable by him on the actual taxable turnover during the month to which it relates."

55. Sri Achar, learned Government Advocate, stated that if, in the course of a particular month goods which upon their entry into the local area attract, prima facie the taxable event, are actually reported out of the local-area during that month itself, the "dealer" would be entitled to reduce his taxable turnover, to that extent, in the Statement to be filed under S. 7 and pay tax only the residue of the turn-over. Sri Achar says that R. 7 and the amended Form No. 3, expressly enable this. This, Sri Achar says, in a case of exemption.

Sri Achar further says that if a dealer causes entry of scheduled-goods during a month and part of it is re-exported in the following month or a subsequent month, the dealer would, again be entitled to have the value of the turn-over relating to such relevant month. This, Sri Achar says would really operate as a refund though the process is by a set off against or deduction from, what is payable by way of tax for the concerned subsequent month. Sri Achar further stated that R. 30(2)(f) expressly enables making of rules for a direct refund also. Sri Achar states, rules covering such refunds would be framed expeditiously.

Sri Achar has filed a memo in this behalf.

The above proceedings, in our opinion, operate as a combination of Rules of exemption and refund and, in an appropriate way, recognize and reconcile the incidents of the entry of goods into the local area and the consequences of their subsequent re-export out-side the local-area.

56. In view of the foregoing, we are unable to agree with Sri Gandhi that S. 7 tries to bring within scope transactions which are otherwise outside S. 3. S. 7, properly construed, is consistent with the scheme of the charging section. We are unable to the contention of Sri Gandhi that the procedure envisaged by S. 7 is discordant with S. 3 and therefore requires to be held to be an unreasonable restrictions offending Art. 19(1)(g). The question, therefore, of reading down S. 7 does not arise.

57. We, accordingly, hold and answer Points (viii) and (ix) against the petitioners.

58.Re: Para (x): The contention is that there is a discrimination brought about by the charging Section in confining the charge to "dealers" alone. The arguments is that S. 3 of the Principal Act, as amended, applies only to dealers in scheduled goods and not to dealers in non-scheduled good and not also to non-dealers, although all the three classes of persons cause entry of goods into a local area for consumption, use or sale therein. It is urged that though differentia for the classification may be logical and intelligible, however, it has rational nexus with the objects of the legislation.

59. This contention, has no merit. A dealer is defined under S. 2(4) of the Principal Act. That definition imports the same meaning assigned to that expression in S. 2(k) of the Karnataka Sales Tax Act, 1957. The defination of "dealer" under the said S. 2(k) is wide and comprehensive. S. 28 of the Principal Act exempts persons who are not dealers in scheduled goods.

Sri Indra Kumar's contention is that a person who may not be a dealer in scheduled goods and who, nevertheless, causes entry of scheduled goods into a local-area for consumption, use or sale and that placing such dealers outside the purview of the tax brings about a hostile discrimination.

These are matters which belong to the area of the policy of taxation. Legislature does not have to tax everything to tax something. Though tax Laws are not outside the purview of Art. 14, there is however a wide range of selections and

freedom in appraisal available to the legislature in the objects and incidents of taxation. In formulating fiscal-policy the legislature has a wide latitude in the matter of choice of persons and things. The complexities involved in evolving a tax-policy and the inter-play of diverse economic criteria that inform a fiscal policy are such that in the matter of judicial review a meticulous scrutiny by the Court of the burden of the tax on different persons or interest can hardly be justified. The legislature is the best judge of these matters. The Court can strike-down a tax-law only if arbitrariness and hostile unequal treatment is writ-large. In view of the innate complexities of fiscal adjustments, the legislature necessarily enjoys a wide discretion in the matter of classification for the purpose of taxation. Besides the import into the "Principal Act" of the definition of "dealer" from the S.T. Act ensures that the logical bases of the distinctions underlying that definition would also inform the choice of the persons of incidence under the present Act. The definition of "dealer" is so comprehensive as to render the possibility of a person with any trading activity of any significance in the scheduled goods being outside the law quite remote. In deed, practical considerations of economic viability of a tax scheme in relation to the costs of administration and considerations of efficiency of administration and implementation of the tax-law are also relevant considerations.

