Supreme Court of India
Sri Ranga Match Industries vs Union Of India on 25 January, 1994
Equivalent citations: 1994 SCC, Supl. (2) 726 JT 1994 (1) 621
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
SRI RANGA MATCH INDUSTRIES

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT25/01/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
HANSARIA B.L. (J)

CITATION:
1994 SCC Supl. (2) 726 JT 1994 (1) 621
1994 SCALE (1)427

ACT:

HEADNOTE:

JUDGMENT:
The Judgments of the Court were delivered by B.P. JEEVAN REDDY, J.-Tariff Item 38 of the First Schedule to the Central Excises and Salt Act, 1944 levied duty upon matches. With a view to encourage the production of matches in the non-mechanised sector, the Government of India have been issuing exemption notifications from time to time. Under Notification No. 162 of 1967 dated 27-7-1967, a distinction was made even among the non-mechanised units, with reference to their output. Smaller units were given a more beneficial rate of duty. In 1975 another notification (No. 154 of 1975) was issued broadly reiterating the aforesaid scheme and providing some additional concession to smaller units.

2. On 19-6-1980, two notifications were issued being Notification No. 98 of 1980 and Notification No. 99 of 1980. Notification No. 98 of 1980 levied duty on matches produced in the mechanised sector at Rs 7.20p while in the case of matches produced in non-mechanised sector the duty was Rs 4.50p. By Notification No. 99 of 1980, a further distinction was made among the units in non-mechanised sector. Factories "recommended by the Khadi and Village Industries Commission for exemption under this notification as a bona fide cottage unit" or which was a member of a cooperative society was held entitled to pay duty at the rate of Rs 1.60p per gross. There were,

however, two other conditions which these factories had to satisfy, viz., (i) their matches are sold through KVIC or a cooperative society and

(ii) their matches are cleared under the labels prescribed by the KVIC and approved by the appropriate officer of the Excise Department. (Vide Provisos 1 to 3 appended to the said Notification No. 99 of 1980). It would be appropriate to read the notification, insofar as it is relevant:

"In exercise of the powers conferred by sub- rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts matches, in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power, falling under Item No. 38 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise leviable thereon as is in excess of Rs 1.60 per gross boxes of 50 matches each: Provided that the matches are cleared for home consumption by a manufacturer from a factory which is recommended by the Khadi and Village Industries Commission for exemption under this notification as a bona fide Cottage Unit, or which is a member of a cooperative society (including a marketing or service industrial cooperative society but excluding a cooperative bank) registered under any law relating to cooperative societies for the time being in force and assisting exclusively manufacturers of such matches:
Provided further that the matches are sold or marketed through the Khadi and Village Industries Commission or a cooperative society (including a marketing or service industrial cooperative society but excluding a cooperative bank) aforesaid or an agency established by a State Government: Provided also that where the matches are produced by a factory recommended by the Khadi and Village Industries Commission as bona fide Cottage Unit aforesaid, the matches shall be cleared only under the labels prescribed by the said Commission and approved by an officer not below the rank of an Assistant Collector of Central Excise."
3. Certain manufacturers in non-mechanised sector challenged the validity of the first and the second provisos by way of writ petitions in the Madras High Court. Their grievance was that even though they applied for issuance of a certificate to the KVIC as a bona fide cottage unit, expressing their willingness to abide by the conditions prescribed by the Commission, it declined to register them on grounds not relevant in law. They also complained of discrimination as between themselves and cottage units/members of a, cooperative society. The writ petitions were allowed by a Bench of Madras High Court in Devi Match Factory v. Superintendent of Central Excise, Sattur1 on 9-12-1981. The High Court held that (1) the ground on which the Commission declined to issue 'bona fide Cottage Unit' certificates to the writ petitioners was irrelevant. The writ petitioners were unable to obtain the certificates and the benefit of Notification No. 99 of 1980 for no fault of theirs. The inability of the Commission to market the produce of the certified units is no ground for refusing the certificate to eligible units; (2) that KVIC had no authority in law to impose conditions which were not provided by the notifications issued by the Central Government under Rule 8 of the Central Excise Rules; (3) that while the KVIC was insisting upon a ceiling on the production of matches for new applicants, it was not observing the said condition in the case of those units who had already obtained certificates from it. This brought about a discrimination between similarly placed units.

4. The mandamus issued by the High Court is in the following terms:

"There will be a writ of mandamus directing the respondents to give the benefit of Notification No. 99 of 1980 without reference to the first and the second provisos to the notification. However, it is made clear that this order will be applicable only to those petitioners who have filed the writ petitions. This order also is subject to the further conditions that the Government is at liberty to reject the concession in cases where the respondents to these writ petitions come to the conclusion on materials that such and such a petitioner is not a bona fide unit, in the sense, that it was either non-existent or fictitious unit, or that it is a subsidiary of the mechanised sector unit. There will be

an order accordingly in these writ petitions. In form the writ appeals are also allowed. There will be no order as to costs."

5. The result of this judgment was that the distinction made between cottage units and other non-mechanised units disappeared and all the non-mechanised 1 (1983) 12 ELT 99 (mad) units became entitled to the much lower rate of duty, viz., Rupees 1.60p per gross. This situation was obviously one which the Government had not reckoned with, nor intended. More important, it became liable to refund duty to the writ petitioners huge amounts running into several crores of rupees. Accordingly it stepped in soon after the said judgment and by a Notification (No. 2 of 1982), dated 1-1- 1982 superseded Notification No. 99 of 1980. In the place of the criteria in Notification No. 99 of 1980, Notification No. 2 of 1982 evolved a new criteria for becoming eligible for the lesser rate of duty of Rs 1.60p. The new criteria was with reference to the quantum of clearances. It is not necessary to set them out here.

