

Bench: Abhay S Oka, Hrishikesh Roy, Dhananjaya Y Chandrachud

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

Civil Appeal Nos. 4056-4064 of 1999

...Appellan

Versus

...Responden

1. In *Mineral Area Development Authority v. Steel Authority of India*,¹ the nine-Judge Bench of this Court answered the questions referred in terms of the conclusions arrived at by the majority. In the process, the judgment overruled *India Cement Ltd. v. State of Tamil Nadu* ² and subsequent decisions of this Court which relied on it. After the pronouncement of the judgment, counsel for the

assesses submitted that the judgment may be given prospective effect. Therefore, the proceedings were listed for hearing submissions on whether or not the judgment should be given prospective effect.

B. Submissions

2. Mr R Venkataramani, Attorney-General for India, Mr Tushar Mehta, Solicitor- General of India, Mr Harish Salve, Mr Abhishek Manu Singhvi, Mr Mukul Rohatgi, and Mr Arvind Datar, senior counsel, made the following submissions:

a. India Cement (supra) held the field for thirty-five years before it was overruled in MADA (supra). Demands for tax under state legislation pertaining to Entries 49 and 50 of List II of the Seventh Schedule have been stayed in terms of the law laid down in India Cement (supra). The affected 1 Civil Appeal Nos. 4056-4064 of 1999; 2024 INSC 554 (“MADA”). 2 (1990) 1 SCC 12 PART B parties (which include public sector undertakings) have factored in the state levies which were valid and applicable at the relevant point of time and passed them on to the end consumers. If State legislatures are allowed to renew the tax demands, end consumers will ultimately bear the burden;

b. After the decision in India Cement (supra), the levies collected by the States were protected because of validation legislation enacted by Parliament. If a ruling creates or renews a liability for the assesses, there is no protection against retrospective demands;

c. Since 2015, entities bidding for mineral concessions have submitted their financial bids on the basis of the legal position in India Cement (supra). If MADA (supra) is given retrospective effect, it will rewrite commercial bargains underpinning the mineral auctions. This Court ordinarily does not disturb past or concluded transactions in tax matters; d. The doctrine of prospective overruling is well-established in Indian constitutional jurisprudence. MADA (supra) should be given prospective effect because it lays down new constitutional principles; and e. Where enforcement of taxing legislation was either partially or completely interdicted by judicial orders, it should be directed that no new tax demand be made for the period before the judgment in MADA (supra), that is, before 25 July 2024.

3. On the other hand, Mr Rakesh Dwivedi, Mr Vijay Hansaria, and Mr Tapeshe Kumar Singh, senior counsel, appearing for the States made the following submissions:

PART B a. The doctrine of prospective overruling is applicable only when the judgment invalidates a legislation or introduces a new interpretation by overruling its earlier decision. The doctrine of prospective overruling has never been applied to situations where the declaration of law attaches validity to taxing legislation;

b. If MADA (supra) is applied prospectively, India Cement (supra) will have to operate till 25 July 2024. Resultantly, all relevant state legislation will be tested on

the anvil of India Cement (supra) and may be declared ultra vires. This consequence is unjust and against the public interest; and c. In *State of West Bengal v. Kesoram Industries Ltd*, 3 a Constitution Bench upheld the validity of legislation enacted by the State of West Bengal. After Kesoram (supra), several states such as Chhattisgarh, Madhya Pradesh, and Rajasthan enacted legislation which was upheld by the respective High Courts. Giving prospective effect to MADA (supra) will result in a discriminatory situation. While West Bengal will continue to collect tax (which it has been doing since 1992), other states with similar enactments may be deprived of collecting tax from the date of their enactments.

4. We have also heard Mr Pitambar Acharya, Advocate General of the State of Orissa, who emphasized the importance of protecting the financial interests of States.

3 (2004) 10 SCC 201

C. Prospective overruling

5. The doctrine of prospective overruling is applied when a constitutional court overrules a well-established precedent by declaring a new rule but limits its application to future situations. The underlying objective is to avert injustice or hardships. 4 The doctrine was applied by the courts in the US on the basis that the US Constitution “neither prohibits nor requires retroactive effect.” 5 The US Supreme Court has considered the existence of a statute or judicial decision as an “operative fact” having “consequences which cannot justly be ignored” or “erased by a new judicial declaration.” 6 Therefore, it was held that the effect of a subsequent ruling as to invalidity may have to be considered in light of various aspects. 7

