SUPREME COURT OF INDIA

P. Kannadasan

Vs.

State of T.N.

C.A.No.9847 of 1996

(B.P.Jeevan Reddy and S.C.Sen JJ.)

26.07.1996

JUDGEMENT

B.P. JEEVAN REDDY, J.:-

1. Leave granted in the Special Leave Petitions.

2. The appellants-writ petitioners are challenging the validity of the Cess and Other Taxes on Minerals (Validation) Act, 1992 (being Act 16 of 1992) enacted by Parliament. The High Courts have repelled the attack. it is renewed here.

FACTUAL CONSPECTUS :

3. Section 115 of the Tamil Nadu Panchayats Act, 1958 levied in every Panchayat Development

Block a local cess @ 0.45 p. on every rupees of land revenue payable to the Government in respect of any land for every fasli. The explanation to the section defined "land revenue" to include inter alia royalty and lease amount payable in respect of the land. The validity of the levy was challenged in the Madras High Court. A learned single Judge dismissed the writ petition holding that being a tax on land, it is within the legislative competence of the State Legislature. The learned Judge followed the decision of this Court in H.R.S. Murthy v. Collector of Chittoor, (1964) 6 SCR 666 : (AIR 1965 SC 177). A writ appeal against the decision of the learned single Judge was dismissed, again following the decision in H.R.S. Murthy. The matter was brought to this Court. It was heard ultimately by a seven Judge Bench (India Cements Limited v. State of Tamil Nadu, 1989 Suppl (1) SCR 692 : (AIR 1990 SC 85) which held, the said levy to be outside the legislative competence of the Tamil Nadu Legislature. This Court held that (1) the levy cannot be sustained under and with reference to Entry 49 of List-II of the Seventh Schedule to the Constitution of India as a tax on land; (2) the levy is a levy on minerals and is relatable to Entries 23 and 50 of List-II; (3) that on account of the declaration made by Parliament contained in Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957,(M.M.R.D. Act), the State Legislatures have been denuded of the power to levy tax on minerals. Regulation of mines and mineral development takes within its purview the levy of tax on minerals. Section 9 of the M.M.R.D. Act, this Court held, provides for levy of royalty/dead rent on minerals. The State Legislatures cannot, therefore, impose any tax on minerals. H.R.S. Murthy (AIR 1965 SC 177) was wrongly decided. Having so declared, this Court however, directed that the said decision shall only have prospective effect. This was for the reason that the State have been levying and collecting the said cess on the basis of the decision of this Court in H.R.S. Murthy. The decision in India Cement was rendered on 25th October, 1989.

4. Following the decision in India Cement (AIR 1990 SC 85), a three Judge Bench declared identical levies imposed by the State of Orissa, Bihar and Madhya Pradesh as incompetent and void (Orissa Cement Limited v. State of Orissa, (1991) 2 SCR 105: (AIR 1991 SC 1676)). Having regard to the fact that decisions of the High Courts in Orissa, Bihar and Madhya Pradesh (which were the subject matter of appeals before this Court) were rendered on different dates, the Bench directed that the said decision shall be operative prospectively with effect from the date of the said judgment, i.e., 4th April, 1991 in the case of State of Bihar, with effect from December 22, 1989 in the case of Orissa and with effect from March 28, 1989 in the case of Madhya Pradesh.

5. The aforesaid decisions of this Court had a serious impact on the revenues of several State Governments. Not only were they barred from collecting the said cess, quite a few of them were obliged to refund substantial amounts which had already been collected. It is well known that the State Governments in this country are perpetually strapped for funds. The decisions made their situation more acute. The Parliament then came to their rescue and promulgated. The Cess and other Taxes on Minerals (Validation) Ordinance, 1992 on February 15, 1992. The Ordinance has been replaced by Act 16 of 1992, published in the Gazette of India on 4th April, 1992. The Act contains only three sections. Having regard to the several submissions made with respect to its validity, it is appropriate to read all the three sections including the schedule appended thereto:

"An Act to validate the imposition and collection of cesses and certain other taxes on minerals under

certain State laws.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows :-

Prefatory Note - Statement of Objects and Reasons - Certain State Acts imposing cesses or other taxes on minerals had been struck down by Courts including the Supreme Court of India in different cases. As a result of judgments in these cases, State Government became liable to refund cesses and other taxes collected by them. Since refund was likely to have a serious impact on State revenues of the concerned State Governments and having regard to the fact that it is extremely difficult to ensure that the levies collected are refunded to the large number of end users of minerals who have actually borne the burden of such levies, the Cess and Other Taxes on Minerals (Validation) Ordinance, 1992 (Ord. 7 of 1992) was promulgated by the President on the 15th February, 1992, to validate collection of such levies by State Government up to the 4th day of April, 1991.

2. The Bill seeks to replace the aforesaid Ordinance.

1. Short title, extent and commencement - (1) This Act may be called the Cess and Other Taxes on Minerals (Validation) Act, 1992.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 15th day of February, 1992.

2. Validation of certain State laws and actions taken and things done thereunder - (1) The laws specified in the Schedule to this Act shall be, and shall be deemed always to have been, as valid as if the provisions contained therein relating to cesses or other taxes on minerals had been enacted by Parliament and such provisions shall be deemed to have remained in force up to the 4th day of April, 1991.

(2) Notwithstanding any judgment, decree or order of any court, all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued and cesses or other taxes on minerals realised under any such laws shall be deemed to have been validly taken, done, made, issued or realised, as the case may be, as if this section had been in force at all material times when such actions were taken, things were done, rules were made, notifications were issued, or

cesses or other taxes were realised, and no suits or other proceeding shall be maintained or continued in any court for the refund of the cesses or other taxes realised under any such laws.

(3) For the removal of doubts, it is hereby declared that nothing in sub-section (2) shall be construed as preventing any person from claiming refund of any cess or tax paid by him in excess of the amount due from him under any such laws.

3. Repeal and savings - (1) The cess and Other Taxes on Minerals (Validation) Ordinance, 1992 (Ord. 7 of 1992) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See Section 2)

1. The Andhra Pradesh (Mineral Rights) Tax Act, 1975 (A.P. Act 14 of 1975).

2. The Andhra Pradesh (Andhra Area) District Boards Act, 1920.

3. The Andhra Pradesh (Telangana Area) District Boards Act, 1955.

4. The Cess act, 1880 (Bengal Act 9 of 1880) as applicable in the State of Bihar.

5. The Karnataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayat and Nyaya Panchayats Act, 1983 (Karnataka Act 20 of 1985).

