Motor General Traders and Anothers

Vs

State of Andhra Pradesh and Others

Writ Petitions Nos. 737 of 1979, 242 of 1980 and 5316, 3974, and 7902-03 of 1983

(A. P. Sen, E. S. Venkataramiah JJ)

26.10.1983

JUDGMENT

VENKATARAMIAH, J. -

1. The constitutional validity of clause (b) of Section 32 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Act No. XV of 1960) (hereinafter referred to as 'the Act') which exempts all buildings constructed on and after August 26, 1957 from the operation of the Act is challenged in these petitions under Article 32 of the Constitution.

2. On October 1, 1953, the State of Andhra came into existence under the provisions of the Andhra State Act, 1953 comprising the area specified in Section 3 of that Act which formerly formed a part of the then State of Madras. By virtue of the provisions contained in Part IV of that Act, the Madras Buildings (Lease and Rent Control) Act, 1949 (Madras Act No. XXV of 1949) continued to be in operation in the State of Andhra. On November 1, 1956 under the States Reorganisation Act, 1956 with the merger of the area known as the Telangana area, which formerly formed a part of the erstwhile State of Hyderabad, with the territories of the State of Andhra the new State of Andhra Pradesh came into existence. By virtue of Section 119 of the State Reorganisation Act, the Hyderabad House (Rent, Eviction and Lease) Control Act, 1954 (Hyderabad Act No. XX of 1954) continued to be in force in the Telangana area even after the new State of Andhra Pradesh came into existence. In the Andhra area, the Madras Buildings (Lease and Rent Control) Act, 1949 also continued to be in force. By a notification dated May 9, 1956 issued by the Government of Andhra Pradesh under the said Madras Act, all buildings in the Andhra Area, the construction of which was completed on or after October 1, 1953 were exempted from all the provisions of that Act for a period of three years from the date of such completion. On August 26, 1857 the State Government issued another notification under the Hyderabad Act exempting buildings in the Telangana area for a period of five years from the operation of that Act. Both the said Madras Act and the Hyderabad Act were repealed and replaced by the Act which came to be passed in 1960. It appears that at the time when the Bill which later became the Act was being considered by the Joint Select Committee of the State Legislature, the Chairman of the Committee informed the Committee that the Government of India had advised that new buildings should be exempted from the Act as it would be an incentive to the house buildings activity and he also brought to its notice that the State Government had issued the above said orders exempting the new buildings from the provisions of the respective Acts for a limited period. Thereupon Joint Select Committee recommended that in order to afford an incentive to the house building activity, all buildings constructed after August 26, 1957 should be exempted from the scope of the Bill. Ultimately Section 32 of the Act was enacted as follows :

32. Act not to apply to certain buildings. - The provisions of this At shall not apply :

(a) to any building owned by the Government :

(b) to any building constructed on and after August 26, 1957.

3. We are concerned with clause (b) of Section 32 in these cases. It may be noted that the exemption granted under clause (b) is not restricted to any specific period as it was in the notification issued under the repealed Acts. Nor was it made applicable to new buildings as suggested by the Government of India by laying down a specific period during would be considered as new for purposes of exemption. The constitutionality of this provision was questioned before the High Court of Andhra Pradesh on the ground that it violated Article 14 of the Constitution in Chintapalli Achaiah v. P. Gopalakrishna Reddy (AIR 1966 AP 51, 56 : (1965) 2 Andh LT 408) in a petition filed in 1964. that petition was dismissed by the High Court on January 5, 1965 upholding the validity of Section 32(b) of the Act. In the course of its judgment the High Court observed thus :

> The policy of the Act can be found out, as discussed above, from all permissible intrinsic and extrinsic sources. Thus examined, the policy underlying Section 32 is to provide an incentive to private efforts to construct new buildings. The Act read as a whole therefore balances the policy underlying the main Act and the policy underlying Section 32. This purpose cannot be said to be in any manner derogatory to the main purpose of the Act; in fact it supplements it. It is true that the tenants of the new buildings would suffer from the same hardship in order to redress which the measure was enacted. The Legislature in its wisdom and perhaps with justification thought that this hardship to the tenant will be short-lived and compared to the necessity of bringing into existence more and more new houses, for which purpose the concession is shown has necessarily to be tolerated for a short while in the interests of the entire body of tenants as the new buildings are bound to bring down not only the hardships from which the new tenants would thus suffer but solve the larger problem of residential accommodation thus giving relief in all respects to the entire body of the tenants. It is for this purpose that it is now well-settled that the Legislature can recognise degrees of evil without being arbitrary, unreasonable or in conflict with Article 14 of the Constitution ....

