State Of M.P vs Rakesh Kohli & Anr on 11 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2351, 2012 (6) SCC 312, 2012 AIR SCW 3245, (2013) 119 REVDEC 615, (2012) 1 CLR 1220 (SC), 2012 (1) CLR 1220, 2012 (5) SCALE 467, (2012) 116 ALLINDCAS 200 (SC), 2012 (116) ALLINDCAS 200, AIR 2012 SC (CIVIL) 1887, 2012 (02) KER LT 142 SN, (2012) 5 ANDHLD 80, (2012) 3 MPLJ 595, (2012) 3 ICC 406, (2012) 2 WLC(SC)CVL 107, (2012) 4 MAD LW 541, (2012) 3 RECCIVR 158, (2012) 4 ALL WC 3598, (2012) 5 MAD LJ 408, (2012) 5 SCALE 467, (2012) 93 ALL LR 682

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Bench: H.L. Gokhale, R.M. Lodha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 684 OF 2004

State of M.P. …. Appellant

Versus

Rakesh Kohli & Anr. ….Respondents

WITH

CIVIL APPEAL NO. 1270 OF 2004

JUDGMENT

R.M. Lodha, J.

The only point for consideration here is, whether or not the Division Bench of the Madhya Pradesh High Court was justified in declaring Clause (d), Article 45 of Schedule 1-A of the Indian Stamp Act,

1899 (for short, '1899 Act') which was brought in by the Indian Stamp (Madhya Pradesh Amendment) Act, 2002 (for short, 'M.P. 2002 Act') as unconstitutional being violative of Article 14 of the Constitution of India.

2. The above point arises in this way. Two writ petitions came to be filed before the Madhya Pradesh High Court. In both writ petitions initially it was prayed that Clauses (f) and (f-1), Article 48, Schedule 1- A brought in the 1899 Act by Section 3 of the Indian Stamp (Madhya Pradesh Amendment) Act, 1997 (for short, 'M.P. 1997 Act') be declared ultra vires. During the pendency of these petitions, the 1899 Act as applicable to Madhya Pradesh was further amended by the M.P. 2002 Act. The respondents, referred to as writ petitioners, amended their writ petitions and prayed that Clause (d), Article 45 of Schedule 1-A of the 1899 Act as substituted by M.P. 2002 Act be declared ultra vires. The writ petitioners set up the case that original Article 48 of the 1899 Act, Schedule 1-A prescribed stamp duty payable at Rs. 10/- if attorney was appointed for a single transaction. By M.P. 1997 Act, Article 48 Clause (f) was substituted by Clauses (f) and (f-1). Clause (f-1) provided that where power of attorney was executed without consideration in favour of person who is not his or her spouse or children or mother or father and authorizes him to sell or transfer any immovable property, the stamp duty would be leviable as if the transaction is conveyance under Article 23. Explanation II inserted by M.P. 1997 Act provided that where under Clauses (f) and (f-1), duty had been paid on the power of attorney and a conveyance relating to that property was executed in pursuance of power of attorney between the executant of the power of attorney and the person in whose favour it was executed, the duty on conveyance should be the duty calculated on the market value of the property reduced by duty paid on the power of attorney. By M.P. 2002 Act, stamp duty relating to power of attorney has been prescribed in Article 45 of Schedule 1-A. Clause (d) thereof prescribes stamp duty at two per cent on the market value of the property which is subject matter of power of attorney when power of attorney is given without consideration to a person other than father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorizing such person to sell immovable property situated in Madhya Pradesh. The writ petitioners pleaded, inter alia, that the distinction between an agent who was a blood relation and who was an outsider carved out in Article 45, Clause (d) was legally impermissible. The provision violates Article 14 of the Constitution as it has sought to create unreasonable classification.

3. The State of Madhya Pradesh stoutly defended the challenge to the above provisions and stated before the High Court that the matter of rate of stamp duty was solely in the domain of State Legislature and none of the provisions of the Constitution was offended by the above provisions.