In deed, in *Twyford Tea Co. v. Kerala State* (21-AIR 1970 S.C. 1133) Supreme Court observed:

"The burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack, and it is on the person complaining of discrimination. The burden of proving not possible "inequality" but hostile "unequal" treatment. This is more so when uniform taxes are levied. When the legislature reasonably applies an uniform rate after equalising matters between diversely situated persons, differences in treatment must be capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differentially treated. To be able to succeed in the charge of discrimination, a person must establish conclusively that persons equally circumstanced have been treated unequally and vice versa."

In regard to a judicial approach to a matter such as this, Cooley in his *Treatise on the "Constitutional Limitations"* at page 182, says this:

"It has been said by an eminent Jurist, that when courts are called upon to pronounce the invalidity of an act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention can throw any new light upon the subject and never declare a statute void, unless the nullity and invalidity of the act are placed, in their judgment, beyond reasonable doubt. A reasonable doubt must be solved in favour of the legislative action....."

Learned Author refers also to the passage in the judgment of Chief Justice Marshall in *Fletcher v. Peck* (6 Cranch, 128, Per Marshall, Ch. J) which is also worth recalling:

"The question whether a law be void for its repugnancy to the constitution is at all times a question of much delicacy, which ought seldom if ever to be decided in the affirmative in a doubtful case. The Court has impelled by duty to render such a judgment would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes; but it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its power, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other....."

Sri Indra Kumar has not been able to demonstrate how the law offends Art. 14. The distinction between "dealers" in scheduled goods and "non dealers" in scheduled goods is too obvious to admit of any possible doubt in regard to the permissibility of the classification.

60. Accordingly, point No. (x) is answered against the petitioners.

61.Re: Point (xi): Sri Kashinath Rao Patil contended, quite seriously that in view of Art. 277 the State Legislature has no competence to make this law. Art. 277 which is a saving clause says that any taxes etc., which immediately before the commencement of the Constitution, were being lawfully levied by the Government of any State, Municipality, etc., may, notwithstanding that those taxes etc., are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law. Conditions for the attraction of Art. 277 are that the topic of legislation was earlier within the State Power and that under the Constitution the topic has been taken out of the State List and included in the Union List. The provision is analogous to S. 143(2) of the Government of India Act, 1935. The sole object of Art. 277 is to avoid dislocation of the finances of the State and local authorities by depriving them of revenue which they were deriving at the commencement of the Constitution (see *Amaravati Municipality v. Ramachandra* (22-AIR S.C. 1166). There is no scope for application of this principle in the present case. Entry 52 of List II is within the State power.

62. We answer Point (xi) against the petitioners.

63.Re: Point (xii)-This contention of Sri Gandhi is equally untenable. The Finance Minister, it is urged, had assured on the Floor of the Legislature that Entry Tax would be levied only on such goods that did not attract Sales Tax. The argument is that by Act 13 of 1982, goods liable to Sales Tax have also been brought into the schedule and that such inclusion is not permissible. It belongs to the rudiments of the subject that no estoppel can be pleaded against the legislature and that motives of a legislation are outside judicial scrutiny.

64. We answer Point (xii) also against the petitioners.

65.Re: Point (xiii): The first aspect urged by Sri Kashinath Rao Patil is that the successive notification issued under S. 3 are bad for noncompliance with the procedure of prior publication. S. 3 does not envisage or require prior publication so as to attract, the provisions of S. 23 of the General Clauses Act. There is no substance in this contention.

The second aspect is that under S. 29 of the "principal Act", avowedly, Entry Tax is intended for the benefit of and assignable to local authorities. Sri Kashinath Rao Patil says that in view of the circumstances that the levy is intended for the benefit of local authorities and consistent with the need to nurture, what Sri Kashinath Rao Patil calls, "Democracy at the grass-roots", legislature ought not to impose this levy directly but should authorise and empower the local authorities, by appropriate provision in the statutes governing their constitution and functioning, to levy and collect this tax. The argument is in the areas of policies of public finance. The argument, it is needless to say, is wholly irrelevant in judicial review of legislation.

66. We, accordingly, hold and answer Point (xiii) also against the petitioners.

67.Re:Point No. (xiv): The contention is that Karnataka Act 13 of 1982, in so far as it introduces new items viz., Items 4 to 16 to the schedule to the Principal Act, and in so far it expands the definition of "local-area" in S. 2(5) of the Act, results in the imposition of additional restriction on the freedom of Trade and Commerce offending Art. 301; that those additional restrictions imposed by this non-compensatory tax are not reasonable nor in the public interest and that, at all events, even if the restrictions could be said to be reasonable and in public interest; the Amending Act 13 of 1982 not having been introduced or move in the legislature with the previous sanction of the President and not having also subsequently received the assent of the President is unconstitutional and void.

