Krishna Chandra Gangopadhyaya and Others

Vs

The Union of India and Others

Writ Petitions Nos. 357-359 of 1970

(CJI A. N. Ray, K. K. Mathew, V. R. Krishna Iyer JJ)

18.04.1975

JUDGMENT

KRISHNA IYER, J. –

The central issue in these petitions deals with the question whether a statute and a rule earlier declared by the Court unconstitutional or otherwise invalid, can be retroactive through fresh validating legislation enacted by the competent Legislature. More pointedly, the constitutionality of Rule 20(2) framed by the Bihar Government under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act LXVII of 1957) (for short the Central Act) and the second proviso the Section 10(2) of the Bihar Land Reforms Act, 1950 (for Brevity, the Bihar Act) has been challenged on various grounds in the petitions, a validating statute by Parliament transforming them into Central legislation, as will be presently explained. The subject of the litigation is minor mineral and the right of the petitioners adversely affected by the impugned legislation, is to quarry stones, etc., on the strength of leases granted to them by erstwhile proprietors whose ownership vested in the State of virtue of the Bihar Act. By the combined operation of the section proviso to Section 10(2) of the Bihar Act and Rule 20(2) (framed by the State Government) of the Bihar Minor Mineral Concession Rules, 1964 (hereinafter called the Rules) the petitioners were called upon to pay certain rents and royalties in respect of mining operations, but the power of the State, clothed by these provisions was put in issue in the first round of litigation by lessees of quarries, which culminated disastrously against the State in Baijnath Kedia v. State of Bihar ((1970) 2 SCR 100 : (1970) 1 SCC 838). This Court, in that case, held that the Bihar Legislature had no jurisdiction to enact the second proviso to Section 10(2) of the Bihar Act, because it went further to hold that section 15 of the Central Act, read with Section 2 thereof, had appropriated the whole field relating to minor minerals for parliamentary legislation. This court proceeded to lay down that the second sub-rule, added by the Notification dated December 10, 1964 to Rule 20 of the Rules did not affect leases in existence prior to the enactment of the Rules. The upshot of the decision was that the action taken by the Bihar Government in modifying the terms and conditions of the leases which were in existence anterior to the Rules and the levy sought to be made on the strength of amended Bihar Act and rule were unsustainable. Thereupon the State persuaded Parliament to enact the Validation Act of 1969 with a view to remove the road-blocks which resulted in decision in Kedia' case (supra). The preamble and the short Act (now impugned) provide thus :

> An Act to validate certain provisions contained in the Bihar Land reforms Act, 1950, and the Bihar Minor Mineral Concession Rules, 1964, and action taken and things done in connection therewith.

Section 1 gives the title of the Act. Section 2 of the Act runs thus :

> 2. Validation of certain Bihar State laws and action taken and things done connected therewith. - (1) the laws specified in the schedule shall be and shall be deemed always to have been, as valid as if the provisions contained therein had been enacted by Parliament.
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> (2) Notwithstanding any judgment, decree or order of any court, all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued and rents or royalties realised under any such laws shall be deemed to have been validly taken, done, made issued or realised, as the case may be, as if this section had been in force at all material times when such action was taken, things were done, rules were made notifications were issued, or rents or royalties were realised, and no suit or other proceeding shall be maintained or continued in any court for the refund of rents or royalties realised under any such laws.
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> (3) For the removal of doubts, it is hereby declared that nothing in sub-section (2) shall be construed as preventing any person from claiming refund of any rent or royalties paid by him in excess of the amount due from him under any such laws.

In the Schedule, Section 10 of the Bihar Reforms Act, 1950 (Bihar Act XXX of 1950), as amended by the Bihar Land Reforms (Amendment) Act, 1964 (Bihar Act VI of 1965) and by Bihar Land Reform (Amendment) Act, 1965 (Bihar Act VI of 1965), and two other sections, namely Section 10-A and 31, of the Bihar Land reforms Act 1950, as amended by the various amending Acts, are mentioned. Sub-rule (2) of Rule 20 of the Bihar Minor Mineral Concession Rules, 1964, as inserted by the Bihar Minor Mineral Concession (First Amendment) Rules, 1964, published under the Bihar Government Notification No. A/MM-109964 (Pt.) 7700/M dated December 19, 1964, in the Gazette of Bihar (Pt. II), dated December 30, 1964 is also mentioned therein.

