

(1971) 11 DEL CK 0027

In the Delhi High Court

Case No : Letter Patent Appeal No. 53 of 1971

Union of India and Others

APPELLANT

Vs

Lachmi Narain

RESPONDENT

Date of Decision : 18-11-1971

Acts Referred:

Citation : (1972) ILR Delhi 475 : (1973) 32 STC 113

Hon'ble Judges : Hardayal Hardy, C.J.; Prithvi Raj, J

Bench : Division Bench

Advocate : B.N. Sen, B. Kirpal, Ashok Sen, Balram Sangal and S.P. Aggarwal, for the Appellant;

Judgement

Hardayal Hardy, C.J.

(1) This Letters Patent Appeal is directed against the judgment dated the 13th January, 1971, passed by Shri v. S. Deshpande, a single Judge of this Court in Civil Writ No. 574-D of 1966, whereby the learned Judge quashed notification No. S.R.O. 3908 date 7th December, 1957 and the subsequent notifications made thereafter in pursuance of the said notification.

(2) Since a common question of law is involved in this Letters Patent Appeal and LPAs, Nos. 54 to 59 of 1971 and in writ petitions viz. Civil Writs Nos. 593 to 652 of 1971 and in Civil Writs Nos. 792 to 806 of 1971, the counsel for the parties agreed that only the Appeal and Civil Writ No. 593 of 1971 be heard as decision in these two cases will dispose of the appeals and other writ petitions. Consequently, both the Appeal and the Writ petition are being disposed of by this common judgment.

(3) There is no dispute as to facts which have been clearly stated in the judgment of the learned Single Judge.

(4) Delhi was a Part "C" State in 1950". By virtue of Section 2 of the Part "C" States (Laws) Act, 1950, the Central Government had the power by notification

in the official gazette to extend to a Part "C" State any enactment which was in force in a State at the date of the notification with such restrictions and modifications as the Central Government thought fit.

(5) In exercise of its powers u/s 2 of the Part "C" State (Laws) Act, 1950, the Central Government in 1951 by a notification No. S.R.O. 615 dated the 28th April, 1951, extended the Bengal Finance (Sales Tax) Act, 1941, to the Union Territory of Delhi with certain restrictions and modifications as were laid down in the said notification.

(6) In sub-section (2) of Section 6 of the Bengal Act, before it was extended to the Union Territory of Delhi vide S.R.O. 615 dated the 28th April, 1951, the State Government had the power after giving by notification in the official gazette, not less than three months notice of its intention to do so. by a like notification to add to the schedule, and thereupon the schedule was to be deemed to be amended accordingly. Sub-section (1) of Section 6 envisaged that no tax shall be payable under the Act on the sale of goods specified in the first column of the schedule, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof.

(7) It may, Therefore, be noted that at the time the Bengal Act, was extended to the Union Territory of Delhi, in the original Act there was only one schedule in respect of the exempted goods which were not subject to the levy of the tax and the State Government had the power only "to add" to the schedule. In other words, the power was only to add to the list such goods that the State Government thought fit to. exempt from the levy. But while extending the Act to the Union Territory of Delhi by S.R.O. 615 dated the 28th April, 1951, power was given not only "to add" to but also to "omit from" or "otherwise amend" the Schedule.

(8) Subsequently, however, the Bengal Act as extended to the Union Territory of Delhi was amended by amendment Act of 1956 and by virtue of section 4 of the amending Act the words "Second Schedule" in both the sub-sections of section 6 of the Act were substituted for the words "Schedule". Thus the effect of the amendment was that instead of one schedule, there came into being, two schedules and as such. another schedule was added to the Act by the amending Act of 1956. it may also be stated here that earlier in 1951 by a notification No. 20-3-51/Judl. (S.R.O. 1564) dated the 4th October, 1951. the words "the first column of" occurring between the words "in" and "the" were omitted from sub-section (1) of section 6 of the Bengal Act and likewise for the words "in the corresponding entry in the second column thereof" occurring in the said sub-section were substituted for the word "therein".

(9) This the amended and substituted sub-section (1) of section 6 after the amendment Act of 1956 read as follows :-

"no tax shall be payable under this Act on the sale of goods specified in the Second Schedule subject to the conditions and exceptions, if any, set out

therein."

the Second Schedule pertains to the exempted goods.

(10) It has also to be borne in mind that at the time the Bengal Act was extended to the Union Territory of Delhi in sub-section (2) of Section 6 of the Act the State Government was empowered not only "to add" to but also to "omit from" or "otherwise amend" the schedule. although the period of notice required to be given by the State Government of its intention to do either of the three things, namely, "to add" to, "omit from" or "otherwise amend" the schedule was not less than three months.