It is necessary to recall here that Karnataka Act 13 of 1982 was a piece of composite legislation. It brought about amendments to several taxation laws, including the "Principal Act". Only S. 7 of the Act 13 of 1982, which has 15 subsections, deals with the Principal Act and amends its provisions. Sri K. Srinivasan urges that vitiating effect of the infirmity stemming from want of previous sanction is not confined only to S. 7 but would extend to the whole of the legislative measure, namely Amending Act 13 of 1982.

68. The sequential aspects that require consideration, are (a) Whether the expansion of the definition of "Local Area" and introduction of 13 new items of goods by S. 7 of Act 13 of 1982 constitute additional restrictions on the freedom of trade and commerce under Art. 301; (b) if so, whether those additional restrictions are reasonable and in public interest; (c) Whether S. 7 of Act 13 of 1982 required compliance with the proviso to Art. 304(b), and (d) Whether the non-compliance in that behalf vitiates Karnataka Act 13 of 1982 as a whole or affects merely the provisions of S. 7 thereof.

69. Petitioners contend that while under the Principal Act only 3 specific item of goods were included in the schedule, now by S. 7(15) of the Amending Act 13 of 1982, 13 more items are included in the schedule. That apart, it is urged, the definition of "local area" as amended by S. 7(1)(a) of the Amending Act 13 of 1982 is also expanded. It is urged by these changes additional restrictions are imposed which, even if they are reasonable and in public interest, require compliance with Art. 304(b). It is, not disputed that the Amending Act 13 of 1982 was not introduced or moved in the Legislature of the State with the previous sanction of the President and the "Act" was not also subsequently reserved for the assent of the President.

70. The statute in question is a taxing statute. Taxation laws are not outside Part XIII of the Constitution. The words of Art. 301 are so wide and unambiguous that a taxing law which impedes the free flow of trade and commerce clearly falls within it.

The tax in question was not sought to be supported as a compensatory tax. A compensatory tax is outside the purview of Art. 301 as the tax is intended to create facilities for trade and promote the free flow of trade and not to impede it. All the taxes have in some degree or other a compensatory element and if it had been contended that the tax was compensatory in character the argument might, perhaps, have had some interesting possibilities, though it is hardly permissible to speculate as to what the result might have been.

That this tax, having regard to its nature and incidence and its effect on the movement of trade has been held in M/s. Hansa Corporation case to affect, directly and immediately, the movement of goods and, therefore, to be a restriction on the freedom conferred by Art. 301. Supreme Court said:

".....To the extent the impugned tax is levied on the entry of goods in a local area it cannot be gain said that its immediate impact would be on movement of goods and the measure would fall within the inhibition of Article 301(Vide Para-32).

71. Sri Achar, learned Government Advocate, however, contended that the concept of freedom of trade and commerce in Art. 301 as to what constitutes restrictions on that freedom must be understood in the context of trade and commerce as a whole and not with reference to trade of a particular individual and his individual rights; that in view of the restriction on the freedom of trade and commerce implicit in the imposition of this tax, the "Principal Act" was reserved for, and has received, assent of, the President; and that the mere additions to the list of taxable-goods in the schedule and the expansion of the definition of local area" are mere differences of degree and do not amount to imposition of new or additional restrictions. The concept of the restrictions, Sri Achar says, is not whether this item is taxed or that item is taxed, but relates to the effect of the imposition of a tax of this nature on trade and commerce as a whole and so viewed the assent of the President initially accorded to the

"Principal Act" amount to an assent generally to the fiscal policy of the law and its effect on trade and commerce as a whole. This having been done and the principal of this impost assented to Sri Achar says, the details to the operation of the law or the degree of its incidence are matters of mere details of implementation.