4. The Division Bench of the High Court has accepted the constitutional challenge to Clause (d), Article 45 of Schedule 1-A brought in the 1899 Act by M.P. 2002 Act and held that the said provision was violative of Article 14 of the Constitution of India. The Division Bench gave the following reasoning:

> "11. As far as clauses (d) is concerned, it lays a postulate that postulate [sic] that when the power of authority is given without consideration to a person other than the father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorizing such person to sell immovable property, 2% on the market

> value of the property is to be collected. Submission of Mr. Agrawal is that this clause is absolutely unreasonable and smacks of arbitrariness, as there is no rationale to include the category of persons who have been included and to leave out to all other persons. Mr. S.K. Yadav, learned Government Advocate submitted that near relatives can constitute a class by itself and all others can fit into a different category and, therefore, the said provision does not offend the concept of classification, as there is intelligible differentia. On a first blush the aforesaid submission of the learned counsel for the State appears to be quite attractive, but on a deeper probe it is not what it is. In the guise of the classification something has been stated in the said provision. One can give certain examples. One may not have kith or kin and intact [sic] even that case to deprive him to execute the power of attorney for selling the property, unless 2% is paid on the market value is arbitrary. The provisions may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonable and irrationality. The State may have a laudable purpose but the laudable purpose alone cannot sustain the provision. The matter would been [sic] different had it included a rider that it is executed in favour of any other for consideration or some other purposes is not the situation. In view of the same, we are of the considered opinion, the aforesaid provision is defiant of Article 14 of the Constitution. Accordingly, we have no hesitation to declare the same as violative of Article 14 of the Constitution."

5. Ms. Vibha Datta Makhija, learned counsel for the appellant — State of Madhya Pradesh – submitted that the High Court was in error in declaring Clause (d), Article 45, Schedule 1-A as violative of Article 14 of the Constitution of India. She would submit that the test of challenge to a legislative provision was completely different from that of an administrative action. A legislative provision cannot be struck down as being arbitrary, irrational or unreasonable. She further submitted that the classification made in Clause (d) of Article 45, Schedule 1-A had intelligible differentia with a direct nexus to the object of the 1899 Act. The object of the 1899 Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. The legislative wisdom took into consideration that genuine power of attorney documents would be executed by the executants without consideration mostly in favour of kith and kin to complete sale transactions on behalf of the executants. The said category attracts lower stamp duty than power of attorney executed in favour of third parties/strangers since such power of attorney document would be for extraneous reasons.

6. Learned counsel for the State of M.P. also submitted that the wisdom of the Legislature in protecting the revenue and carving out genuine classes from others had been well recognized. The court cannot sit in judgment over their wisdom. She relied upon decisions of this Court in Balaji v. Income Tax Officer, Special Investigation Circle, Akola and others[1]; State of A.P. and others v. Mcdowell and Co. and others[2]; Ramesh Chand Bansal and Others v. District Magistrate/Collector Ghaziabad and others[3]; Veena Hasmukh Jain and another v. State of Maharashtra and others[4]; Hanuman Vitamin Foods Private Limited and others v. State of Maharashtra and another[5]; Karnataka Bank Limited v. State of Andhra Pradesh and others[6]; Government of Andhra Pradesh and others v. P. Laxmi Devi (Smt.)[7]; Union of India v. R. Gandhi, President; Madras Bar

Association[8] and Suraj Lamp and Industries Private Limited v. State of Haryana and another[9].

7. The respondents despite service have not chosen to appear.

8. The definition of 'conveyance' is contained in Section 2(10) of the 1899 Act which reads as under:

> "S.2. Definitions.—In this Act, unless there is something repugnant in the subject or context,--
>
> (10) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.

9. Section 2(21) defines 'power of attorney'. It reads as follows :

> "S. 2(21) "Power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it;"

10. The 1899 Act has been amended from time to time by the Madhya Pradesh State Legislature insofar as its application to the State of Madhya Pradesh is concerned. The stamp duty on power of attorney was originally prescribed in Article 48, Schedule - 1-A of the 1899 Act. Clause (f) in original Article 48, Schedule 1-A read as under:

> "SCHEDULE-1A Stamp Duty on Instruments (See section 3) Description of Instruments Proper Stamp Duty
>
> 1) (2)
>
> 48.Power of Attorney, as defined by Section 2(21), not being a Proxy [No. 52].

(f) when giving for consideration The same duty as Conveyance and authorizing the attorney to (No. 23) for a market value sell any immovable property; equal to the amount of the consideration."

