The State Of Manipur vs Surjakumar Okram on 1 February, 2022

Author: L. Nageswara Rao

Bench: B.V. Nagarathna, B.R. Gavai, L. Nageswara Rao

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 823-827 of 2022
(Arising out of SLP (C) Nos.2001-2005 of 2021)

The State of Manipur & Ors. .... Appellant (s)

Versus

Surjakumar Okram & Ors. …. Respondent (s)

WITH

Civil Appeal Nos. 828-832 of 2022
(Arising out of SLP (C) Nos.2386-2390 of 2021)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. The Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act No. 10 of 2012) (hereinafter referred to as the "2012 Act") was enacted by the Legislature of Manipur to provide for appointment, salary and allowances 1 | Page of Parliamentary Secretaries in Manipur. Section 3 read with Section 4 thereof, enabled the Chief Minister to appoint a member of the Manipur Legislative Assembly as a Parliamentary Secretary, who shall have the rank and status of a Minister of State. Section 7 of the 2012 Act stipulated that a Parliamentary Secretary shall be entitled to such salary and allowances as are admissible to a Minister of State under the Manipur Parliamentary Secretary (Salary and Allowances) Act, 1972. Appellants in Civil Appeals arising out of SLP (C) Nos. 2386-2390 of 2021 were appointed as Parliamentary Secretaries in 2017.

2. The Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004 (hereinafter referred to as the "Assam Act, 2004"), which had provisions similar to that of the 2012 Act, was the subject matter of challenge before the Gauhati High Court.

The writ petition filed before the Gauhati High Court was transferred to this Court. On 26.07.2017, this Court in Bimolangshu Roy v. State of Assam & Anr.1 declared 1 (2018) 14 SCC 408 2 | Page that the Legislature of Assam lacked competence to enact the Assam Act, 2004. The Manipur Assembly passed the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Repealing Act, 2018 (hereinafter referred to as the "Repealing Act, 2018") which was notified on 04.04.2018. It was mentioned in preamble of the Repealing Act, 2018 that the 2012 Act was being repealed in light of the judgment of this Court in Bimolangshu Roy (supra). The Repealing Act, 2018 contained a saving provision to the following effect:

> "2. (1) XXX XXX XXX
>
> (2) Notwithstanding the repeal of the Manipur Parliamentary Secretary (Appointment, Salary and

Allowances and Miscellaneous Provisions) Act, 2012, the repeal shall not affect –

(a) the previous operations of the repealed Act or anything duly done in pursuance of the Act so repealed including anything done in official discharge of their duties by the Parliamentary Secretaries; or

(b) any right, privilege or obligation incurred under the repealed Act." 3 | Page

3. In the meanwhile, the Appellants in Civil Appeals arising out of SLP (C) Nos. 2386-2390 of 2021 resigned from the post of Parliamentary Secretaries. It is also relevant to mention that PIL Nos. 7, 9 and 10 of 2017 were filed in the High Court of Manipur challenging the validity of the 2012 Act. The validity of the Repealing Act, 2018 was assailed in the High Court of Manipur by way of Writ Petition (C) No. 317 of 2018 and PIL No. 16 of 2018. The PILs and the Writ Petition (C) No. 317 of 2018 were taken up together by the High Court of Manipur and disposed of by judgment dated 17.09.2020. The 2012 Act and the Repealing Act, 2018 were declared as unconstitutional by the High Court. Aggrieved by the said judgement, the State of Manipur and the members of the Manipur Legislative Assembly who were appointed as Parliamentary Secretaries have filed the above appeals.

4. The writ petitioners contended before the High Court of Manipur that the Manipur Legislature lacked competence to promulgate the 2012 Act. It was further submitted before the High Court that the saving clause in the Repealing Act, 4 | Page 2018 is a devious method to justify the illegal appointments made by virtue of the 2012 Act. The High Court was of the view that the power of a legislative body to repeal a law is co-extensive with the legislative body's competence to enact such law. If the State Legislature lacked legislative competence to enact the 2012 Act, the State Legislature did not have the power to repeal the same by way of the Repealing Act, 2018. The State Legislature could not have provided for a saving clause in the Repealing Act, 2018 to justify acts done and rights, privileges and obligations incurred under the 2012 Act.

