Lakshmana Rao Yadavalli & Anr vs State Of A.P.& Ors on 6 December, 2013

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Bench: Dipak Misra, Anil R. Dave

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 8283 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Basant Agrotech (India) Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 8288 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Solaris Chemtech Industries Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 8291 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Madhyabharat Phosphate P. Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 10815 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Liberty Phosphate Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 10816 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Asian Fertilizer Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14654 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Poly Chemical Industries & Anr. ...Respondents

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14655 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Madhya Bharat Agro Products Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013

(Arising out of S.L.P. (C) No. 14656 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Khaitan Chemicals & Fertilisers Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14657 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Bhilai Eng. Corp. Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14658 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Indian Potash Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14659 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Nirma Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14660 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Arawali Phosphate Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14662 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. T.J. Agro Fertilisers P. Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14663 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Indra Organic Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14664 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Shiva Fertilisers Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14665 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. R.C. Fertilisers P. Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14667 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Indian Phosphate Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14666 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Gajraj Fertilisers P. Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 14668 of 2012)

State of Rajasthan and others ... Appellants

Versus

M/s. Manglam Phosphates Ltd. ...Respondent

WITH

CIVIL APPEAL NO. OF 2013
(Arising out of S.L.P. (C) No. 16252 of 2012)

State of Rajasthan and others ... Appellants

Versus

Dharamsi Morarji Chemical Co. Ltd. ...Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted in all the Special Leave Petitions.

2. Regard being had to the commonality of issue involved and the similitude of controversy pyramided in all these appeals, preferred by special leave, they were heard together and are disposed of by a singular order. For the sake of convenience, the facts in Civil Appeal arising from Special Leave Petition (Civil) No. 8283 of 2012 are adumbrated herein.

3. The respondent preferred DB Civil Writ Petition No. 4357 of 2009 before the High Court of Judicature for Rajasthan at Jodhpur challenging the constitutional validity of Chapter VII of the Rajasthan Finance Act, 2008 (for brevity 'the Act') which provides for levy of cess on mineral rights. The respondent was granted a mining lease for extraction on major minerals. As per the amendment brought in the year 2008 it was required to pay the environment and health cess imposed under Section 16 of the Act. The State Government, in exercise of the powers conferred by Section 19 of the Act, framed a set of rules called Rajasthan Environment and Health Cess Rules, 2008 (for short "the Rules"). Rule 13 of the Rules provides for the head under which the cess collected under Section 16 of the Act is to be credited. Rule 14 of the Rules provides for the allocation of the funds for implementation of environment and health projects in mining areas in various parts of the State. Questioning the constitutional validity of the impost under the Act it was contended before the High Court that the State Legislature had no competence to impose environment and health cess on major minerals as the field is occupied by the provisions contained in the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the MMDR Act'), which is an enactment by the Parliament. It was urged that the imposition of such cess is not a fee but a tax which is covered by the MMDR Act whereunder the power to levy tax on the mineral rights in respect of major minerals is vested in the Parliament. It was further put forth that the Parliament, in exercise of the powers conferred on it by Entries 54 and 55 of List-I of the Seventh Schedule to the Constitution of India, has enacted the MMDR Act and the Rules framed thereunder and under the said Act, the power vests from all spectrums in the Central Government in respect of major minerals and, therefore, the State Legislature could not have enacted such law for imposing such cess on major minerals. It was contended that the cess in question is a nature of fee and the levy of fee on major minerals is governed by the provisions contained in the MMDR Act and the Rules framed thereunder and hence, the State Legislature does not have competence to impose such cess.

4. Apart from the aforesaid contentions, certain other submissions were advanced and reliance was placed on India Cement Ltd. and others v. State of Tamil Nadu and others[1] wherein it has been held that the royalty was a tax. Be it noted, keeping in view the principle stated in India Cement Ltd.'s case, (a seven-Judge Bench decision) a three- Judge Bench in Orissa Cement Ltd. v. State of Orissa[2], held that the decision of levy of cess impugned therein was unconstitutional.

5. On behalf of the State reliance was placed on the Constitution Bench decision in State of W.B. v. Kesoram Industries Ltd. and Others[3]. In the said case the State of West Bengal was aggrieved by the judgment rendered by the High Court of Calcutta wherein it was held that the levy of cess on coal bearing land was similar to the one which had been struck down in India Cement Ltd. (supra) and Orissa Cement Ltd. (supra) and on that foundation it was ruled that the State Legislature had no competence to levy such cess. The majority in the Constitution Bench referred to the Entries 52, 54, 96 and 97 of the Union List (List-I) and Entries 23, 49, 50 and 56 of the State List (List-II) of the Seventh Schedule, adverted to issues pertaining to tax legislation and dwelled upon how the nature of tax levied is different from the measure of tax and culled out number of principles two of which are reproduced below:

> "(6) "Land", the term as occurring in Entry 49 of List II, has a wide connotation. Land remains land though it may be subjected to different user. The nature of user of the

> land would not enable a piece of land being taken out of the meaning of land itself. Different uses to which the land is subjected or is capable of being subjected provide the basis for classifying land into different identifiable groups for the purpose of taxation. The nature of user of one piece of land would enable that piece of land being classified separately from another piece of land which is being subjected to another kind of user, though the two pieces of land are identically situated except for the difference in nature of user. The tax would remain a tax on land and would not become a tax on the nature of its user.
>
> (7) To be a tax on land, the levy must have some direct and definite relationship with the land. So long as the tax is a tax on land by bearing such relationship with the land, it is open for the legislature for the purpose of levying tax to adopt any one of the well known modes of determining the value of the land such as annual or capital value of the land or its productivity. The methodology adopted, having an indirect relationship with the land, would not alter the nature of the tax as being one on land."

6. Elaborating on the said principles, the Constitution Bench adverted to the concept of regulation and, in that context, culled out the principle to the effect that the primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences for determining the character of the levy. A levy essentially in the nature of a tax and within the power of the State Legislature cannot be annulled as unconstitutional merely because it may have an effect on the price of the commodity. A State legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of "regulation and control" belonging to the Central Government by reason of the incidence of levy being permissible to be passed on to the buyer or consumer, and thereby affecting the price of the commodity or goods. Thereafter, it observed as follows: -

> "A tax or fee levied by the State with the object or augmenting its finances and in reasonable limits does not ipso facto trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied by the State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental."

7. After so stating the Constitution Bench ruled that taxes on lands and buildings in Entry 49 of List II cannot be levied by the Union. Taxes on mineral rights, a subject in Entry 50 of List II, can also not be levied by the Union though as stated in Entry 50 itself the Union may impose limitations on the power of the State and such limitations, if any, imposed by Parliament by law relating to mineral development to that extent shall circumscribe the States' power to legislate. Power to tax mineral rights is with the States; the power to lay down limitations on exercise of such power, in the interest of regulation, development or control, as the case may be, is with the Union and that is the result achieved by homogeneous reading of Entry 50 of List II and Entries 52 and 54 in List I. So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue

resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional.

8. Thereafter, the Court adverted to individual cases, namely, coal matters, tea matters, brick earth matters, mining and mineral matters and then addressed itself to the purpose behind the MMRD Act and, eventually, came to hold as follows:-

> "147. Royalty is not a tax. The impugned cess by no stretch of imagination can be called a tax on tax. The impugned levy also does not have the effect of increasing the royalty. Simply because the royalty is levied by reference to the quantity of the minerals produced and the impugned cess too is quantified by taking into consideration the same quantity of the mineral produced, the latter does not become royalty. The former is the rent of the land on which the mine is situated or the price of the privilege of winning the minerals from the land parted with by the Government in favour of the mining lessee. The cess is a levy on mineral rights with impact on the land and quantified by reference to the quantum of minerals produced. The distinction, though fine, yet exists and is perceptible."

9. At this juncture, it is apt to note that the decision in Kesoram Industries Ltd. (supra) has been referred for consideration by a larger Bench in Mineral Area Development Authority and others v. Steel Authority of India and others[4]. It may be profitably stated that a three-Judge Bench has referred the matter to a Bench of nine Judges by framing eleven questions of law. A direct reference to a nine-Judge Bench has been explained in the following terms:-

> "...we may clarify that normally the Bench of five learned Judges in case of doubt has to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger coram than the Bench whose decision has come up for consideration (see Central Board of Dawoodi Bohra Community v. State of Maharashtra[5]). However, in the present case, since prima facie there appears to be some conflict between the decision of this Court in State of W.B. v. Kesoram Industries Ltd (supra) which decision has been delivered by a Bench of five Judges of this Court and the decision delivered by a seven-Judge Bench of this Court in India Cement Ltd. v. State of T.N. (supra), reference to the Bench of nine Judges is requested."

10. It is the admitted position that certain matters arising out of the said decision are awaiting for answer of reference in the case of Mineral Area Development Authority (supra) by the larger Bench. In the present batch of cases, the controversy is different as the High Court has declared the notification dated 23.1.2009 amending the earlier notification dated 25.2.2008 w.e.f. 1.4.2008 with regard to imposition of cess on Rock Phosphate at the rate of Rs.500/- per tonne is ultra vires because the notification issued by the Government ccould only be prospectively effective and cannot have retrospective operation. The said opinion has been expressed on the foundation that legislature has not conferred the power on the Executive to issue such a notification. Regard being had to the

said controversy, our advertence in this batch of appeals shall be a restricted one, namely, to scrutinize whether the view expressed by the High Court declaring the notification to the effect that it cannot have retrospective effect is valid and justified or warrants any interference.

