
(1989) 07 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 462 of 1980

Titaghur Paper Mills Co. Ltd. and Another	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 19-07-1989

Acts Referred:

Constitution of India, 1950 — Article 13(2), 14, 19, 19(1), 226
Orissa Sales Tax (Amendment and Validation) Act, 1979 — Section 2, 3
Orissa Sales Tax Act, 1947 — Section 2

Citation : (1990) 76 STC 447

Hon'ble Judges : D.P. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : D.P. Mohanty, for the Appellant; Standing Counsel (C.T.) and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The petitioners have filed this application under Article 226 of the Constitution of India to declare the provisions of the Orissa Sales Tax (Amendment and Validation) Act, 1979 (Orissa Act 24 of 1979) (hereinafter referred to as the "amending Act") ultra vires the Constitution ; to direct by a writ of mandamus the Commissioner of Sales Tax, Orissa and his subordinates not to enforce, execute and administer the provisions of the said Act in respect of the petitioners and for other consequential reliefs.

The petitioner No. 1 is the Titaghur Paper Mills Company Limited, an existing company within the meaning of the Companies Act, 1956, and petitioner No. 2 is one Paresh Chandra Dash, Manager of the Mill No. 3 at Choudwar and the Principal officer of petitioner No. 1. Of the eighteen opposite parties, the State of Orissa represented by the Secretary in the Finance Department, Secretary to the State Government in the Law Department and the Commissioner of Sales Tax, Orissa are opposite parties Nos. 1 to 3 respectively. Opposite parties Nos. 4 to 8 are Sales Tax Officers of different circles in the districts of Dhenkanal, Cuttack,

Puri, Phulbani and Sambalpur. The Orissa Sales Tax Act which has been amended by the impugned statute shall, for convenience, be referred to as "the principal Act" hereafter.

2. The petitioners challenge the vires of the amending Act on various grounds, such as want of legislative competence, being violative of Articles 13(2), 14, 19(1)(g), 265, 300, 300A read with Article 304(b) of the Constitution. It is their case that the decisions of this Court in a series of cases, for example in the cases of Ramakrishna Deo v. Collector of Sales Tax, Orissa [1955] 6 STC 674, State of Orissa v. Divisional Forest Officer [1973] 32 STC 487 and Straw Products Limited v. State of Orissa [1978] 42 STC 302, went against opposite party No. 1. The said opposite party No. 1 applied under Article 136(1) of the Constitution for special leave to appeal to the Supreme Court against the judgment passed by this Court and leave was granted by the court. The appeal was pending on the relevant date, i.e., 19th of July, 1979, when the impugned amending Act was enforced. It is the contention of the petitioners that by filing the case in the Supreme Court, opposite party No. 1 held out the representation to petitioner No. 1 that it has chosen to avail of the constitutional right of appeal and to abide by the final judgment of the Supreme Court. Acting on the representation, the petitioners were getting ready to contest the case. But the said opposite party No. 1 went back upon its representation and enacted the impugned amending Act and, therefore, its action is hit by the principles of equitable and promissory estoppel which bind the State in its various departments and activities. It is the further case of the petitioners that such action of opposite parties, particularly opposite parties Nos. 1 and 2, invades the sanctity of the constitutional status, dignity, prestige and the rights and power of the Supreme Court of India enshrined in Articles 355(1) and 346(3) (sic) of the Constitution of India, It is also the case of the petitioners that the amending Act creates a situation where a person is subjected to two laws, one the principal Act and the other the amending Act and that the latter is more rigorous and burdensome and less advantageous than the other. Therefore, the latter is liable to be struck down. Referring to the concept of "dealer" under the principal Act which postulates the carrying on of the activities in the nature of business for a given period of time in order to be a "dealer", the petitioners contend that explanation II in the amending Act takes away that effect. Therefore, there is clear discrimination in the provisions of the amending Act which offends Article 14 of the Constitution of India. The petitioners submit that the power to legislate in accordance with entry 54 of List II of the Seventh Schedule to the Constitution read with Article 245(1) has been authoritatively interpreted by the Supreme Court of India. That power is basically related to and/or rooted in the concept of sale of goods as defined by the Indian Sale of Goods Act, 1930. But the amending Act in effect and substance seeks to modify, abridge the said concept and therefore trespasses far beyond the competence of the legislature. The amending Act, according to the petitioners in effect and substance destroyed the substratum of the concept of "turnover of sales", "turnover of purchases" provided by Section 2(i) and 2(j)