5. We have heard Dr. Rajeev Dhawan, learned Senior Counsel appearing for the Appellants in Civil Appeals arising out of SLP (C) Nos. 2386-2390 of 2021, learned Additional Advocate General appearing for the State of Manipur in Civil Appeals arising out of SLP (C) Nos. 2001-2005 of 2021

and Mr. Narender Hooda, learned Senior Advocate appearing for the Respondents in Civil Appeals arising out of SLP (C) Nos. 2001-2005 of 2021.

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6. Dr. Dhawan submitted that the Appellants resigned as Parliamentary Secretaries on 04.08.2017, while remaining members of the Assembly, due to which PIL Nos. 7, 9 and 10 of 2017 filed before the High Court became infructuous. The declaration of the Assam Act, 2004 as unconstitutional does not per se render the 2012 Act invalid. He argued that Bimolangshu Roy (supra) was wrongly decided and should be held to be per incuriam for not considering the relevant entry in List II of the Seventh Schedule of the Constitution while declaring that the Assam Legislature lacked competence to enact the Assam Act, 2004. In any event, according to Dr. Dhawan, striking down of the Repealing Act, 2018 should not result in invalidation of all the decisions taken by the Parliamentary Secretaries appointed under the 2012 Act. Relying on judgments of this Court, Dr. Dhawan submitted that the Repealing Act, 2018 should not be disturbed in view of the express saving provision thereof, the de facto doctrine and the principles underlying Section 6 of the General Clauses Act, 1897 (hereinafter referred to as the “General Clauses Act”).

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7. Mr. Hooda, learned Senior Counsel, on the other hand, countered the submissions made on behalf of the Appellants by submitting that there was no error committed by this Court in deciding Bimolangshu Roy (supra). The State of Manipur, accepting and following the judgment in Bimolangshu Roy (supra), repealed the 2012 Act. Appointments made to the post of Parliamentary Secretaries were discontinued after the judgment in Bimolangshu Roy (supra). Applying the principles of the said judgment to the 2012 Act, the saving clause could not have been inserted in the Repealing Act, 2018, especially after the State Government has accepted the judgment. The saving clause is only to justify the illegal appointments that were made by virtue of the 2012 Act.

8. Before proceeding to deal with the submissions made on either side, it is necessary to take note of the relevant provisions in the Constitution of India that would arise for consideration in this case. Article 164(1) of the Constitution of India provides that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed 7 | Page by the Governor on the advice of the Chief Minister, and that the Ministers shall hold office during the pleasure of the Governor. Article 164(1-A) was inserted by the Constitution (Ninety-first Amendment) Act, 2003. The said Article limited the number of Ministers, including the Chief Minister, in the Council of Ministers in a State to 15 percent of the total members in the Legislative Assembly of the State. Article 194(3) of the Constitution empowers the State Legislature to make laws in respect of the powers, privileges and immunities of a House of the Legislature and of the members and the committees of a House of such Legislature. Article 246 of the Constitution confers the Legislature of a State with exclusive powers to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule. The relevant entries in List II of the Seventh Schedule are as below:

> "39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and if there is a Legislative Council, of that Council and of the members and the

8 | Page committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Minister for the State."

9. There does not appear to be any dispute on the factual front. The Assam Legislature enacted the relevant statute in 2004, providing for appointment of members of the Assam Legislative Assembly as Parliamentary Secretaries. The Assam Act, 2004 and the 2012 Act are undoubtedly in pari materia. This Court in Bimolangshu Roy (supra) struck down the Assam Act, 2004 as unconstitutional. The appointments of Parliamentary Secretaries were discontinued by the Chief Minister of Manipur around the time the judgment in Bimolangshu Roy was delivered. Thereafter, the Repealing Act, 2018 was enacted and notified with effect from 04.04.2018. The 2012 Act and the Repealing Act, 2018 were challenged before the High Court of Manipur.