2. The legal question canvassed before us is as to whether the amending Act is question has been an exercise in futility because of an unconstitutional easy and foggy drafting or has achieved the purpose set by Parliament which is transparent from the legislative history. Shri A. K. Sen Counsel for the petitioner has turned the focus mainly on one or two deficiencies in the enactment of the Act by Parliament. Shri Sen's submission is that notwithstanding the validating measure, the right claimed by the State to alter the terms of the lease or to impose a new levy has not been validly acquired.

Case History

3. Mines and minerals, as topics of legislation, fall under the Union and the State Lists. Under our scheme of distribution of legislative powers, particularly when subjects of national and provincial concern are involved, an interlocking arrangement is provided whereby the Union has a dominant say and the States a lesser role, the present case of mines and minerals being an instance in point. The relevant entries in the Seventh Schedule are Item 54 of List I and Item 23 of List II. The latter is expressly made subject to the provisions of List I with respect to regulation and development under the control of the Union and the Union's powers extend to regulation and development of mines and minerals 'to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. In the exercise of the above power, the Union Parliament passed the Central Act which covered not merely the field of

major minerals but also occupied the area of minor minerals, as is evident from Sections 15 and 16 of the Act. (The necessary declaration visualised in Entry 54 of List I is made by Section 2 of the Central Act). Although the legislation was made by parliament, Section 15 conferred power on the State Government as its delegate to make rules in respect of minor minerals.

4. The Bihar State which had on its statute book a land reforms law, sought to acquire control over mines and minerals and in that behalf added a second proviso to Section 10(2) which reads thus (Bihar Act 4/65) :

> Provided further that the terms and conditions of the said lease in regard to minor minerals as defined in the Mines and Minerals (Regulation and Development) Act, 1959 (Act LXVII of 1957) shall, in so far as they are inconsistent with the rules of that Act, stand substituted by the corresponding terms and conditions by those rules and if further ascertainment and settlement of the terms will become necessary then necessary proceedings for that purpose shall be under taken by the Collector.

5. The apparent legal result was that the State Government could shape the terms and conditions of the leases granted by the quondam proprietors and this was done by framing rules under Section 15 of the Central Act as the delegate of Parliament. Faced with a demand for higher levy put forward by the State which had been armed by the amendment of the Land Reforms law and the rules under Section 15 of the Central Act, mineral prospectors and quarriers moved petitions under 226 of the Constitution in the Patna High Court. Although those petitions were dismissed, appeals were carried to this Court which, as earlier stated, ended in success. It is important to note the reasons which weighed with this Court in striking down the two pieces of legislation, one amending the Bihar Act and the other, adding a sub-rule under the Central Act, so that an insight into the infirmities of the said legislations may be gained and the need and object of the validation appreciated.

6. Hidayatuallah, C.J. in Baij Nath Kedia (supra), speaking for the Court, pointed out that the declaration contemplated by Entry 54 of List I was contained in Section 2 of Act 67/57 and thus the Central Government assumed control over regulation of mines and mineral development to the extent provided in the Central Act. Since Section 15 of the Central Act went on to state that the State Government may makes rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith, the whole subject of legislation regarding minor mineral was also covered by the Central Act and, to that extent, the powers of the State Legislature stood excluded. No scope was therefore left for the enactment of the second proviso to Section 10(2) of the Bihar Act which related to mining and minerals and was for that reason ultra vires. The fate of sub-rule 20(2) was no better, according to the learned Chief Justice. Vested interests cannot be taken away except by law made by a competent Legislature. Since the Bihar Legislature had lost power to legislate about minor minerals, Parliament was the sole source of power in this behalf. Rule 20(2) of the Bihar Minor Minerals Concession Rules, 1964 was ineffective for modifying leases granted earlier. It could not derive sustenance on the second proviso to Section 10(2) of the Bihar Act which had been held ultra vires nor could legislative support be derived from Section 15 of the Central Act since the rule-making power conferred by that provision did not contemplate alteration of terms of leases already in existence before the Act was passed.

7. The direct lessons from Kedia (supra) were drawn by Parliament and suitable legislative action taken, according to the Solicitor General, resulting in the present Validation Act. So much so the purpose of the enactment was obvious, the law laid down by this court was obeyed and the resultant

referential legislation must therefore be interpreted to further and fulfill - not to frustrate or foil - the intendment of retroactive validation of earlier inoperative legislative and executive action taken by the Bihar State.