6. In *Chevron Oil Company v. Huson*,⁸ the US Supreme Court identified three separate factors to be considered while deciding the applicability of prospective overruling: (i) the decision to be applied prospectively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not foreshadowed; (ii) the court must weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or 4 *Great Northern Railway Co. v. Sunburst Oil and Refining Co.*, 287 U S 358 (1932) 5 *Linkletter v. Walker*, 381 US 618 (1965) 6 *Chicot County Drainage Dist. v. Baxter State Bank*, 308 US 371 (1940) 7 *Chicot County Drainage Dist (supra)* 8 404 US 97 (1971) PART C retard the operation of the rule; and (iii) whether the application of nonretroactivity avoids substantial

inequitable results, injustice or hardships.

7. This Court has adopted the doctrine of prospective overruling, partly inspired by the jurisprudence developed in the US. In *Golak Nath v. State of Punjab*, a Bench of eleven Judges of this Court was called upon to decide the validity of the Constitution (Seventeenth Amendment) Act 1964 which included certain state agrarian laws in the Ninth Schedule of the Constitution. The majority held that an amendment to the Constitution was “law” according to the definition under Article 13. Further, it was held that constitutional amendments are also subject to limitations prescribed under Article 13(2).⁹ Resultantly, the constitutional amendment was declared void for infringing Article 13(2). The next issue before the Court was whether the decision should be applied prospectively.

8. *Golak Nath* (supra) overruled earlier decisions¹⁰ of this Court which had held that Parliament can amend or abridge the fundamental rights in Part III of the Constitution. The States had relied on the earlier rulings to enact agrarian legislation. During 1950 and 1967, various amendments were carried out to the Constitution validating the agrarian reforms undertaken after Independence. In this context, Chief Justice K Subba Rao observed that giving retrospective operation to the decision “would introduce chaos and 9 Constitution of India, Article 13 10 *Shankari Prasad Singh Deo v. Union of India*, 1951 SCC 966; *Sajjan Singh v. State of Rajasthan*, 1964 SCC OnLine SC 25.

PART C unsettle the conditions in our country.” Resultantly, it was observed that overruling the earlier decisions but restricting the ruling to the future and not to the past was a “reasonable principle” to resolve extraordinary situations:

“49. [...] It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a court finds law and that it does make law. It finds law but restricts its operation to the future. It enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It is left to the discretion of the court to prescribe the limits of the retroactivity and thereby it enables it to mould the relief to meet the ends of justice.” (emphasis added)

9. The Chief Justice held that the power of this Court to apply the doctrine of prospective overruling could be traced to Article 142 and formulated the following propositions about the applicability of the doctrine:

a. It can be invoked only in matters arising under the Constitution; b. It can be applied only by this Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; and c. The scope of the retroactive operation of the law is left to the discretion of this Court to be moulded in accordance with the justice of the cause or matter before it.

PART C

10. After laying down the broad canvas, the learned Chief Justice concluded:

“53. [...] What then is the effect of our conclusion on the instant case? Having regard to the history of the amendments, their impact on the social and economic affairs of our country and the chaotic situation that may be brought about by the sudden withdrawal at this stage of the amendments from the Constitution, we think that considerable judicial restraint is called for. We, therefore, declare that our decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964, or other amendments made to the Constitution taking away or abridging the fundamental rights. We further declare that in future the Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights.” (emphasis added)

11. Although *Golak Nath* (supra) was subsequently overruled in *Kesavananda Bharati v. State of Kerala*,¹¹ the doctrine of prospective overruling has been accepted by this Court. This Court has applied the doctrine in varied contexts. The following principles emerge on the application of the doctrine:

a. The power of this Court to mould the relief claimed to meet the justice of the case is derived from Article 142;¹² 12 b. It is applied by this Court while overruling its earlier decision, which was otherwise final. It has also been applied when deciding on an issue for the first time;¹³ 11 (1973) 4 SCC 225 12 *Belsund Sugar Co. Ltd. v. State of Bihar*, (1999) 9 SCC 620 [112] 13 *Somaiya Organics (India) Ltd. v. State of U P*, (2001) 5 SCC 519 [24] PART C c. The object is to validate all the actions taken before the date of declaration in the larger public interest. 14 The doctrine does not validate an invalid law, but the declaration of invalidation takes effect from a future date;¹⁵ d. Cases that have attained finality are saved because doing otherwise would cause unnecessary and avoidable hardships;¹⁶ e. It is applied to bring about a smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the overruled law; 17 f. It is a device innovated to avoid: (i) reopening settled issues, (ii) refund of amounts collected under invalid legislation, and (iii) multiplicity of proceedings; 18 and g. It is applied to avoid social and economic disruptions and give sufficient time to the affected entities and institutions to make appropriate changes and adjustments. 19