11. We have heard Dr. Manish Singhvi, learned counsel for the appellants and Ms. Shweta Garg, learned counsel for the respondents.

12. Before we appreciate the controversy that has travelled to this Court, we think it necessary to state the fundamental principles that serve as guidance to understand the fiscal legislations and the duty of the Court while dwelling upon the interpretation of taxing statutes.

13. In A.V. Fernandez v. The State of Kerala[6], Bhagwati, J. referred to a passage from Partington v. The Attorney General[7] which is as follows: -

> "As I understand the principle of all fiscal legislation it is this :
>
> if the person sought to be taxed, comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

14. The said passage, as has been stated in the said pronouncement, was quoted with approval by the Privy Council in Bank of Chettinad v. Income-tax Commr.[8] and the Privy Council had registered its protest against the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position. Proceeding further the learned Judge stated that:

> "It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provision of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter." [Emphasis added]

15. In Commissioner of Salex-tax, U.P. v. Modi Sugar Mills Ltd.[9], Shah, J., speaking for the majority in the Constitution Bench, has observed thus: -

> "In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : if cannot imply

> anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

16. In Commissioner of Income-tax, Madras v. Kasturi and Sons Ltd.[10], a two-Judge Bench has approvingly quoted a passage from the book "Principles of Statutory Interpretation" by Justice G.P. Singh, Sixth Edition 1966, which is as follows: -

> "The well established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means : "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words". In a classic passage LORD CAIRNS stated that the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." VISCOUNT SIMON quoted with approval a passage from Rowlatt, J. expressing the principle in the following words :
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> "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." Relying upon this passage Lord Upjohn said : "Fiscal measures are not built upon any theory of taxation"."[11]

17. In Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana[12], it has been observed thus: -

> "The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all."

18. Keeping in mind the aforesaid primal principles and the kernel of fiscal legislation, we shall now proceed to deal with principal source of power under the Act and then test whether the amended notification, a retrospective one, has been issued in consonance with the said power. In this context, it is imperative to refer to Section 16 of the Act which delegates authority to the State Government to issue a notification to levy and collect the cess in issue in such manner as may be prescribed. The said provision reads as follows:-

> "16. Levy and collection of cess on mineral rights. – Subject to any limitation imposed by Parliament by law relating to mineral development, there shall be levied and collected, in such manner as may be prescribed, an environment and health cess on mineral rights in respect of such minerals and at such rates, not exceeding rupees five hundred each tonne of mineral dispatched, as may be notified by the State Government from time to time."

19. In exercise of power contained in Section 16 of the Act the Finance Department issued a notification on 25.2.2008. The said notification stipulated that the rate of environment and health cess on mineral rights and the minerals in respect of which cess shall be levied. The rate as stipulated in the said notification in respect of minerals, namely, (i) Cement Grade Limestone, (ii) Gypsum, (iii) Rock Phosphate,

(iv) Wollastone and (v) M.R. Cess on Lead and Zinc was Rs.5/-, Rs.5/-, Rs.35/-, Rs.40/- and Rs.80/- per tonne respectively.

20. While the said notification was in vogue, the State Government brought a notification dated 23.1.2009 amending the notification dated 25.2.2008 with effect from 1.4.2008. The said amendment reads as follows: -

> "In the said notification the existing S. No. 3 and entries thereto shall be substituted by the following namely: -
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> |3. |M.R. Cess on Rock Phosphate |500/-" |

> 21. From the aforesaid notification, it is vivid that the first notification was issued on 25.2.2008 in exercise of power under Section 16 of the Act for imposing a levy at a particular rate on certain major minerals. By bringing the amendment on 23.1.2009 the rate of tax in respect of Rock Phosphate was increased to Rs.500/- per tonne with retrospective effect.
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> 22. There is no dispute over the fact that a legislature can make a law retrospectively or prospectively subject to justifiability and acceptability within the constitutional parameters. A subordinate legislation can be given retrospective effect if a power in this behalf is contained in the principal Act. In this regard we may refer with profit to the decision in Mahabir Vegetable Oils (P) Ltd. and another v. State of Haryana and Others[13], wherein it has been held that:-
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> "We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne[14])."