6. On 24-2-1982 the Government issued yet another notification (being No. 22 of 1982) in supersession of Notification No. 2 of 1982, dated 1-1-1982. According to this notification, the conditions for availing the lesser duty of Rs 1.60p are: (i) the factory should not produce more than 150 million matches in a financial year, (ii) in a factory satisfying the above condition, clearances not exceeding 120 million would be entitled to pay the said lesser duty, (iii) the monthly production of such factory does not exceed 150 million matches and (iv) the clearances from the factory during the previous financial year did not exceed 150 million matches. This notification was prospective in operation. However, by Section 52 of the Finance Act, 1982, the said notification was given retrospective effect on and from 19-6-1980 the date on which Notification No. 99 of 1980 had been issued. It is evident that this retrospective operation was given with a view to enable the State to retain the duty collected by it from the non-certified units (writ petitioners in the batch of writ petitions disposed of on 9-12-1981) and to frustrate claims of refund from them. Since the constitutional validity of Section 52, insofar as it gave retrospective effect to Notification No. 22 of 1982 is questioned in these appeals, it would be appropriate if we read Notification No. 22 of 1982 as well as Section 52 here:

"NOTIFICATION 22/1982 GOVERNMENT OF INDIA (MINISTRY OF FINANCE - DEPARTMENT OF REVENUE) Notification No. 22 of 1982 Central Excise Dr. 23-2-1982 G.S.R. 77(E) In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 2 of 1982-Central Excise and 3/82-Central Excise, dated the 1st January, 1982, the Central Government hereby exempts matches falling under Item No. 38 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power, in respect of the first clearances for home consumption from a factory not exceeding 120 million matches cleared during a financial year, from so much of the duty of excise leviable thereon as is in excess of Rs 1.60 per gross boxes of 50 matches, subject to the condition that clearances from the said factory during such financial year does not exceed 150 million matches and also subject to the following other conditions namely-

(i) the total production of matches in a calendar month during the aforesaid period by the said factory does not exceed 15 million matches.

(ii) the total clearances, if any, of matches for home consumption from the said factory during the preceding financial year, did not exceed 150 million matches."

(Provisos and explanation omitted as unnecessary.) "Section 52 of the Finance Act, 1982

52. Provisions as to duties of excise on matches in relation to a certain period and validation.- (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 77(E) dated the 23rd day of February, 1982, which was issued in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 to provide for certain

exemptions from duty in relation to matches shall, subject to the modifications specified in the Fourth Schedule-
(a) be deemed to have, and to have always had, effect on and from the 19th day of June, 1980; and
(b) be deemed to prevail, and to have always prevailed, over all notifications issued on or after the 19th day of June, 1980 but before the 23rd day of February, 1982 under sub-rule (1) of the said rule in relation to matches. Explanation.- For the purposes of this section, "matches" means matches failing under Item No. 38 of the First Schedule to the Central Excise Act.
(2) Any action or thing taken or done or purported to have been taken or done on or after the 19th day of June, 1980 and before the 23rd day of February, 1982 in relation to matches, under the Central Excise Act and the Central Excise Rules, 1944, read with notifications referred in clause (b) of sub- section (1), shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done as if the provisions of sub-section (1) had been in force at all material times and such action or thing had been taken or done under the Central Excise Act and the Central Excise Rules, 1944, read with the notification dated the 23rd day of February, 1982, referred to in subsection (1), and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,-
(a) all duties of excise levied, assessed or collected or purporting to have been levied, assessed or collected on or after the 19th day of June, 1980 and before the 23rd day of February, 1982 on matches, shall be deemed to be, and shall be deemed to have always been, as validly levied, assessed or collected as if the provisions of this section had been in force at all material times;
(b) no suit or other proceeding shall be maintained or continued in any court for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the provisions of this section had been in force at all material times;
(c) refund shall be made of all such duties of excise which have been collected but which would not have been so collected if the provisions of this section had been in force at all material times;
(d) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, if the provisions of this section had been in force at all material times. Explanation.- For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force."
7. The appellants questioned the validity of Section 52 (insofar as it gave retrospective operation to Notification No. 22 of 1982) on several grounds, all of which were repelled and writ petitions dismissed.

8. In these appeals, the very same grounds have been reiterated. Shri Vaidyanathan, who led the arguments on behalf of the appellants, urged the following contentions: (1) Section 52 seeks to supersede the writ of mandamus issued by the Madras High Court in Devi Match Factory] which Parliament is not competent to do. Parliament has in fact assumed the powers of an appellate court over the decision of the Madras High Court.

(2) This is not a case where the legislation seeks to remove the basis on which a statute or statutory provision is invalidated. As a matter of fact, the Madras High Court did not strike down Notification No. 99 of 1980 or any part of it. What it did was to issue a mandamus directing the Union of India to apply the said notification to the appellants without reference to the first and second provisos thereto. In such a case, the superseding of the said notification, as well as giving retrospective effect to Notification No. 22 of 1982 by Section 52 of the Finance Act are impermissible, incompetent and arbitrary. (3) In the face of the mandamus issued by the Madras High Court which had become final the introduction of a new basis of exemption with retrospective effect is a clear case of superseding the judgment of a court and thus beyond the scope of Parliament.

(4) The classification made among the units in non- mechanised sector between cottage units and others brought about by Notification No. 22 of 1982 on the basis of quantum of production and clearances is discriminatory and violative of Article 14.

(5) Section 52 is merely a device to retain the monies illegally collected by the State from the petitioners. The impugned provision is a fraud on the legislative power besides being violative of the fundamental right guaranteed to the petitioners by Article 19(1)(g) of the Constitution.