12. This Court has often used its powers under Article 142 to limit the retroactivity of its decisions. In *Union of India v. Mohd. Ramzan Khan*,²⁰ a three-Judge Bench of this Court held that non-furnishing of an enquiry report to a delinquent employee would amount to a violation of the rules of natural 14 *Baburam v. C C Jacob*, (1999) 3 SCC 362 [5] 15 *Somaiya Organics* (supra) [37] 16 *Raymond Ltd. v. MP Electricity Board*, (2001) 1 SCC 534 [24]; *Sarwan Kumar v. Madan Lal Aggarwal*, (2003) 4 SCC 147 [15]; *Ramesh Kumar Soni v. State of M P*, (2013) 14 SCC 696 [21]. 17 *L Chandra Kumar v. Union of India*, (1997) 3 SCC 261 [94]; *Ashok Kumar Gupta v. State of U P*, (1997) 5 SCC 201 [54] 18 *M A Murthy v. State of Karnataka*, (2003) 7 SCC 517 [8]; *Shree Mahavir Oil Mills v. State of Jammu and Kashmir*, (1996) 11 SCC 39 [27] 19 *New Noble Educational Society v.*

CIT, (2023) 6 SCC 649 [84] 20 (1991) 1 SCC 588 PART C justice. The Court declared the law to be prospective, but gave relief to the employees before the Court. The correctness of Ramzan Khan (supra) came up before a Constitution Bench in Managing Director, ECIL v. B Karunakar. 21 The Constitution Bench upheld Ramzan Khan (supra). It was further held that the law laid down in Ramzan Khan (supra) cannot be applied retrospectively because:

a. the legal position on furnishing the report of an enquiry officer to the delinquent employee was unsettled before Ramzan Khan (supra); b. the authorities had proceeded on the assumption that there was no requirement to furnish a copy of the enquiry report to the delinquent officer; and c. reopening of all disciplinary proceedings before Ramzan Khan (supra) would result in grave prejudice to the administration which outweighed the benefit to the employees.

Hence, it was held that no proceedings before the decision in Ramzan Khan (supra) should be challenged on the ground that there was a failure to furnish the enquiry report.

21 (1993) 4 SCC 727 PART D D. A pragmatic solution to reconcile the conflicting interests

13. In India Cement (supra), a Bench of seven Judges of this Court held that royalty is tax. Resultantly, it was held that the State legislatures have no legislative competence to impose cess on royalty under Entries 23 and 50 of List II. Fifteen years later, a Constitution Bench in Kesoram (supra) held that royalty is not a tax. It was further held that the power to levy tax on mineral rights vests with the State legislatures and is subject to any limitations laid down by Parliament by law relating to mineral development. Given this divergence, a reference was made to a larger Bench. MADA (supra) has laid down the principles for interpreting Entry 54 of List I and Entries 23 and 50 of List II. In the process, this Court overruled India Cement (supra).

14. The doctrine of prospective overruling has been applied by this Court in situations where the new declaration results in the invalidation of legislation, which would otherwise have been valid under the old declaration. 22 The doctrine has also been used where this Court has declared a legislation as ultra vires. 23 In the case of taxing statutes, such a declaration would make the State liable to refund all amounts collected under the invalid legislation. Therefore, this Court declares the new rule to apply prospectively not only to secure the revenues of the State but also to protect the rights and obligations crystallized by persons and entities under the old regime. 24 22 Golak Nath (supra) [53]; Synthetics & Chemicals Ltd v. State of U P, (1990) 1 SCC 109 [89] 23 Gaurav Kumar v. Union of India, 2024 SCC OnLine SC 1841 [108] 24 India Cement Ltd v. State of T N, (1990) 1 SCC 12 [35]; Orissa Cement Ltd v. State of Orissa, 1991 Supp (1) SCC 430 [69] PART D

15. This Court generally does not declare prospective overruling when upholding the legislative competence of legislatures. In Municipal Council, Kota v. Delhi Cloth & General Mills Co. Ltd., 25 this Court was called upon to decide the validity of the dharmada tax levied and collected by the Municipal Council. The High Court held that the Municipal Council was not authorized to collect the tax. Further, the High Court directed the State government to refund the collections made to the

assesses. In the appeal, a two-Judge Bench of this Court upheld the competence of the Municipal Council to levy the tax. It also set aside the order of the High Court granting refunds to the assesses.