4. It may be noticed that the High Court felt that the hardship caused to the tenants by the exemption given in the case of buildings constructed after August 26, 1957 under Section 32(b) of the Act was 'short lived' and the concession should be tolerated for a short while. But that was not to be so. The exemption has continued to remain in force till now i.e. for more than a quarter of century. The problem of shortage of housing accommodation in urban areas is becoming more and more acute. The landlords who earned their exemption under Section 32(b) of the Act have continued to enjoy for a long number of years the freedom to indulge in malpractices which the Act was intended to check while others are governed by the Act. The petitioners have now questioned the validity of the said provision before this Court.

5. The Act except sub-section (2) of Section 3 thereof applies to the cities of Hyderabad and Secunderabad and to all municipalities in the State of Andhra Pradesh. Sub-section (2) of Section 3 of the Act applies to the cities of Hyderabad and Secunderabad and to any municipality in the State of Andhra Pradesh if the State Government issues a notification to that effect. The State Government is authorised to apply all or any of the provisions of the Act except Section 3(2) to any

other area in the State of Andhra Pradesh. The Act was passed with a view to consolidating and amending the law relating to the regulation of leasing of buildings, the control of rents thereof and the prevention of unreasonable eviction of tenants therefrom in the State of Andhra Pradesh.

6. In view of Section 32(b) of the Act there are two sets of buildings in every area in which the Act is applicable - those to which the Act is applicable and those which are exempted under Section 32(b), leaving aside buildings owned by the Government and those exempted by any notification issued under Section 26 of the Act. The buildings to which the Act is applicable are aged more than 26 years and those to which the Act is not applicable are aged about 26 years or less. During these 26 years from August 26, 1957 thousands of buildings may have been constructed and all of them are continuing to enjoy the immunity from the provisions of the Act. The petitioners contend that on account of this exemption there have also come into existence two classes of landlords - one class governed by the Act and the other not governed by the Act and two classes of tenants - one class having the protection of the remedial provisions of the Act and another class who do not have such protection. It is argued by the petitioners that whatever may have been the position in the first few years after the Act was passed, there is no justification for continuing this exemption for all time to come.

7. The State Government has stated that the object of granting the exemption was only provide an incentive to the building activity. It is further pleaded in paragraph 6 of the counter-affidavit filed on behalf of the State Government thus;

> 6. It was under active consideration of the Government subsequently regarding amending Section 32(b) of the Act so as to include later constructions. Twice bills were introduced in the Legislature of the State but, however, they could not be passed. The matter is again under active consideration of the Government. The proposal now under consideration by the Government is to extend the Act to all buildings after the completion of 10 years of their construction. Similar provisions are to be found in the relevant Acts of the Acts of the States of Tamil Nadu and Karnataka. However, in the States of Tamil Nadu and Karnataka, the Act applies to buildings five years after construction.

8. Two attempts were made to get the Act amended but they failed. In Bills No. 33 of 1977 introduced in the Andhra Pradesh Legislative Assembly on July 27, 1977, it was proposed to substitute the date 'the 26th August 1957' in Section 32(b) of the Act by the date the 1st January, 1968'. The said Bill lapsed on the Legislative Assembly being prorogued on September 2, 1977. In the Bill (L.A. Bill. No. 12 of 1982) which was introduced on July 26, 1982 but which was not passed owing to the dissolution of the Legislative each Assembly it was proposed to confine the exemption in respect of each building to a period of ten years after its construction. The Statement of Objects and Reasons attached to that Bill is instructive. The relevant part of it reads thus :

> Statement of Objected and Reasons
>
> The Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 came into force on April 21, 1960 and applies to buildings constructed prior to August 26, 1957 in the twin cities of Hyderabad and Secunderabad and other municipalities in the State. The number of buildings that existed as on that date was adequate enough to serve the needs of the population at that time. Such of the buildings as were in good condition have already been requisitioned and have been under the control of

> the government. The rest of the buildings are now either in a dilapidated condition or under the occupation of the landlords. Consequently, the Government are facing acute shortage of accommodation and it has become almost impossible to requisition any old building constructed prior to August 26, 1957 to met the growing needs of the Government. It is, therefore, proposed to extend the scope of the Act to all buildings after the expiration of ten years from the completion of their construction.
>
> # * * * B. Venkatram, Chief Minister##

9. Although the reason given for the amendment in the Statement of Objects and Reasons approaches the problem from the point of view of the Government, it is clear that even the State Government is not quite satisfied with the existing law.