11. Section 3 of the M.P. 1997 Act brought in amendment in the 1899 Act, inter alia, as under :

> "In Schedule 1-A of the Principal Act, in Article 48,--
>
> i) For clause (f), the following clauses shall be substituted, namely:-
>
> |(f) when given for consideration |The same duty as a conveyance | |and authorizing the attorney to |under Article 23 on the market | |sell or transfer any immovable |value of the property | |property. | | | | |(f-1) when given without |The same duty as a conveyance | |consideration in favour of |under Article 23 on the market | |persons

who are not his or her |value of the property | |spouse or Children, or mother or | | |father and authorizing the | | |attorney to sell or transfer any | | |immovable property | |

ii) the existing explanation shall be renumbered as explanation I thereof and after explanation I as so renumbered, the following explanation shall be inserted, namely :-

"Explanation II:--Where under clause (f) and (f-1) duty has been paid on the power of attorney and a conveyance relating to that property is executed in pursuance of power of attorney between the executant of power of attorney and the person in whose favour it is executed, the duty on conveyance shall be the duty calculated on the market value of the property reduced by duty paid on the power of attorney".

The Objects and Reasons for the above amendment were to check the tendency to execute power of attorney authorising the attorney to sell or transfer immovable property in place of a conveyance deed and to increase the revenue of the Government in the State of Madhya Pradesh.

12. Article 48 in the 1899 Act as amended by M.P. 1997 Act was substituted by M.P. 2002 Act. The new provision, Article 45 in respect of power of attorney in Schedule 1-A which was brought in by M.P. 2002 Act reads as follows :

"SCHEDULE-1A Stamp Duty on Instruments (See section 3) Description of Instrument Proper Stamp Duty | | |45. Power of attorney [as defined by| | |section 2(21)] not being a proxy:- | | |when authorizing one person or more | Fifty rupees. | |to act in single transaction, | | |including a power of attorney | | |executed for procuring the | | |registration of one or more documents| | |in relation to a single transaction | | |or for admitting execution of one or | | |more such documents; | | |when authorizing one person to act in|One hundred rupees. | |more than one transaction or | | |generally; or not more than ten | | |persons to act jointly or severally | | |in more than one transaction or | | |generally; | | |when given for consideration and |The same duty as a conveyance (No. 22) on the market value of the property. | |authorizing the agent to sell any | | |immovable property. | | |when given without consideration to a|Two percent on the market value of the property which is the subject matter of power of attorney. | |person other than the father, mother,| | |wife or husband, son or daughter, | | |brother or sister in relation to the | | |executant and authorizing such person| | |to sell immovable property situated | | |in Madhya Pradesh. | | |In any other case; |Fifty rupees for each person authorized | Explanation-I.—For the purpose of this article, more persons than one when belonging to the same firm shall be deemed to be one person.

Explanation-II.—The term 'registration' includes every operation incidental to registration under the Registration Act, 1908 (16 of 1908)."

13. In our opinion, the High Court was clearly in error in declaring Clause (d), Article 45 of Schedule 1-A of the 1899 Act which as brought in by the M.P. 2002 Act as violative of Article 14 of the Constitution of India. It is very difficult to approve the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonable and irrationality. The High Court failed to keep in mind the well defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

14. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i), that the appropriate Legislature does not have competency to make the law and (ii), that it does not take away or abridge any of the fundamental rights enumerated in Part – III of the Constitution or any other constitutional provisions.

15. In Mcdowell and Co.2 while dealing with the challenge to an enactment based on Article 14, this Court stated in paragraph 43 (at pg.

737) of the Report as follows :

> ".....A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground..... ..... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act.

An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom....." (Emphasis supplied) Then dealing with the decision of this Court in State of T.N. and others v. Ananthi Ammal and others[10], a three-Judge Bench in Mcdowell and Co.2 observed in paragraphs 43 and 44 [at pg. 739) of the Report as under :

> ".....Now, coming to the decision in Ananthi Ammal, we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the

> Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7) "7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis."
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> 44. It is this paragraph which is strongly relied upon by Shri Nariman.

We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

16. The High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such enactment could not have been struck down on the ground that it was arbitrary or irrational.