16. In *Jindal Stainless Ltd. v. State of Haryana*, 26 a Bench of nine Judges of this Court held that a non-discriminatory tax does not per se constitute a restriction on the right to free trade, commerce and intercourse guaranteed under Article 301. This Court overruled long-standing precedents that held that taxes, except for compensatory taxes, offend Article 301. 27 In that case, the counsel specifically submitted that the judgment should be given a prospective effect. 28 However, the decision was given a retrospective effect. In her concurring opinion, Justice Banumathi dealt with the issue raised by the assesses about payment/refund of tax in case the validity of the legislation was upheld or otherwise. The learned Judge rejected the claim of the assesses for refund of taxes thus:

“481. It is well settled that a claim of refund can be allowed only when the claimant establishes that he 25 (2001) 3 SCC 654 26 (2017) 12 SCC 1 27 *Atiabari Tea Co. Ltd. v. State of Assam*, AIR 1961 SC 232; *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*, AIR 1962 SC 1406 28 *Jindal Stainless Ltd. (supra)* [897] PART D has not passed on the tax burden to the consumers.

No refund can be granted so as to cause windfall gain to any person when he has not suffered the burden of tax. The possibility of the tax burden having been passed on to the consumers by the assesseees cannot be ruled out in the present case. Applying the law laid down above to the present case, it emerges that the assesseees cannot claim refund irrespective of whether the impugned legislations are declared valid or unconstitutional. Unless the assesseees establish that they have not passed on the tax burden to the consumers, they cannot make a claim for refund and unjustly enrich themselves.” (emphasis added)

17. MADA (*supra*) has upheld the legislative competence of States under Entries 49 and 50 of List II. If MADA (*supra*) is given a prospective application, the validity of all relevant legislation enacted before the date of the decision, that is 25 July 2024, will have to be tested on the touchstone of the previous law. The previous law on the aspects of interpretation of Entry 54 of List I and Entries 23 and 50 of List II of the Seventh Schedule was unsettled because of the conflicting decisions in *India Cement (supra)* and *Kesoram (supra)*. There is always a presumption of constitutionality in favor of a statutory enactment. It is based on the theory that the elected representatives are aware of the needs of the citizens and are best placed to frame policies to resolve them. 29 Legislation represents the will of the people and cannot be lightly interfered with unless it transgresses constitutional principles. 30 If 29 *Association for Democratic Reforms v. Union of India*, (2024) 5 SCC 1 [45] 30 *Charanjit Lal Chowdhury v. Union of India*, (1950) SCR 869; *State of Bihar v. Bihar Distillery Ltd.*, (1997) 2 SCC 453 [17] PART D MADA (*supra*) is applied prospectively, the relevant taxing legislations may conceivably be invalidated, requiring the States to refund the amount collected to the assesses. Since MADA (*supra*) has answered the reference and resolved the conflict, it would be iniquitous to apply the decision prospectively.

18. The learned Solicitor General relied on the Constitution Bench decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*³¹ to draw upon the point that this Court has applied the doctrine of prospective overruling where the parties have entered into commercial relations based on the prevailing legal position. In *Bharat Aluminium (supra)*, this Court held:

“197. The judgment in *Bhatia International* [(2002) 4 SCC 105] was rendered by this Court on 13-3-2002. Since then, the aforesaid judgment has been followed by all the High Courts as well as by this Court on numerous occasions. In fact, the judgment in *Venture Global Engg.* [(2008) 4 SCC 190] has been rendered on 10-1-2008 in terms of the ratio of the decision in *Bhatia International* [(2002) 4 SCC 105]. Thus, in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter.”

19. The decision in *Bharat Aluminium (supra)* was applied prospectively to arbitration agreements concluded after the date of judgment. However, the legal context in the present batch of matters is different. Article 265 of the Constitution prescribes that no tax shall be levied or collected except by authority of law. The law must be valid in the sense that it must be within the legislative competence of the legislature and consistent with other provisions 31 (2012) 9 SCC 552 PART D of the Constitution.³² Further, the power to levy tax is an incidence of sovereignty. ³³ If we are to give a prospective application to *MADA (supra)*, it would result in a situation where the legislation enacted by the States in pursuance of their plenary powers under Entries 49 and 50 of List II may conceivably be invalidated based on a position of law which has been overruled. This would not be a constitutionally just outcome.