10. The first submission of Dr. Rajeev Dhawan is that Bimolangshu Roy (supra) was wrongly decided and needs 9 | Page reconsideration. The following issues arose for consideration before this Court in the matter of Bimolangshu Roy (supra):

> "I. Whether the Legislature of Assam is competent to make the Act?
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> II. Whether the creation of the office of Parliamentary Secretary would amount to a violation of the constitutionally prescribed upper limit of 15 % on the total number of the Council of Ministers?
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> III. Whether the concept of a "Responsible Government" envisaged under various provisions of the Constitution is in any way violated by the impugned enactment and therefore unconstitutional as being violative of the basic structure of the Constitution.
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> IV. Whether the theory of basic structure could be invoked at all to invalidate an enactment which is otherwise not inconsistent with the text of the Constitution."
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> 11. This Court in Bimolangshu Roy (supra) observed that Article 194(3) of the Constitution deals with powers, privileges and immunities of the House of the Legislature and its members but does not authorize the State Legislature to create offices such as those of Parliamentary

10 | P a g e Secretaries. It was noted that in some cases, the power to legislate was conferred by certain Articles in the Constitution on matters specified therein without corresponding entries in the lists in the Seventh Schedule, such as in the case of Article 3 under which the Parliament is

competent to create or extinguish a State but there is no corresponding entry in List I of the Seventh Schedule. In certain other cases, corresponding entries in the lists of the Seventh Schedule are found with reference to the power to legislate as expressly conferred in the text of some Articles of the Constitution, as is seen with entries 38, 39 and 40 of List II. With respect to the latter category, this Court held that where the power to legislate is sourced to a dedicated Article in the Constitution, legislative authority with respect to a closely associated or the same topic as contained in the Article cannot be sought from the corresponding entry in the list read with Article 246. To substantiate, it was further elaborated that even if entries 38, 39 and 40 in List II were not there in the Seventh Schedule, the State Legislature would still be competent to make laws on topics 11 | P a g e indicated in those three entries because of the authority contained in Articles 164(5), 186, 194, 195 etc. Therefore, any interpretation on legislative power sought to be given to these entries which is not contemplated by the corresponding Article, was considered to be repugnant to the scheme of the Constitution, as the Article expressly conferring legislative authority is the source of legislating power. Noticing that the text of both Articles 194(3) and the relevant portion of entry 39 are substantially similar, this Court was of the firm opinion that creation of new offices by legislation would be outside the scope of Article 194(3). The powers, privileges and immunities contemplated by Article 194(3) and entry 39 are those of the legislators qua legislators, as concluded by this Court in Bimolangshu Roy (supra). In view of the said finding, the Court did not find it necessary to examine the other issues that had been identified.

12. Dr. Dhawan submitted that the relevant entry empowering the Manipur Legislature to make the 2012 Act is entry 40 of List II, which was not considered in 12 | P a g e Bimolangshu Roy (supra). Placing reliance on the judgment of this Court in Ujagar Prints & Ors. (II) v. Union of India & Ors.2, he argued that this Court committed an error in striking down the Assam Act, 2004, which was in the nature of a composite legislation drawing upon several entries. As this Court examined the legislative competence only with reference to Article 194(3) of the Constitution of India and entry 39 of List II, the judgment is liable to be declared per incuriam. Arguing to the contrary, Mr. Hooda submitted that entry 40 of List II relates to salaries and allowances of Ministers for the State and cannot be relied on to defend the Assam Act, 2004. He argued that entry 39 which refers to powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof corresponds to Article 194(3) of the Constitution of India. According to Mr. Hooda, the Legislature is empowered to make laws, by virtue of Article 194(3) and entry 39, in respect of powers, privileges and immunities of a House of the Legislature and of its 2 (1989) 3 SCC 488 13 | P a g e members and communities, but this authority does not extend to creation of new offices.