(11) In 1957 by notification No. S.R.O. 3908 dated the 7th December. 1957 the Central Government in the exercise of the powers conferred on it by Section 2 of the Union Territories (Laws) Act, 1950 (XXX of 1950) made the following amendment in its notification No. S.R.O. 61.5 dated the 28th April. 1951. whereby the Bengal Act was extended to the Union Territory of Delhi subject to the modifications made in the Act as specified in the said S.R.O. :-

"IN the said notification in the modification to the Bengal Act aforesaid. in item 6 relating to sub-section (2) of Section 6 after sub-item (a) the following shall be inserted :-

(AA)for the words "not less than three months" notice" the words "such previous notice as it considers reasonable" shall be substituted."

(12) The validity of this notification as also the subsequent notifications is made thereafter in pursuance of the above said notification dated the 7th December. 1957. has been challenged. To complete the history of the? Various amendments made to the Bengal Act as extended to the Union Territory of Delhi, it may be noted, that the Act was amended by the amending Act, No. 20 of 1959 passed by Parliament which. amending Act received the assent of the President on 12th May, 1959.

(13) Before closing this chapter in the case, it has to be noted that the. Delhi Legislative Assembly came into being on the 17th March, 1952. which Assembly was abolished on 1st November 1956 as a result of the State Re-Organisation Act, 1956, and the Constitution (Seventh Amendment) Act, 1956, which constituted Delhi as Union Territory whose administration was to be the direct responsibility of the President acting through an Administrator under an appropriate designation.

(14) Before considering the contentions of the parties, it would be relevant here to state that the dispute in the Letter Patent Appeal and in Civil Writ No. 593 of 1971 pertains to" the levy of sales tax on "Durries" while in the other connected writ petitions different commodities are involved which have been subjected to the levy to sales. tax. However, as already stated above, common questions of law are involved in the Appeal and the Writ petitions though the date? on which sales- tax levied on "Kiryana", "Dry Fruit", "Knitting wool" and other

commodities, were different, the matters are being disposed of by this common judgment.

(15) By a notification dated 14th December, 1957 Schedule II of the Bengal Act was amended whereby "Durries" were exempted from the levy of sales tax.

(16) The Central Government by notification No. 113 dated the 16th June 1966 gave notice of its intention to amend the 2nd Schedule of the Bengal Act with effect from 1st July, 1966. The notification in particular stated that item No. 17 of the Schedule was sought to be substituted withdrawing exemption from the levy of sales tax on Durries, Druggist and Carpets. Subsequently, the Central Government in notification No. G.S.R. 1061 dated the 29th June, 1966, issued by the Ministry of Home Affairs, levied sales tax on Durries with effect from 1st July 1966. With a view to give effect to notification. dated the 29th June, 1966, the Commissioner of Sales Tax also issued press- note No. XV-6/CST-65/8861, dated the 30th June, 1966. whereby he notified to the general public that the item "Durries" had been omitted from the schedule of "exempted goods" with effect from 1st July, 1966, and that the sales tax on Durries was livable from 1st July, 1966 at the rate mentioned in the above-said notification. Besides the Chief Commissioner, Delhi, in notification F. 4(87)/64- Fin.(E)(IV) dated the 30th June, 1966, notified the rate of sales tax to be levied on Durries in accordance with the said notification. Sales tax was. also levied on "Kiryana", "Dry fruit", "Knitting wool" and other commodities at different rates.

(17) Before the learned Single Judge the following grounds were urged on behalf of the petitioner who is now respondent in the appeal before us.

(1)The power given by section 2 of the Union Territories (Laws) Act 1950 to the Central Government to extend enactments in force in a State to a Union Territory with such restrictions and modifications as it thinks fit could be exercised by the Government only to make such modifications in the enactment so applied as were necessary a". view of the peculiar local conditions. The modification in section 6(2) made by the Sro, 3908 dated 7th December, 1957 was not necessitated by this reason. It was, Therefore, ultra virus section 2 of the Union Territories (Laws) Act 1950; (2) such a modification could be made once when the Bengal Finance (Sales Tax) Act 1941 was extended to Delhi in 1951. No modification could be made after such extension; (3) the modification could not change the policy of the legislature reflected in the Bengal Finance (Sales Tax) Act, 1941. The impugned modification was contrary to it and (4) the notification No. Gsr 964 dated 16th June 1966 giving notice of intention to withdraw the exemption from sales tax with respect to Ghee and Durries and the notification No. Gsr 1061 dated 29th June 1966 withdrawing the said exemption were void as the statutory notice of not less than three months as required by section 6(2) prior to its modification by the impugned notification of 7th December, 1957 had not been given,