6. The Karnataka (Mineral Rights) Tax Act, 1984 (Karnataka Act 32 of 1984).

7. The Madhya Pradesh Karadhan Adhiniyam, 1982 (M.P. Act 15 of 1982).

8. The Madhya Pradesh Upkar Adhiniyam, 1982 (M.P. Act 1 of 1982).

9. The Maharashtra Zilla Parishads and Panchayat Samitis (Amendment and Validation) Act, 1981 (Maharashtra Act 46 of 1981).

10. The Orissa Cess Act, 1962 (Orissa Act II of 1962).

11. The Tamil Nadu Panchayat Act, 1958 (Tamil Nadu Act XXXV of 1958)".

5A. The Statement of Objects and Reasons appended to the Bill states that cesses and other taxes on minerals imposed by certain State Governments were struck down by this Court, on account of which they have become liable to refund cesses and other taxes collected to them. Since such refund is likely to have serious impact on the revenues of the concerned State Governments and also because it is extremely difficult to ensure that the levies collected are refunded to the large number of end users of minerals who have actually borne the burden of such levies, the said Act was being made by Parliament. The Preamble to the Act states that it was an Act "to validate the imposition and collection of cesses and certain other taxes on minerals under certain State Laws". The Act is deemed to have come into force on February 15, 1992, the date on which the Ordinance 7 of 1992 was promulgated by the President. Section 2 which contains three sub-sections in the main provision in the Act. Sub-section (1) says that the provisions contained in the laws specified in the Schedule to the Act relating to cesses and other taxes on minerals, shall be and shall be deemed always to have been as valid as if the provisions contained therein had been enacted by Parliament and that such provisions shall be deemed to have remained in force up to the 4th day of April, 1991. Sub-section (2) elaborates and elucidates the content of sub-section (1). Having regard to the decisions of this Court and the High Courts on the question of validity of cesses and taxes on minerals imposed by the States, the sub-section opens with a non obstinate clause "notwithstanding any judgment, decree or order of any court". The sub-section then provides three things. It firstly says that "all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued..... shall be deemed to have been validly taken done, made or issued.....as the case may be, as if this section had been in force at all material times when such actions were taken, things were done, rules were made and notifications were issued". Secondly, it says that "cesses and other taxes on minerals realised under any such laws shall be deemed to have been validly.... realised.....as if this section had been in force at all material

times when such....cesses or other taxes were realised". The third thing provided by the sub-section is the declaration that "no suit or other proceedings shall be maintained or continued in any court for the refund of the cesses or other taxes realised under any such laws". Sub-section (3) is clarificatory in nature. It starts with the words "for the removal of doubts" and declares that nothing in sub-

section (2) shall be construed as preventing any person from claiming refund of any cess or tax paid by him in excess of the amount due from him under any of the laws mentioned in the Schedule. It is a case of stating the obvious by way of abundant caution.

6. The object and purpose of the Validation Act is self-evident. Since it was declared by this Court (and other High Courts) that the State Legislatures were not competent to levy cesses and taxes on minerals by virtue of the declaration contained in Section 2 of the M.M.R.D. Act (made in terms of Entry 54 in List-I of the Seventh Schedule to the Constitution). The Parliament stepped in and enacted the relevant provisions of the State enactments (mentioned in the Schedule) with retrospective effect from the date of the levy under each of the said enactments. The power of the Parliament to levy such taxes cannot really be disputed. If the States have no power to levy such cessess or taxes, if follows that Parliament does have such power. By virtue of the deeming clause contained in sub-section (1) of Section 2, the relevant provisions of the State enactments must be deemed to have been enacted on the date they were enacted by the respective State Legislatures and they must be deemed to have remained in force up to the 4th day of April, 1991. The device adopted by Parliament is a well known one. It may be called legislation by incorporation. The effect is as if all the relevant provisions of the Scheduled Acts are individually and specifically enacted by Parliament; all those provisions must be read into Section 2(1). The necessary and logical consequences flowing there from is the creation of levy of all the cesses and taxes, levied by the respective State enactments, by Parliament itself. The provisions so enacted are, however, declared to be in force up to the 4th day of April, 1991.

CONTENTIONS OF THE PARTIES :

7. S/Sri K. Parasaran G.L. Sanghi, A.K. Ganguli, B. Sen, V.A. Bobde, Abhishek Singhvi, Rohinton F. Nariman and Ajit Kumar Sinha urged the following contentions in support of their attack upon the validity of the Act :

1. The impugned Act is a clear case of the Parliament seeking to over turn the decisions rendered by this Court and the High Court in exercise of their constitutional power and are, therefore, incompetent and ineffective.

2. The language in Section 2 does not achieve the purpose set out in the Preamble. The Parliament must first make a law creating the levy before it can create a fiction that the law must be deemed to have been made on an anterior date, i.e. before giving it retrospective effect. The Parliament cannot relegate even the law making function to the realm of fiction. In other words, without making law, the Parliament cannot declare that the law shall be deemed to have been made by it on an anterior date. Section 2 does not bring into existence any levy/imposition. The language employed in Section 2 is wholly inadequate for the purpose. The section is a mere exercise in futility.

3. Even if it is held by this Court for any reason that Section 2 has indeed created the levy, the creation of the said levy is for the limited purpose of enabling the State Governments to retain what they have already collected. Section 2 does not empower the Parliament or its agencies to collect taxes which were not collected on or before the 4th day of April, 1991. In other words, after 4th day of April, 1991, any tax or cess levied under the Act (which means the Scheduled enactments) remaining uncollected/unrealised cannot be collected or realised. The idea was to close the chapter on 4th day of April, 1991: whatever is collected shall not be refunded and whatever is not collected shall not be collected thereafter.

4. The effect of Section 2 is that cesses and taxes on minerals are levied in different States at different rates. This is because the rate of tax/cess in each of the concerned States was different. A Parliamentary enactment cannot levy the same tax/cess at different rates in different States of the country. it would be discriminatory and violative of Article 14 of the Constitution. No justification has been put forward by the Union of India in support of such discriminatory treatment. This discriminatory levy is antithetical to the basic object underlying M.M.R.D. Act, viz., levy of uniform royalties/taxes. Indeed, the Act does not extend to the entire country but only to certain States in the country.