Statutory conspectus and meaning

8. Substantially this history of the impugned Act is not under serious challenge. The vital conflict is as to whether, whatever may have been in the mind of Parliament, the Court can speculate on presumed intent and read that object with implicit sense. According to Sri Sen, what has been legislated has to be judged on the language used which, in his view, was hardly adequate to create power to vary the leases or cast liability to pay larger rents and royalties retrospectively.

9. We listen largely to the language of the statute but where, as here, clearing up of marginal obscurity may make interpretation surer if light from dependable sources were to beam in, the Court may seek such aid. What has been described as the sound system of construction, excluding all but the language of the text and the dictionary as the key, hardly holds the field especially if the enactment has a fiscal or other mission, its surrounding circumstances speak and its history unfolds the mischief to be remedied. The Court, in its comity with the Legislature, strives reasonably to give meaningful life and avoid cadeveric consequence. We have set out the story of the rebirth, as it were, of the law of minor mineral royalty levy to drive home the propriety of this method of approach. No doubt, there is some remissness in the drawing up of what professes to be a validating law and the neglected art of drafting bills is in part the reason for subtle length of submissions where better skill could have made the sense of the statute luscent and its validity above-broad. Informed by a realistic of the statute but guided primarily by what the Act has said explicitly or by necessary implication we will examine the meaning and its impact on Counsel's contentions.

The main propositions of law

10. Kedia's case (supra) has held void both proviso 2 to Section 10 of the Bihar Act and Rule 20(2) made under the Central Act. Shri A. K. Sen did not dispute the legislative competence of Parliament, by specific enactment, to validate retroactively otherwise invalid legislation or incorporate into a Central Act a void State legislation since mines and minerals, minor and major, had been taken over by the Centre. His chief submission was that the well-known legislative mechanics to resurrect statutorily earlier Acts or rules declared dead by Court had not been adopted here, so much so the fiction introduced by the deeming provision has failed to achieve what is being claimed by the State as the legislative object. Mr. Sen's proposition, shortly stated, is :

> If a law is void as being passed by an incompetent Legislature, validation by a subsequent Act passed by a competent Legislature can only be effected by the subsequent law enacting the provisions of the old Act expressly or by incorporation. It cannot be done by a competent Legislature laying down in the subsequent Act that the former Act passed by the incompetent Legislature is deemed to be valid.

What is moot is not the proposition but its application to our legislative situation.

11. Reliance for this proposition was placed, inter alia, on Jaora Sugar Mills v. State ((1966) 1 SCR 523, 531 : AIR 1966 SC 416); Jawaharmal v. State of Rajasthan ((1966) 1 SCR 890, 899, 901, 904 : AIR 1966 SC 764); Shama Rao v. Pondicherry ((1967) 2 SCR 650, 662 : AIR 1967 SC 1480 : (1967) 20 STC 215) and Gwalior Rayon Mills v. Assistant Commissioner, S. T. (AIR 1974 SC

1660, 1681 : (1974) 4 SCC 98, 125-26 : 1974 SCC (Tax) 226) To take the last case first, we may state that the problem tackled there related to excessive delegation and abdication of legislative power and did not bear upon the issue of legislation by reference or incorporation. Of course, there is consideration of Shama Rao (supra) in the judgment of Mathew, J., but it is difficult to make out how the observations to which our attention was invited bear upon the issue before us.

12. The learned Judge's containment of the principle in Shama Rao (supra) with which we respectfully concur, may be set out here (p. 1679) : [SCC p. 124 : SCC (TAX) p. 252, para 64]

We think that the principle of the ruling in (1967) 2 SCR 650 (viz, Shama Rao) must be confined to the facts of the case. It is doubtful whether, there is any general principle which precludes either Parliament or a State Legislature from adopting a law and the future amendments to the law passed respectively by a State Legislature or Parliament and incorporating them in its legislation. At any rate, there can be no such prohibition when the adoption is not of the entire corpus of law on a subject but only of a provision and its future amendments and that for a special reason or purpose.

The kernel of Gwalior Rayon (supra) is the ambit of delegation by Legislatures, and the reference to legislation by adoption or incorporation supports the competence and does not contradict the vires of such a process - not an unusual phenomenon in legislative systems nor counter to the plenitude of powers constitutional law has in many jurisdictions conceded to such instrumentalities clothed with plenary authority. The Indian Legislatures and courts have never accepted any inhibition against or limitation upon enactment by incorporation, as such.