(18) The grounds found favor with the learned Single Judge who held: "The writ

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

(19) The appellants, Union of India, Delhi Administration and the Commissioner of Sales Tax are aggrieved by the order made by the learned Single Judge and have come up in appeal before us

(20) Mr. Ashok Sen who is counsel for the respondent in Lpa No. 53 of 1971 and also for the petitioner in Civil Writ No. 593 of 1971 has repeated those very contentions that were urged by him before the learned Single Judge. Counsel for the petitioners in the remaining writ petitions and for the respondents in the other LPAs has not addressed any separate arguments and has adopted the arguments of Shri Ashok Sen as his arguments on behalf of the petitioners,

(21) Mr. B. Sen, counsel for the appellants, first look up the question relating to the power to omit from or otherwise amend the Schedule and submitted that this power was conferred on the Central Government at the time Bengal Act was extended to the Union Territory of Delhi as the Central Government was empowered to make such modifications by virtue of section 2 of the Part "C" States (Laws) Act, 1950. As regards amending the Schedule by substituting "second schedule" the same was done by the amending Act, 1956, and that impugned notification was issued on 7th December, 1955, and was operative when in 1959, Parliament looking at the Bengal Act as it was, approved of the Act by introducing the requisite amendments to the Act which Parliament in its wisdom thought proper and necessary. This was done by the amendment Act 20 of 1959 and whatever infirmity may have existed in the Act, it stood rectified and cured by the seal of approval that Parliament put on the Bengal Act.

(22) In this respect it would be useful to consider a subsequent decision of their Lordship of the Supreme Court in Venkata Rao Esajirao Limbekar and Others Vs. The State of Bombay and Others, , which does not appear and has not been followed, in that case the appellant assailed the validity of the provisions of S 3S(E) of the Hyderabad Tenancy Act and Agricultural Lands Act (Act No. XXI of 1960) as amended by Act No. III of 1954. One of the grounds of challenge was that the aforesaid Act had not received the assent of the President and the Act was non est. In dealing with the contention, their Lordships observed at page 129 that when Hyderabad Amending Act III of 1954 was enacted the assent of the President was duly obtained and that when the assent of the President had been accorded to the amending Act, it would be difficult to hold that the President had never assented to the parent Act, namely, Hyderabad Act XXI of 1950. Further even if such assent had not been accorded earlier it must be taken to have been,

granted when amending Act III of 1954 was assented to.

(23) Shri Ashok Sen, counsel for the respondent however relied upon the Supreme Court's decision in *B. Shama Rao Vs. The Union Territory of Pondicherry*, in which their Lordships noticed their earlier judgment in *Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*. In *B. Shama Rao's* case the Madras Central Sales Tax Act, 1959 (No. 1 of 1959) as in force in the State of Madras was enforced in the Union Territory of Pondicherry with certain modifications and adaptations. The question for consideration before the Supreme Court was, whether in extending the Act, the Pondicherry Legislature abdicated its legislative power in favor of the Madras Legislature. The Court observed that the Pondicherry Legislature not only adopted the Act but also provided that if the Madras Legislature were to amend this Act prior to the date when the Pondicherry Government would issue this notification enforcing the Madras Act to the Territory of Pondicherry, it would be the amended Act which would apply. That being so, their Lordships of the Supreme Court observed that there was nothing for the Pondicherry Legislature to predicate what the amended Act would be and that the case was clearly one of non application of mind and one of refusal to discharge the function entrusted to the Pondicherry Legislature by the instrument Constituting it. It may also be mentioned here that the Pondicherry Legislature passed the Pondicherry General Sales Tax (Amendment) Act (XII of 1966) with a view to remove the infirmity in the Act. While examining the amendment the Court held that on the view that the principal Act was still-born, the attempt to revive that which was void ab initio was frustrated and such an Act could have no efficacy.

(24) It was accordingly urged that the amendment to the schedule substituting it by Second Schedule and incorporating clause (aa) in Section 6(2) by the impugned notification No. S.R.O. 3903 dated the 7th December, 1957 being non est the Bengal Act as it existed in 1959 was not available to Parliament to amend the same by amending Act (No. 20 of 1959). In this view of the matter, it was submitted that a new enactment was required to be passed. Besides, it was urged that the only change that was incorporated in the Act by the amending Act of 1959 was that for the word "State" except wherever it occurred in the expression "State Government", the words "Union Territory" were substituted. Accordingly, it was contended that the Parliament did not apply its legislative mind to the Act and it cannot be said that the infirmity was rectified by the amending Act of 1959.