5. The declaration made by Parliament in Section 2 of the M.M.R.D. Act is not an absolute and unlimited one. The denudation of the State Legislatures is only to the extent provided in the said Act. Section 9 is one of the provisions of the M.M.R.D. Act defining the extent of denudation. The impugned levy created by Section 2 of the impugned Act is in addition to the levy under Section 9. In other words, the extent of denudation has been enhanced by the impugned levy. If so, such levy/denudation could have been effected only by making a fresh declaration in terms of Entry 54 of List-I of the Seventh Schedule to the Constitution. No such declaration has been made by Parliament and, therefore, the levy is incompetent and ineffective.

6. The levy in question can be related only to Entry 54 of List-I. It cannot be related to Entry 97 of List-I. If so, the levy of cess/tax should be for the purposes of regulating the mines or mineral development. Absolutely no material is placed before the Court to show that the levy of the impugned cess/tax is for the said purpose.

7. The impugned enactment is a temporary statute. Its effect is only up to 4th day of April, 1991. On that date, the purpose of the Act comes to an end. Thereafter, it is a dead-letter. Since Section 6 of the General Clauses Act does not apply in the case of a temporary statute, no action can be taken and no recoveries can be made after 4th day of April, 1991, indeed, the relevant provisions of the enactments mentioned in the Schedule to the Act are enacted and kept alive only up to 4th day of April, 1991 which means that even the provisions relating to recovery also cease to have any force after the said date. Since the recovery machinery is not available and is not in existence after the said date, no recoveries can be made after the said date. The sequence of events, the statement of

objects and reasons and the language in sub-section (2) of Section 2 all bear out the fact that the Act was intended merely to save the collections already made and not to enable the Union of India or its agencies to recover the taxes or cesses not realised or recovered on or before the 4th day of April, 1991. It is significant to note that the impugned Act does not contain any provision corresponding to any of the clauses in Section 6 of the General Clauses Act.

8. Shri Chandrasekharan, learned Additional Solicitor General, Sri Gulab C. Gupta and Sri K. N. Shukla, appearing for the Governments of Tamil Nadu, Madhya Pradesh and the Government of India respectively disputed the correctness of the several contentions urged on behalf of appellants-petitioners and submitted that Section 2 of the impugned enactment is perfectly adequate and effective to create the levy (by Parliament) of cesses and taxes which were earlier imposed by the State enactments but which enactments were declared to be incompetent by this Court and the High Courts. They submitted that Parliament was competent and did create a new levy with retrospective effect but limited its operation up to 4th day of April, 1991. The learned counsel submitted that the impugned enactment is not and cannot be described as a temporary statute. The impugned Act has not expired. It is very much alive and continues to be on the statute book. Merely because the levy created thereunder is confined to a particular period, it does not mean either that the Act has expired or that it is a temporary statute. Learned counsel also submitted that the different rates of levy created by Section 2 cannot be described as discriminatory. Having regard to the context in which the impugned Act came to be enacted - historical factors - it could not have been otherwise. Levy of a tax at different rates in different States of the country is not an unknown feature. Such a practice already exists. The Parliament is competent to enact a law applicable only to a part of the country. Classification on the grounds of geographical division is a well-known and well accepted one. It is also not necessary, they submitted, that there should be a fresh declaration in terms of Entry 54 of List I whenever the rate of tax or royalty is enhanced or any of the provisions of the M.M.R.D. Act are amended. The impugned enactment is in the nature of an addition or a proviso to the M.M.R.D. Act. The States have already been denuded of the power to levy any tax or cess on minerals. There is no fresh denudation now. The Parliament is only adding to the tax which it has already imposed and that too for a limited period. Learned counsel submitted that identical provisions have already been upheld by this Court and that there is no reason to take a different view.

THE RELEVANT PROVISIONS OF THE CONSTITUTION AND THE M.M.R.D. ACT:

9. For a proper appreciation of the questions arising herein, it is necessary to notice certain relevant provisions of the Constitution and the M.M.R.D. Act. Entries 23 and 50 of List II of the Seventh Schedule to the Constitution read thus:

"23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by laws relating to mineral development".

10. These entries which empower the States to make laws with respect to regulation of mines and mineral development and to levy taxes on mineral rights are, however, subject to the provisions of List I with respect to regulation and development under the control of the Union. Entry 54 of List I empowers the Union to make laws regulating the mines and mineral development to the extent such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest. Entry 54 of List I reads:

"54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest ".

Entry 97 of List I may also be set out :

"97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists".

The Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1957, Section 2 whereof contains the declaration in terms of Entry 54 of List I. It reads :

"2. Declaration as to expediency of Union control :- It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided".

11. The Act regulates the prospecting and mining operations, prescribes the royalties payable in respect of mining leases, provides for development of minerals and certain other miscellaneous and incidental provisions. Section 9 read with second Schedule to the Act prescribes the rates of royalty payable by the lessees in respect of each mineral. Section 9-A provides for payment of dead-rent which is in the nature of a minimum royalty. We need not refer to the other provisions in the Act for the purposes of this case.

PART II

12. We may now proceed to deal with the contentions urged by the learned counsel for appellants-petitioners, in the order set out hereinabove.