9. Shri Vaidyanathan, learned counsel for the petitioners placed strong reliance upon the decisions of this Court in Madan Mohan Pathak v. Union of India2 and A. V. Nachane v. Union of India3. According to the learned counsel the dicta of the said judgments squarely applies herein.

10. It is a matter of frequent occurrence, more particularly in the field of taxation, that where a court strikes down a provision of law which has got serious financial implications to the public exchequer, the legislature steps in to repair the situation. The legislature does this by removing or altering the basis of, or the defect in the law on which the judgment is based, with retrospective effect. It also provides a validation clause in such cases. The result of such removal or alteration is that the judgment based on unamended provision becomes inoperative. That this is permissible for the legislature to do is no longer in doubt or dispute. A series of decisions of this Court commencing from Rai Ramkrishna v. State of Bihar4 to Cauvery Water Disputes Tribunal5 have affirmed this principle. Shri Vaidyanathan, however, says that in Madan Mohan Pathak2 a departure was made by this Court from the above principle. According to the learned counsel, the ratio of the said judgment is that where the Court issues a mandamus and it becomes final, the effect of the mandamus cannot be taken away by the legislature in any manner except by approaching the higher court, if any. He submits further that if the High Court had struck down certain portions of Notification No. 99 of 1980, it might have been permissible for Parliament to rectify the same by altering or amending the notification so as to remove the basis of the judgment but in this case the High Court has not struck down any portion of the said notification but has chosen to issue a mandamus directing the State to apply the said notification to the writ petitioners without insisting upon compliance with first and second provisos.

11. For a proper appreciation of the submissions of Shri Vaidyanathan, it would be appropriate to notice what precisely was the mandamus issued in Devi Match Factory1. The operative portion of the judgment has already been set out. The High Court issued a mandamus "directing the respondents to give the benefit of Notification No. 99 of 1980 without reference to the first and the second provisos to the notification". What does this mean? It is not the form that matters but the substance. In my opinion, the said mandamus in effect amounts to striking down the first and second provisos, for it is not permissible to keep the two provisos intact and yet issue a mandamus directing that the said provisos shall be ignored. A mandamus is issued to enforce a statute or statutory obligation, not in negation of it. I am, therefore, of the opinion that the distinction sought to be made on the basis of the language and form of the mandamus issued in Devi Match Factory1 is unacceptable. It was really a case of striking down of the said two provisos as discriminatory. Even otherwise (i.e., even if I assume that it was a mandamus directing the extension of the benefit of the said notification to the then writ petitioners ignoring the said two provisos) the position is no different. It is not suggested by the respondents' 2 (1978) 2 SCC 50: 1978 SCC (L&S) 103: (1978) 3 SCR 334 3 (1982) 1 SCC 205: 1982 SCC (L&S) 53: (1982) 2 SCR 246 4 AIR 1963 SC 1667: (1964) 1 SCR 897: (1963) 50 ITR 171 5 1993 Supp (1) SCC 96 (11) counsel indeed, no such argument could have been reasonably advanced that once such a mandamus was issued the Central Government was rendered powerless to withdraw, supersede, amend and modify the said notification for ever. They concede that the notification could be and was validly superseded with effect from 1-1-1982 or 23-2-

1982, as the case may be. If this could be done, we fail to see why it could not be done with retrospective effect and that too by Parliament. In principle, there is no difference; what could be done prospectively could also be done retrospectively. No question of legislative competence can arise in such a case. The only contention that can possibly arise is one of violation of the provisions of Part III of the Constitution which we would be dealing with at a later stage. To repeat the said mandamus did not and could not prevent the Central Government (authority empowered to grant exemption) from withdrawing the said notification. The power of the Central Government to withdraw a notification issued by it was in no way curtailed or affected by the judgment of the Madras High Court in Devi Match Factory1. Once Notification No. 99 of 1980 was withdrawn and superseded with effect from 1-1-1982 by Notification No. 2 of 1982, the judgment of the High Court became inoperative with effect from that date. The argument to the contrary has no basis either in principle or in authority. It is like saying that once a mandamus is issued directing the implementation of an enactment, Parliament becomes disabled from repealing it. Having thus validly superseded (withdrawn) Notification No. 99 of 1980, the Central Government evolved a new criteria in Notification No. 2 of 1982 which it was equally competent to do. Notification No. 2 of 1982 was again superseded by Notification No. 22 of 1982, altering yet again the criteria for exemption in the case of smaller units in the non-mechanised sector. The basis of grant of lesser rate of duty was shifted from the nature of the unit to quantum of production and clearances. Section 52 of the Finance Act then stepped in and gave retrospective effect to Notification No. 22 of 1982 on and from 19-6-1980, the date on which Notification No. 99 of 1980 was issued. The effect of the above exercise was that Notification No. 99 of 1980 was rendered inoperative in toto. In law, it was as if it had not existed. If so, the mandamus issued by the High Court in Devi Match Factory1 directing the implementation of the said notification also ceased to be operative and effective. The basis, the foundation of the mandamus was removed totally. The effect of Section 52, is as if Notification No. 99 of 1980 was never issued. This is the logical and necessary legal effect of Section 52. There is no escape from it. Perhaps, it is necessary to remind and reiterate the dictum of this Court in M.K. Venkatachalam, /.TO. v. Bombay Dyeing and Manufacturing Co.6 to the following effect:

"In deciding this question it would be necessary to determine the true legal effect of the retrospective operation of the Amendment Act. Section 1, sub-section (2), of the Amendment Act expressly provides that subject to the special provisions made in the said Act it shall be deemed to have come into force on the first day of April, 1952. The result of this provision is that the amendment made in the Act by Section 13 of the Amendment Act must, by legal fiction, be deemed to have been included in the principal Act as from the first of April, 1952, and this inevitably means that, at the time 6 (1958) 34 ITR 143: AIR 1958 SC 875: 1959 SCR when the Income Tax Officer passed his original order on October 9, 1952, allowing to the respondent credit for Rs 50,603-15-0, the proviso added by Section 13 of the Amendment Act must be deemed to have been inserted in the Act. As observed by Lord Asquith of Bishopstone in East End Dwellings Co. Ltd. v. Finsbury Borough Council7 :
'If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.' Thus, there can be no doubt that the effect of the retrospective operation of the Amendment Act is that the proviso inserted by the said section in Section 18-A(5) of the Act would, for all legal purposes, have to be deemed to have been included in the Act as from April 1, 1952."
12. It is perhaps necessary to stress that this retrospective operation was provided in this case not by the Central Government in exercise of its power under Rule 8 but by Parliament itself in exercise of

its plenary power. If the appellants cannot avail of the benefit of Notification No. 22 of 1982, they cannot blame the Government therefore.

13. In view of the strong reliance placed by Shri Vaidyanathan on the decision of this Court in Madan Mohan Pathak2 it is necessary to ascertain the relevant facts and the precise ratio of the decision. It is a decision of a Constitution Bench of seven Judges. In June 1974, a settlement was arrived at between the Life Insurance Corporation and its employees relating to the terms and conditions of service of Class III and Class IV employees including the bonus payable to them. Clause 8(ii) provided for payment of annual cash bonus, arrived at by applying a particular formula. The settlement was valid for a period of four years and was to continue until a new settlement was arrived at. After the coming into force of the Payment of Bonus (Amendment) Act, 1976, the Central Government decided that the employees of establishments not covered by the Payment of Bonus Act would not be eligible for payment of bonus but an ex gratia payment in lieu of bonus would be made to them. Life Insurance Corporation was one of the establishments to whom the Payment of Bonus Act did not apply. Pursuant to the said decision, the Government of India advised the Corporation to stop paying bonus in accordance with clause 8(ii) of the aforesaid settlement. The Corporation stopped the payment whereupon the employees approached the High Court of Calcutta by way of a writ petition. A learned Single Judge allowed the writ petition and issued a mandamus directing the Corporation to pay bonus in accordance with clause 8(ii) of the Settlement. The Corporation preferred a Letters Patent Appeal against the said decision. While said appeal was pending, Parliament enacted the Life Insurance Corporation (Modification of Settlement) Act, 1976. When the Letters Patent Appeal was taken up, the Corporation represented that in view of the said Act 7 (1952) AC 109, 132(A): (1951) 2 All ER 587 there was no necessity for proceeding with the appeal. The Division Bench accordingly dismissed the Letters Patent Appeal with the result that the mandamus issued by the learned Single Judge continued to be operative and effective. The employees of the Corporation filed fresh writ petitions in this Court challenging the constitutional validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976 which were allowed. Three opinions were rendered by the learned Judges. Bhagwati, Krishna Iyer and Desai, JJ. rendered one opinion, Chandrachud, Fazal Ali and Singhal, JJ., a separate short opinion and Beg, C.J. another opinion. We may notice the ratio of each of these three opinions. Bhagwati, J. held that the impugned Act did not refer to and did not purport to supersede or nullify the settlement between the Corporation and its employees. In the words of Bhagwati, J., "unfortunately the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus..... The learned Judge remarked that the Corporation committed a grave error in withdrawing the Letters Patent Appeal in view of the impugned enactment. Had they persisted with the appeal and brought the aforesaid Act to the notice of the Court, the Letters Patent Appeal would certainly have been allowed. But as a result of the erroneous course adopted by the Corporation, the learned Judge remarked, the mandamus issued by the learned Single Judge remained effective and became final. The learned Judge then proceeded to examine the validity of enactment on the footing that it did take away the benefit of bonus vesting in the employees of the Corporation by virtue of clause 8(ii) to the Settlement and held it to be violative of Article 31(2) of the Constitution. He declared it void on that ground. Chandrachud, Fazal Ali and Singhal, JJ. delivered a two-line order agreeing with the opinion of Bhagwati, J. that the impugned enactment was violative of Article 31(2) and saying further that they do not think it necessary to express any opinion on the effect of the judgment of the Calcutta High Court aforementioned. Beg, C.J. observed, in the first instance, that though Section 11(2) of the Life Insurance Corporation Act empowered the Central Government to alter the conditions of service of the employees, the Central Government did not choose to resort to that provision, but instead Parliament chose to enact the Act impugned therein, depriving the employees of their bonus. The impugned Act took away the benefit conferred by the mandamus issued by the

Calcutta High Court upon the employees. This amounts to exercise of judicial power by Parliament, which has been held to be bad in Indira Nehru Gandhi v. Raj Narain8. The learned Chief Justice then held the impugned enactment to be violative of Article 19(1)(f) of the Constitution and not saved by Article 19(6).

14. While appreciating the ratio of the said opinions, it is necessary to bear in mind the basic fact that the settlement between the Corporation and its employees was not based upon any statute or statutory provision. Sub-sections (1) and (3) of Section 18 of the Industrial Disputes Act provide merely the binding nature of such settlements; they do not constitute the basis of the 8 1975 Supp SCC 1 :(1976) 2 SCR 347 settlements. The settlement between the parties was directed to be implemented by the High Court. In other words, it was not a case where the High Court either struck down a statutory provision nor was it a case where a statutory provision was interpreted in a particular manner or directed to be implemented. It was also not a case where the statutory provision, on which the judgment was based, was amended or altered to remove/rectify the defect.