13. The dispute is not whether Parliament can legislate into validity a State Act which is outside the State List. If Section 2 of impugned Act merely validates invalid State law by Parliament's action, it is doomed to fail. It is for the Constitution, not Parliament, to confer competence on State Legislatures. The observations in Jaora Sugar Mills (supra) on which Shri A. K. Sen laid great stress, silence the question :

> ..... If it is shown that the impugned Act purports to do nothing more than validate the invalid State statutes, then of course, such a validating Act would be outside the legislative competence of Parliament itself. Where a topic is not included within the relevant List dealing with the legislative competence of the State Legislatures, Parliament, by making a law, cannot attempt to confer such legislative competence on the State Legislatures.

It is a far constitutional cry from this position to the other proposition that where Parliament has power to enact on a topic actually legislates within its competence but, as an abbreviation of drafting, borrows into the statute by reference the words of a State Act not qua State Act but as a convenient shorthand, as against a longhand writing of all the sections into the Central Act, such legislation stands or falls on Parliament's legislative power, vis-a-vis the subject viz., mines and minerals. The distinction between the two legal lines may sometimes be fine but always is real. Jaora Sugar Mills illumined this basic difference with reference to Section 3 of the Act challenged there, by observing :

> ..... What Parliament has done by enacting the said section is not to validate the invalid State statutes, but to make a law concerning the cess covered by the said statutes and to provide that the said law shall come into operation retrospectively. There is a radical difference between the two positions. Where the Legislature wants

> to validate an earlier Act which has been declared to be invalid for one reason or another, it proceeds to remove the infirmity from the said Act and validates its provisions which are free from any infirmity. That is not what Parliament has done in enacting the present Act. Parliament knew that the relevant statutes were invalid, because the State Legislature did not possess legislative competence to enact them. Parliament also knew that it was fully competent to make an Act in respect of the subject-matter covered by the said invalid State statutes. Parliament, however, decided that rather than make elaborate and long provisions in respect of the recovery of the cess, it would be more convenient to make a compendious provision such as is contained in Section 3. The plain meaning of Section 3 is that the material and relevant provisions of notifications, orders, and rules issued or made thereunder are material times in it. In other words, what Section 3 provides is that by its order and force, the respective cesses will be deemed to have been recovered because the provisions in relation to the recovery of the said cesses have been incorporated in the Act itself. Then command under which the cesses would be deemed to have been recovered would, therefore, be the command of Parliament, because all the relevant sections, notifications, orders and rules have been adopted by the parliamentary statute itself.

No parliamentary omnipotence to redraw legislative lists in the Seventh Schedule can be arrogated to confer on the State competence to enact on a topic where it is outside its lists. But if Parliament has the power to legislate on the topic, it can make an Act on the topic by any drafting means, including by referential legislation.

14. The learned Solicitor General, in the course of his submissions made it clear that he did not want to vindicate the levy by any validation of the invalidated portion of Section 10 of the Bihar Act. He based his case on the success with which Parliament had legislated for itself, although adopting a shorthand form of incorporation referentially of a State Act and subordinate legislation given in the Schedule to the Validation Act. He also made it clear that Rule 20(2) had nothing to do with the Bihar Legislature but was the product of parliamentary legislation by delegation in favour of State Government. Thus, in his view, the Parliament legislated for itself and statutorily adopted for itself the second proviso to Section 10 of the Bihar Act and the otherwise ultra vires sub-rule (2) of Rule 20. If the re-enacting technique adopted for the referential or incorporating legislation was insufficient in law, the failed. Otherwise, the Act and Rules referred to in the Schedule to the Validation Act revived and became operational, retroactively. There is force in the submission that taking a total view of the circumstances of the Validation Act Parliament did more than simply validate an valid law passed by the Bihar Legislature but did re-enact it with retrospective effect in its own right adding an amending Central Act to the Statute book.

15. Shri A. K. Sen pressed passages from Jawaharmal (supra), but some care in scrutiny will reveal that Jawaharmal does not clash with Jaora Sugar Mills (supra).