23. In MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and Others[15], the question arose whether under Section 10 (3) of the Kerala General Sales Tax Act, 1963 power was conferred on the Government to issue a notification retrospectively. This Court approved the view expressed by the Kerala High Court in M. M. Nagalingam Nadar Sons v. State of Kerala[16], wherein it has been stated that in issuing notifications under Section 10, the Government exercises only delegated powers while legislature has plenary powers to legislate prospectively and retrospectively, a delegated authority like the Government acting under the powers conferred on it by the enactment concerned, can exercise only those powers which are specifically conferred. In the absence of such conferment of power the Government, the delegated authority, has no power to issue a notification with retrospective effect.

24. In Vice-Chancellor, M.D. University, Rohtak v. Jahan Singh[17], it has been clearly laid down that in the absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.

25. In Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla and others[18], a three-Judge Bench has ruled thus: -

"... in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power."

26. On a perusal of the aforesaid authorities there can be no scintilla of doubt that if the power has been conferred under the main Act by the legislature, the State Government or the delegated authority can issue a notification within the said parameters. In the case at hand, the High Court interpreting Section 16 has opined that such a power has not been conferred on the Government to issue a notification retrospectively and, therefore, it can only apply with prospective effect. Dr. Manish Singhvi, learned counsel appearing for the State, has submitted that wherever a statutory power is conferred, there is no limitation with regard to exercise of that power and the same could be exercised from time to time and even if the words "time to time" are absent in the statute, the power conferred under the Act could be exercised all over again and there is no limitation to the number of times the power is exercised and if the power is exercised once, it cannot be stated that the power stands exhausted. It is his submission that the administrative power as well as

quasi-legislative power could be exercised any number of times and this principle is embodied under Section 21 of the General Clauses Act. The learned counsel would further contend that even if the words "time to time" would not have been there in Section 16 of the Act, the power could be exercised any number of times. To bolster his submissions, he has commended us to the decisions in A. Thangal Kunju Musaliar v. M. Venkatachalam Potti, Authorised Official and Income-Tax Officer and another[19], D.G. Gose and Co. (Agents) Pvt. Ltd. v. State of Kerala and another[20], Bansidhar and other v. State of Rajasthan and others[21] and The State of Madhya Pradesh and others v. Tikamdas[22].

27. First we shall deal with the aforesaid authorities as learned counsel for the State has assiduously endeavoured to justify the retrospective application of the notification on the fulcrum of aforesaid decisions.

28. In A. Thangal Kunju Musaliar (supra), the Constitution Bench, apart from other facets, was dealing with the validity of the notification dated 26.7.1949 as it had brought the Travancore Taxation on Income (Investigation, Commission) Act into force with effect from 22.7.1949. The said notification was challenged on the ground that it was bad as it had purported to bring the Act into operation from retrospective effect. It was urged that Government could not, in the absence of express provision authorizing in that behalf, fix the commencement of the Act retrospectively and further the courts disfavoured retrospective operation of laws which prejudicially affect vested rights. Repelling the said submission, the Constitution bench stated thus: -

> "No such reason is involved in this case. Section 1(3) authorises the Government to bring the Act into force on such date as it may, by notification, appoint. In exercise of the power conferred by this section the Government surely had the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. There can, therefore, be no objection to the notification fixing the commencement of the Act on 22.7.1949 which was a date subsequent to the passing of the Act.
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> So the Act has not been given retrospective operation, that is to say, it has not been made to commence from a date prior to the date of its passing. It is true that the date of commencement as fixed by the notification is anterior to the date of the notification but that circumstance does not attract the principle disfavouring the retroactive operation of a statute."

29. After so stating, their Lordships proceeded to advert to the aspect whether the notification was retrospective or not and in that regard ruled thus: -

> "The operation of the notification itself is not retrospective. It only brings the Act into operation on and from an earlier date. In any case it was in terms authorised to issue the notification bringing the Act into force on any date subsequent to the passing of the Act and that is all that the Government did."

30. On a seemly appreciation of the ratio laid down in that case, we have no trace of doubt in our mind that the said decision has no applicability to the facts in the case at hand. As is evident, the notification giving effect to the enactment was prior to the date of issue of notification but much after the legislature had passed the enactment and further the language employed in the Act was quite different. Hence, it can be stated with certitude that the said decision does not further the point urged by the learned counsel for the State.