72. So far as the contention that the freedom under Art. 301 is from the point of view of trade and commerce as a whole and not from the individual point of view, it is necessary to recall what Supreme Court said in *Automobile Transport Ltd. v. State of Rajasthan* (23 AIR 1962 S.C. 1406):

"...Another distinction which has been drawn is that Art. 19 looks at the right from the point of view of an individual whereas Art. 301 looks at the matter from the point of view of freedom of the general volume of trade and commerce and intercourse. We do not think that this distinction if any such distinction at all exists, is material in the present cases, because an individual trade may complain of a violation of his freedom guaranteed under Art. 19(1)(i) and he may also complain if the freedom assured by Art. 301 has been violated. In a particular set of circumstances the two freedoms need not be the same or need not coalesce. In some of the Australian decisions a distinction was sought to be drawn between the free flow of the same volume of inter-State trade and the individual's right to carry on his trade in more than one State and it was argued that S. 92 of the Australian Constitution related to the free-flow of the volume of trade as distinguished from an individual's right to carry on his trade. Such a distinction was negatived and the Privy Council pointed out that the redoubtable Mr. James who fought many a battle for the freedom of his trade and occupation was after all an individual....." (vide para-15).

Again in *Syed Ahmed Aga v. State of Mysore* AIR (1975 S.C. 1443) it is held:

"...No doubt the restrictions contemplated by Art. 304(b) may be of a character different from those on an individual citizen's right to trade but it cannot be denied that their impact on individual rights is often very direct....." (vide page-5).

It appears that if the imposition of this tax, which affects the movement of goods in the course of inter-State or inter-State commerce, on three items of goods and in a specifically defined "local-area" constitutes as indeed it has been held to a restriction on the freedom of trade and commerce from the special point of view of Art. 301, then, logically, the imposition of the tax in other areas not originally defined and on a number of new and different items would constitute additional restrictions also within the special meaning of Art. 301.

In *Syed Ahmed Aga's* case the Supreme Court said:

"...It is only an additional "restriction" from the special point of view of Art. 304(b) which requires Presidential sanction". (vide para-24).

The schedule to the Principal did not contain a residuary entry, to the effect the

State could bring to tax such other goods as it may from time to time notify. In regard to the "local-area" also the Principal Act did not confer power on the State Government to extend the provisions of the law to such other local areas as the Government may notify from time to time. We cannot accept Sri Achar's contention that the earlier Presidential assent is some kind of a blanket sanction enabling the expansion of the scope of the restrictions, and the inclusion of new or additional 13 items in its schedule. The position might have been different if the Principal Act had so defined the expression "local-area" as to include such other areas as the State Government may notify from time to time and the schedule had contained a residuary generic entry.

73. In regard to this question we can derive some guidance from the converse-implications of the decision of the Supreme Court in *Bangalore Wollen, Cotton and Silk Mills Co., v. Bangalore Corporation*. AIR 1962 S.C. 562.

74. In that case the appellant-Company challenged the levy of octroi duty on "cotton" and "wool", imposed by the Corporation of the city of Bangalore under S. 97 of the city of Bangalore Municipal Corporation Act, 1949, on the ground, inter-alia, that the impost was violative of Art. 301 and did not have the protection of Art-305, Schedule III, part-V of the Act specified 8 classes of goods which were classified as Items I to VIII. After enumeration of Classes I to VIII the last item ie., Class VIII, provided "other articles which are not specified above and which may be approved by the Corporation by an order in this behalf". Cotton and Wool were brought to duty from January 1955. It was prgd that the impost must be held to be a new and post-constitutional one and was not saved by Article 305. For the Corporation it was contended that there was no new imposition as there was sufficient specification of those goods in the Act itself. Supreme Court upheld the levy observing:

".....It was firstly submitted that there is sufficient specification in the Act itself of the articles on which the octroi duty could be levied, S. 97 of the Act gives power to levy octroi duty on animals or goods without any exception which are brought within the octroi limits. Ss. 98 and 130 lay down the procedure for the levying of taxes and impose a limitation on the extent of the tax to be levied and Classes I to VII make certain articles taxable and Class-VIII makes other articles and goods taxable if they are provided by the Corporation....."

".....the combined effect of Ss. 97 and 130 and part V of Schedule III including class VIII which have been set out above is that the words are of very general nature and would have the same effect as if all articles were intended to be and were included....."(vide para-6)

Supreme Court referred to and placed reliance on its earlier decision in *Anwarkhan Maboob Co., v. State Of Bombay*. In that case the assessee questioned the liability to purchase tax levied on certain goods" on the ground that the goods had not been specified in the sales Tax Act. The last entry in the schedule of goods subject to sales and purchase tax was "all goods other than

those specified from time to time in Schedule A (and S. 7A) and in the proceeding entries". This was held to be sufficient specification of the goods.