15. Now of the seven learned Judges, only Beg, C.J. put forward as one of the grounds for allowing the writ petition, the theory that the mandamus issued by the learned Single Judge of the Calcutta High Court having become final could not be nullified by Parliament. No other learned Judge adopted that reasoning. As pointed out hereinabove, three learned Judges for whom Bhagwati, J. spoke, held that the settlement remained untouched by the impugned Act and, therefore, settlement continued to be in force, and that if the Act is taken as nullifying the settlement, the Act is bad being violative of Article 31(2). Three other learned Judges, Chandrachud, Fazal Ali, JJ. agreed with Bhagwati, J. only to the extent that the Act was violative of Article 31(2). The question now is how far does the first ground aforesaid in the judgment of Beg, C.J. helps the appellants herein. In my opinion, it does not. Both the situations are qualitatively different. In our case, the mandamus was to apply Notification No. 99 of 1980 to the appellants without reference to the offending provisos and as we have pointed out hereinabove, that did not disable the Central Government from superseding and withdrawing the said notification. Such a course by the Central Government does not amount to setting aside the judgment or to declaring it inoperative. It is a case where a statutory provision, on which the judgment of the High Court was based, being removed altogether with retrospective effect. The result, no doubt, is to render the judgment of the High Court inoperative but that this is a permissible thing to do for the legislature is no longer in doubt. I have stated this position hereinbefore too.

16. So far as the decision in Nachane3 is concerned, it dealt with the validity of Life Insurance Corporation (Amendment) Act, 1981. This Act amended Sections 48 and 49 of the Life Insurance Corporation Act. Section 48 empowers the Central Government to make rules while Section 49 empowers the Corporation to make regulations. Under the amended Section 48, the Central Government framed rules giving them retrospective effect from 1-7-1979 saying that none of the employees of the Corporation shall be entitled to payment of any profit-sharing bonus or any other kind of cash bonus. The validity of the said rules and the Amendment Act was challenged again by the employees. This Court held that (i) the impugned amendment and the rules are not violative of Article 14 or on the ground of excessive delegation of legislative function, (ii) the rules made under Section 48 "cannot make the writ issued by this Court nugatory in view of the decision of the majority in Madan Mohan Pathak v. Union of India2". The observations at page 267 (of SCR3 : SCC p. 220) make it clear that the majority decision referred to in the above extract is the decision that the Life Insurance Corporation (Modification of Settlement) Act, 1976 was violative of Article 31(2). Reference is also made to the opinion of Beg, C.J. that the said Act was violative of Article 19 and further that "if the right conferred by the judgment independently is sought to be set aside, Section 3 of the Act, would, in my opinion, be invalid for trenching upon the judicial power". The further observations of Beg, C.J. that the right conferred by a judgment of a court cannot be taken away

without even mentioning to it, i.e., in an "indirect fashion", were also quoted, (iii) when it was argued that the observations quoted from the opinion of Beg, C.J. in Madan Mohan Pathak2 cannot be said to lay down the correct law and are inconsistent with the earlier decisions of this Court, the argument was dealt with in the following words: (SCC p. 221) "The Attorney General referred to a number of earlier decisions of this Court wanting us to infer that the observations quoted above from the judgment in Madan Mohan Pathak case2 did not state the correct law in view of the said decisions. But these observations expressed the majority view of a Bench of seven Judges bearing directly on the point that arises for decision in the instant case and are binding on us. We therefore hold that Rule 3 operating retrospectively cannot nullify the effect of the writ issued in D.J. Bahadur case9 which directed the Life Insurance Corporation to give effect to the terms of the 1974 settlements relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation. The Life Insurance Corporation (Amendment) Act, 1981 and the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981 are relevant legislation. However in view of the decision in Madan Mohan Pathak case2, these rules, insofar as they seek to abrogate the terms of the 1974 settlements relating to bonus, can operate only prospectively, that is, from 2-2-1981, the date of publication of the rules. The petitions are allowed to this extent only."

17. It must be remembered that Madan Mohan Pathak2 was a decision between the same parties. In this sense, it is clear that nothing new was said in Nachane3. The observations of Beg, C.J. in Madan Mohan Pathak2 were reproduced as constituting a binding decision between the parties. Assuming that the observations of Beg, C.J. represent the correct position in law, the appellants cannot yet succeed for the reason that in this case the rights of the appellants declared in Devi Match Factory1 were derived from and based upon Notification No. 99 of 1980 and once that notification was rendered inoperative with retrospective effect by Section 52 of the Finance Act, the basis of the mandamus issued in Devi Match Factory1 got knocked out.

18. In this connection, it may be reiterated that it is open to the legislature to remove the basis of, or rectify the defect/lacuna in the law on which a judgment is based and thereby render the judgment inoperative. What is relevant is whether the basis of the judgment has been removed or not. So long as the manner in which the basis has been removed is within the legislative competence, the Court cannot interfere. There is no set method or a prescribed method. The method adopted in this particular case cannot be said to be an impermissible one. As emphasised hereinbefore, the superseding of Notification No. 99 of 1980 with prospective effect is not questioned by the appellants. If it can be done prospectively, it can equally be done with retrospective effect and in this case, it has been done by a parliamentary enactment. More than one decision of this Court has upheld this power of Parliament/legislature. In , M.K Venkatachalam, LT06 the order of assessment had become final. Later the 9 LIC v. D.J. Bahadur, (198 1) 1 SCC 315: 1981 SCC (L&S) 111 relevant provision was amended with retrospective effect and on that basis the earlier order of Income Tax Officer was rectified under Section 35 of the Indian Income Tax Act, 1922. It was held to be permissible. Similarly, in Sunder Dass v. Ram Prakash10 the finality of a decree passed by a civil court was held to have been disturbed by a retrospective amendment of law. Because of the retrospective amendment of law, it was held, the decree which was validly passed and had become final, has been rendered inexecutable and that the said objection can be raised in the execution proceedings. The same position is affirmed by A.K. Sarkar, J., in his opinion in Kavalappara Kottarathil Kochuni v. State of Madras11. Though the opinion of Sarkar, J. is a dissenting one, there is no dissent on the above point. [The majority held that in view of its opinion on another question, it is not necessary for it to express any opinion on this aspect (see page 904)].