10. The petitioners principally rely upon Article 14 of the Constitution in support of their case. The equality clause contained in that Article requires that all persons subjected to any legislation should be treated alike under like circumstances and conditions. Equals have to be treated equally and unequals ought not to be treated equally. While that Article forbids class legislation, it does not forbid classification for purposes of implementing the right of equality guaranteed by it. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. While the classification maybe founded on different bases what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The principles governing a valid classification have been laid down by this Court in ram Krishna Dalmia v. Justice S. R. Tendolkar (1959 SCR 279, 297 : AIR 1958 SC 538) thus :

> (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
>
> (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
>
> (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
>
> (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
>
> (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
>
> (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the

> classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

11. The burden of proof regarding the question that a piece of legislation is violative of Article 14 of the constitution is, no doubt, on the petitioners. That burden stands discharged by them in these cases. It is seen that the impugned provision has at any rate become per se discriminatory because it is not possible to support the exemption given to buildings which have also now become old as many of them are now more than ten years old. The State Government itself has already made two abortive attempts to get the section amended.

12. The Law Commission of Andhra Pradesh in its Twenty fourth Report on the revision of the Act submitted in December 1977 while expressing its opinion on the clause relating to the amendment of Section 32(b) of the Act observed thus;

Sub-clause (v) is intended to exclude buildings, for a period of 10 years from the date on which their construction is completed, from the date on which their construction is completed, from the purview of the Act to ensure that the incentive to embark upon construction of new houses, which is so necessary at present, is not scuttled but encouraged. Exclusion of buildings for a particular period, reckoned from the date of completion of their construction is, in our opinion, a better course than providing that the proposed Act shall not apply to buildings constructed on or after a particular date, as the former would obviate the need for periodical amendment of the provision if the Act should continue to remain on the Statute Book for a considerable length of time.

13. In the circumstances, it is not possible to say that the petitioners have not placed any material in support of their case. On the other hand the contesting respondents have not placed any material in support of their case that the impugned provision in its present form does not violate Article 14 of the Constitution.

14. Judged from the standards laid down in the case of Ram Krishna Dalmia (1959 SCR 279, 297 : AIR 1958 SC 538) we are of the view that the classification of buildings for purposes of Section 32(b) of the Act does not satisfy the true tests of a valid classification. We are confronted in these cases with the position, say, in Hyderabad, city, that there are a large number of buildings which are more than 26 years old which are governed by the Act and quit a large number of buildings which are constructed subsequent to august 26, 1957 which are exempted from it. Many of the exempted buildings are more than 10 years old. While it may be that there is some justification for exempting new buildings say which are five, seven or ten years old from the Act, in order to provide an incentive to builders of new buildings, there is hardly any justification to allow buildings which were constructed more than ten years ago to remain outside the scope of the Act. The landlords of such buildings must have realised a large part of investment made on such buildings by way of rents during all these years. The Court cannot fail to take into account that owing to continuous influx of population into urban areas in recent years the rates of rents have gone up everywhere and that the landlords of such buildings have been able to take advantage of the situation created by the shortage of urban housing accommodation which is now a universal phenomenon. In the case of these buildings there is no longer any need to continue the exemption. There cannot be any valid justification to apply the Act to a building which is 27 years old and not to apply it in the case of a building which is 26 years old. The anomaly that is brought about by Section 32(b) of the Act would be more pronounced when the State Government by a notification brings the Act into force

now in any part of the State for the first time. On such extension of the Act, only buildings constructed prior to August 26, 1957 in that part of the State would become subject to the Act and later buildings would still be exempt from its operation. This is a wholly insupportable classification. The classification of buildings into two classes for purposes of Section 32(b) of the Act, therefore, does not any longer bear any relationship to the object, since the buildings which are exempted have already come into existence and their owners have realised a major part of their investment.

15. But it was argued that since Section 32(b) of the Act was valid at the commencement of the Act as held by the High Court in the year 1965, it cannot be struck down at any time after it has come into force.