75. The relevance to the present case of the analogy of the Bangalore Wollen, Cotton and Silk Mill's case lies in the circumstance that in that case the levy was protected by Art. 305 because of the specification contained in "Class VIII", and that but for this generic residuary specification, the impost rendered itself liable to be treated as a new levy for purposes of Arts. 301 and 304(b). The effect of Art. 305 in that case is analogous to the effect of a compliance with Art. 304(b) in the present case. The protection of Art. 305 was available because of a generic residuary specification already obtaining in the preconstitutional law.

In the absence of a similar residuary specification in the schedule to the Principal Act, the benefit of the presidential assent obtained to the Principal Act would not, in our opinion, be available to the subsequent additions. This reasoning also applies to the amendment of "local-area" which, in "Principal Act", had not been so defined as to include such other areas as may be notified by the State Government.

We are, therefore, of the opinion that provisions of Ss. , 7(i)(a) and 7(15) of the Amending Act 13 of 1982 impose additional restrictions on the freedom of trade and commerce under Art. 301 and even if these additional restrictions can be held to be reasonable and in public interest the legislative measure would attract and require compliance with Art. 304(b).

76. So far as the question whether the restrictions, are reasonable and in public interest is concerned it is appropriate to recall what the Supreme Court said in *M/s. Hansa Corporation's* case. It was observed;

".....However, no One was in doubt that octroi was a major source of revenue to municipalities and its abolition would cause such a dent on municipal finances that compensation for the loss would be inevitable. Accordingly, the State Government undertook a policy of compensating the municipalities year by year. For generating funds for this compensation, rates of Sales Tax were raised and in some cases a surcharge was levied. The amount so collected was not sufficient to bridge the gap in municipal budget. To further augment the finances for compensating the municipalities, additional fund was sought to be generated by levy of tax under the impugned legislation. No doubt, the tax levied was one on entry of scheduled goods in local areas meaning thereby it had all the broad features of octroi, yet the manner of levy, the method of collection and the persons liable to pay the same were so devised by the impugned Act as to remove the abnoxious features of octroi....." (vide para-8).

".....Even apart from this, a levy which appears to be quite reasonable in its impact on the movement of goods and is; imposed for the purpose of augmenting municipal finances which suffered a dent on account of abolition of octroi cannot be said to impose an unreasonable restriction on the freedom of Inter-State trade, commerce and, inter-course,....." (vide para 34).

The difference that the amending Act 13 of 1982 has brought about is a different of degree and not a difference of kind. Petitioners have not been able to show that there is any qualitative change brought about by the addition of new items to the schedule so as to make the levy an unreasonable restriction on the freedom of trade and commerce. Moreover there is no increase in the rate of tax.

As to the concept of public interest, it must be observed that the expression "in public interest" would mean "in the interest of the general public" (See: *Kochuni v. State of Madras and Kerala*) AIR 1960 S.C. 1080 "public interest" is satisfied when there is a "public purpose". Having regard to the purpose of the present law which is in the raising of funds by way of tax for governmental purposes, it cannot be said that the additional restrictions are not in the public interest.

77. What is left to be considered now is whether in consequence of this non-compliance with the requirements of Art. 304(b) proviso the whole of Karnataka Act 13 of 1982 is rendered bad as contended by Sri Srinivasan or that the vitiating effect is confined to and operates on such provisions of S. 7 of that Act, which seek to introduce the amendments touching the additional restrictions. It is to be recalled that the Taxation and Certain Other Laws (Amendment) Act, 1982 (Karnataka Act 13 of 1982) is a piece of composite legislation. It draws upon several entries within the State power and effects amendments to several other laws in addition to the "Principal Act". Though the legislative device and expedience of a composite legislation is restored to, in effect and substance, there is a combination of several laws in the Amending Act 13 of 1982, it would be a travesty of the entire Amending Act 13 of 1982 if it is held to be vitiated by reason alone of the circumstance that one of its severable provisions dealing with a distinct statute required prior sanction of the President.

We are of the opinion that S. 7(1)(a) and S. 7(15) of the Karnataka Act 13 of 1982 alone stand affected for want of prior sanction or subsequent assent of the President.

The view we take is supportable on the language of Art. 255, which says:

"No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given if assent to that Act was given....."(Underlining in italics ours).

The words "no provision in any such Act, would suggest that the invalidity, depending upon the fact and circumstances of a particular case, could be confined only to a provision and not to the whole Act.