13. In Ujagar Prints (II) (supra), this Court held as follows:

> "53. If a legislation purporting to be under a particular legislative entry is assailed for lack of legislative competence, the State can seek to support it on the basis of any other entry within the legislative competence of the legislature. It is not necessary for the State to show that the legislature, in enacting the law, consciously applied its mind to the source of its own competence. Competence to legislate flows from Articles 245, 246, and the other articles following, in Part XI of the Constitution. In defending the validity of a law questioned on ground of legislative incompetence, the

> State can always show that the law was supportable under any other entry within the competence of the legislature. Indeed in supporting a legislation sustenance could be drawn and had from a number of entries. The legislation could be a composite legislation drawing upon several entries. Such a "ragbag" legislation is particularly familiar in taxation." Article 194(3) enables the Legislature to make law relating to powers, privileges and immunities of its members. This Court in Bimolangshu Roy categorically held that State

14 | P a g e Legislatures are competent to make law in respect of powers, privileges and immunities of a House of the Legislature and its members even in the absence of reference to entries 38, 39 and 40 of List II. The stand of the State of Assam before this Court in Bimolangshu Roy (supra) was that the Legislature had the competence to make the law in view of entry 39, which has to be given the broadest possible interpretation. In its affidavit, the State of Assam contended that the legislative entry should not be read in a narrow or pedantic sense but must be given its fullest meaning and widest amplitude. It was further stated that the making of law providing for creation of the post of Parliamentary Secretary was within the competence of the State Legislature as a Parliamentary Secretary is a member of the Legislative Assembly. It is no doubt true that this Court in Ujagar Prints (II) (supra) held that the State Government can always resort to more than one entry to defend the legislation, when it is challenged on the ground of legislative competence. However, it is to be noted that the State of Assam did not seek to take the support of any 15 | P a g e other entry, apart from entry 39, to substantiate its legislative competence before this Court in Bimolangshu Roy (supra).

14. The Appellants in the present matter contended that this Court did not appreciate the relevance of entry 40 of List II while assessing the Assam Legislature's competence to enact the Assam Act, 2004. We are of the considered view that entry 40 which relates to salaries and allowances of the Ministers of the State cannot be resorted to, for the purpose of justifying the legislative competence in enacting the Assam Act, 2004. The relevant entry is entry 39 which corresponds to Article 194(3) of the Constitution of India. On the other hand, entry 40 corresponds to Article 164 of the Constitution and we are in complete agreement with Bimolangshu Roy (supra), wherein this Court has acknowledged and reiterated the need to be wary of the perils of interpreting entries in the lists of the Seventh Schedule as encompassing matters that have no rational connection with the subject-matter of the entry. Therefore, we do not see any force in the submission of Dr. Dhawan 16 | P a g e that the judgment of this Court in Bimolangshu Roy (supra) needs reconsideration.

15. After the judgment of this Court in Bimolangshu Roy (supra), the Parliamentary Secretaries resigned and the Repealing Act, 2018 was notified on 04.04.2018. The contention of the Appellants is that PIL Nos. 7, 9 and 10 became infructuous after the 2012 Act was repealed and therefore, the High Court committed an error in declaring the 2012 Act as unconstitutional.

In Kay v. Goodwin3, Tindal, C.J. stated:

> "I take the effect of repealing a statute to be to obliterate it as completely from the records of Parliament as if it had never been passed; and it must be considered as a

> law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law." In the case of State of U.P. & Ors. v. Hirendra Pal Singh & Ors.4, this Court was of the following opinion:
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> "22. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act 3 (1830) 6 Bing. 576, at p. 582 4 (2011) 5 SCC 305 17 | P a g e from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly..."

16. The aforesaid judgments leave no room for doubt that after enactment of the Repealing Act, 2018, the 2012 Act did not survive and the High Court ought not to have considered the constitutional validity of the same. To that extent, the High Court committed an error in declaring a non-existing law as unconstitutional. It is beyond question that this Court in Bimolangshu Roy (supra), while dealing with the Assam Act, 2004 which is ad verbum to the 2012 Act, held that the Assam Act, 2004 was vitiated due to lack of legislative competence. However, the 2012 Act was not dealt with by this Court and the same continued to be valid till it was repealed. Indeed, the 2012 Act was not declared unconstitutional by any court before the High Court delivered the impugned judgment and therefore, it was well within the competence of the Manipur Legislature to repeal the 2012 Act. The High Court has committed an error in 18 | P a g e holding that the Manipur Legislature did not have the competence to enact the 2012 Act as a result of which, the Repealing Act, 2018 could not have been made. The law passed by the legislature is good law till it is declared as unconstitutional by a competent Court or till it is repealed. There is no error committed by the Manipur Legislature in repealing the 2012 Act in light of the judgment of this Court in Bimolangshu Roy (supra).