16. What may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of Article 14 of the Constitution if it is persisted in over a long period without any justification. The trend of decisions of this Court on the above question may be traced thus : In Bhaiyalal Shukla v. State of M.P. (1962 Supp 2 SCR 257, 274-275 : AIR 1962 SC 981 : (1962) 13 STC 236) one of the contentions urged was that the levy of sales tax in the area which was formerly known as Vindhya Pradesh (a Part 'C' State) on building materials used in a works contract was discriminatory after the merger of that area in the new State of Madhya Pradesh which was formed on November 1, 1956 under the States Reorganisation Act, 1956 as the sale of building materials in a works contract was not subject to any levy of sales tax in another part of the same new State namely the area which was formerly part of the area known as State of Madhya Pradesh (the Central Provinces and Berar area). That contention was rejected by this Court with the following observations at pages 274-275 :

> The laws in different portions of the new State of Madhya Pradesh were enacted by different Legislatures, and under Section 119 of the States Reorganisation Act, all laws in force are to continue until repealed or altered by the appropriate Legislature. We have already held that the sales tax law in Vindhya Pradesh was validly enacted, and it brought its validity with it under Section 119 of the States Reorganisation Act, when it became a part of the State of Madhya Pradesh. Thereafter, the different laws in different parts of Madhya Pradesh can be sustained on the ground that the differentiation arises from historical reasons, and a geographical classification based on historical reasons has been upheld by this Court in M. K. Prithi Rajji v. State of Rajasthan (Civil Appeal No. 327 of 1956, decided on November 2, 1960) and again in State of M.P. v. Gwalior Sugar Co. Ltd. (Civil Appeals Nos. 98 and 99 of 1957, decided on November 30, 1960) The latter case is important, because the sugarcane cess levied in the former Gwalior State but not in the rest of Madhya Bharat of which it formed a part, was challenge on the same ground as there, but was uphold as not affected by Article 14, We, therefore, reject this argument.

17. Then followed the decision of this Court in State of M. P. v. Bhopal Sugar Industries Ltd. ((1964) 6 SCR 846, 852-854 : AIR 1964 SC 1179 : (1964) 52 ITR 443) In this case the continuance of the levy of agricultural income-tax in the are comprised in the former State of Bhopal (a Part 'C' State) under the Bhopal State Agricultural Income Tax Act, 1953 (Act. No. IX of 1953) even after its merger in the new State of Madhya Pradesh formed on November 1, 1956 under the States Reorganisation Act, 1956 when there was no such levy on agricultural income in some other parts of the new State of Madhya Pradesh was question on the ground that Article 14 of the Constitution had thereby been contravened. The High Court of Madhya Pradesh upheld the plea of the petitioner.

On appeal this Court observed in the above case at pages 852-854 thus :

> Continuance of the laws of the old region after the reorganisation by Section 119 of the States Reorganisation Act was by itself not discriminatory even though it resulted in differential treatment of persons, objects and transactions in the new State, because it was intended to serve a dual purpose - facilitating the early formation of homogeneous units in the larger interest of the Union, and maintaining even while merging its political identity in the new unit, the distinctive character of each region, till uniformity of laws was secured in those branches in which it was expedient after full enquiry to do so. The laws of the regions merged in the new units had therefore to be continued on grounds of necessity and expediency. Section 119 of the States Reorganisation Act was intended to serve this temporary purpose, viz., to enable the new units to consider the special circumstances of the diverse units, before launching upon a process of adaptation of laws so as to make them reasonably uniform, keeping in view the special needs of the component regions and administrative efficiency. Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared .... It would be impossible to lay down any definite time-limit within which the state had to make necessary adjustments so as to effectuate the equality clause of the Constitution. That initially there was a valid geographical classification of regions in the same State justifying unequal laws when the State was formed must be accepted. But whether the continuance of unequal laws by itself sustained the plea of unlawful discrimination in view of changed circumstances could only be ascertained after a full and thorough enquiry into the continuance of the grounds on which the inequality could rationally be founded, and the change of circumstances, if any, which obliterate the compulsion of expediency and necessity existing at the time when the Reorganisation Act was Act was enacted.