31. The authority in D.G. Gose and Co. (Agents) Pvt. Ltd. (supra), has been commended to us by the learned counsel for the State, as we understand, to substantiate the point that a levy can always be imposed at any point of time even from the retrospective date unless it is grossly unreasonable. He has specifically drawn inspiration from paragraphs 13 and 14 of the said decision. Be it noted, in the said case, the controversy related to the Kerala Building Tax Act, 1961. The said Act was eventually passed after lot of changes on 2.4.1975 by which tax was imposed on buildings. However, the imposition of tax on buildings was made with retrospective effect from 1.4.1973. One of the challenges pertained to retrospective application of the law. In that context, the Constitution Bench, speaking through Shinghal, J., in paragraphs 14 to 16, stated thus: -

> "14. Craies on Statute Law, seventh Edn., has stated the meaning of "retrospective" at p. 367 as follows:
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> "A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. But a statute 'is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing'." It has however, not been shown how it could be said that the Act has taken away or impaired any vested right of the assessees before us which they had acquired under any existing law, or what that vested right was. It may be that there was no liability to building tax until the promulgation of the Act (earlier the Ordinances) but mere absence of an earlier taxing statute cannot be said to create a "vested right", under any existing law, that it shall not be levied in future with effect from a date anterior to the passing of the Act. Nor can it be said that by imposing the building tax from an earlier date any new obligation or disability has been attached in respect of any earlier transaction or consideration. The Act is not therefore retrospective in the strictly technical sense.
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> 15. What it does is to impose the building tax from April 1, 1973. But as was held in Bradford Union v. Wiltshire[23], if the language of the statute shows that the legislature thinks it expedient to authorise the making of retrospective rates, it can fix the period as to which the rate may be retrospectively made.
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> 16. This Court had occasion to examine the validity of the retrospective levy of Sales Tax in Tata Iron and Steel Co. Ltd. v.

State of Bihar[24] and it was held that that was not beyond the legislative competence of the State legislature."

32. We have already stated that there can be no cavil that the legislature has the authority to pass a law both retrospectively and prospectively within the constitutional parameters. In the aforesaid case the legislature had passed the law with retrospective effect. The Court opined that the same did not affect the vested rights as nothing had been done earlier and hence, no right had vested in the citizens. We may, in addition, state that the said enactment was treated to be valid as it did not invite the wrath of Article 14 of the Constitution. In the case at hand, we are really not testing the retrospective applicability of the law made by the legislature but a notification issued by the State Government in exercise of power conferred under a statutory provision. Needless to say, there is a sea of difference between the two and hence, the aforesaid authority is of no assistance to the learned counsel for the State.

33. The next submission pertains to the principle embodied under Sections 14 and 21 of the General Clauses Act to bolster the stand that the power conferred under the statute can be exercised time and again and there is no limitation to the number of times the power is exercised. In essence, it is submitted that there is no exhaustion of power. In this context, the learned counsel has drawn our attention to the Constitution Bench decision in Bansidhar's case. In the said case it has been held that when there is a repeal of a statute accompanied by re-enactment of law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Section 6 of the General Clauses Act ensued or not, but only for the purpose of determining whether the provisions in the new statute indicate a different intention. It has also been stated therein that a saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. Building the edifice on the said premise, it is proponed that the power conferred on the State Government under Section 16 of the Act can be exercised any number of times and the words "time to time" are redundant or otiose. Bestowing our anxious consideration on the aforesaid submission we only state that the aforesaid authority is of no assistance to the appellant-State because the controversy that has emanated in that case is altogether a different one. To put it differently, the proposition laid down in the aforesaid authority does not buttress the submission sought to be urged. In fact, it is farther away from the "North Pole".

34. At this juncture, we are obliged to state that the learned counsel for the State had really drawn immense invigorating inspiration from the pronouncement in Tikamdas (supra). In the said case a three-Judge Bench was considering whether a subordinate legislation, namely, M.P. Foreign Liquor Rules could be ultra vires the Sections 62 and 63 of the M.P. Excise Act, 1915 as the notification that was issued had retrospective effect. The factual expose' of the said case is that, on 25.4.1964 the M.P. Government by virtue of its powers under Sections 62 and 63 of M.P. Excise Act, 1915 amended M.P. Foreign Liquor Rules which were published on 25.4.1964 and the said amendment was given retrospective effect from 1.4.1964 as a consequence of which a demand for the difference of licence fee was made. The three-Judge Bench observed that there is no doubt that unlike legislation made by sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rule-making power in the concerned statute expressly or by necessary implication confers

power in this behalf. After stating the abovesaid proposition the learned Judges referred to Section 62 of the relevant Act which empowered the State Government to make rules for the purpose of carrying out the provisions of the Act and in that context, observed that the said rule may regulate the amount of fee, the terms and conditions of licences and scale of fees and the manner of fixing the fees payable in respect of such licences, but the said provision by itself did not expressly grant power to make retrospective rules. Thereafter, the bench referred to Section 63 which read thus: -

> "all rules made and notifications issued under this Act shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as may be specified in that behalf."

35. Interpreting the said Section, the Court opined thus: -

> "Clearly the Legislature has empowered its delegate, the State Government, not merely to make the rules but to give effect to them from such date as may be specified by the delegate. This provision regarding subordinate legislation does contemplate not merely the power to make rules but to bring them into force from any previous date. Therefore ante-dating the effect of the; amendment of Rule IV is not obnoxious to the scheme nor ultra vires Section 62."