13. The first submission of the learned counsel for appellants-petitioners is that by enacting the impugned Act, the Parliament has sought to annual and invalidate the decisions of this Court in India Cement (AIR 1990 SC 85) and Orissa Cement (AIR 1991 SC 1676) which it is not competent to do. It is submitted that this Court had issued a mandamus directing certain State Governments to refund the taxes and cesses collected by them under the invalid laws. Some of the States had also given undertakings to this Court to refund the taxes/cesses collected in the event of the success of appellants-petitioners. The mandamus so issued cannot be invaidated by making a law. The undertaking given by the State is binding upon it. Strong reliance is placed upon the decisions of this Court in Madan Mohan Pathak v. Union of India (1978) 3 SCR 334 : (AIR 1978 SC 803) and A. V. Nachane v. Union of India (1982) 2 SCR 246 : (AIR 1982 SC 1126). It is not possible to agree. It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., Legislature, Executive and the Judiciary. Even though the Constitution has adopted the Parliamentary form of government where the dividing line between the Legislature and the Executive becomes thin, the theory of separation of powers is still valid. Ours is also a federal form of government. The subject in respect of which the Union and the States can make laws are separately set out in List I and List II of the Seventh Schedule to the Constitution respectively. (List III is, of course, a concurrent list). The Constitution has invested the Supreme Court and High Courts with the power to invalidate laws made by Parliament and the State legislatures transgressing the constitutional limitations. Where an Act made by a State legislature is invalidated by the Courts on the ground that the State legislature was not competent to enact it, the State legislature cannot enact a law declaring that the judgment of the Court shall not operate; it cannot overrule or annual the decisions of the Court. But this does not mean that the other legislature which is competent to enact that law cannot enact that law. It can. Similarly, it is open to a legislature to alter the basis of the judgment as pointed out by this Court in Shri Prithvi Cotton Mills v. Broach Borough Municipality (1970) 1 SCR 388 : (AIR 1970 SC 192) - all the while adhering to the constitutional limitations; in such a case the decision of the Court becomes ineffective in the sense that the basis upon which it is rendered, is changed. The new law or the amended law so made can be challenged on other grounds but not on the ground that it seeks to ineffectuate or circumvent the decision of the Court. This is what is meant by "checks and balances" inherent in a system of government incorporating the concept of separation of powers. This aspect has been repeatedly emphasised by this Court in numerous decisions commencing from Shri Prithvi Cotton Mills. Under our Constitution, neither wing is superior to the other. Each wing derives its power and jurisdiction from the Constitution. Each must operate within the sphere allotted to it. Trying to make one wing superior to other would be to introduce an imbalance in the system and a negation of the basic concept of separation of powers inherent in our system of government. Take this very case. The State legislatures enacted provisions levying cesses/taxes on minerals. They thought that they were entitled to do so by virtue of Entry 50 of List II of the Seventh Schedule and that the enactment of the M.M.R.D. Act by the Parliament and the declaration contained in Section 2 thereof did not deprive them of the legislative power conferred by the said entry. A Constitution Bench of this Court in H.R.S. Murthy upheld their stand and affirmed their belief. Several years later, a larger Bench of this Court overruled H.R.S. Murthy (AIR 1965 SC 177) in India Cement (AIR 1990 SC 85) and ruled that by virtue of the declaration contained in Section 2 of the M.M.R.D. Act and the provisions of the said Act, the State legislatures are denuded of their power to levy any tax on minerals. Entry 50 in List II became practically a dead letter. Provisions in several State enactments levying cess/tax on minerals were accordingly invalidated with effect from different dates. The decisions of this Court clearly meant that the power to levy cess/tax on minerals

vested exclusively with the Parliament. Since this Court is the final arbiter on the interpretation of the Constitution, everybody was bound by the said declaration of law. In the circumstances, the Parliament stepped in and enacted the impugned law, avowedly to bail out States of the predicament aforementioned; the impugned enactment makes this objective clear beyond any doubt. At the same time, it should be noted that Parliament does not purport to clothe the State legislatures with the power which they do not possess. The Parliament had already deprived the State legislatures of the power to levy tax on minerals by making the declaration contained in Section 2 of the M.M.R.D. Act as far back as 1957. The said declaration remains intact which means that the States have no power to levy any tax or cess on minerals so long as the said declaration remains in force. The Parliament, therefore, adopted the only legislative course open to it in the circumstances. It created those very levies with retrospective effect by enacting the impugned law. section 2(1) says that the relevant provisions of the enactment mentioned in the Schedule to the Act shall be deemed to have been enacted by Parliament on the date they were enacted by the respective legislatures and that such provisions shall be deemed to have remained in force up to 4th day of April, 1991. It is not suggested that Parliament is not competent to levy a tax or cess with retrospective effect. It is, however, suggested that the tax so levied must also be operative and effective on the date the enactment is made. There cannot be a levy which is wholly and exclusively retrospective, it is argued. We see no warrant for reading such a restriction upon the power of the Parliament. If the Parliament is empowered to make a law with retrospective effect, it is entitled to make the law effective for such anterior period as it thinks appropriate. It cannot be said that unless the levy created with retrospective effect is also kept alive on the date the law is enacted by Parliament, such a levy would be incompetent. This would amount to evolving a principle unknown to law and would also amount to creating a fetter on Parliament for which there is no basis in principle. We are also unable to see any substance in the submission that by virtue of the impugned enactment, the Parliament has tried to annul the judgments of this Court. On the contrary, the Parliament has accepted the law declared by this Court and has accordingly enacted the law itself, about whose legislative competence there can be no serious question.

14. The decisions in Madan Mohan Pathak (AIR 1978 Sc 803) and Nachiane (AIR 1982 SC 1126), we must say, have no bearing on this question. Even so, having regard to the strong reliance placed thereon by Sri G. L. Sanghi, it would be appropriate to deal with the facts and principle of the said decisions, to illustrate how the said decisions are wholly irrelevant to the question concerned herein. First, the decision in Madan Mohan Pathak.

15. 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 where upon 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 the said appeal was pending, Parliament enacted the Life Insurance Corporation (Modification of Settlement) Act, 1976. When the Letters Patent Appeals was taken up, the Corporation represented that in view of the said Act 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 remains almost unnoticed and the impunged Act was passed in ignorance of that judgment..... Section 3 of the impugned Act provided that the provisions of the settlement insofar as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from 1st April, 1975. 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 impunged 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, it is relevant to note, cited with approval the law laid down by this Court in Shri Prithivi Cotton Mills (AIR 1970 SC 192) but distinguished it by pointing out that the 1976 Act concerned before them in Madan Mohan Pathak (AIR 1978 SC 803) purported to merely deny the benefit of settlement to the employees which settlement was directed to be implemented by means of a madamus issued by the Calcutta High Court and hence, the principle in Shri Prithvi Cotton Mills (AIR 1970 SC 192) did not help the Life Insurance Corporation. This is what the learned Judge said:

"It is difficult to see how this decision given in the context of a validating statute can be of any help to the Life Insurance Corporation. Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax".

16. 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 impunged 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 impunged 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 Narain (1976) 2 SCR 347 : (AIR 1975 SC 2299). 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).

17. While appreciating the ratio of the said opinions, it is necessary to bear in mind that it was not a case where the High Court either struck down a statutory provisions 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. 17-A. 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 and Singhal, JJ. agreed with Bhagwati, J. only to the extent that the Act was violative of Article 31(2).

18. The observations of Bhagwati, J. extracted hereinabove - upon which Sri Sanghi places strong reliance - indeed emphasise the fact that the 1976 Act was passed in ignorance of the mandamus issued by High Court and that the Act did not touch the decision of the High Court in any manner. These observations cannot be read to support the contention that where a mandamus issued is premised on the footing that State Legislatures have no legislative power to impose the disputed levy, the Parliament (which is undoubtedly competent to impose the said levies) cannot make a law imposing the said levies. As pointed out earlier, the majority judgment of Bhagwati, J. did indeed affirm the statement of law in Shri Prithivi Cotton Mills (AIR 1970 SC 192), which we may quote here only with a view to emphasise the principle. Hidayatullah, C.J., speaking for the Constitution Bench held (at pl. 195 of AIR):

"When a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition is that the Legislature must possess the power to impose the tax, for if it does not, the action must ever remain ineffective and illegal. Granted legislative competence it is not sufficient to declare merely that the decision of the Court shall not bind, for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A Court's decision must always bind unless the

conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances".