read with the basic ingredient of the very charging section, namely, Section 4 of the principal Act, as regards the essential predicate of the continuity or carrying on of any activity of business of purchasing or selling goods. The impugned Act is also violative under Article 245(1) of the Constitution of India, inasmuch as, according to the petitioners by explanation II to Section 2 of the amending Act the Central Government or a State Government or any of their employees acting in their official capacity on behalf of such Government have also been brought within the purview, liability and charge of the State sales tax. It is also alleged that patently hostile, irrational and unreasonable discrimination has been perpetrated on the Central Government and/or on the State Government or any of their employees acting in their official capacity on behalf of such Government on the one hand and the dealers requiring as an essential ingredient of dealership, the carrying on the business of purchasing, selling, supplying or distributing goods directly or otherwise for cash and/or for deferred payment and/or for commission, remuneration and/or other valuable consideration. The petitioners further contend that by creating a deemed category of dealers with retrospective effect their right to carry on avocation of choice by petitioner No. 2 and the constitutional right to property has been seriously affected. The impugned Act which has been given retrospective effect is, as contended by the petitioners, confiscatory and exproprietary in nature and, therefore, violative of the mandate of the provisions of Article 31(1) and Article 300A of the Constitution.

On these allegations the petitioners sought for the reliefs noticed earlier.

3. Return has been filed on behalf of the opposite parties Nos. 1 and 3 only. The said opposite parties have refuted all the material allegations in the writ petition and have disputed the submissions and contentions raised on behalf of the petitioners.

The gist of their stand is that there is no unconstitutionality, illegality or invalidity in the amending Act.

4. Before proceeding to consider the case of the petitioners on merit, it will be convenient to quote in extenso the provisions of the amending Act.

"2. In Section 2 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the "principal Act"), for Clause (c), the following clause shall be and shall be deemed always to have been substituted, namely :--

" (c) "dealer" means any person who carries on the business of purchasing, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes--

(i) a local authority, a company, an undivided Hindu family, any society (including a co-operative society), club, firm or association which carries on such business i

(ii) a society (including a co-operative society), club, firm or association which

purchases goods from, or sells, supplies or distributes goods to its members ;

(iii) a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of purchasing, selling, supplying, or distributing goods on behalf of any principal whether disclosed or not ; and

(iv) a casual dealer.

Explanation I.--Every person who acts as an agent on behalf of a dealer residing outside the State and purchases, sells, supplies or distributes goods in the State or acts on behalf of such dealer as--

(i) a mercantile agent as defined in the Indian Sale of Goods Act, 1930, or

(ii) an agent for handling goods or documents of title relating to goods, or

(iii) an agent for the collection or payment of the sale price of goods or as a guarantor for such collection or payment,

and every local branch of a firm registered outside the State or of a company the principal office or headquarters whereof is outside the State, shall be deemed to be a dealer for the purposes of this Act.

Explanation II.--The Central Government or a State Government or any of their employees acting in official capacity on behalf of such Government, who, whether or not in the course of business, purchases, sells, supplies or distributes goods, directly or otherwise for cash or for deferred payment or for commission, remuneration or for other valuable consideration, shall, except in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purposes of this Act,"

3. Validation of actions.--Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, an assessment, reassessment, levy or collection of any tax or imposition of any penalty made or purporting to have been made, under the principal Act before the commencement of the Orissa Sales Tax (Amendment and Validation) Ordinance, 1979, and any action taken or thing done or purporting to have been taken or done in relation to or in pursuance of such assessment, reassessment, levy, collection or imposition shall be deemed to be as valid and effective as if such assessment, reassessment, levy, collection or imposition or action or thing had been made, taken or done under or in furtherance of the principal Act as amended by this Act and--

(a) all acts, proceedings or things done or actions taken by any authority, officer or person in connection with the levy, assessment, reassessment or collection of such tax or imposition of such penalty shall for all purposes, be deemed to be and to have always been done or taken in accordance with law ;

- (b) no suit or other proceedings shall be maintained or continued in any court or before any authority whatsoever for the refund of any tax or penalty so paid ; and
- (c) no court shall enforce any decree or order directing the refund of any such tax or penalty so paid."