36. From the aforesaid, it is luculent that the language used therein is quite different. In the case at hand, Section 16 uses the words "from time to time". Even if we accept the submission of the learned counsel for the State that the words "time to time" are redundant, the provision does not remotely suggest to have conferred power on the State Government to make rules with retrospective effect. In fact, the aforestated decision was cited with immense aplomb during the course of hearing that words "time to time" empowers the State Government or the delegate to make the rules retrospectively. It may be noted, despite so much gloss put on the said proposition in the written note of submission, there is a real departure but we think, and we should, the original submission made in course of hearing deserves to be dealt with. In Tikamdas (supra) the language used by the legislature was that the notification issued under the Act shall have the effect from the date of publication in the Official Gazette or from such other date as may be specified in that behalf. Interpreting the same, the Court opined that the legislature had empowered the delegate to make the rules from any previous date and hence, it was neither obnoxious to the scheme nor ultra vires Section

62. Thus, the words used therein "or from such other date a may be specified in that behalf" were interpreted by the Court that the legislature had empowered the delegate to make a rule retrospectively. In the case at hand, as has been stated hereinbefore, the words used in Section 16 are "from time to time". The learned counsel for the State is absolutely justified in stating that it can be exercised any number of times and the power does not get exhausted. To elaborate, a maximum rate has been specified by the legislature. The State Government can fix the rate on any of the minerals from period to period with the conditions prescribed therein, namely, no limitation is imposed by the Parliament by law relating to mineral development and the maximum limit of Rs.500/- per tonne. To clarify further, if there is an imposition of Rs.35 it can be varied as the

occasion may arise. The rate fixed can be varied, changed or modified from time to time. We really cannot discern from the language employed in the said provision that because of the use of the words "time to time" a notification can be issued imposing a rate of tax with retrospective effect or apply the notification retrospectively. A notification can only be issued, as we perceive, prospectively, and we are inclined to think so as legislature has deliberately used the words "from time to time" and not the language as is noticed in Tikamdas (supra).

37. We are disposed to think that the words "from time to time" in law have a different connotation. In this regards we may refer with profit to certain authorities in the field. In Kashmir Singh v. Union of India and others[25], question arose whether rule of perpetuity would be applicable in respect of a member of a Sikh Judicial Commission constituted under the Sikh Gurdwaras Act, 1925 and in that context the words used "from time to time" that find place in Sections 40 and 70 of Punjab Reorganisation Act, 1996 fell for interpretation. A contention was raised on behalf of State of Punjab that having regard to the tenor of Sections 40 and 70 of the Act it was evident from the language employed in the said provisions a reasonable meaning was required to be given and on proper construction of the words "from time to time" would lead to the conclusion that the Government had the power to make fresh appointments of the members. The Court, while dealing with various contentions, ruled that the provisions in the Act clearly indicated the tenure of the Commission but the dichotomy had been created in view of the words "time to time" and the limited power of the State to dissolve the Commission. In that context, the Court observed thus: -

> "With a view to find out an answer to the question as to what meaning should be assigned to the words "from time to time", in our opinion, a holistic reading of the statutes should be resorted to."

> 38. We have referred to the aforesaid decision for the purpose that in case one thinks of any implied power from the language used in the statute by using the words "from time to time" there has to be a holistic reading of the statute but not a fragmented one. That apart, the said decision clarifies that on certain occasions the words "from time to time" have their signification when one relies on a provision that the power exercised once does not get exhausted solely because the use of words "from time to time", but the said terms may not have any importance but when reliance is placed as a source of power to issue a notification or order to act otherwise with retrospective effect. In that event, needless to say it warrants proper interpretation. In the case at hand, it can definitely be stated that despite reading the entire Act in a holistic manner we are unable to trace any other provision throwing any light on the words "from time to time" and, therefore, the conferment of power shall rest upon the construction that is exclusively placed on Section 16 of the Act.

> 38. In M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board[26], the controversy that arose for determination was whether an agreement despite expiry would prevail over a regulation made under Section 79(c) of the Electricity (Supply) Act, 1948 pertaining to the age of superannuation of employees of the Board having regard to the use of the words "time to time" in Section 2 of the Madhya Pradesh Industrial

Employment (Standing Orders) Act, 1961. After stating the facts the Court observed thus: -

"43. The power of the Board, therefore, to lay down the conditions of service of its employees either in terms of regulation or otherwise would be subject only to any valid law to the contrary operating in the field. Agreement within the meaning of the proviso appended to Standing Order 14-A is not a law and, thus, the Regulations made by the Board shall prevail thereover.