(25) In the present appeal, the Bengal Act as extended by S.R.O. 615 dated the 28th April, 1951, did not suffer from any infirmity. It is conceded by the learned counsel for the respondent that the Central Government at the time it extended the Bengal Act was competent to introduce such modifications and restrictions as it thought fit. That being so, it cannot be said that the Act as extended was non est and was not available to the Parliament for repealing or amending it. The

challenge to the Bengal Act is restricted to (i) the substitution of "Second Schedule" for "Schedule" as substituted by Amending Act of 1956 and (ii) issuing of impugned notification by the Central Government in the exercise of the powers conferred on it u/s 2 of the Union Territories (Laws) Act, 1950.

(26) Applying the principle laid down by their Lordships of the Supreme Court in Venkatarao Esajirao Limbekar's case (1) (supra), Parliament while amending the Bengal Act by virtue of Amending Act, 1959 (20 of 1959) can be said to have substituted the words "second schedule" for the word "schedule" and also approved of the impugned notification. That being so, the principle laid down in B. Shama Rao's case (2) (Supra) would not be applicable to the instant appeal. The contention of the learned counsel for the respondent that in the amending Act of 1959 (20 of 1959) the only change incorporated was that for the word "State" words "Union Territory" were substituted is not borne out from the perusal of the Amending Act as substantial changes were made in the Act by the Amending Act. The Amending Act introduced new sections such as 5-A, 5-B, 10-A, 21-A, 22-A and 23-A. Besides new sub-section (4) was added to section 26 and a new schedule being schedule No. III was also inserted. Moreover, in various sections of the Act substantial changes by way of additions and substitutions were made.

(27) We may now turn to the first three contentions of the respondent which as we have said before, have been accepted by the learned Single Judge. It was urged on their behalf that by virtue of section 2 of the Union Territories Act, 1950, the Central Government has the power by notification in the official gazette to extend to the Union Territory of Delhi, Himachal Pradesh, Manipur or Tripura, or to any part of such territory, any enactment which is in force in a State at the date of the notification with such restrictions and modifications as it thought fit. It was accordingly urged that the right to modify an enactment while extending it to the Union Territory was ancillary to the act of extending an enactment.

(28) In pursuance of the provisions of Section 2 of the Part "C" State (Laws) Act or the Union Territories Act, the powers of the Central Government are limited to make modifications and restrictions to an enactment in force in a Part "A" State while extending the enactment to a Part "C" State or the Union Territory and thereafter the Central Government ceases to enjoy the power to further make amendments in the enactment so extended. Such a power stands exhausted as soon as an enactment in force in Part "A" State is extended to a Union Territory and thereafter it is not open to the Central Government to exercise any power of making further additions or restrictions to an extended enactment. To sustain his contention the learned counsel for the respondent drew support from re : The Delhi Law's Act (supra) and urged that Fazi Ali J. had observed at page 846 : "The power of introducing necessary restrictions and modifications is incidental to the power to apply or adapt the law, and in the context in which the provision as to modification occurs, it cannot bear the

sinister sense attributed to it. The modifications are to be made within the framework of the Act and they cannot be such as to affect its identity or structure or the essential purpose to be served by it. The power to modify certainly involves a discretion to make suitable changes, but it would be useless to give an authority the power to adapt a law without giving it the power to make suitable changes.

(29) Mahajan J. (as he then was) in this connection observed at page 905, "It is obvious that such an authority is ancillary to legislation, and without it an attempt for varying details and machinery to carry them out might become oppressive, or absolutely fail." Mukerji J., at page 1004 observed "This leads us to the question as to what is implied in the language of Section 7 of the Delhi Laws Act which empowers the Central Government to extend any statute in force in any other part of British India to the Province of Delhi with such modifications and restrictions, as it thinks fit. The word "restrictions" does not present much difficulty. It connotes limitation imposed upon a particular provision so as to restrain its application or limit its scope. It does not by any means involve any change in the principle. It seems to us that in the context, and used along with the word "restrictions" the word "modifications" has been employed also in a cognate sense and it does not involve any material or substantial alteration". Das J" observed at pages 1088 and 1089, "The power to extend an Act mutates mutant certainly involved some modification, however small it may be. The power to extend a part of an Act necessarily included the power to omit some sections or parts of some sections, or the important qualifications and provisos to any section."

(30) It was Therefore submitted that taking into consideration the observations of their Lordships of the Supreme Court in The Delhi Laws Act (supra) (s) the permissible modifications were such as would after modification leave the general character of the enactment intact and that delegation of legislative power to the executive as delegation simplicities was not envisaged and accordingly it was for this reason that their Lordships of the Supreme Court in the Delhi Laws Act (supra) (s) sustained the first portion of Section 2 of the Part "C" States (Laws) Act and declared ultra virus the latter portion of the section which empowered the Central Government to make provision in any enactment extended to a Part "C" State for repeal or amendment of any law (other than a Central Act) which was for the time being applicable to that Part "C" State. The learned counsel for the respondent Therefore, contended that the power bestowed upon the Central Government by virtue of sub-section (2) of Section 6 of the Bengal Act to omit from or otherwise amend the Second Schedule. could not be sustained as the same was not necessary and integrated with extending the law.