17. That stamp duty is a tax and hardship is not relevant in interpreting fiscal statutes are well known principles. In Bengal Immunity Co. Ltd. v. State of Bihar and others[11], a seven-Judge Bench speaking through majority in paragraph 43 (at pg. 685) of the Report while dealing with hardship in the statutes stated as follows :

> ".....If there is any real hardship of the kind referred to, there is Parliament which is expressly invested with the power of lifting the ban under cl. (2) either wholly or to the extent it thinks fit to do. Why should the Court be called upon to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful, when the Constitution itself has expressly provided for another authority more competent to evaluate the correct position to do the needful?"

18. In Commissioner of Income Tax, Madras v. R.SV. Sr. Arunachalam Chettiar[12], a three-Judge Bench of this Court, inter alia, observed in paragraph 13 (at pgs. 1220-21) of the Report, "equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not."

19. In the Income Tax Officer, Tuticorin v. T.S. Devinatha Nadar etc.[13], this Court in paragraph 30 (at pg. 635) of the Report observed as follows :

> "30. From the foregoing decisions it is clear that the consideration whether a levy is just or unjust, whether it is equitable or not, a consideration which appears to have greatly weighed with the majority, is wholly irrelevant in considering the validity of a levy. The courts have repeatedly observed that there is no equity in a tax. The observations of Lord Hatherley, L.C. in (1869) 4 Ch. A 735. "In fact we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the legislature contemplated," were made while construing, a non-taxing statute. The said rule has only a limited application in the interpretation of a taxing statute. Further, as observed by that learned Judge in that very case the question in each case is "whether the legislature had sufficiently expressed its intention" on the point in issue." The court highlighted that the court could not concern itself with the intention of the Legislature when the language expressing such intention was plain and unambiguous.

20 . In P. Laxmi Devi (Smt.)7, a two-Judge Bench of this Court was concerned with a judgment of the Andhra Pradesh High Court. The High Court had declared Section 47-A of the 1899 Act as amended by A.P. Act 8 of 1998 that required a party to deposit 50% deficit stamp duty as a condition precedent for a reference to a Collector under Section 47-A unconstitutional. The Court said in P. Laxmi Devi (Smt.)7 as follows :

> "19. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide CIT v. V.MR.P. Firm Muar. If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.
>
> 20. xxx xxx xxx
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> 21. It has been held by a Constitution Bench of this Court in ITO v.

T.S. Devinatha Nadar (vide AIR paras 23 to 28) that where the language of a taxing provision is plain, the court cannot concern itself with the intention of the legislature. Hence, in our opinion the High Court erred in its approach of trying to find out the intention of the legislature in enacting the

impugned amendment to the Stamp Act." While dealing with the aspect as to how and when the power of the court to declare the statute unconstitutional can be exercised, this Court referred to the earlier decision of this Court in Rt. Rev. Msgr. Mark Netto v. State of Kerala and others[14] and held in para 46 (at pg. 740) of the Report as under :

> "46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide Rt. Rev. Msgr. Mark Netto v. State of Kerala SCC para 6 :
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> AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise." Then in paras 56 and 57 (at pg. 744), the Court stated as follows:
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> "56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the judges' personal preferences. The court must not invalidate a statute lightly, for, as observed above, invalidation of a statute made by the legislature elected by the people is a grave step. As observed by this Court in State of Bihar v. Kameshwar Singh: (AIR p. 274, para 52) "52. ... The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence...."
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> 57. In our opinion, the court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its unconstitutionality."

21. The Constitution Bench of this Court in Mohd. Hanif Quareshi and others v. State of Bihar[15], while dealing with the meaning, scope and effect of Article 14, reiterated what was already explained in earlier decisions that to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have rational relation to the object sought to be achieved by the statute in question. The Court further stated that classification might be founded on different basis, namely, geographical, or according to objects or occupations or the like and what is necessary is that there

must be a nexus between the basis of classification and the object of the Act under consideration.

22. In Mohd. Hanif Quareshi15, the Constitution Bench further observed that there was always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. It stated in paragraph 15 (at pgs. 740-741) of the Report as under :

> ".....The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation....."

23. The above legal position has been reiterated by a Constitution Bench of this Court in Mahant Moti Das v. S.P. Sahi[16].