44. The Board has power to make regulations which having regard to the provisions of the General Clauses Act would mean that they can make such regulations from time to time."

39. The aforesaid decision is referred to solely for the purpose that the words, namely, "from time to time" may be associated with any number of times, of course subject to the principle of reasonableness and its impact but does not engulf the spectrum of retrospectivity or retroactivity in its ambit and sweep.

40. In Shree Sidhbali Steels Limited and Others v. State of Uttar Pradesh and Others[27], the Court in a writ petition preferred under Article 32 of the Constitution was dealing with the issue of justifiability of the action taken by U.P Power Corporation Limited which had issued a notification on 7.8.2000. It was propounded that the said notification was illegal, arbitrary and violative of Article 14, 19 (1) (g) and 21 of the Constitution insofar as it denies the petitioner the hill development rebate of 33.33% on the total amount of electricity bills issued by the respondents for the remaining unexpired period of five years from the date of commencement of supply of electricity to the industrial units of the petitioners. The question that emerged for consideration before the three-Judge Bench was whether benefit given by statutory notification could be withdrawn by the Government by another statutory notification and whether the principles of promissory estoppel could be applicable to a case where concessions/rebates given by statutory notification were subsequently withdrawn by another statutory notification. The three-Judge Bench did not accept the statement of law in U.P. Power Corpn. Ltd. V. Sant Steels and Allys (P) Ltd.[28] where a Division Bench had stated that the notification issued under Section 49 of the Electricity (Supply) Act, 1948 could be revoked/modified only if express provision exists for the revocation/modification of the said notification under Section 49 itself and as there is no such provision under Section 49 it was not open to the Corporation to revoke the same. That apart, it was stated therein that the provisions of the General Clauses Act would be applicable in case of delegated legislation if withdrawal/curtailment of benefit was in larger public interest or if the legislation was enacted by the legislature authorizing the Government to withdraw/curtail the benefit granted by a notification. While not accepting the said statement of law as correct the three-Judge Bench referred to Sections 14 and 21 of the General Clauses Act, 1897 and opined thus:-

"Section 14 deals with the exercise of a power successively and has no relevance to the question whether the power claimed can at all be conferred. By Section 14 of the General Clauses Act, 1897, any power conferred by any Central enactment may be exercised from time to time as occasion arises, unless a different intention appears in the Act. There is no different intention in the Electricity (Supply) Act, 1948. Therefore, the power to issue a notification under Section 49 of the Act of 1948, can be exercised from time to time if circumstances so require." After so stating the learned Judges analysed the scope of Section 21 of the General Clauses Act and opined that Section 21 embodies a rule of construction and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification, etc. Thereafter, the court enumerated the principle thus:-

"...there is no manner of doubt that the exercise of power to make subordinate legislation includes the power to rescind the same. This is made clear by Section 21. On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Exercise of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorises such an exercise expressly or by necessary implication." Analysing further the learned Judges opined that by virtue of Sections 14 and 21 of the General Clauses Act, when a power is conferred on an authority to do a particular act, such power can be exercised from time to time and carries with it the power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power. It would be too narrow a view to accept that chargeability once fixed cannot be altered. Since the charging provision in the Electricity (Supply) Act, 1948 is subject to the State Government's power to issue notification under Section 49 of the Act granting rebate, the State Government, in view of Section 21 of the General Clauses Act, could always withdraw, rescind, add to or modify an exemption notification. No industry couldn claim as of right that the Government should exercise its power under Section 49 and offer rebate and it is for the Government to decide whether the conditions were such that rebate should be granted or not. The aforesaid authority clearly lays down that the power conferred can be exercised in the context of wores "from time to time" as used in the Act or in aid of General Clauses Act.

41. At this juncture, we may fruitfully refer to the meaning given to the words "from time to time" in certain dictionaries and the description made in certain other texts. In "Words and Phrases", Volume 17 A, 1974, "from time to time" has been enumerated in various contexts. We may think it appropriate to reproduce certain contexts which are useful in the present case.