5. On perusal of the above provisions, it is clear that this is an Act to amend the Orissa Sales Tax Act, 1947, and to validate certain actions. Though notified in the Extraordinary Gazette published on 17th October, 1979, the Act shall be deemed, to have come into force with effect from 19th July, 1979. Section 2 of the amending Act provides that the definition of the term "dealer" given therein shall be substituted in place of Section 2(c) of the Orissa Sales Tax Act and shall be deemed always to have been substituted. In other words, the said provisions have been given retrospective effect. u/s 3 of the amending Act it is provided that an assessment, reassessment, levy or collection of any tax or imposition of any penalty made or purporting to have been made, under the principal Act before the commencement of the Orissa Sales Tax (Amendment and Validation) Ordinance, 1979, and any action taken or thing done or purporting to have been taken or done in relation to or in pursuance of such assessment, reassessment, etc., shall be deemed to be as valid and effective as if such assessment, reassessment, levy, collection or imposition or action or thing had been made, taken or done under or in furtherance of the principal Act as amended by the amending Act. In other words what has been done under Sections 2 and 3 of the Act is to rectify certain defects on which some assessment proceedings under the principal Act for assessment, reassessment, levy of penalty, etc., were declared to be invalid and after removal of the defect stated in the orders and judgment to validate order/action on the basis of the amendment made by the amending Act.

6. Though the petitioners in their writ application challenged the amending Act on several grounds at the hearing of the case the learned counsel appearing for them raised the following submissions only :

Explanation II in Section 2 of the amending Act cannot be construed to be governing the main provisions in the section. Since the Government, Central or State, is not mentioned in the main provision, introduction of the said term in explanation II is bad. Further, the provision in the said explanation II is invalid since it runs counter to the provisions in the main section, inasmuch as, it dispenses with the ingredient to "carrying on business" in the main section ; (2) a deeming clause as in the explanation II of Section 2 is not permissible in a taxation statute ; (3) in the provisions in entry 54 in List II of the Seventh Schedule to the Constitution of India, the term "sale" must carry the meaning as per the definition of the word in the Sale of Goods Act. Judged on this basis, the provision in explanation II of Section 2 falls short of the requirement and therefore is invalid ; and (4) the provision in explanation II of Section 2 worked out discriminatory treatment against the State Government and its employees.

7. On perusal of the writ petition it is clear that though the petitioners have

raised various contentions to challenge the provisions of the amending Act necessary averments indicating the basis on which their submissions/contentions are based have not been indicated. Challenge to the constitutional validity of a statute is a serious matter. It is therefore necessary that the petitioners should clearly and explicitly state the case in support of the grounds on which they challenge the validity of the enactment. Merely raising some contentions/submissions which may appear on the face of it attractive will not carry them far. However, as noticed earlier, though as many as 10 to 12 grounds were stated in the writ application, challenge was ultimately confined to explanation II of Section 2 of the amending Act and that too on the grounds indicated in the preceding paragraphs.

8. The Supreme Court in the case of *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, quoting from Heydon's case (1584) 3 Co Rep 7a, observed that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :

1st. What was the common law before the making of the Act ;

2nd. What was the mischief and defect for which the common law did not provide ;

3rd. What remedy the parliament hath resolved and appointed to cure the disease of the Commonwealth ; and

4th. The true reason of the remedy ; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

The Supreme Court in the case of *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, , considering the question of validity of the taxing statute operating retrospectively observed that though there are some provisions in the Constitution which prohibit retrospective legislation as, for instance, Article 20 (1) and (2), Article 304(b), they cannot be construed to mean that a law passed under it must in every case be prospective. If a statute is passed under Article 304(b) retrospectively, its reasonableness may, of course, fall to be considered on the merits in a given case, but that is not to say that in no case can a statute be passed under the said article to operate retrospectively. The court further observed that it has been consistently held that the mere fact that a validating statute operates retrospectively does not justify the contention that the character of the tax sought to be recovered by such retrospective operation is necessarily changed. In the said judgment the court dealing with the challenge to the validity of the Act on the ground of infringement of Article 19(1), observed that it has been generally held that a presumption of constitutionality arises where a statute is impeached as being unconstitutional, but in regard to the fundamental

right under Article 19(1) once the invasion of the fundamental right under Article 19(1) is proved, the State must justify its case under Clause (6) which is in the nature of an exception to the main provisions contained in Article 19(1). The Court further observed that another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the needs of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. But this is generally applicable in cases under Article 14 of the Constitution.