16. We may briefly deal with that decision and explain it. Article 255 of the Constitution insists on Presidential assent for certain Acts of the State Legislature, although subsequent assent is curative of the infirmity caused by absence of previous assent. In Jawaharmal (supra), one of the points that fell for decision was the efficacy of a legislative declaration that an earlier invalid Act (for want of Presidential assent) be deemed to be valid by re-enactment and subsequent assent of the President to the second Act. This Would virtually mean that by the re-enacting device, Presidential assent could be by-passed by the Legislature. Negativing this submission, the Court observed, with reference to

the Rajasthan Act which attempted this unconstitutional exercise :

> In other words, the Legislature seems to say by Section 4 that even though Article 255 may not have been complied with by the earlier Finance Acts, it is competent to pass Section 4 whereby it will prescribe that the failure to comply with Article 255 does not really matter, and the assent of the President to the Act amounts to this that the President also agrees that the Legislature is empowered to say that the infirmity resulting from non-compliance with Article 255 does not matter. In our opinion, the Legislature is incompetent to declare that the failure to comply with Article 255 is of no consequence; and, with respect, the assent of the President to such declaration also does not serve the purpose which subsequent assent by the President can serve under Article 255 ....
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> ..... We have tried to read Section 4 as favourably as we can while appreciating the argument of the learned Advocate-General; but the words used in all the three parts of Section 4 are clear and unambiguous; they indicate that the Legislature thought that it was competent to it to cure, by its own legislative process, the infirmity resulting from the non-compliance with Article 255 when it passed the earlier Finance Acts in question, and it was probably advised that such a legislative declaration would be valid and effective provided it received the assent of the President. In our opinion, the approach adopted by the Legislature in this case is entirely misconceived. The Legislature, no doubt can validate an earlier Act which is invalid by reason of non-compliance with Article 255 and such an Act may receive the assent of the President which will make the Act effective. The Legislature cannot, however, itself declare by a statutory provision that the failure to comply with Article 255 can be cured by cured by its own enactment, even if the said enactment received the assent of the President. In our opinion, the even the assent of the President cannot alter the true constitutional position under Article 255. The assent of the President cannot, by any legislative process, be deemed to have been given to an earlier Act at a time when in fact it was not so given. In this context there is no scope for a retrospective deeming in regard to the assent of the President. It is somewhat unfortunate that the casual drafting of Section 2 leaves the period covered by Act 11 of 1962 and the notification issued thereunder as unenforceable as before, and the omnibus and general provisions of Section 4 are of no help in regard to the said period.

In dismissing a similar contention based on Jawaharmal, to challenge the identical statute with which we are here concerned, the Patna High Court observed, in Bhalbhum T&I Ltd. v. Union of India (AIR 1972 Pat 364, 373) :

> In that case, the validating law merely declared that the original invalid legislation was valid in spite of the contravention of Article 255 of the Constitution. In the instant case, Parliament has not sought to declare that the failure to comply with the requirements of Article 255 of the Constitution is of no consequence.

17. The crucial demarcation between Jaora Sugar Mills (supra) and Jawaharmal (supra) is important and cannot be overlooked. The latter case dealt with a State Legislature ineffectually overcoming

invalidity caused by absence of Presidential assent. Validation by a Legislature must necessarily be what it could validly have done and not of what someone else had to do. The assent of the President could not be made up for by the validating process adopted by the Legislature. So it was that Jawaharmal suffered from Legislative incompetence a second time.

18. It is important to notice, however, that the alleged vice of the legislation in the present case relates to a radically different area. What is within the competence of Parliament it seeks to do - validation by incorporation of a legislation on a topic within its purview. The device adopted of re-enacting by validation is familiar to the Indian draftsman as to his Anglo-American counterpart. We have no doubt that incorporation of Acts is permissible in the absence of other disabling factors. It is one thing to say that retroactive validation by a competent Legislature is impermissible; it is another to contend that there has not been a valid execution of this process - or rather Parliament has not, in the present case, done what the draftsman ought to have done to effectuate the ostensible purpose of creating a new power to levy royalty and to alter the terms of the mining leases and then to give such newly created liability anterior effect.