17. The crucial point that arises next for our consideration is the validity of the saving clause in the Repealing Act, 2018. It was submitted by the Appellants that any act done or decision taken during the currency of the Repealing Act, 2018 required to be saved to avoid any confusion. Dr. Dhawan submitted that decisions made by persons appointed under the 2012 Act can be saved by virtue of (a) the de facto doctrine; (b) the express saving provision of the Repealing Act, 2018; and (c) Section 6 of the General Clauses Act. He placed reliance on the judgments of this Court in Gokaraju Rangaraju v. State of Andhra 19 | P a g e Pradesh5, State of Punjab v. Harnek Singh6 and Election Commission of India & Anr. v. Dr. Subramaniam Swamy & Anr. 7 in support of his submissions.

18. Where a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made 8. Field, J. in Norton v. Shelby County9, observed that "an unconstitutional act is not law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed".

19. An unconstitutional law, be it either due to lack of legislative competence or in violation of fundamental rights guaranteed under Part III of the Constitution of India, is void 5 (1981) 3 SCC 132 6 (2002) 3 SCC 481 7 (1996) 4 SCC 104 8 Cooley on Constitutional Limitations, Volume I, page 382 9 118 US 425 (1886) 20 | P a g e ab initio. In Behram Khurshid Pesikaka v. State of Bombay10, it was held by a constitution bench of this Court that the law-making power of the State is restricted by a written fundamental law and any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus, a nullity. A declaration of unconstitutionality brought about by lack of legislative power as well as a declaration of unconstitutionality brought about by reason of abridgement of fundamental rights goes to the root of the power itself, making the law void in its inception. This Court in Deep Chand v. State of Uttar Pradesh & Ors.11 summarised the following propositions:

> "(a) Whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power;
>
> (b) The Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other 10 (1955) 1 SCR 613 11 1959 Supp (2) SCR 8

21 | P a g e provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution;

(c) It follows from the premises that a law made in derogation or in excess of that power would be ab initio void..."

20. The power of a legislative body to repeal a law is co- extensive with its power to enact a law. The effect of repealing of a statute is to obliterate it completely from the records of Parliament.12 While repealing a statute, the Legislature is competent to introduce a clause, saving any right, privilege, liability, penalty, act or deed duly done and any investigation, legal proceeding or remedy arising therefrom, under the repealed statute. There is a distinction between declaration of a statute as unconstitutional by a Court of law and the repeal of a statute by the Legislature. On declaration of a statute as unconstitutional, it becomes void ab initio. Saving past transactions are within the exclusive domain of the Court. On the other hand, though the consequence of repeal is also obliteration of the statute with retrospective effect on 12 Kay v. Goodwin (supra) 22 | P a g e past transactions, the Legislature is empowered to introduce a saving clause in the repealing act. 13 Even in cases where a saving clause is not made, the provisions of the General Clauses Act are applicable to central statutes and the principles of the General Clauses Act can be made applicable to statutes made by the State Legislatures as well (See: State of Punjab v. Harnek Singh (supra)). It is relevant to state at this point that the Manipur Legislature enacted the Manipur General Clauses Act, 1966, which came into force on 30.03.1966, by which the provisions of the General Clauses Act, 1897 were made applicable to the statutes of the Manipur Legislature.