20. After *India Cement (supra)*, Parliament enacted the Cess and Other Taxes on Minerals (Validation) Act 1992 to validate the imposition and collection of taxes on minerals made under the State legislations before 1991. The Central Government also increased the rates of royalty to compensate the States for the loss of mineral revenues. ³⁴ The recalibration of the royalty rates protected the States from the amount lost due to the abolition of cess on minerals and mineral rights. The assesses submit that in the interregnum they have structured their commercial bargains in terms of the prevalent law. Subsequently, *Kesoram (supra)* took a view that diverged from the ruling in *India Cement (supra)*. *Kesoram (supra)* is an operative fact based on which many State legislatures have already enacted taxing statutes. A pragmatic solution to reconcile the financial interests of the States and the assesses can be achieved by proscribing the States from demanding taxes pertaining to Entries 49 and 50 of List II of the Seventh Schedule for the period before *Kesoram (supra)*.

³² *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 [25] ³³ *Jindal Stainless Ltd (supra)* [17] ³⁴ See ‘Mineral Royalties’, Government of India, Ministry of Mines (2011) 16. PART D

21. The learned Solicitor General has pointed out that the total amount due by the assesses (which includes public sector undertakings) to the governments is substantial and will impose a heavy financial burden on the assesses. During the pendency of the present reference, this Court passed interim orders in the tagged matters. These include (i) rejection of the stay of proceedings while

allowing restitution in the event the appeal is allowed;³⁵ (ii) grant of interim stay subject to the assesses submitting bank guarantees for the whole amount sought to be recovered;³⁶ and (iii) direction to the States to take no coercive steps against the assesses for recovery of any demands of tax pending the appeal. ³⁷ The payment or non-payment of the dues was thus made subject to the outcome of the appeals or petitions. It is a settled legal position that a beneficiary of an interim order of stay has to pay interest on the amount withheld or not paid under the interim order in the event the outcome goes against the beneficiary. ³⁸

22. The total amount, that is the principal plus the interest, due by the assesses in the pending matters may be substantial in comparison to their total net worth. Steel Authority of India has stated on affidavit that retrospective application of MADA (supra) will lead to revival of cumulative demands to the tune of approximately Rupees three thousand crores from different States. The delay in the court proceedings should not be to the detriment of the ³⁵ Civil Appeal No. 5329 of 2002; Civil Appeal No. 4745 of 2006; Civil Appeal No. 4478 of 2010 ³⁷ Civil Appeal No. 874 of 2013; Civil Appeal No. 3642 of 2011; Civil Appeal No. 10082 of 2016; Civil Appeal No. 4588 of 2017.

³⁸ State of Rajasthan v. J K Synthetics Ltd., (2011) 12 SCC 518 [23]; State of U P v. Prem Chopra, 2022 SCC OnLine SC 1770 [24] PART E assesses. ³⁹ Taking into consideration the lapse of more than three decades since India Cement (supra) and more than a decade since the matter was referred to a larger Bench, equities will be balanced if the State governments waive the outstanding interest accrued on the principal due from the assesses. This direction applies to all assesses, regardless of whether they have approached this Court or the High Courts challenging the validity of the relevant statutes.

23. During the proceedings, the Solicitor General submitted that a few States do not wish to collect the dues accrued before the decision in MADA (supra). It is the prerogative of the State legislatures to determine whether to forego the dues for the period before 25 July 2024.

E. Conclusion

24. The submission that MADA (supra) should be given prospective effect is rejected.

25. Bearing in mind the consequences that would emanate from the past period, the following conditionalities are directed to prevail:

a. While the States may levy or renew demands of tax, if any, pertaining to Entries 49 and 50 of List II of the Seventh Schedule in terms of the law laid down in the decision in MADA (supra) the demand of tax shall not operate on transactions made prior to 1 April 2005;

b. The time for payment of the demand of tax shall be staggered in instalments over a period of twelve years commencing from 1 April 2026; and ³⁹ See K C Ninan v. Kerala State Electricity Board, 2023 SCC OnLine SC 663 [339] PART E c. The levy of interest and penalty on demands made for the period before 25 July 2024 shall stand

waived for all the assesses.

..... C J I [D r D h a n a n j a y a Y C h a n d r a c h u d]
.....J [Hrishikesh Roy]J [Abhay
S Oka]J [J B Pardiwala]J
[M a n o j M i s r a] J [U j j a l B h u y a n]
.....J [Satish Chandra Sharma]J
[Augustine George Masih] New Delhi;

August 14, 2024