19. The controversy now shifts to the effectiveness or otherwise of the legislative device in achieving retroactive validation. We have already noticed that the second proviso to Section 10(2) of the Bihar Act and sub-rule (2) of Rule 20 of the Mineral Concession Rules, 1964 were void, as held by this Court. We have therefore to treat them as non est. We have already held that the Bihar Act qua Bihar legislation could not be resuscitated by Parliament conferring such power through a law. The position may be different so far as Rule 20(2) is concerned since that is a rule framed by Parliament through its delegate, the State Government, although the rule itself being in excess of the power conferred by Section 15 of the Central Act was ultra vires. In this invalidatory situation, Parliament passed on Act to validate the void provision of the Bihar Land Reforms Act, 1950 and the ultra vires sub-rule of Rule 20 of the Mineral Concession Rules as well as the action taken and things done in connection therewith. The Act is itself short and consists of two sections, of which the latter is the only important one. It validates the laws specified in the schedule by a deeming device. Secondly, it bring into force, back-dating it, all action taken, rents and royalties realised and rules made 'notwithstanding any judgment, decree or order of any Court'. The problem before us is whether the Act has achieved its purpose of creating retrospective liability for rents, royalties, etc., and validating retrospectively the impugned provisions of the Bihar Act and the Mineral Concession Rules.

20. Shri A. K. Sen's criticism has to be noticed in this background; for he urges that in the light of the rulings of this Court no liability to levy rent or royalty can be created retroactively without two clear stages or steps : firstly, a law must be enacted creating the liability; next, such provision should be made retrospective. This two-stage procedure is absent in the statute under attack and therefore the purpose, whatever it be, has misfired, argues Mr. Sen. In plain terms the present case raises the question of enactment by reference and incorporation. It is correct to contend that curative statutes and validating exercises, unless the process is explicit enough and permissible otherwise, cannot be given ex post facto effect by courts. What is the intention of Parliament is mainly to be gathered from the language used, tested by approved canons of construction.

21. The profusion of precedents touched upon at the Bar leaves us with a few which were stressed as having direct pertinence to the points in debate. The power of a Legislature to pass a law obviously includes the power to pass it retrospectively. Minor minerals, as explained already, being a topic withdrawn and confided to Parliament for legislation, the validating Act cannot fail for incompetence. But before a levy ex post facto is made, the legislation must first create the fiscal

liability and then project it retrospectively. This is the broad trend of Sri A. K. Sen's submission. He relies heavily on Kamrup (Deputy Commr. and Collector, Kamrup v. Durga Nath Sarma, (1968) 1 SCR 561 : AIR 1968 SC 394) to urge that a legislation cannot by a simple 'deeming' device render valid what is unconstitutional.

22. The following observations were emphasized by Counsel (p. 580 of the report) :

> It is to be seen that the core of Assam Act 21 of 1960 is the deeming provision of Section 2 under which certain lands are deemed to be acquired under the earlier Act. As this deeming provision is invalid, all the other ancillary provisions fall to the ground along with it. The later Act is entirely dependent upon the continuing existence and validity of the earlier Act. As the earlier Act is unconstitutional and has no legal existence, the provisions of Act No. 21 of 1960 are incapable of enforcement and are invalid.

The ratio is apt to be misunderstood for, in its essence, the judgment merely holds that where the later Act is entirely dependent upon the valid continuance of the earlier Act, which has been held unconstitutional, the deeming provision cannot produce the desired effect. The learned Solicitor General, however, argues that the situation in the present case is altogether different. The earlier Bihar Act or the rules framed by the State Government under the Act do not have to be valid for sustaining the amending Act made by Parliament. The constitutionality of the earlier law has not to be posited for the survival of the Central Amending Act. In this submission the learned Solicitor General is right and so the proposition in Kamrup (supra) is inapplicable here.

23. In Hari Singh (Hari Singh v. Military Estate Officer, ((1973) 1 SCR 515 : (1972) 2 SCC 239), Kamrup (supra) was approved but there is no quarrel over the correctness of the proposition there, its application being inept in the context of the present case. However, Ray, J. (as he then was), made certain observations which were pressed before us by Mr. Sen : [SCC p. 247, para 17]

The ratio is that the 1960 Act has no power to enact that an acquisition made under a constitutionally invalid Act was valid. The 1960 Act did not stand independent of the 1955 Act. The deeming provision of the 1960 Act was that land was deemed to be acquired under the 1955 Act. If the 1955 Act was unconstitutional, the 1960 Act could not make the 1955 Act constitutional.

With great respect we agree with the position but, as earlier stated, the statutory complex confronting us is something different. In the present case, the Bihar Legislature is not legislating into validity, by a deeming provision, what has been declared ultra vires by the Court. It is Parliament, whose competency to legislate on the topic in question is beyond doubt, that is enacting the 'deeming' provision. It follows that Hari Singh (supra) also cannot salvage the appellant.