(31) The learned counsel appearing for the respondents contended that the Bengal Act as originally extended to the Union Territory of Delhi in 1951, contained one Schedule as mentioned in Sub-section (2) of Section 6 and according to sub-section (1) of the said section, no tax was payable under the

Act on the sale of goods specified in the first column of the schedule subject to the conditions and exceptions, if any, set out in the corresponding entry in the Second column there of; that subsequently in 1957 by the impugned notification the period of three months notice required to be given of its (Central Government's) intention so to do, to add, to omit from or otherwise amend the Schedule, was curtailed to such period as may be considered reasonable by the Central Government. Introducing such vital amendments and changes in the parent Act amounts to changing the very fabric of the Act which was not within the competence of the Central Government either by virtue of Section 2 of the Part "C" States (Laws) Act, 1950 or u/s 2 of the Union Territories Act, 1950.

(32) According to the learned counsel, after the Bengal Act was extended in 1951 it became the law in Delhi and it was only the Delhi State Assembly or Parliament which could amend the Act, and the Central Government cannot fall back on the provisions of either of the Part "C" States Act or the Union Territories Act to make sweeping changes in the Bengal Act so as to change the very Act. In support of his contention, the learned counsel for the respondent placed reliance on the observations of their Lordships of the Supreme Court at page 452 in *Mithan Lal Vs. The State of Delhi and Another*, wherein it was said, "when a notification is issued by the appropriate Government extending the law of a Part "A" State to a Part "C" State, the law so extended derives its force in the State to which it is extended from Section 2 of Part "C" States (Laws) Act, enacted by Parliament. The result of a notification issued under that section is that the provisions of law which is extended become incorporated by reference, in the Act itself, and Therefore a tax imposed there under is a tax imposed by Parliament."

(33) On behalf of the appellants no specific argument was advanced by the learned counsel except that our attention was invited to Section 21 of the General Clauses Act. The said section reads :-

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

learned Single Judge, basing himself on the observations of the Supreme Court at page 100 of the judgment in *Gopi Chand Vs. The Delhi Administration*, which are to the following effect;

"... section 21 of the General Clauses Act, embodies a rule of construction, the nature and extent of the application of which must inevitably be governed by the relevant provision of the statute which confers the power to issue the notification. . . .but the said power must inevitably be exercised within the limit prescribed by the provisions conferring the said power."

and remarked :-

"It follows, Therefore, that the answer to the question whether the Central

Government can exercise the power of modification repeatedly depends not so much on section 21 of the General Clauses Act but on Section 2 of the Union Territories (Laws) Act, 1950. Normally section 2 does not so contemplate exceptionally this may be permitted but as stated above the exceptional circumstances have not come into being."

WE do not see which exceptional circumstances the learned Single Judge has in view. In any event, no such circumstances have been stated. We Therefore express our respectful dissent from the view taken by the learned Judge. In our opinion. Section 21 of the General Clauses Act gives power to the Central Government to add to, amend, vary or rescind any notification etc. provided the power to do so, does not run counter to the policy of the legislature or affect any change in its essential features. Learned Single Judge further observed :-

"THE power of modification is thus an integral part of a power of extension. It cannot Therefore be exercised except for the purpose of extension. The power of extension in itself is simply to transplant the the State Law to the Union Territory. It does not comprise any other thing. But it is absolutely necessary to make the State law intelligible and applicable in Union Territory that some of the nomenclature should be adapted to the different set up of the Union Territory. Otherwise the State Act will not make sense applied to the Union Territory."

FROM the extracts quoted by the learned Single Judge from the judgment of the Supreme Court in Re. Delhi Laws Act (Supra) and from the judgment in Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, . the principle deduced by the learned Judge does not appear to follow. We are Therefore not inclined, as at present advised, to support the above observations. However, since the matter was not argued at great length and the appellants' counsel rested his submissions on the other aspects of the case, we would not like to express any definite opinion on the question as to whether the power of making any modifications or restrictions in the Act can only be exercised at the time of extending the Act and that it cannot -be done subsequently by the Central Government in exercise of its executive powers.

(34) The next contention to be considered is that the impugned notification suffers from the infirmity of excessive delegation of legislative powers or that the delegation of power is in any way un-fettered and uncanalised.