19. At this stage, it would be appropriate to deal with the decision of this Court in D. Cawasji & Co., Mysore v. State of Mysore12 on which too reliance was placed by Shri Vaidyanathan, learned

counsel for the appellants. Sales tax on liquor was levied at 6 1/2%. The Government was collecting it on the entire sale price of barrack. However, in a batch of writ petitions filed by the licensees, the Karnataka High Court held that the levy of sales tax on excise duty and cesses component of the sale price was incompetent. In other words, it was held that sales tax can be levied only on the price proper but not upon excise duty and cesses which form part of the sale price. The said judgment of the High Court was questioned in this Court but later on the Government withdrew the appeal, with the result that the judgment of the High Court became final. With a view to nullify claims for refund, the Karnataka Legislature intervened and amended the Mysore Sales Tax Act with retrospective effect. The amending Act enhanced the rate of tax from 6 1/2% to 45% which meant that the Government need not refund any amount to the licensees pursuant to the aforesaid judgment of the High Court. The Amendment Act was questioned in the High Court but was upheld. On Appeal, this Court held the Amendment Act unconstitutional. On a close reading of the judgment, it is clear that the main ground on which the Act was held to be incompetent was that raising the rate of tax from 6 1/2% to 45% with retrospective effect was "clearly arbitrary and unreasonable" and, therefore, violative of Articles 14 and

19. It was observed that instead of removing the defect/lacuna pointed out by the High Court, the legislature sought to raise the rate of tax steeply with retrospective effect and that it was bad. The judgment cannot be read as laying down that in no event can the legislature seek to render the judgment of the Court ineffective and inoperative by amending or rectifying the defect or the lacuna pointed out, on the basis of which the judgment was rendered. In my opinion, therefore, the said judgment cannot be understood as supporting the appellant's submission nor can it be read as militating against the well-accepted power of Parliament which has been reiterated in innumerable judgments of this Court.

10 (1977)2SCC662:(1977)3SCR60 11 (1960) 3 SCR 887, 950-952 : AIR 1960 SC 1080 12 1984 Supp SCC 490: 1985 SCC (Tax) 63

20. It was then urged by Shri Vaidyanathan that the retrospective operation given to Notification No. 22 of 1982 by Section 52 is violative of the petitioners' fundamental right guaranteed by Article 19(1)(g) of the Constitution and that it was confiscatory in nature. Counsel submitted that as a result of the said retrospective operation, the appellants became liable to pay more duty than they had passed on to their purchasers/consumers with the result that the appellants will have to pay the said duty from their own pocket. Counsel submitted that had they known that such a provision was to come into operation, they would have collected more tax from their purchasers/consumers. He stated that the appellants collected and passed on the burden of excise duty only at the rate of Rs 1.60p per gross. Counsel further submitted that even the certified cottage units are adversely affected by the impugned legislation inasmuch as with the removal of ceiling by Notification No. 99 of 1980 they produced and cleared matches in excess of 150 million matches but collected and passed on duty only at the rate of Rs 1.60p per gross. Now they too are being called upon to pay at the higher rate. In my opinion, there is no substance in these contentions. So far as the non-certified units (writ petitioners in Devi Match Factory1) are concerned, they could not say till 9-12- 1981 (the day their writ petitions were allowed) that they are entitled to pay only the lesser duty of Rs 1.60p. As the matters then stood, they were liable to pay the higher duty applicable to non-mechanised units. I cannot, therefore, accept their plea that they collected duty at the lesser rate. If, indeed, they have done so, they have to thank themselves for the present situation. Passing on the incidence is not a condition of valid levy. Again the judgment was operative hardly for a few days, i.e., 9-12- 1981 to 1-1-1982 on which date Notification No. 99 of 1980 was superseded by Notification No. 2 of 1982. During this intermission of three weeks, the Union of India had approached this Court by way of special leave petitions against the judgment of the Madras High Court which are said to have been dismissed on 18-12-1981. In the circumstances, the said petitioners cannot say that they could not pass on the duty at the higher rate. No businessman in his senses would have collected duty at the

lesser rate in the above circumstances. Now, so far as the certified cottage units are concerned, they were subjected to a ceiling of 100 million matches per year until Notification No. 99 of 1980 was issued. It was a condition of grant of certificate. Though the said notification removed the ceiling, it appears that the KVIC was insisting upon the very same ceiling as a condition of granting certificate. (It may be recalled that it was this inconsistence of KVIC that was characterised as incompetent by the Madras High Court in Devi Match Factory1). By producing and clearing matches in excess of the said ceiling, the said units forfeited the character of a cottage unit. They acted contrary to the condition subject to which they were granted the certificate. It is not their case that they were expressly permitted by the KVIC to exceed the said ceiling. No order or proceeding of KVIC granting such permission has been brought to our notice. In the above situation, if some of the cottage units exceeded the ceiling, they evidently did so at their own risk. They cannot claim any immunity or indulgence from the Court on that score. I am, therefore, not satisfied that there is any substance in the argument of prejudice or loss to the appellants on account of the retrospective operation being given to Notification No. 22 of 1982.