19. The mandamus issued by this Court was against the States and not against the Union or the Parliament. This Court did not say that Parliament had no power to impose the said levies. We are also of the opinion that the decision in Madan Mohan Pathak (AIR 1978 SC 803) must be read and understood in the particular facts of that case and that it would not be reasonable to read that decision as militating against, or as over turning the series of decisions of this Court on the subject including Rai Ramakrishna v. State of Bihar (1964) 1 SCR 897 : (AIR 1963 SC 1667), Shri Prithvi Cotton Mills (AIR 1970 SC 192) and Jagra Sugar Mills v. State of Madhya Pradesh (1966) 1 SCR 523 : (AIR 1966 SC 416).

20. Now, coming to the decision in Nachane (AIR 1982 SC 1126), it is indeed a sequel to the decisions in Madan Mohan Pathak (AIR 1978 SC 803) and Life Insurance Corporation v. D.J. Bahadur, (1981) 1 SCC 315 : (AIR 1980 SC 2181), and its ratio has to be understood in the light of the background facts set out in Paras 1 to 5 of the said judgment. Having regard to the identity of the subject-matter, it was held in Nachane that the decision in Madan Mohan Pathak and D.J. Bahadur being decision between the same parties, their ratio is binding upon them. It cannot be said that any new principle was enunciated.

21. We may mention that we have dealt with the decision in Madan Mohan Pathak (AIR 1978 SC 803) at some length because we find that it is being frequently relied upon as laying down a principle at variance with Shri Prithvi Cotton Mills (AIR 1970 SC 192) and the host of decisions affirming it. In our opinion, the effort is a futile one, as demonstrated hereinabove. Another decision rendered by one of us, Suhas C. Sen, J. sitting with N.P. Singh, J. has also understood the decision in Madan Mohan Pathak in precisely the same manner. (See Comorin Match Industries (P) Limited v. State of Tami Nadu (1996) 5 JT (SC) 167 : (1996 AIR SCW 2251). We respectfully agree with all that has been said in the said judgment with respect to the decisions in Madan Mohan Pathak and Nachane. It is needless to reproduce those observations over again here.

22. We must also say that the fact-situation and the ratio of Madan Mohan Pathak (AIR 1978 SC 803) and Nachane (AIR 1982 SC 1126) is totally at variance with the fact situation in the case before us. They are worlds apart in every sense of the term. The first contention of the appellants is accordingly rejected.

23. The second contention of the learned counsel for appellants petitioners is that Section 2 of the impugned enactment does not achieve the purpose set out in the Preamble and that the language employed in Section 2 is not adequate to create any fresh levies. It is submitted that the Parliament must first create the levy and then give it retrospective effect. But it cannot relegate both the making of law and giving it retrospective effect to the realm of fiction, it is argued. The Parliament cannot

say that it must be deemed to have made a law without actually making it. It is submitted that in sub-section (1) of Section 2, there are no words saying that the Parliament is levying the various taxes/cesses mentioned in the said sub-section read with the Schedule. By way of contrast, our attention is invited to the language of Section 3 of the Sugarcane Cess (Validation) Act, 1961 which was enacted by Parliament in view of the decision of this Court in Diamond Sugar Mills Limited v. State of Uttar Pradesh (1961) 3 SCR 242 : (AIR 1961 SC 652) and the decision of the Madhya Pradesh High Court following it and declaring that the levy of cess on sugarcane under the provisions of the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958 was beyond the legislative competence of the Madhya Pradesh Legislature. Several States had levied similar cesses. To meet the situation arising from the decisions aforesaid, the Parliament enacted the Sugarcane Cess (Validation) Act, Section 3 whereof reads:

"3. Validation of imposition and collection of cesses under State Acts.

(1) Notwithstanding any judgment, decree or order of any Court, all cesses imposed, assessed or collected or purporting to have been imposed, assessed or collected under any State Act before the commencement of this Act shall be deemed to have been validly imposed, assessed or collected in accordance with law, as if the provisions of the State Acts and of all notifications, orders and rules issued or made thereunder, in so far as such provisions relate to the imposition, assessment and collection of such cess had been included in and formed part of this section and this section had been in force at all material times when such cess was imposed, assessed or collected; and accordingly,-

(a) no suit or other proceeding shall be maintained or continued in any court for the refund of any cess paid under any State Act;

(b) no court shall enforce a decree or order directing the refund of any cess paid under any State Act; and

(c) any cess imposed or assessed under any State Act before the commencement of this Act but not collected before such commencement may be recovered (after assessment of the cess, where necessary) in the manner provided under that Act.

(2) For the removal of doubts it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person-

(a) from questioning in accordance with the provisions of any State Act and rules made thereunder the assessment of any cess for any period; or

(b) from claiming refund of any cess paid by him in excess of the amount due from him under any State Act and the rules made thereunder".

(Emphasis added)

23-A. The validity of Sugarcane Cess (Validation) Act was questioned in this Court in Joara Sugar Mills Private Limited (AIR 1966 SC 416) but was upheld. The contention of the learned counsel for appellants-petitioners is that if the Parliament wanted to impse the levies, which levies were earlier imposed by State enactments but declared incompetent, the Parliament must impose the levy as has been done by it in Section 3 of the Sugarcane Cess (Validation) Act, 1961. Section 2(1), it is contended, does not impose the levies and, therefore, there is no levy and there is no imposition. It is not possible to agree with this contention either. The State enactments mentioned in the Schedule to the impunged enactment did contain provisions creating the levy. It is the very same provisions which are enacted by Parliament now. Section 2(1) says that the said provisions must be deemed to have been enacted and must be deemed always to have been enacted by Parliament. In such a situation, it is idle to contend that Section 2(1) does not create the levy or the impost. It does. We are also unable to find any qualitative difference between Section 3 of the Sugarcane Cess (Validation) Act and Section 2 of the impugned Act. The relevant words are the same, viz., "shall be deemed to have been.....". With necessary adaptations, both the provisions are quite alike. We need not, however, dilate upon this contention of appellants-petitioners for the reason that an identical provisions enacted to meet an identical situation has already been upheld by this Court in Krishnachandra Gangopadhyaya v. Union of India, 1975 Suppl SCR 151 : (AIR 1975 SC 1389). In Baijnath Kedia v. State of Bihar, (1970) 2 SCR 100 : (AIR 1970 SC 1436), this Court had declared the second proviso to Section 10(2) of the Bihar Land Reforms Act, 1950 unconstitutional on the ground that Bihar Legislature had no legislative competence to enact it and that Parliament alone was competent to legislate in that behalf. It was also held that Rule 20(2) framed by the Bihar Government as delegate of the Parliament under Section 15 of the M.M.R.D. Act was unconstitutional since the rule making power conferred by Section 15 did not contemplate alteration of terms of leases already in existence before the Act was passed. In view of the judgment of this Court in Baijnath Kedia, the Parliament enacted the Validation Act in the year 1969. The Preamble to the said Act stated that it was "an Act to validate certain provisions contained in the Bihar Land Reforms Act, 1950, and the Bihar Minor Mineral Concession Rules, 1964, and action taken and things done in connection therewith". Section 2 of the said Act read thus :