Dealing with the question of challenge to a taxing statute on the ground of infringement of Articles 14, 19, 301 and 265, the court observed that it is, of course, true that the validity of tax laws can be questioned in the light of the provisions of Articles 14, 19 and Article 301, if the said tax directly and immediately imposes a restriction on the freedom of trade ; but the power conferred on the court to strike down a taxing statute if it contravenes the provisions of Articles 14, 19 or 301 has to be exercised with circumspection, bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character. But where the court is satisfied that the impugned Act imposed unreasonable restrictions on the fundamental rights of the citizens, conferred unbridled power on the appropriate authorities, introduced unconstitutional discrimination and in consequence, amounted to a colourable exercise of legislative power, such a taxing statute can properly be regarded as purely confiscatory and the power of the court can be legitimately invoked and exercised. Further, the legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate. It would be idle to contend that a State must tax everything in order to tax something.

In the said decision dealing with the question of repeal of the earlier Act and passing of a validating new retrospective enactment, the Supreme Court held that the power to make a law necessarily includes the power to make provisions of the law retrospective and it is within the competence of a legislature to pass validating Acts, because the power to pass such validating Acts is essentially subsidiary to the main power of legislation on the topics included in the relevant List. Therefore, if the legislature felt that the infirmity in the earlier Act could be cured and it proceeded to comply with the requirements of Article 304(b), it cannot be said that a law passed under Article 304(b) is void, because the legislature has thereby attempted to recover taxes which could not be recovered under the earlier Act owing to the constitutional infirmity in the said Act. On consideration the court ruled that the exercises of legislative power which has resulted in the passing of the Assam Act 10 of 1961 cannot, therefore, be said to

be colourable in any sense, and also cannot be regarded as confiscatory for the reason that it had been passed substantially for the purpose of validating the recoveries made under the earlier Act and enforcing the assessment orders passed under that Act.

In the case of Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others, the Supreme Court considering the scope of the explanation observed that the explanation must be read so as to harmonise with and clear up any ambiguity in the main section and cannot be so construed as to widen the ambit of the section.

The same question came to be considered by the Supreme Court in the case of Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, , wherein majority of the Judges took the view that it is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it ; but ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention.

9. From the principles laid down in the decisions discussed above it is clear that there is no substance in any of the contentions raised on behalf of the petitioners that giving retrospective effect to the amending Act is impermissible ; that there is discrimination merely because the Government and its employees are sought to be brought within the purview of the taxation in the principal Act ; that the amending Act is beyond the legislative competence of the said legislature since it does not come within the ambit of entry 54 of List II of the Seventh Schedule ; that the amending Act infringes the right to property or right to carry on trade and avocation enshrined in Articles 19 and 301 of the Constitution.

10. The only point which remains for consideration relates to Section 2 of the amending Act by which a new definition of the term "dealer" has been substituted in place of the definition in the parent Act with retrospective effect. More pointedly, the contention raised on behalf of the petitioners is that explanation II is contradictory and in conflict with the main provision in Section 2(c). It is the submission of the petitioners that under the main provision "dealer" means any person who carries on the business of purchasing, selling, supplying or distributing goods directly or otherwise, etc., while in explanation II it is provided that the Central Government or a State Government or any of their employees acting in official capacity on behalf of such Government, who, whether or not in the course of business, purchases, sells, supplies or distributes goods, directly or otherwise for cash or deferred payment or for commission, remuneration or for other valuable consideration, shall, except in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purpose of the Act. Under the explanation, the requirement that a person in order to be a dealer must carry on business of purchasing, selling, supplying or distributing goods is given a go-by

so far as the Central Government or a State Government or any of their employees is concerned. According to the petitioners an explanation is meant to explain the main provisions in the section and not to add to or make a fresh provision contrary to the main provision.