78. The next question is whether this non-compliance with Art. 304(b) makes the legislative provision void or merely unenforceable. The observation of the Supreme Court in *Jawaharlal's Case* AIR. 1966 SC 164 are instructive;

".....The position with regard to the laws to which Art. 255 applies, therefore is that if the assent in question is given even after the Act is passed, it serves to

cure the infirmity arising from the initial noncompliance with its provisions. In other words, if an Act is passed without obtaining the previous assent of the President, it does not become void by reason of the said infirmity; it may be said to be unenforceable until the assent is secured. Assuming that such a law is otherwise valid, its validity cannot be challenged only on the ground that the assent of the President was not obtained earlier as required by other relevant provisions of the constitution. The said infirmity is cured by subsequent assent and the law becomes enforceable....."(vide para-16).

Sri Srinivasan, however, relied upon the following observation of the Supreme Court in, *Atiabari Tea Co., v. State of Assam*. AIR. 1961 S.C. 232.

"In the result we hold that the Act has put a direct restriction on the freedom of trade, and since it is doing so it has not complied with the provisions of Art. 304(b) it must be declared to be void" (vide para-32).

In *Atiabari Tea Company's* case, the question as to what would be the effect and consequence of non-compliance with the proviso to Art. 304(b) on a law and as to whether that the law would be void or merely Unenforceable was not specifically raised and therefore cannot be said to have been pronounced upon by the Supreme Court. But, in *Jawahrmal's* case a specific issue as to the legal consequences of such non-compliance was raised and decided, and therefore, "we think it is permissible for us to adopt the view taken in *Jawaharmal's* case.

79. Accordingly, our conclusions on Point NO. (xiv) are:

(a) that the amendment to S. 2(5) of the Principal Act brought about by S. 7(1) (a) of the Amending Act 13 of 1982 and the introduction of 13 new items to the schedule to the Principal Act by S. 7(15) of the Amending Act 13 of 1982 impose additional restrictions on the freedom conferred by Art. 301 of the Constitution;

(b) that those additional restrictions are reasonable and in public interest;

(c) that the legislative measure imposing the additional restrictions, viz., S. 7(1) (a) of the Amending Act 13 of 1982 required compliance with proviso to Art. 304(b) or Art. 255 of Constitution;

(d) that there having been no such compliance with Art. 304(b) of the Constitution and the provisions of S. 7(1) (a) and 7(15) of the Amending Act 13 of 1982 are unenforceable until such compliance is shown.

80. S. 7(1)(a) substitutes a new definition of "local area" with its enlarged implications, in S. 2(5) of the Principal Act in substitution of the old definition. We are of the view that this substitution does not involve the implication of two sequential steps, first, that the old S. 2(5) is repealed and, secondly that a new provision is introduced in the place of the repealed provisions and the argument that though the second stage of substitution fails to take effect, the first stage of repeal is effectuated with the result that there would be no subsisting definition of "localarea" at all is, accordingly, excluded. (See: *State of Maharashtra v. C.P.*

Manganese Ore Co. Ltd., AIR; 1977 S.C. 879.

Consistently with the view that S. 7(1)(a) is unenforceable it must be held that it has not brought about a substitution of S. 2(5) intended by it. The result is, the original definition of "local area" as obtaining under S. 2(5) of the Principal Act, subsists and the notification dated 2-4-1982 must be read accordingly.

81) In the result for the foregoing reasons we allow these writ petitions in part and:

(a) Declare that the provisions of S. 7(1)(a) and S. 7(15) of the Karnataka (Amending Act 13/82) are unenforceable by reason of noncompliance with the requirement of the proviso to Art. 304(b) or Art. 255 of the Constitution, until such compliance is shown";

(b) Issue a writ of mandamus in each of these cases to the respondents directing them to forbear from enforcing the provisions of S. 7(1)(a) and S. 7(1) of the Amending Act 13 of 1982 as long as non-compliance the proviso to Art 30(b) or with Art. 255(c) of the Constitution continues;

(c) Quash that part of the Notification bearing No. FD 14 CET 28. dt. 2-4-1982 which purports to bring to tax items 4 to 16 in the schedule to the Principal Act.

82) In the circumstances of these cases, we leave the parties to bear, and pay their own costs in these petitions.

Sri. M.R. Achar, learned Government Advocate, is permitted to file his memo of appearance within two weeks from today.

It is ordered accordingly.