"2. Validation of certain Bihar State laws and action taken and things done connected therein.

(1) The laws specified in the Scheudle shall be and shall be deemed always to have been as valid as if the provisions contained therein had been enacted by Parliament.

(2) Withstanding any judgment, decree or order of any Court, all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued and rents or royalties realised under any such laws shall be deemed to have been validly taken, done, made, issued or realised, as the case may be, as if this section had been in force at all material times when such action were taken, things were done, rules were made, notifications were issued, or rents or royalties were realised, and no suit or the proceedings shall be maintained or continued in any Court for the refund of rents or royalties realised under any such laws.

(3) For the removal of doubts, it is hereby declared that nothing in sub-section (2) shall be construed as preventing any person from claiming refund of any rents or royalties paid by him in excess of the amount due from him under any such laws".

24. It was contended before this Court that language of Section 2 is not sufficient to bring about a levy. It was contended that "no liability to levy rent or royalty can be created retroactively without two clear stages or steps : firstly, a law must be enacted creating the liability; next, such provision should be made retrospective. This two stage procedure is absent in the statute under attack and, therefore, the purpose, whatever it be, has misfired". It may be noticed that this is precisely the contention urged before us now. The said contention was, however, rejected by this Court. It observed : "the Bihar Legislature is not legislating into validity, by a deeming provision, what has been declared ultra vires by the Court. It is Parliament, whose competency to legislate on the topic in question is beyond doubt, that is enacting the 'deeming' provisions". The Court held further that the language of Section 2 is clear and unmistakable and that by enacting the said provision the "Parliament desired to validate retrospectively what the Bihar legislation had ineffectually attempted. It has used words plain enough to implement its object and, therefore, the validating Act as well as the consequential levy are good". A perusal of Section 2 of the impugned enactment and Section 2 of the 1969 Validation Act considered in Krishnachandra Gangopadhyaya (AIR 1975 SC 1389) would show that Section 2 of the impugned enactment is a faithful reproduction and repetition of Section 2 of the 1969 Validation Act, word to word. The only additional words are in Section 2(1), viz., "and such provisions shall be deemed to have remained in force up to the 4th day of April, 1991".

25. Shri Parasaran contended that these additional words in Section 2(1) do make a qualitative difference and distinguish the present case from the one considered in Krishnachandra Gangopadhyaya (AIR 1975 SC 1389). We cannot agree. The said words merely limit the levy up to 4th day of April, 1991 and in no manner detract from the content and effect of the preceding words employed in sub-section (1) of Section 2.

26. So far as reliance upon the language employed in Section 3 of the Sugarcane Cess (Validation) Act is concerned, all that we need say is, there is no set or standard formula to which all Validation Acts should conform. The Parliament is not bound to adopt identical language every time it enacts a

Validation Act. It is open to it to employ such language as it chooses. All that the Court should see is whether the language employed achieves the purpose which the Parliament set out to achieve. The language employed in Section 2 of the impugned enactment, we are satisfied, does achieve the purpose and we are fully fortified, in our opinion, by the decision in Krishanchandra Gangopadhyaya. The second contention too accordingly fails.

27. The third contention which has been urged by every counsel appearing for appellants-petitioners with great vehemence is this: the impugned Act is designed to and provides only for validating the taxes and cesses already recovered under the relevant provisions of the enactment mentioned in the Schedule. The impugned Act does not, however, empower or authorise the Parliament or its agencies to recover taxes and cesses which are payable under the said provisions but have not been recovered on or before 4th day of April, 1991. The Statement of Objects and Reasons and the language in sub-section (2) of Section 2 are relied upon in support of this contention. It is also pointed out that Section 2 does not contain a clause or words corresponding to clause (c) in sub-section (1) of Section 3 of the Sugarcane Cess (Validation) Act, 1961, referred to hereinbefore. It is not possible to accede to this contention either. Section 2 enacts the relevant provisions of the enactments mentioned in the Schedule with retrospective effect. The provisions so enacted do create the levy. Indeed, unless the levy is validated, recoveries already made cannot be validated. It is for this reason that the Preamble to the Act says that it is an Act "to validate the imposition and collection of cesses and certain other taxes on minerals under certain State laws". Once the provisions, which create the levy, are deemed to have been enacted by Parliament, the levy is very much there with retrospective effect. Once there is a valid levy, not only the taxes already collected need not be refunded but the taxes and cesses which have not already been collected can also be collected. It is impossible to see any distinction in principle between both. Merely because sub-section (2) inter alia states that "cesses or other taxes on minerals realised under any such laws shall be deemed to have been validly.....realised....as if this section had been in force at all material times when such ..... cesses or other taxes were realised", it does not mean that the taxes which were levied but not collected cannot be collected. The said words in sub-section (2) are not words of limitation; they are words of validation and put in by way of abundant caution in view of the judgments and orders of the Courts. On the language of Section 2 which enacts with retrospective effect, the relevant provisions levying cesses and taxes on minerals and also validates the rules and notifications issued thereunder, we find it impossible to say that the levy is validated only for the limited purpose of saving the taxes already collected, i.e., to stay the refund of taxes already collected. Indeed, if the section were so construed, it would lead to discriminatory consequences. Take two persons 'A' and 'B'. Both are equally liable to pay the cess on minerals levied by, say the Madras Legislature. One pays the tax according to law and the other does not. If the argument of appellants-petitioners is to be accepted, the man who paid will be worse off than the person who did not pay because no tax can now be collected from the person who did not pay. No such unreasonable intention can be attributed to Parliament. It would not be reasonable to assume that the Parliament intended such discriminatory treatment between two similarly placed persons and for no reason. Some of the counsel for appellants-petitioners sought to argue that the above situation cannot be described as discriminatory. According to them, there is a reasonable classification between the person who does not pay, comes to the Court and succeeds in his challenge and the person who does not come to the Court but quielty pays the tax and sits at home. This illustration proceeds on the assumption that only a person not paying the tax comes to the Court. That may not always be true. A person may pay the tax demanded and then come to Court challenging the demand and collection. There may also be a situation where a tax is collected from him even before