18. The court, however, found that the pleadings in the case were inadequate to decide whether Article 14 of the constitution had been actually violated or not. It, therefore, set aside the judgment of the High Court and remanded the case to the High Court to decide the question afresh after giving the parties the opportunity to amend their pleadings. This view was followed in Vishwesha Thirtha Swamiar v. State of Mysore ((1972) 1 SCR 137 : (1972) 3 SCC 246, 251 : AIR 1971 SC 2377) where this Court observed at page 144 : (SCC p. 251, para 21)

> ... In view of the facts of this case, the temporary nature of the Acts, and the pendency of the resettlement and survey proceeding we cannot say that the Legislature has acted contrary to the provisions of Article 14.

19. Then came the decision of this Court in H. H. Shri Swamiji of Shri Admar Mutt v. Commissioner, Hindu Religious & Charitable Endowments Department ((1980) 1 SCR 368, 387-388 : (1979) 4 SCC 642, 658, 659 : 1980 SCC (Tax) 16 : AIR 1980 SC 1). In this case the continued

application of the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Act No. 19 of 1951) in the area which formerly formed a part of the State of Madras prior to the States Reorganisation Act, 1956 and which later on became part of the new State of Mysore (now Karnataka) when a similar law was not in force in the other parts of the new State was challenged. Here again the material placed before the Court was not sufficient to decide the question. The Court, therefore, dismissed the appeal. But Chandrachud, C.J. speaking for the majority, however, observer at pages 387-388 thus : (SCC pp. 658, 659, paras 29, 30, 31)

... An indefinite extension and application of unequal laws for all time to come militate against their true character as temporary measures taken in order to serve a temporary purpose. Thereby, the very foundation of their constitutionality shall have been destroyed, the foundation being that section 119 of the States Reorganisation Act serves the significant purpose of giving reasonable time to the new units to consider the special circumstances obtaining in respect of diverse units. The decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because the relevance of historical reasons which justify the application of unequal laws is bound to wear out with the passage of time. In Broom's Legal Maxims (1939 Edition, Page 97) can be found a useful principle, Cessante Ratione Legis Cessat Ipsa Lex, that is to say, "Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself."

We do not however see any justification for holding that the continued application of the Madras Act of 1951 to South Kanara District became violative of Article 14 as immediately as during the period under consideration, which was just five or six years after the passing of the States Reorganisation Act. Nor indeed are we disposed to hold that the continued application of that Act until now is shown by adequate data to be violative of Article 14.

But that is how the matter stands today. Twenty three years have gone by since the States Reorganisation Act was passed but unhappily, no serious effort has been made by the State Legislature to introduce any legislation - apart from two abortive attempts in 1963 and 1977 - to remove the inequality between the temples and Mutts situated in the South Kanara District and those situated in other areas of Karnataka. In-equality is so clearly writ large on the case of the impugned statute in its application to the District of South Kanara only, that it is perilously near the periphery of unconstitutionality. We have restrained ourselves from declaring the law as inapplicable to the District of South Kanara from today but we would like to make it clear that if the Karnataka Legislature does not act promptly and remove the inequality arising out of the application of the Madras Act of 1951 to the District of south Kanara only, the Act will have to suffer a serious and successful challenge in the not distant future. We do hope that the Government of Karnataka will act promptly and move an appropriate legislation, say, within a year or so. A comprehensive legislation which will apply to all temples and Mutts in Karnataka, which are equally situated in the context of the levy of fee, may perhaps afford a satisfactory solution to the problem. This, however, is a tentative view-point because we have not investigated whether the Madras Act of 1951, particularly Section 76(1) thereof, is a piece of hostile legislation of the kind that would involve the violation of Article 14. Facts in regard thereto may have to be explored, if and when occasion arises.

20. The two grounds which persuaded this Court not to strike down the impugned legislation in the above case as can be gathered from the above passage were (1) that the period under consideration was just five or six years after the passing of the States Reorganisation Act 1956 and (2) that there was no adequate data to decide the question whether the impugned legislation did in fact make any hostile discrimination. Otherwise the Court would have in all probability struck down the impugned provision of law even though it had been continued by virtue of Section 119 of the States

Reorganisation Act 1956.