21. Elaborating on the point relating to the exercise of powers by the Court to save past transactions, it is necessary to refer to the law laid down by this Court. Following American jurisprudence, the doctrine of prospective overruling was applied in I.C. Golak Nath & Ors. v. State of Punjab & Anr.14. In Golak Nath (supra), this Court held that the power of the amendment under 13 Keshavan Madhava Menon v. State of Bombay 1951 SCR 228 14 (1967) 2 SCR 762 23 | P a g e Article 368 of the Constitution of India did not allow the Parliament to abridge the fundamental rights enshrined in part III of the Constitution. Realising that there would be confusion and chaos if the judgment is given retrospective effect, this Court evolved a " reasonable principle to meet this extraordinary situation". The following propositions were laid down by this Court in Golak Nath (supra):

> "(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution;
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> (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India;
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> (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it." Though Golak Nath (supra) applied the doctrine of prospective overruling in the context of earlier decisions of this Court on the same issues which had otherwise become final, the doctrine of prospective overruling has been

24 | P a g e applied by this Court even where the issue was being decided by the Court for the first time.

22. While laying down the principles of prospective overruling, this Court in Golak Nath (supra) dealt with the scope of Article 142 of the Constitution of India and held that the said provision enables the Supreme Court to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. The conundrum in India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.15 related to the levy of cess on royalty being within the competence of the State Legislature. A constitution bench of this Court declared the cess imposed by the State of Tamil Nadu as ultra vires. However, this Court observed that the State of Tamil Nadu shall not be liable for any refund of cess already paid or collected. Validity of levy of cess based on royalty was raised again in Orissa Cement Ltd. v. State of Orissa & Ors. 16. An argument was advanced in the said case on behalf of the States that declaration of levy as invalid need not 15 (1990) 1 SCC 12 16 1991 Supp (1) SCC 430 25 | P a g e automatically result in a direction for refund of amounts collected earlier. Relying upon the earlier judgments of this Court in Golak Nath (supra) and India Cement (supra), this Court declared the levy of cess as unconstitutional. However, this Court refused to give any direction for refund of any amounts collected till the date on which the levy in question has been declared unconstitutional. In Indra Sawhney & Ors. v. Union of India & Ors. 17, this Court overruled its earlier judgment in General Manager, Southern Railway v. Rangachari 18 and held that reservation in promotions cannot be provided under Article 16 of the

Constitution of India but directed the decision to be operative from five years from the date of the judgment. The points raised by the appellants in Ashok Kumar Gupta & Anr. v. State of U.P. & Ors. 19, inter alia, were:

> (a) that the reservation in promotion having been declared unconstitutional in Indra Sawhney (supra) was void ab initio and vitiated the promotion of the respondents and therefore, operation of the unconstitutional direction could

17 1992 Supp (3) SCC 217 18 (1962) 2 SCR 586 19 (1997) 5 SCC 201 26 | P a g e not be postponed by prospective overruling of the ratio of Rangachari (supra); (b) that the said prospective overruling, even if assumed to be the majority judgment, was violative of the fundamental rights of the appellants/petitioners under Articles 14 and 16 and therefore, the power under Article 142 of the Constitution could not be exercised to curtail fundamental rights. The said points were answered by this Court in the following terms:

> "60. It would be seen that there is no limitation under Article 142(1) on the exercise of the power by this Court. The necessity to exercise the power is to do "complete justice in the cause or matter". The inconsistency with statute law made by Parliament arises when this Court exercises power under Article 142(2) for the matters enumerated therein. Inconsistency in express statutory provisions of substantive law would mean and be understood as some express prohibition contained in any substantive statutory law. The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to

27 | P a g e mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise.

61. Admittedly, the Constitution has entrusted this salutary duty to this Court with power to remove injustice or to do complete justice in any cause or matter before this Court. The Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] ratio was in operation for well over three decades under which reservation in promotions were given to several persons in several services, grades or cadres of the Union of India or the respective State Governments. This Court, with a view 28 | P a g e to see that

there would not be any hiatus in the operation of that law and, as held earlier, to bring about smooth transition of the operation of law of reservation in promotions, by a judicial creativity extended the principle of prospective overruling applied in Golak Nath case [(1967) 2 SCR 762 : AIR 1967 SC 1643] in the case of statutory law and of the judicial precedent in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] and further elongated the principle postponing the operation of the judgment in Mandal case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] for five years from the date of the judgment. This judicial creativity is not anathema to constitutional principle but an accepted doctrine as an extended facet of stare decisis. It would not be labelled as proviso to Article 16(4) as contended for."