"The phrase "from time to time" means as occasion may arise, at intervals, now and then occasionally. Florey v. Meeker, 240 P. 2d 1177,1190,194 Or. 257." xxx xxx xxx xxx xxx "In constitutional amendment, authorizing Legislature to alter salaries of named county officers "from time to time", the quoted phrase does not mean from "term to term". Almon v. Morgan County, 16 So.2d 511,514,245 Ala. 241." xxx xxx xxx xxx xxx "The phrase "from time to time", as used in the

Constitution, authorizing the Legislature to increase the number of judges of the Supreme Court from time to time, means occasionally; that is, as occasion requires, and therefore the words cannot be held to mean that the Legislature may not decrease the number of judges after an increase thereof. State v. McBride, 70 P.25,27,29 Wash. 335." xxx xxx xxx xxx "The Century Dictionary defines the phrase 'from time to time' to mean 'occasionally'; and the Universal Dictionary defines 'from time to time' to mean, 'at intervals; now and then." The phrase is used in such meaning in Acts1898, c. 123, para 95, which directs the police commissioners of Baltimore, at the request of the park commissioners, to detail from time to time members of regular police force for preservation of order in the parks. Upshur v. City of Baltimore, 51 A. 953, 955, 94 Md. 743." xxx xxx xxx xxx "The county board of supervisors had no authority to alter an election precinct in September, under statute providing that board may, from time to time, change the boundaries of precincts and providing that changes might be made at regular or special meeting in July, since the two provisions were in pari materia and should be construed together in the light of all the provisions of the statute, the words "from time to time" meaning "at times to recur," and not "at any time." Laws 1885, p. 193 para 29, Laws 1871-72, p. 380, para 30, S.H.A. ch. 46, para 29, 30. County Board of Union County v. Short, 77 Ill App. 448."

42. In The Law Lexicon, The Encyclopedic Law Dictionary: (2nd edition, 1997, page 764), the words have been conferred the following meaning:-

> "From time to time – "as occasion may arise". The words "from time to time" mean that an adjournment may be made as and when the occasion requires and they will not mean adjournment from one fixed day to another fixed day. The words "from time to time" are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and therefore, not being able to act again in the same direction. The meaning of the words "from time to time" is that after once acting the donee of the power may act again; and either independently of, or by adding to, or taking from, or reversing altogether, his previous act."

43. In Blacks Law Dictionary: (5th edition page 601), it has been defined as follows:-

> "From time to time – Occasionally, at intervals, now and then."

44. In Stroud's Judicial Dictionary: (5th edition volume 2 page 1053), it has been stated as follows:-

> "From time to time 'as occasion may arise' (as per William, J., Bryan v. Arthur, 11 A. & E 117)."

45. Thus, the conspectus of authorities and the meaning bestowed in the common parlance admit no room of doubt that the words "from time to time" have a futuristic tenor and they do not have the etymological potentiality to operate from a previous date. The use of the said words in the Section 16 of the Act cannot be said to have conferred the jurisdiction on the State Government or delegate to issue a notification in respect of the rate with retrospective effect. Such an interpretation does not

flow from the statute which is the source of power. Therefore, the notification as far as it covers the period prior to the date of publication of the notification in the official Gazette is really a transgression of the statutory postulate. Thus analysed, we find that the view expressed by the High court on this score is absolutely flawless and we concur with the same. We may reiterate for the sake of clarity that we have not adverted to the defensibility of the analysis from other spectrums which are founded on the principles set forth in Kesoram's case as the matter has been referred to a larger Bench and the lis in these appeals fundamentally pertain to the retrospective applicability of the notification issued by the State Government as regards the rate of cess on the major mineral, i.e. Rock Phosphate.

46. Resultantly, the appeals, being devoid of merit, stand dismissed. Ordinarily, we would have imposed costs regard being had to the change of stance by the appellant from time to time but recognizing the anxiety on behalf of the State, we restrain from doing so.

.....J. [Anil R. Dave] .....J. [Dipak Misra] New Delhi;

December 06, 2013.

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[1] (1990) 1 SCC 12
[2] (1991) Suppl. 1 SCC 430
[3] (2004) 10 SCC 201
[4] (2011) 4 SCC 450
[5] (2005) 2 SCC 673
[6] AIR 1957 SC 657
[7] (1869) 4 H L 100 at p. 122(B)
[8] AIR 1940 PC 183
[9] AIR 1961 SC 1047
[10] AIR 1999 SC 1275

[11] This passage presently finds place at page 826, Twelfth Edition 2012 of "Principle of Statutory Interpretation" by G.P. Singh. [12] AIR 1998 SC 120 [13] (2006) 3 SCC 620 [14] (1911) 2 Ch 1 : 104 LT 759 (CA) [15] (2006) 8 SCC 702 [16] (1993) 91 STC 61 (Ker) [17] (2007) 5 SCC 77 [18] AIR 1992 SC 2038 [19] AIR 1956 SC 246 [20] (1980) 2 SCC 410 [21] (1989) 2 SCC 557 [22] (1975) 2 SCC 100 [23] 1868 LR 3 QB 606, 616 [24] AIR 1958 SC 452 [25] (2008) 7 SCC 259 [26] (2004) 9 SCC 755 [27] (2011) 3 SCC 193 [28] (2008) 2 SCC 777