21. The above three cases arose under the States Reorganisation Act. In Narottam Kishore Dev Varma v. Union of India ((1964) 7 SCR 55, 60 : AIR 1964 SC 1590) the petitioners who wished to sue the Maharaja of Tripura, the former rule of the Princely State of Tripura contended that Section 87-B of the Code of Civil Procedure which applied the provisions of Section 85 and of sub-sections (1) and (3) of section 86 of the Code of Civil Procedure to a ruler of any former Indian State thereby making the consent of the Central Government a prerequisite for the trial of a suit against such a ruler, giving; certain immunity to him as provided in sub-section (3) of Section 86 and extending the provisions of Section 85 to the case of such a ruler was violative of Article 14 and Article 19(1)(f) of the Constitution. After upholding the provisions on the ground that they were necessitated by historical reasons, Gajendragadkar, C.J. observed at page 60 thus :

Before we part with this matter, however, we would like to invite the Central Government to consider seriously whether it is necessary to allow Section 87-B to operate perceptively for all time. the agreements made with the Rulers of Indian States may, no doubt, have to be accepted and the assurances given to them may have to be observed. But considered broadly in the light of the basic principle of the equality before law, it seems somewhat odd that section 87-B should continue to operate for all time. For past dealings and transactions, protection may justifiably be given to Rulers of former Indian States; but the Central Government may examine the question as to whether for transactions subsequent to January 26, 1950, this protection need or should be continued. If under the Constitution all citizens are equal, it may be desirable to confine the operation of Section 87-B to past transactions and not to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which Section 87-B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge.

22. In all these cases while it; is true that no provision was actually struck down, there is a firm foundation laid in support of the proposition that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution. This is a sufficient answer to the contention that if at the time when the Act was enacted Section 32(b) of the Act was no; unconstitutional, it cannot at any time thereafter be challenged on the ground of unconstitutionality.

23. At this stage we shall deal with a very persuasive argument addressed by learned counsel for some of the respondents. Drawing support from the observation in Bhopal Sugar Industries Ltd. case ((1964) 6 SCR 846, 852-854 : AIR 1964 SC 1179 : (1964) 52 ITR 443) and in H. H. Shri Swamiji of Shri Admar Mutt case ((1980) 1 SCR 368, 387-388 : (1979) 4 SCC 642, 658, 659 : 1980 SCC (Tax) 16 : AIR 1980 SC 1) they contended thus. As in the above two decisions this Court had declined to strike down the impugned legislation as it found that there no adequate material to do so, in the cases before us also we should follow the same course of action. The learned counsel argued that the State Legislature had deliberately granted the exemption in order to encourage construct on of new houses in view of the acute shortage of housing accommodation and since the shortage has become more and more acute, the Court should not interfere with the legislative judgment and allow the owners of buildings covered by Section 32(b) of the Act to continue to enjoy the exemption until there is evidence to show that there is no longer any such shortage. We find it difficult to accept this argument because it overlooks one essential distinction between the facts of those two cases and the facts of the present cases. The two decisions referred to above arose in the context of Reorganisation of States. The State of Madhya Pradesh was formed by integrating areas which

formed parts of the British India and a number of Indian States. Similarly the State of Karnataka was formed by merging five integrating units which again formerly formed parts of the British India and Indian States. There were on the same subject laws of different patterns in force in the several integrating units on the eve of reorganisation. Those laws were allowed to continue in force as a matter of necessity in the different local areas until the State Legislature concerned passed a common legislation on each subject for the whole State. The Legislature had to consider which of the different laws should be selected for enforcement in the entire State either with or without modification. This certainly needed enquiry and investigation because of the diversities prevailing in each reorganised State. On enquiry probably the Legislature might have preferred to apply the very legislation impugned before the Court for the entire State. In these circumstances, this Court felt that it was not possible to decide whether a particular law which was challenged before them was discriminatory or not in the absence of necessary pleadings and relevant material. In the instant cases, the question is not one of selecting any particular local law for extension to the other parts of a State. This is a case where the Legislature while passing the law has given the exemption apparently as an incentive to encourage building activity. The learned counsel were not able to show how the continuance of the exemption in the case of persons who have built houses more than two decades ago will act as an incentive to builders of new houses now. If that is really so, then there is no justification to continue to have the restrictions imposed by the Act on buildings built prior to August 26, 1957 also and the whole Act should have to be repealed for if the impugned exemption can act as an incentive the repeal of the Act should also act as an incentive. We are of the view that in the instant case no investigation as contemplated in the above two decisions of this Court is necessary. The long period that has elapsed after the passing of the Act itself serves as a crucial factor in deciding the question whether the impugned law has become discriminatory or not because the ground on which the classification of buildings into two categories is made is not a historical or geographical one but is an economic one. Exemption was granted by way of an incentive to encourage building activity and in the circumstances such exemption cannot be allowed to last for ever.