23. The principles that can be deduced from the law laid down by this Court, as referred to above, are:

> I. A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.
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> II. After declaration of a statute as unconstitutional by a court of law, it is non est for all purposes.
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> 29 | P a g e III. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.

IV. Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional.

Therefore, it is clear that there is no question of repeal of a statute which has been declared as unconstitutional by a Court. The very declaration by a Court that a statute is unconstitutional obliterates the statute entirely as though it had never been passed. The consequences of declaration of unconstitutionality of a statute have to be dealt with only by the Court.

24. The 2012 Act was not subject-matter of consideration by this Court in Bimolangshu Roy (supra). In the said judgment, this Court was concerned only about the validity of the Assam Act, 2004. It is well within the competence of the Manipur Legislature to repeal the 2012 Act, which had 30 | P a g e not been adjudged as unconstitutional by any Court till the Repealing Act, 2018 was enacted. Further, there can be no doubt that the Legislature has the power to include a saving provision while repealing a statute. However, we have been called upon to assess whether, in the peculiar facts of the present case, the Manipur Legislature had the competence to introduce a saving clause in the Repealing Act, 2018. The undisputed facts are that the 2012 Act and the Assam Act, 2004 are in pari materia. The Assam Act, 2004 was declared as unconstitutional in Bimolangshu Roy (supra). Public interest litigations were filed in the Manipur High Court challenging the vires of the 2012 Act. The Manipur Legislature decided to repeal the 2012 Act " in light of the judgment of this Court in " Bimolangshu Roy (supra) and "in the process of being a responsible Government which upholds the Rule of Law ", as have been categorically stated in the preamble of the Repealing Act, 2018. In the

normal course of events, the public interest litigations challenging the vires of the 2012 Act would have been allowed and the 2012 Act would have been declared 31 | P a g e as unconstitutional, relying on Bimolangshu Roy (supra). However, before these matters were taken up by the High Court, the Manipur Legislature, taking cognizance of the ramifications of Bimolangshu Roy (supra) and acknowledging the inferable unconstitutionality of the 2012 Act, has enacted the Repealing Act, 2018. As is evident from the preamble of the Repealing Act, 2018, the repeal of the 2012 Act is a procedural formality by the Manipur Legislature to give the statute a logical conclusion, in light of the pending public interest litigations challenging its constitutional validity before the High Court. Bearing in mind these exceptional facts and circumstances, we are of the considered view that by means of the saving clause in the Repealing Act, 2018, the Manipur Legislature could not have infused life into a legislation, which was recognised by the Legislature itself as unconstitutional and thereby, a nullity, prompting its repeal. In light of the above, the Manipur Legislature cannot be said to have the competence to enact the saving clause in the Repealing Act, 2018.

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25. Having held that the Manipur Legislature was not competent to introduce a saving clause in the Repealing Act, 2018, what remains to be considered is the fate of the acts, deeds etc. undertaken by the Parliamentary Secretaries who were appointed under the 2012 Act. Nullification of transactions affecting the public due to the acts done by the Parliamentary Secretaries appointed under the 2012 Act would cause serious damage to third parties and create significant confusion and irregularity in the conduct of public business. Therefore, in exercise of powers under Article 142 of the Constitution of India, we consider it necessary to save only those acts, deeds and decisions duly undertaken by the Parliamentary Secretaries under the 2012 Act during their tenure. In view of the relief provided, it is not necessary to refer to the de facto doctrine pleaded by Dr. Dhawan.

26. For the foregoing reasons, we hold that the Manipur Legislature was competent to enact the Repealing Act, 2018. The saving clause in the Repealing Act, 2018 is struck down. However, this shall not affect the acts, deeds 33 | P a g e and decisions duly undertaken by the Parliamentary Secretaries under the 2012 Act till discontinuation of their appointments, which are hereby saved.

27. The Civil Appeals are disposed of accordingly.

.....J. [L. NAGESWARA RAO] .....J. [B.R. GAVAI] .....J. [B.V. NAGARATHNA] New Delhi, February 01, 2022.

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