24. We reach the twilight of legislative area when we move into West Ramnad Electric Distribution Co. case (West Ramnad Electric Distribution Co. Ltd. v. State of Madras, ((1963) 2 SCR 747 : AIR 1962 SC 1753) which also dealt with a validating Act. The Madras Electricity Supply Undertakings Act, 1949 clothed the State with power to acquire electricity supply undertakings. The validity of the said Act was challenged and this Court held the law ultra vires. In consequence, the Madras Legislature passed Madras Act 29/54 which incorporated the impugned provisions of the earlier Act of 1949 and purported to validate the action taken under the earlier Act. The affected appellant assailed the new Act to the extent to which it purported to validate the act done under the earlier Act of 1949 which had been declared inoperative by the Court. The facet of that decision which relates

to the point under discussion before us establishes that validation, with retrospectivity super-added, is perfectly competent for the Legislature. Gajendragadkar, J. (as he then was), observed :

> The argument is that there is no specific or express provision in the Act, which makes the Act retrospective and so, Section 24, even if it is valid, is ineffective for the purpose of sustaining the impugned order by which possession of the appellant concern was obtained by the respondent.
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Before dealing with this argument, it would be necessary to examine the broad features of the Act and understand its general scheme. The Act was passed because the Madras Legislature thought it expedient to provide for the acquisition of undertakings other than those belonging to and under the control of the State Electricity Board constituted under Section 5 of the Electricity (Supply) Act, 1948 in the State of Madras engaged in the business of supplying electricity to the public. It is with that object that appropriate provisions have been made by the Act to provide for the acquisition of undertakings and to lay down the principles for paying compensation for them. It is quite clear that the scheme of the Act was to bring within the purview of its material provisions undertakings in respect of which no action had been taken under the earlier Act and those in respect of which action had been so taken.

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It is thus clear that the Act, in terms, is intended to apply to undertakings of which possession had already been taken, and that obviously means that its material and operative provisions are retrospective. Actions taken under the provisions of the earlier Act are deemed to have been taken under the provisions of the Act and possession taken under the said earlier provisions is deemed to have been taken under the relevant provisions of the Act. This retrospective operation of the material provisions of the Act is thus writ large in all the relevant provisions and is an essential part of the scheme of the Act. Therefore, Mr. Nambiar is not right when he assumes that the rest of the Act is intended to be prospective and so, Section 24 should be construed in the light of the said prospective character of the Act. On the contrary, in construing Section 24, we have to bear in mind the fact that the Act is retrospective in operation and is intended to bring within the scope of its material provisions undertakings of which possession had already been taken.

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The third part of the section provides that the statutory declaration about the validity of the issue of the notification would be subject to this exception that the said notification should not be inconsistent with or repugnant to the provisions of the Act. In other words, the effect of this section is that if a notification had been issued properly under the provisions of the earlier Act and its validity could not have been impeached if the said provisions were themselves valid, it would be deemed to have been validity issued under the provisions of the Act, provided, of course, it is not inconsistent with the other provisions of the Act. The section is not very happily worded, but on its fair and reasonable construction, there can be no doubt its meaning or effect. It is a saving and validating provision and it clearly intends to validate actions taken under the relevant provisions of the earlier Act which was invalid from the start. The fact that Section 24 does not use the usual phraseology that the notifications issued under the earlier Act shall be deemed to have been issued under the Act, does not alter the position that the second part of the section has and is intended to

have the same effect.

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We have no doubt that Section 24 was intended to validate actions taken under the earlier Act and on its fair and reasonable construction, it must be held that the intention has been carried out by the Legislature by enacting the said section. Therefore, the argument that Section 24 even if valid, cannot effectively validate the impugned notification, cannot succeed.

25. The ratio of West Ramnad (supra) is clear. The legislature can retrospectively validate what otherwise was inoperative law or action. Unhappy wording, infelicitous expression or imperfect or inartistic drafting may not necessarily defeat, for that reason alone, the obvious object of the validating law and its retrospective content.