24. It is argued that since the impugned provision has been in existence for over twenty three years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. There are two answer to this proposition. First, the very fact that nearly twenty three years are over from the date of the enactment of the impugned provision and the discrimination is allowed to be continued unjustifiably for such a long time is a ground of attack in these cases. As already observed, the landlords of the buildings constructed subsequent to August 26, 1957 are given undue preference over the landlords of buildings constructed prior to that date in that the former are free from the shackles of the Act while the latter are subjected to the restrictions imposed by it. What should have been just an incentive has become a permanent bonanza in favour of those who constructed buildings subsequent to August 26, 1957. There being no justification for the continuance of the benefit to a class of persons without any rational basis whatsoever the evil effect flowing from the impugned exemption have caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be case of hostile discrimination by lapse of nearly a quarter of century. The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statue is but a reason for exercising special caution in examining the arguments by which the attack is supported." (See W.A. Wynes : Legislative, Executive and Judicial Powers in Australia, Fifth Edition, p. 33) We are constrained to pronounce upon the validity of the

impugned provision at this late stage because the garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge.

25. It was, however, contended on behalf of some of the respondents (landlords) that if clause (b) of Section 32 of the Act was void then the entire Act may be struck down so that all the tenancies may be regulated by contracts entered into by the parties in accordance with their free will. In other words it was submitted that even the limited operation of the rent control legislation in Andhra Pradesh on buildings constructed prior to August 26, 1957 may be lifted by declaring the whole Act as invalid on the ground that the Legislature would not have passed the Act if it had known that exemption could not be given for ever to buildings constructed on and after august 26, 1957. On behalf of the petitioners it was urged that the primary object of the Legislature was to continue to give protection to the tenants against their unreasonable evictions from and recovery of unconscionable rents from them for the buildings more or less on the same lines as it was under the Madras Buildings (Lease and Rent Control) Act, 1949 and the Hyderabad House (Rent Eviction and Lease) Control Act, 1954 which were in force in the two areas of the State which were merged into one State on November 1, 1956 and that in any event clause (b) of Section 32 i.e. the offending provision alone can be struck down without doing any violence to the rest of the statute. It was argued that the operation of the Act would in any way not be affected thereby and the only result of striking down clause (b) of Section 32 would be that the rest of the Act would become applicable to all buildings which are now exempted by clause (b) of Section 32.

26. A statue bad in part is not necessarily void in its entirety. Provisions which are within legislative power and which are otherwise in conformity with the Constitution may survive if they are capable of being separated from the bad. But a provision inherently that, standing alone, legal effect can be given to it and that the Legislature intended the provision to stand, in case others included in the statute and held bad should fall. (See Dorchy v. Kansas, 264 US 286) The general rule is that when a provision which is in the nature of an exception to a general statute is invalid, the general provisions of the statute are not invalidated thereby, unless it clearly appears that the exception is so intimately and inherently related to and connected with the general provisions to which it relates that the Legislature would not have enacted the latter without the former. The principles underlying the doctrine of severability are explained in Cooley's Constitutional Limitations (Eight Edition), Vol. 1, at pages 360-362 thus :

> Where, therefore, a part of a statute is unconstitutional, that fact does not authorise the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the Legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section; for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is striken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent wholly independent of that which was rejected, it musts be sustained.

27. After a review of the law on the doctrine of severability, Venkatarama Ayyar, J. summarised the

principles governing the said doctrine in R. M. D. Chamarbaugwalla v. Union of India (1957 SCR 930, 950-952 : AIR 1957 SC 628) at pages 950-952 thus :

> (1) In determining whether the valid parts of a stature are separable from the invalid parts thereof, it is the intention of the Legislature that is the determining factor. The test to be applied is whether the Legislature would have enacted the valid part if it had known that the rest of the stature was invalid. Vide Corpus Juris Secundum, Vol. 82, p. 156; Sutherland on Statutory Construction, Vol. 2, pp 176-177.
>
> (2) If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from the one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide Cooley's Constitutional Limitations, Vol. 1 at pp. 360-361 Crawford on Statutory Construction, pp. 217-218.
>
> (3) Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide Crawford on Statutory Construction, pp. 218-219.
>
> (4) Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.
>
> (5) The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (Vide Cooley's Constitutional Limitations, Vol. I. pp 361-362) : it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.
>
> (6) If after the invalid portion is expunged from the statue what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. Vide Sutherland on Statutory Construction, Vol. 2 p. 194
>
> (7) In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the preamble to it. Vide Sutherland on Statutory Construction, Vol. 2, pp. 177-178.