21. For the above reasons, the appeals fail and are dismissed with costs. Advocate's fee Rs 10,000 consolidated.

HANSARIA, J.- Despite the great respect in which I hold Brother Justice Jeevan Reddy, I have not been able to persuade myself to agree with him in the view he has taken. According to me the appeals deserve to be allowed because of what is being stated.

23. The facts of the appeals having been narrated in detail, there is no need to recapitulate except saying that against the judgment of the Madras High Court given in Devi Match Factory case1 this Court had been approached only relating to Raja Match Works and the petition was numbered as SLP(C) No. 11173 of 1981; leave was granted on 1-2-1982 but stay was refused. Subsequently, on 25-7-1983 Civil Appeal No. 303 of 1982 (arising out of the aforesaid SLP) was dismissed as infructuous. This shows that the judgment in Devi Match Factory1 became final for all purposes insofar as remedy available to the Union of India as a litigant is concerned. The all important question is that whether in exercise of legislative power the judgment could have been set at naught?

24. Brother Reddy has held, and with respect rightly, that it is permissible to the legislature to repair a situation by removing or altering the basis of the judgment which strikes down a provision of law. Such a piece of legislation has a validation clause, the result of which is that the judgment based on the unmended provision becomes inoperative. This proposition of law has rightly been said as "no longer in doubt or dispute". According to me, it cannot be equally in doubt or dispute that the legislature cannot assume to itself judicial power. Apart from that what has been stated in this regard in Madan Mohan Pathak case2 already referred by my learned brother, which was followed in Nachane case3, I propose to refer to three other decisions to bring home this aspect of law. First of these is D. Cawasji & Co. v. State of Mysore12 in which a Bench of three Judges of this Court has adverted to this aspect in paragraphs 1018. Paragraphs 10- 1 3 have noted two earlier decisions of this Court in Janapada Sabha, Chhindwara v. Central Provinces Syndicate Ltd. 13 and Municipal Corporation of the City of Ahmedabad v. New Shorock Spg. & Wvg. Co. Ltd. 14 In first of these decisions it was observed, inter alia at page 751 (SCR) that though it is open to the legislature within certain limits to amend the provisions of a statute retrospectively and to declare what the law shall be deemed to have been, it is not open to the legislature to say that the judgment of a court properly constituted and rendered in exercise of its power in a matter brought before it shall be deemed to be ineffective. In the second case some of the observations made by this Court in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality15 were noted and it was stated at page 295 (SCR) that validation of a tax declared illegal may be done only if the grounds of illegality or' invalidity are capable of being removed and are in fact removed and the tax thus made legal. This

observation was made after stating that court's decision must 13 (1970) 1 SCC 509: (1970) 3 SCR 745 14 (197Q) 2 SCC 280: (197 1) 1SCR 288 15 (1969) 2 SCC 283: (1970) 1 SCR 388 always bind unless the conditions on which it is based are fundamentally altered.

25. It was then stated in Cawasji case 12 that to nullify the judgment of the High Court which had become final inasmuch as the special leave petition filed against the judgment by the State was withdrawn, the impugned amendment was introduced, which did not proceed to cure the defect or lacuna. The impugned amendment was, therefore, not considered to be a validating act which seeks to validate the earlier statutory provision declared illegal by removing the defect or lacuna which had led to the invalidation of the law. As this had not been done and the only object of the impugned amendment was stated to nullify the effect of the judgment which had become conclusive and binding on the parties for enabling the State Government to retain the amount wrongfully and illegally collected, it was held that same was not permissible and the impugned Act was therefore held to be invalid.

26. 1 would next refer to Cauvery Water Disputes Tribunal case5 which too has been noted by my learned brother. The Constitution Bench of this Court in that case dealt with this aspect of the matter in paragraphs 74 to 76. In paragraph 74 the decision in Madan Mohan Pathak v. Union of India2 was referred and in paragraph 75 the decision in P. Sambamurthy v. State of A.P. 16 in which even a constitutional provision, which had conferred power of judicial review on State Government, was held to be violative of the basic structure doctrine by stating that rule of law would be meaningless if State Government could set at naught a judgment rendered against it by a duly constituted adjudicatory body. It was then observed in paragraph 76 : (SCC p. 142) "The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal."

27. Lastly the famous case of Indira Nehru Gandhi v. Raj Narain8 in which Beg, J., as he then was, stated in paragraph 553 (SCR) that the Constitution undoubtedly specifically vests "judicial power" only in the Supreme Court and in the High Courts and not in any other bodies or authorities, whether executive or legislative, functioning under the Constitution. In paragraphs 577 and 578 (SCR) the learned Judge observed that even in exercise of "constituent power" no judicial or quasi-judicial function could be performed by Parliament. It may be pointed out that in Kesavananda Bharati case17 it has been held that constituent power stands on a higher pedestal than legislative power; and so, what applies to constituent power would apply proprio vigore to legislative power, which has been exercised in the present case while enacting Finance Act, 1982.

28. So, a legislature cannot entrench upon judicial power. This has been reiterated very recently in State of Haryana v. Karnal Coop. Farmers' Society 16 (1987) 1 SCC 362: (1987) 2 ATC 502 17 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 : AIR 1973 SC 1461 Ltd. 18 According to Beg, J. this is, however, what had happened in Madan Mohan Pathak case2 and it is because of this that Section 3 of the Act impugned 'herein was declared as invalid. Though it is correct that Bhagwati, J., as he then was, speaking for self, Krishna Iyer and Desai, JJ. had not taken the aforesaid view of the impugned section, but the learned Judge did state at page 355 (SCR) that if a judgment is erroneous the remedy lies by way of appeal or review, but so long as the judgment stands it cannot be disregarded or ignored, it must be obeyed.