24. In Hamdard Dawakhana and another v. The Union of India and others[17], inter alia, while referring to the earlier two decisions, namely, Bengal Immunity Company Ltd.11 and Mahant Moti Das16 , it was observed in paragraph 8 (at pg. 559) of the Report as follows:

> "8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy."

25. In Hamdard Dawakhana17, the Court also followed the statement of law in Mahant Moti Das16 and the two earlier decisions, namely, Charanjit Lal Chowdhury v. Union of India and others[18] and The State of Bombay and another v. F.N. Balsara[19] and reiterated the principle that presumption was always in favour of constitutionality of an enactment.

26. In one of the recent cases in Karnataka Bank Limited6, while referring to some of the above decisions, in para 19 (at pgs. 262-263) of the Report, this Court held as under :

> "19. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared

> unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity". Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it. (See State of Bombay v. F.N. Balsara.)"

27. A well-known principle that in the field of taxation, the Legislature enjoys a greater latitude for classification, has been noted by this Court in long line of cases. Some of these decisions are : M/s. Steelworth Limited v. State of Assam[20]; Gopal Narain v. State of Uttar Pradesh and another.[21]; Ganga Sugar Corporation Limited v. State of Uttar Pradesh and others[22]; R.K. Garg v. Union of India and others[23] and State of W.B. and another v. E.I.T.A. India Limited and others[24].

28. In R.K. Garg23, the Constitution Bench of this Court stated that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.

29. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles: (i), there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature (ii), no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii), the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence (iv), hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and (v), in the field of taxation, the Legislature enjoys greater latitude for classification.

30. Had the High Court kept in view the above well-known and important principles in law, it would not have declared Clause (d), Article 45 of Schedule 1-A as violative of Article 14 of the Constitution being arbitrary, unreasonable and irrational while holding that the provision may pass test of classification. By creating two categories, namely, an agent who is a blood relation, i.e. father, mother, wife or husband, son or daughter, brother or sister and an agent other than the kith and kin, without consideration, the Legislature has sought to curb inappropriate mode of transfer of immovable properties. Ordinarily, where executant himself is unable, for any reason, to execute the document, he would appoint his kith and kin as his power of attorney to complete the transaction on his behalf. If one does not have any kith or kin who he can appoint as power of attorney, he may execute the conveyance himself. The legislative idea behind Clause (d), Article 45 of Schedule 1-A is to curb tendency of transferring immovable properties through power of attorney and inappropriate documentation. By making a provision like this, the State Government has sought to collect stamp duty on such indirect and inappropriate mode of transfer by providing that power of attorney given

to a person other than kith or kin, without consideration, authorizing such person to sell immovable property situated in Madhya Pradesh will attract stamp duty at two per cent on the market value of the property which is subject matter of power of attorney. In effect, by bringing in this law, the Madhya Pradesh State Legislature has sought to levy stamp duty on such ostensible document, the real intention of which is the transfer of immovable property. The classification, thus, cannot be said to be without any rationale. It has a direct nexus to the object of the 1899 Act. The conclusion of the High Court, therefore, that the impugned provision is arbitrary, unreasonable and irrational is unsustainable.

31. Consequently, these appeals are allowed and the judgment of the Madhya Pradesh High Court passed on September 15, 2003 is set aside. Writ petitions filed by the present respondents before the High Court stand dismissed. No order as to costs.

.....J. (R.M. Lodha) .....J. (H.L. Gokhale) NEW DELHI.

MAY 11, 2012.

AIR 1962 SC 123 (1996) 3 SCC 709 (1999) 5 SCC 62 (1999) 5 SCC 725 (2000) 6 SCC 345 (2008) 2 SCC 254 (2008) 4 SCC 720 (2010) 11 SCC 1 (2012) 1 SCC 656 (1995) 1 SCC 519 AIR 1955 SC 661 AIR 1965 SC 1216 AIR 1968 SC 623 (1979) 1 SCC 23 AIR 1958 SC 731 AIR 1959 SC 942 AIR 1960 SC 554 AIR 1951 SC 41 AIR 1951 SC 318 1962 Supp (2) SCR 589 AIR 1964 SC 370 (1980) 1 SCC 223 (1981) 4 SCC 675 (2003) 5 SCC 239