11. There is no dispute regarding the proposition that an explanation is ordinarily intended to, as the very term suggests, explain the main provision or elucidate it. But the question really is what was the intent and purpose with which the provision in explanation II to Section 2(c) of the amending Act was introduced by the legislature. For this, the factual background to the passing of the amending Act needs to be considered. This Court as well as the Supreme Court in several cases interpreting the definition of the term "dealer" in the principal Act and the *pari materia* provision of other States Sales Tax Act, decided that departments of Central Government or State Government and their employees occasionally indulging in selling of the goods to others are not dealers, since they do not carry on business in purchasing, selling, supplying and distributing goods. With a view to undo the effect of these decisions the State legislature in its wisdom thought it necessary to rectify the defects pointed out in the judgments and to change the definition of the term "dealer" in the Act. Therefore, in order to remove any doubt that may arise regarding the question, provision was made in Section 2(c) that the Central Government or State Government or any of their employees acting in official capacity on behalf of such Government, who purchases, sells, supplies and distributes goods, whether or not in the course of business, shall be deemed to be a dealer for the purpose of the principal Act. Though styled as an explanation, this provision carefully read along with the other provisions in the section appears to be in the nature of a proviso. Reading it in that light, I find no illegality and infirmity in the provisions under explanation II to Section 2(c).

12. The Supreme Court in the case of *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, discussing the functions of proviso and explanation in statutes observed as follows :

"A proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

To sum up, a proviso may serve four different purposes :

- (1) qualifying or excepting certain provisions from the main enactment ;
- (2) it may entirely change the very concept or the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable ;
- (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself ", and
- (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

In the said case dealing with the point relating to function of explanation, the Supreme Court observed thus :

"It is now well-settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

The object of an explanation to a statutory provision is--

- (a) to explain the meaning and intendment of the Act itself ;
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve ;
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful ;
- (d) an explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment ; and
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

From the principles laid down in the above mentioned case it is clear that whether a principal proviso will be interpreted as an explanation or as proviso depends on the intent and the purpose for which it is introduced and not merely by the label given to it. Therefore, it is important to bear in mind the purpose for which the provision in Section 2(c) was enacted. The purpose was to amend certain provisions of the principal Act in order to remove the defects pointed out in the decisions of this Court and the Supreme Court holding that the Central Government, the State Government and their employees are not dealers as defined in the Orissa Sales Tax Act. The State legislature in its wisdom

considered it necessary to suitably amend the definition of "dealer" to include the Central Government, the State Government and their employees acting on their behalf. The provision in explanation II, on a plain reading, conveys the meaning that it is intended to remove any doubt that may arise with regard to the question whether the aforementioned authorities or officials will not be dealers since they do not carry out business of selling, supplying and distributing the goods. This is one of the permissible purposes for which an explanation may be added to an enactment as held by the Supreme Court in the decision reported in AIR 1985 SC 582 (Sundaram Pillai v. Pattabiraman). If the provision in explanation II is construed to be in the nature of a proviso, which, in my view/opinion, it should be then, as the Supreme Court has held, the proviso can also in suitable circumstances be interpreted to add to the main enactment. Thus viewed either way, the provision in explanation II is clearly permissible and no exception can be taken to its introduction in Section 2(c). I wish to reiterate here that the competence of the State Legislature to enact the provision is not being challenged by the petitioners. That the intent and purpose of the amending Act was to validate certain actions taken under the principal Act is clear from the provisions of Section 3 of the amending Act. It is provided therein that notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, an assessment, reassessment, levy or collection of any tax or imposition of any penalty made or purporting to have been made under the principal Act before the commencement of the Orissa Sales Tax (Amendment and Validation) Ordinance, 1979 and any action taken or thing done or purporting to have been taken or done in relation to or in pursuance of such assessment, reassessment, levy, collection or imposition shall be deemed to be as valid and effective as if such assessment, reassessment, levy, collection or imposition or action or thing had been made, taken or done under or in furtherance of the principal Act as amended by the amending Act.

On the aforesaid analysis there is no substance in the petitioners' challenge to Section 2(c) of the amending Act, particularly explanation II in the said section.

13. As noticed earlier, the petitioners in the writ application have neither clearly pleaded the facts nor specifically indicated the basis for their contentions that the amending Act suffers from hostile discrimination or it is violative of the provisions under Articles 19 and 301 of the Constitution. In the absence of specific allegations in this regard the petitioners could not be permitted to raise these contentions. Therefore, the learned counsel appearing for them did not press and in our view rightly, these points. As such, it is not necessary to burden this judgment with discussions on these points.

14. On the discussions in the foregoing paragraphs the writ petition is dismissed being devoid of merit. Parties will bear their respective costs of this proceeding.

A.K. Padhi, J.

15. I agree.