(35) The question of excessive delegation of legislative powers has been considered in a catena of authorities. In Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, the validity of certain provisions of the Central Provinces and Berar Sales Tax Act, 1947, imposing sales tax on materials used in construction works, was impugned. The sub-section (2) of Section 6 of the above Act empowered the State Government to amend Schedule II after giving by notification not less than one month's notice of their intention so to do, by a notification after the expiry of the period of notice mentioned in the first notification, and thereupon the schedule was to be deemed to be amended

accordingly. In pursuance of the said provision the State Government issued notification amending item 33 of the Schedule by substituting for the words "goods sold to or by the State Government", the words "goods sold by the State Government" with the result that the appellant who was prior to the amendment entitled to exemption in respect of the goods sold to the Government could no longer claim it by virtue of the amendment.

(36) A contention was raised in that case that the impugned notification was bad as being an un-constitutional delegation of legislative authority. The argument advanced was that power to execute a law could be delegated to the executive but the power to make it must be exercised by the Legislature itself. Dealing with the contention, their Lordships of the Supreme Court observed at page 435, "That it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be levied the rates at which it is to be charged in respect of different classes of goods, and the like. Further, the power conferred on the State Government by Section 6(2) to amend the Schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic. and was not un-constitutional."

(37) Section 6(2) of the Centre Provinces and Berar Sales Tax Act, 1947, empowered the State Government, after giving by notification not less than one month's notice of their intention so to do by a notification after the expiry of the period of notice mentioned in the first notification, to amend either schedule to the Act and thereupon such schedule shall be deemed to be amended accordingly. The powers conferred on the State Government as per section 6(2), referred to above, are in substance the same powers which are conferred upon the Central Government in sub-section (2) of Section 6 of the Bengal Act.

(38) In *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, certain area in which the appellant was living was brought within municipal limits by a notification issued u/s 3(I)(f) and 5 of the Patna Administration Act of 1915 (Bihar and Orissa Act 1 of 1915) and the area so brought within municipal limits was subject to municipal taxation. The appellant raised a contention that the notifications issued were delegated legislation and so were bad. The appellant accordingly urged that Section 3(I)(f) and 5 of the Act which permitted the delegation were ultra vires. Section 3(I)(f) of the Patna Administration Act, 1915 (Bihar and Orissa Act No. 1 of 1915) empowered the local Government to extend to Patna the provisions of any section of the Bengal Municipal Act of 1884 "subject to such restrictions and modifications as the local Government think fit." Their Lordships after examining the earlier decision of the Court in *The Delhi Laws Act (supra)* (s) observed at page 301 that in executive authority could be authorised to modify either existing or future laws but not in an essential feature. Further what constituted an essential feature could not be enunciated in general terms but it could not include change of policy.

(39) In *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, a

contention was raised that Section 5 of the East Punjab General Sales Tax Act, 1948 was still-born and was void on the ground that it conferred essentially legislative power on the Provincial Government and that Act No. 19 of 1952 which amended section 5 with retrospective effect could not breathe a new life into the Act. In these respect it was observed at page 1901, "The Constitution confers a power and imposes a duty on the Legislature to make Laws. The essential legislative function is the determination of the Legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favor of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency".

(40) On merits it was held in the above case that in the amendment made in Section 5 since after the word -rates" the words "not exceeding two pies in a rupee" were inserted, the said section as amended was valid.

(41) Earlier in *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, , it was observed that it is well established that the power of delegation is a constituent element to the Legislative power as a whole and that keeping in view the challenge of the complex socio- economic problems, the Legislatures often find it convenient and necessary to delegate subsidiary or ancillary power to delegates of their choice for carrying out the policy laid down by their Acts.

(42) It would be relevant to notice the observations of their Lordships of the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, . In that case the virus of S. 3 of the Essential Supplies (Temporary Powers) Act, 1946 and in particular of S. 4 were questioned on the ground that they were ultra virus the Legislature on the ground of excessive delegation of Legislative power.

(43) Dealing with the contention, Mahajan CJ., who delivered the judgment of the Court, referring to the earlier decision in the *Delhi Laws Act (supra)* (""), re-affirmed the principle that essential powers of legislation cannot be delegated and that the Legislature must lay down legislative policy in respect of a measure and its formulation as a rule of conduct. Applying the said principle to the case it was observed that the Legislature had laid down the principle which, was the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability of fair prices. Delegation of the kind mentioned in S. 3 was up-held on the ground that the preamble and the body of the sections sufficiently formulated the legislative policy and that the details of that policy could only be worked out by delegating them to a subordinate within, the frame-work of that policy. Regarding S. 4, it was observed that the section, only enumerated the classes of persons to whom the powers could be delegated or sub-delegated by the Central Government and it was not correct to say that the instrumentalities had not been selected by the Legislature itself.