28. Rejecting the contention that if by striking down a provision the class which is going to be affected is enlarged, the Court cannot strike down the impugned provision alone, Desai, J. speaking on behalf of the Constitution Bench of this Court in D. S. Nakara v. Union of India ((1983) 1 SCC 305, 340 : 1983 SCC (L&S) 145) at page 340 has observed thus : (SCC para 60)

> ... Said the learned Attorney-General that principle of severability cannot be applied to augment the class and to adopt his words 'severance always cuts down the scope, never enlarges it'. We are not

sure whether there is any principle which inhibits the court from striking down an unconstitutional part of a legislative action which may have the tendency to enlarge the width and coverage of the measure. Whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification, by striking down words of limitation, the resultant effect may be of enlarging the class. In such a situation the court can strike down the words of limitation in an enactment ....

29. On a careful consideration of the above question in the light of the above principles we are of the view that the striking down of clause (b) of Section 32 of the Act does not in any way affect the rest of the provisions of the Act. The said clause is not so inextricably bound up with the rest of the act as to make the rest of the act unworkable after the said clause is struck down. We are also of the view that the Legislature would have still enacted the Act is the place of the Madras Buildings (Lease and Rent Control) Act, 1949 and the Hyderabad House (Rent, Eviction and Lease) Act, 1954 which were in force in the two areas comprised in the State of Andhra Pradesh and it could not have been its intention to deny the beneficial effect of those laws to the people residing in Andhra Pradesh and it could not have been its intention to deny the beneficial effect of those laws to the people residing in Andhra Pradesh on its formation. After the Second World War owing to acute shortage of urban housing accommodation, rent control laws which were brought into force in different parts of India as pieces of temporary legislation gradually became almost permanent statues. Having regard to the history of the legislation under review, we are of the view that the Act has to be sustained even after striking down clause (b) of Section 32 of the Act. The effect of striking down the impugned provision would be that all buildings except those falling under clause (a) of Section 32 or exempted under Section 26 of the Act in the areas where the Act is in force will be governed by the act irrespective of the date of their construction.

30. After giving our anxious consideration to the learned arguments addressed before us, we are of the view that clause (b) of Section 32 of the act should be declared as violative of Article 14 of the Construction because the continuance of that provision on the statute book will imply the creation of a privileged class of landlords without any rational basis as the incentive to build which provided a nexus for a reasonable classification of such class of landlords no longer exists by lapse of time in the case of the majority of such landlords. There is no reason why after all these year they should not be brought at par with other landlords who are subject to the restrictions imposed by the Act in the matter of eviction of tenants and control of rents.

31. We do realize the adverse effect of this decision on many who may have recently built houses by spending their life savings or by borrowing large funds during these inflationary days at high rates of interest, on the expectation and belief that they would not be subjected to the restrictions imposed by the Act. The incentive to build provides a rational basis for classification and it is necessary, in the national interest, that there should be freedom from restrictions for a limited period of time. It is always open to the State Legislature or the State Government to take action by amending the Act itself or under Section 26 of the Act, as the case may be, not only to provide incentive to person who are desirous of building new houses, as it serves a definite social purpose but also to mitigate the rigour to such class of landlords who may have recently built their houses for a limited period as it has been done in the Union Territory of Chandigarh as brought out in our recent judgment in Punjab Tin Supply Co., Chandigarh v. Central Government ((1984) 1 SCC 206). The question whether new legislation should be initiated to exempt newly constructed buildings for a limited period of time on the pattern of similar legislation undertaken by different State or to exempt such class of buildings for a given number of years from the provisions of the Act by the issue of a notification under Section 26 of the Act is one for the State Government to decide.

32. In the result these petitions succeed. Clause (b) of Section 32 of the Act is hereby declared as unconstitutional and it is quashed. We, however, make it clear that this declaration would not affect the validity of any proceedings in which the decree for eviction passed by as civil court has become final and the landlord has already taken possession of the building in question pursuant thereto.

33. The petition are accordingly allowed. No costs.

</html