26. In fairness to Counsel for the appellant, we must state that the proposition in Jadao Bahuji's case (Mst. Jadao Bahuji v. Municipal Committee, Khandina, ((1962) 1 SCR 633 : AIR 1961 SC 1486) about the powers of the Legislature, including within itself the power to make retrospective laws, was not canvassed. Indeed, to urge that Indian Legislatures 'were subject to a strange and unusual prohibition against retrospective legislation' is as late as it is presumptuous. However, Jadao Bahuji (supra) itself contained some valuable observations of relevance for this case which we may here extract (p. 640) :

> Retrospective laws, it has been held, can validate an Act, which contains some defect in its enactment. Examples of Validating Acts which rendered inoperative, decrees or orders of the Court or alternatively made them valid and effective, are many. In Atiqa Begum's case (United Provinces v. Atiqa Begum, 1940 FCR 110 : AIR 1941 FC 16 : 192 IC 138), the power of validating defective laws was held to be ancillary and subsidiary to the powers conferred by the Entries and to be included in those powers.

27. We have said enough to establish that no substantial objection to the Act in question can be pressed on the strength of incompetence of inoperative retrospectivity. That is why the appellant's submission was switched largely on the gross inadequacy of the language of Section 2 of the impugned Act to confer power on the State Government to validate the Rule 20(2) or Section 10 of the Bihar Act. To be precise, the highlight of Sri Sen's arguments runs thus :

> The core of the Act on which the State Government might issue rules is Section 15 of the Central Act, 1957. Section 15 of the 1957 Act did not authorise the State Government to enact Rule 20 for modifying the existing leases as was found in the earlier case. The present Section 2 does not confer any such power nor does it enact the provisions of the Bihar Act to this effect. It only provides that the Bihar Act shall be considered to be valid as if it were passed by Parliament. Section 2 being a core of the present Act and that being invalid and being found not to amount to any incorporation of the Bihar Act, action taken under Rule 20 or Rule 20 itself passed under the old Act would still remain void and inoperative.

In this connection, considerable emphasis was placed on Jawaharmal (supra) and on Shama Rao (supra).

28. Passing reference was also made to Jagannath v. Authorized Officer, Land Reforms ((1971) 2 SCC 893).

29. The first of these decisions [Jawaharmal (supra)] seemingly supports Mr. Sen's proposition, although the others fall wide off the mark. In West Ramnad (supra), referred to by Counsel, this Court made some observations which have relevance to the topic under discussion. There a legislative validation, retrospective in operation, was challenged. The latter legislation used the expression 'hereby declared. The observations made by this Court in that connection are instructive and may be extracted :

> The second part of the section provides that the notifications covered by the first part are declared by this Act to have been validly issued; the expression 'hereby declared' clearly means 'declared by this Act' and that shows that the notifications covered by the first part would be treated as issued under the relevant provisions of the Act and would be treated as validly issued under the said provisions. The third part of the section provides that the statutory declaration about the validity of the issue of the notification would be subject to this exception that the said notification should not be inconsistent with or repugnant to the provisions of the Act. In other words, the effect of this section is that if a notifications had been issued properly under provisions of the earlier Act and its validity could not have been impeached if the said provisions were themselves valid, it would be deemed to have been validly issued under the provisions of the Act, provided, of course, it is not inconsistent with the other provisions of the Act. The section is not very happily worded, but on its fair and reasonable construction, there can be no doubt about its meaning or effect. It is saving and validating provision and it clearly intends to validate actions taken under the relevant provisions of the earlier Act which was invalid from the start. The fact that Section 24 does not use the usual phraseology that the notification issued under the earlier Act shall be deemed to have been issued under the Act, does not alter the position that the second part of the section has and is intended to have the same effect.

It follows that, variant phraseology apart, the meaning and intent must be unmistakable. In the present case we are fully satisfied that Parliament desired to validate retrospectively what the Bihar legislation had ineffectually attempted. It has used words plain enough to implement its object and therefore the Validating Act as well as the consequential levy are good.

30. Rule 20(2) of the Mineral Concession Rules, which had been validated by Section 2 of sub-section (1) and figures as Item 4 of the Schedule to the impugned enactment, stands on an assured footing. This sub-rule is made by the Bihar Government purely as a delegate of Parliament, though beyond the scope of the delegation. Therefore Parliament could validate it and has done so. The source of the authority for rule-making being of Parliament, it is indubitable that the power to give it life retroactively exists. Thus the impugned legislation, levy and other actions are good.

31. For the reasons set out above, we dismiss the writ petitions, but, in the circumstances, without costs.

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