(44) In *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, it was observed at page 1239, "Considering the complexity of modern life it is recognised on all hands that Legislature cannot possibly have time to legislate in every minute detail. That is why it has not been recognised that it is open to Legislature to delegate to subordinate authorities the power to make ancillary rules for the purpose of carrying out the intention of the Legislature indicated in the law which gives powers to frame such ancillary rules". In *Mithan Lal's case* (supra), it was observed that the modification made by the Central Government in the construction contracts did not involve any change of policy in the Bengal Finance (Sales Tax) Act, 1941 rather the modification gave effect to the policy of enactment which was to bring construction contracts within the ambit of the taxation powers of the State" and the impugned provisions were held to be *intra vires*.

(45) The principle deducible from the authorities considered above is that the power of delegation is a constituent element of Legislative power; that the Legislature can delegate subsidiary and ancillary powers to delegates "of their choice; that it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws-such as the selection of persons on whom the tax is to be levied, the rates at which it is to be charged in respect of different classes of goods and the like; that the delegate cannot modify the law in its essential features that the essential legislative function is the determination of the Legislative policy and its formulation as a rule of conduct; that the Legislature cannot abdicate its functions in favor of another and that the Legislature will act *ultra vires*, "if it undertakes to delegate the trust instead of executing, it"; and that in view of the multifarious activities of a welfare state the Legislature cannot work out all the details to suit the varying aspects of a complex socio-economic problems. That being so, it is only when there is a non-application of the Legislative mind or refusal to discharge the functions entrusted to Legislature that the authority delegated would be excessive delegation of legislative powers.

(46) In the instant appeal, we do not find that there was any abdication of legislative functions or there was any non-application of Legislative mind when at the time of extending the Bengal Act in 1951. Central Government was empowered to "omit from" or "otherwise amend" the Schedule apart from to add to, which power already existed in the parent Act. The policy of the Act which is implicit in the preamble of the extended Act is to impose a general tax on the sale of goods in the Union Territory of Delhi with a view to make additions to its revenue and, Therefore, in successfully implementing the policy of the Act it was necessary to empower the Central Government not only to "add to" but also to "omit from" or "otherwise amend" the Schedule. The exercise(r) of such a power is in consonance with the accepted legislative practice in so far as the addition or ex. -emption made does not involve any change of policy laid down in the Act.

(47) Reasonable discretion conferred on the executive under a fiscal statute was

sustained by the Supreme Court in *Kandige Sham Batt v. Agricultural Income Tax Officer, Kasargod*, Air 1963 S.C. 591. It is, therefore, idle to contend that the power entrusted to the Central Government to "add to" or "omit from" or "otherwise amend" the schedule as envisaged in sub-section (2) of section 6 of the Bengal Act suffers from the infirmity of excessive delegation or that the delegation of power is in any way un-fettered or uncanalised.

(48) Moreover, as already noted above, the Bengal Act. was amended by Parliament in 1959 by Amendment Act No. 20 of 1959 when Parliament after applying its legislative mind to the existing Act as in force in the Union Territory of Delhi, put its stamp of approval on the Act as a whole, making such additions or amendments as it thought fit. It, Therefore, cannot be said that the levy is unauthorised or-unwarranted.

(49) This brings us to the second contention, namely, that in curtailing the period from three months to such period as the Central Government may consider reasonable in giving notice of its intention to add to, omit from or otherwise amend the schedule the valuable right of the dealers of being heard before the sales tax is levied has been interfered to their prejudice. The question to be considered, Therefore, is whether in curtailing the period of three months' notice to a shorter period of such duration as the Government may consider reasonable would amount to impairing the right of the general public acquired under the Bengal Act as extended to the Union Territory of Delhi or whether it would amount to making only structural modification necessary for the requirements of the Union Territory of Delhi.

(50) In *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, (), the appellant objected to the payment of the water tax. Before the Supreme Court in appeal it was contended that there was no publication of the proposal and the draft rules in respect of the water tax as provided by S. 131(3) read with S. 94(3) of the U.P. Municipalities Act. Further it was contended that as the provision of S. 131(3) was mandatory and was not complied with, action taken for the imposition of title tax was bad for non-compliance with a mandatory provision and Therefore the tax itself was not levied according to law and could not be realised. In this connection the Court observed that the object of providing for publication of proposals and draft rules was to invite objections and to provide reasonable opportunity of being heard to those who were likely to be affected by the tax before imposing it. In the circumstances it was held that the part of section 131(3) was mandatory and it was necessary to comply with it strictly before any tax could be imposed. However, as regards the method of publication provided in Section 94(3) it was held that so long as publication is made in substantial compliance in the manner provided in the section it would not be improper to hold that the manner of publication was directory so long as the purpose of the mandatory part of Section 131(3) was served.