29. I would like to point out that the legal stand taken by Beg, J. in Madan Mohan Pathak case2 had received majority's endorsement, which would be apparent from what was stated in Nachane3.

There, the Bench after quoting at page 268 (SCR) observations of Beg, J., inter alia, about entrenching upon judicial power, stated that it did not agree with the submission of the Attorney General that the view of Beg, J. did not state the correct law, by observing that the same had been accepted by the majority. It is because of this that in Nachane3 the retrospective given to the concerned rule was held to have nullified the effect of the writ issued in D.J. Bahadur case9 for which reason the same was held to be invalid.

30. Let it now be seen what had really been done in the cases at hand. Brother Reddy has stated, and with respect rightly, that retrospective operation was given to Notification No. 22 of 1982 by Section 52 of the Finance Act, 1982 evidently "to enable the State to retain the duty collected by it from the non-certified units and to frustrate claims of refund from them". So the whole object was to take the wind out of sail which had been blown by the mandamus directed to be issued in Devi Match Factory casel. The same was the object of retrospectively given to the rule which had come to be held invalid in Nachane case3.

31. May it be stated that what has been observed above finds support from what was opined by the Finance Minister in his speech dated 28-2-1982 while moving the Finance Bill in question wherein reference was made about the necessity of refund of substantial amounts because of the judgments obtained by a number of manufacturers in their favour. So, the only purpose sought to be achieved by giving retrospective effect to the impugned provision of the Finance Act was to nullify the effect of the mandamus directed to be issued in Devi Match Factory1. Thus, the retrospectivity was aimed at making nugatory or, to put it differently, to setting aside the judgment which was inter partes as State and the appellants were parties in Devi Match Factory casel.

32. There is no real parting of ways so far from my learned brother. My respectful disagreement with him lies in the view he has taken about the legal import of Notification No. 22 of 1982 read with Section 52 of the Finance Act. According to my learned brother what the High Court had done in Devi Match Factory case] was to strike down the provisos in question as discriminatory and therefore the mandamus issued did not and could not prevent the Central Government from withdrawing Notification No. 99 of 1980 and once the notification stood withdrawn retrospectively the judgment became inoperative. In this context may I say that it is a settled law that the ratio of the judgment is 18 (1993) 2 SCC 363 : AIR 1994 SCI what it decides and not what could be deduced from it. This is what was states in paragraph 13 of State of Orissa v. Sudhansu Sekhar19 and paragraph 46 of Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court2O. Reference may also be made to Ashville Investments Ltd. v. Elmer Contractors Ltd.21 in which the same view was taken at page 582.

33. 1 say with respect that the judgment of the High Court cannot really be read as striking down the notification on the ground it was discriminatory. This would be clear from what was stated by the Court on the subject of discrimination which aspect has been concluded in paragraph 14 reading as below:

" It may be seen from these cases that when two classes are brought into existence but they are differently taxed, the class which is discriminated against is entitled to get the same concession and the discriminatory provision need not be set aside. The principle is applicable even to a case where the lower rate of taxation in favour of one class is contrary to the statute. In our case, there is no question of the concession given to those manufacturers who come under Explanation 11 being illegal. Therefore, this is a fortiori case where the concession extended to the manufacturers coming under Explanation 11 should be extended to the petitioners also. Therefore these writ appeals and the writ petitions have to be allowed." (emphasis supplied)

34. The aforesaid shows that though the Court had applied its mind to the question of discrimination, it did not set aside the provision being discriminatory. What had rather prevailed with the Court in directing to issue mandamus was the inability of the petitioners to obtain certificates from Khadi and Village Industries Commission, which denial was not held as justified for reasons noted by my learned brother. Notification No. 22 of 1982 made no effort at all to take care of the infirmity pointed out by the High Court; instead, it laid down altogether different criteria for claiming levy of excise duty at Rs 1.60. It was thus not a case of removal of the defect or taking care of infirmity pointed out by the Court.

35. 1 would not, therefore, regard the notification as a piece of validating enactment, as it did not remove the defect or lacuna pointed out by the High Court. The whole purpose sought to be achieved by the notification, which was given retrospective effect by Section 52 of the Finance Act of 1982, was to nullify the effect of the judgment, which could not have been done in exercise of the legislative power inasmuch as the judgment had become final for the reasons given above. According to me the present is a case where the best that can be said is that the judgment of the High Court was erroneous, and so, the only remedy available was appeal to this Court, which was partially availed of but to no effect. The impugned section was thus an exercise, which I would prefer to call as "entrenching upon the judicial power", to borrow the language of Beg, J. as used in Madan Mohan Pathak case2 which has rendered the section invalid in the eye of law. The only purpose of impugned provision being 19 AIR 1968 SC 647: (1968) 2 SCR 154: (1970) 1 LLJ 662 20 (1990) 3 SCC 682: 1991 SCC (L&S) 71 21 (1988) 2 All ER 577 to set aside the inter partes decision rendered in Devi Match Factory case1 the legislature exercised judicial power which it could not have done as held by the Constitution Bench in Cauvery Water Disputes Tribunal case5.

36. In the aforesaid view of the matter, I hold that Section 52 of Finance Act, 1982 is invalid. I would, therefore, allow the appeals but would make no order as to costs.

ORDER

37. Having regard to the importance of the question raised herein, we direct these matters to be placed before a Bench of three Hon'ble Judges. At the same time, we have recorded two points of view in our two opinions so that the Bench hearing the matters may have the benefit of our views.