he comes to Court. It is also possible that in a given case, stay is not granted by the Court and he is obliged to pay. There may also be a situation where both 'A' and 'B' in the above illustration may not come to Court. We are, therefore, of the clear opinion that once the levy is created or validated, as the case may be, no distinction can be drawn between the person who has paid and the person who has not paid. We are also unable to find any words in Section 2 or any where else in the impugned enactment limiting the levy only to the extent of the taxes/cesses already collected on or before 4th day of April, 1991. Nor are we satisfied that absence of a clause or words corresponding to clause (c) in Section 3(1) of the Sugarcane Cess (Validation) Act makes any difference. The said clause merely sets out the consequence flowing from the validation contained in the main limb of Section 3(1), by way of abundant caution. It cannot be treated as a substantive provision, Sri K. Parasaran then submitted that the words "imposition and collection" in the Preamble do evidence the intention to confine the imposition to amounts already collected. It is not possible to agree. By reading them conjunctively, their meaning cannot be cut down. On the contrary, the said words indicate the intention to validate the imposition as well as collection. "Collection" does not mean what is already collected alone. It means future collection as well. Neither the Preamble nor Section 2 say that what is already collected alone is validated. This contention too accordingly fails.

28. The fourth contention of the learned counsel for appellants-petitioners is unsustainable in law and is misconceived. The Parliament is competent to enact a law applicable only to a part of the country or to some States in the country, as the case may be. It is not necessary that every law made by Parliament must necessarily apply to the entire country as such. Not only this, the Parliament is equally entitled to prescribe different rates of tax in different States if such different rates are called for in the given circumstances. This is not unknown to law. Take, for instance, sub-section (2A) of Section 8 of the Central Sales Tax Act. Sub-section (1) and (2) of the said Act levy tax at uniform rates throughout the country. But sub-section (2A) brings about a distinction between State and State. It says that notwithstanding the provisions in Section 6(1)(A) or Section 8(1) or Section 8(2)(b), so much turnover of a dealer as pertains to goods, the sale or purchase of which is under the Sales Tax of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent, Central Sales Tax shall also be charged on such turnover either at the nil rate or at such lower rate, as the case may be. This provision clearly recognises and gives effect to different rates of tax in different States of the country on identical transactions of sale. In State of Madras v. N. K. Nataraj Mudaliar, (1968) 3 SCR 829: (AIR 1969 SC 147), this difference in rates of tax between different States was challenged as discriminatory and hence, violative of Articles 301, 302, 303 and 304 of the Constitution of India. The challenge was repelled by a Constitution Bench of this Court. It was held that the said provision does not bring about any discrimination between one State and another within the meaning of Article 303. This Court quoted with approval the observations of the Australian High Court in King v. Barger (1908 (6) CLR 41) with respect to the meaning of the expression "discrimination between States or part of States" used in Section 51 of the Austraian Constitution:

".....the pervading idea is the preference of locality merely because it is locality, and because it is particular part for a particular State. It does not include a differentiation based on other considerations, which are dependent on natural or business circumstances, and may operate with more or less force in different localities; and there is nothing, in my opinion, to prevent the Australian Parliament, charged with the welfare of the people as a whole, from doing what every

State in the Commonwealth has power to do for its own citizens; that is to say, from basing its taxation measures on considerations of fairness and justice, always observing the constitution injunction not to prefer States or parts of States".

29. At the same time, we must say that where Parliament imposes different rates of tax in different States, it * is under an obligation to justify the same. It must satisfy the Court that such a distinction does not amount to discrimination and that it is reasonable in the circumstances and has a purpose behind it. Now, let us see whether there is any justification for imposing different rates in different States in the present case. We think there is. If one only remembers the background and the context in which the impugned enactment was made by Parliament, the reason behind such different rates would immediately become clear. Each State had imposed its own rate. The challenge in India Cement (AIR 1990 SC 85) and Orissa Cement (AIR 1991 SC 1676) was not to different rates being levied by different State Legislatures but to the very legislative competence of the State Legislatures to impose the said levy. When the Parliament is re-enacting those very provisions, it could not but adopt those very rates. This is the historical justification, if we can describe it that way. It is really not a case where the Parliamentary enactment is creating the distinction or different treatment. Distinction and different treatment was already there over several decades; each State was prescribing its own rate on the same mineral; no body ever questioned it as discriminatory; indeed it could not be so questioned; the decisions of the Courts had declared the levy by the State Legislatures as competent; the Parliament has intervened and by enacting the impugned law in exercise of its undoubted power, validated the levy all that flows from it. It such circumstances, there was no other way except to do what has actually been done. The question is one of power and legality of the exercise and not its desirability - apart from the fact that the test of desirability may vary from person to person. In our opinion, the exercise cannot be faulted on the ground of violation of Article 14 of the Constitution.

* Here the expression "it" is used in the manner of speaking figuratively. The Parliament never explains or defend any of its acts before this Court. (See Sanjeev Coke Manufacturing Company v. Bharat Coking Ltd. (1983 AIR SC 239 at para 26). The explanation obviously has to come from the Union of India.

30. It is then argued that the very idea behind enacting the M.M.R.D. Act was to bring about uniformity in taxes and royalties throughout the country. True it is. But does that mean that Parliament cannot create an exception to the rule it itself has created. Uniformity in the rates of tax is an objective set out by Parliament in the M.M.R.D. Act. It is not a precondition to a law made by Parliament under Entry 54 in List I nor is it a limitation upon Parliament's power. If the Parliament has enunciated the principle, it can also create an exception thereto in appropriate circumstances or to meet an exigency. This is precisely what has been done in the instant case. The impugned enactment is both an addition and an exception to Section 9 of the M.M.R.D. Act.