(51) Learned Single Judge has held that the requirements of Section 6(2) of the Bengal Finance (Sales Tax) Act are mandatory only if exemption granted to

goods is to be withdrawn but they are directory if exemption is to be granted by adding any item to the Second Schedule for imposition of tax is to be preceded by opportunity for making representation against it but no such opportunity is necessary before an exemption from payment of tax is to be granted. "The argument is attractive but a closer consideration will expose the fallacy underlining it. Sales-tax is recovered by the Government from a dealer but its actual incidence is on the consumer. If no previous notice is given while granting an exemption, an un-scrupulous dealer will go on charging sales tax without informing the members of the public. The public as such is interested in knowing on which particular items the Government has granted an exemption. The grant of exemption has also a bearing on the level of prices. If publication of a notice is necessary in the case of cancellation of an exemption it is equally necessary in the case of exemption. The distinction is not between the imposition of tax and the manner of publication as was the case in Raza Buland Sugar Company's case. The two parts of a notification u/s 6(2) have therefore been regarded alike.

(52) Applying the principle laid down by their Lordships in the above cited case, it would therefore be seen that the purpose of giving notice to the general public as envisaged in sub-section (2) of Section 6 of the Bengal Act is to invite objections and to provide for a reasonable opportunity of being heard to those who are likely to be affected by the tax before imposing it. The question, therefore, would be as to what can be termed as "reasonable opportunity" of being heard. Whether giving a notice by a period of "not less than three months" alone would be a reasonable period or "such previous notice as the Central Government considers reasonable" would amount to providing as reasonable opportunity.

(53) We have given our anxious consideration to the matter and are of the opinion that all that sub-section (2) of S. 6 of the Bengal Act requires is that the notice of the intention of the Government is required to be given for the information of the public, who must be heard as well before the requisite addition or amendment is made and it cannot be said that three months' notice alone would meet the requirements of law. We would, however, like to state that the period of notice should be reasonable so as not to deprive the general public of their right to file objections to the proposed levy. In other words, the period of notice should not be illusory so as to deprive those who are likely to be affected, of their right to file objections and of being heard before imposing the tax.

(54) In the instant case the Central Government gave notice of its intention to amend the Second Schedule with effect from 1st July 1966 by notification No. 113 dated the 16th- June 1966 by particularly stating in the notice that item No. 17 of the said schedule was sought to be substituted by withdrawing the exemption levy of sales tax on Durries Druggist, Carpets and thereafter notification Gsr 1061. dated the 29th June 1966, issued by government of India, Ministry of Home Affairs, Dunes were subjected to with effect from 1st July, 1966. That being so in all a notice of thirteen days was given to the public. Taking into

consideration the limited area of the Union Territory of Delhi in comparison to the far flung area of Bengal, it cannot be said that the thirteen days" notice was in any manner not reasonable as compared to larger period of three months" notice provided under the Bengal Act as the said period was considered reasonable period taking into consideration the extent and area of the whole of Bengal and the Legislature thought it fit to prescribe the period of three months with a view to apprise the public at large of the intention of the Government to add to, or omit from or otherwise amend the Schedule. This period of three months was provided as the Province of Bengal had a far flung territory and since the public at large had to be apprised of the intention of the State Government, the Legislature considered the period of three months to be reasonable period .

(55) What is required to be decided in this context is the reasonableness of the period required to be given to the general public apprising it of the intention of the Government. Otherwise no special significance or sanctity is attached to the span of time of three months provided in sub-section (2) of Section 6. Taking into consideration the limited and compact area of the Union Territory of Delhi the Central Government considered it feasible to prescribe a shorter period by substituting the words "such previous notice as it considers reasonable," for the words "not less than three months" notice". That being so it is not open for the respondent to urge that by curtailing the period of three months notice to such period as the Government considered reasonable, would in a way amount to depriving the people of their democratic right of being heard before any tax was imposed on them.

(56) Besides, as already held in an earlier part of this judgment. Parliament while enacting the Amendment Act, 1959 (Act No. 20 of 1959) put its seal of approval to the curtailed period of notice. As such the curtailed period of notice shall be taken to have been provided by Parliament on the ratio of Supreme Court's decision in Venkatarao Esajirao Limberkar's case) (supra) . The impugned notification, Therefore, cannot be said to be illegal, whimsical and arbitrary.

(57) For the reasons stated above, the Letters Patent appeals are accepted and the Civil Writ No. 593 of 1971 is dismissed. So are the remaining writ petitions dismissed, but in the circumstances of the case, the parties will bear their own cost.