31. The fifth contention of the learned counsel for appellants-petitioners is equally misconceived.

The Parliament has already denuded the State Legislatures of their power to levy tax on minerals inhearing in them by making the declaration contained in Section 2 of the M.M.R.D. Act. Shri Sanghi argued that the denudation is not absolute but only to the extent provided in the M.M.R.D. Act. Section 9, learned counsel submitted, is one of the facets of the extent of denudation. Section 9, it is submitted, sets out the rates of royalty levied and also states that such rates of royalty can be revised only once in three years. If Section 9 is sought to be amended, whether directly or indirectly, the learned counsel says, a fresh declaration in terms of Entry 54 of List I is called for. This contention assumes that notwithstanding the declaration contained in Section 2 of the M.M.R.D. Act, the States still retain the power to levy taxes upon minerals over and above those prescribed by the M.M.R.D. Act and that a fresh declaration is called for whenever such subsisting power of the State is sought to be further encroached upon. This supposition, however, flies in the face of the decisions of this Court in India Cement (AIR 1990 SC 85) and Orissa Cement (AIR 1991 SC 1676). The said decisions are premised upon the assumption that by virtue of the said declaration, the States are totally denuded of the power to levy any taxes on minerals. It is for this reason that the State enactments were declared incompetent insofar as they purported to levy taxes/cesses on minerals. The denudation of the States is not partial. It is total. They cannot levy any tax or cess on minerals so long as the declaration in Section 2 stands. Once the denudation is total, there is no occasion or necessity for any further declaration of denudation or, for that matter, for repeated declarations of denudation. Indeed, if Sri Sanghi's arguments were to be accepted, a fresh declaration would be required every time the Parliament increases the rate of royalties. No such requirement can be deduced from the relevant constitutional provisions as interpreted by this Court. This contention also accordingly fails.

32. The sixth contention of the learned counsel for appellants-petitioners is premised upon the supposition that the Parliament is bound to utilise the taxes realised under the impugned Act only for the purpose of regulation of mines and mineral development. It is on this supposition, it is argued, that inasmuch as the Union has not established that the impugned levy is required for the purpose of the said regulation and development, the imposition is incompetent. In our opinion, the very supposition is misplaced. What is levied under the impugned enactment is a tax/cess and not a fee. Even in the matter of fees, it is not necessary that element of quid pro quo should be established in each and every case, for it is well-settled that fees can be both regulatory and compensatory and that in the case of regulatory fees, the element of quid pro quo is totally irrelevant. (See Corporation of Calcutta v. Liberty Cinema, AIR 1965 SC 1107). Taxes are raised for augmenting the general revenues of the State and not for any particular purpose - much less for rendering a particular service.

33. We may now deal with the last contention urged by appellants-petitioners. It has several facets. We may first deal with the submission that the impugned Act is a temporary statute and that it has come to an end with the 4th day of April, 1991. Since Section 6 of the General Clauses Act does not apply to a temporary statute and also because the impugned Act does not contain a saving clause in terms of said Section 6, it is argued, no proceedings for recovery of unrecovered taxes/cesses can be taken after the 4th day of April, 1991. In our opinion, the submission is totally misconceived. A temporary statute is one which expires on the expiry of the specified period. The impugned Act was indeed enacted and published in April, 1992 and Section 1(3) says that the Act shall be deemed to have come into force on February 15, 1992. It is, therefore, meaningless to say that it has expired or

it ceased to have any effect on the 4th day of April, 1991. There are no words any where in the impugned Act indicating that it expires on the expiry of a particular period or on a particular date. Merely because the cesses and taxes imposed by it are made effective up to a particular date (4th April, 1991), it does not mean that the statute itself expires on that date. We may in this connection refer to the decision of this Court in Maganti Subrahmanyam (dead) by L.Rs. v. The State of Andhra Pradesh, (1969) 2 SCC 96 : (AIR 1970 SC 403). The Madras Legislature had enacted the Madras Estates Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1947 with a view to prohibit the alienation of Communal, Forest and Private Lands in the estates in the Province of Madras. The Preamble to the Act stated that it was enacted to prevent alienation of the several lands in the estates in the province of Madras pending enactment of legislation for acquiring the interests of land holders in such estates and introducing Ryotwari Settlement therein. In 1948, the Madras Legislature enacted the Madras Estates (Abolition and Conversion into Ryotwari) Act providing for acquisition of the rights of land holders in permanently settled estates. It was contended before this Court that in view of the statement in the Preamble to the 1947 Act, the said Act must be deemed to have come to an end with the enactment of the 1948 Act. On this basis, it was contended that the 1947 Act must be deemed to be a temporary statute. The contention was roundly rejected by this Court observing that since no fixed duration of the Act was specified, it cannot be called a temporary statute. Indeed, the decision of this Court in Madurai Distt. Central Cooperative Bank Ltd. v. Third Income-Tax Officer, Madurai, (1976) 1 SCR 135 : (AIR 1975 SC 2016) indicates that even the Finance Acts which are passed every year, are not transitional or temporary enactments.

34. It is also necessary to say that merely because the levy created by an enactment is limited to a particular period, the Act itself cannot be said to be a temporary statute. The duration of the levy created by the Act and the life of the Act are two different things; they are not necessarily co-extensive. We, therefore, reject the argument that merely because the levies created by Section 2(1) of the impugned Act are to remain in force only up to 4th April, 1991, the impugned Act itself can be described as a temporary statute. The Act very much continues in force even today and will remain in force till the Parliament chooses to repeal it. In the circumstances, the argument regarding the inapplicability of Section 6 of General Clauses Act or the alleged absence of a saving clause in terms of Section 6 are misplaced.

35. The next facet of this contention is that inasmuch as the provisions validated under the impugned Act not only pertain to levy but also to collection and recovery and because all those provisions cease to have effect on and with the 4th day of April, 1991, it must be held that there is no machinery in existence after April 4, 1991, for realising and collecting the uncollected/unrealised taxes/cesses. There is no levy and there is no machinery to realise the levy after April 4, 1991, it is contended. This argument is urged in support of the contention that the Act merely purports to validate the recoveries already made but does not empower or authorise realisation/recovery of taxes/cesses not already collected. This submission ignores the crucial circumstances that the levy is created by the impugned Act and that the impugned Act continues in force. Sub-section (3) of Section 2 is a firm indication that notwithstanding the cessation of levy after the 4th day of April, 1991, the machinery created to recover and refund the said cesses/taxes is kept alive. Sub-section (3) of Section 2 reads :

"(3) For the removal of doubts, it is hereby declared that nothing in sub-section (2) shall be construed as preventing any person from claiming refund of any cess or tax paid by him in excess of the amount due from him under any such laws".

36. Take a case where excessive collection is made sometime before April 4, 1991. What is the remedy of the person concerned. If the appellants' argument were to be accepted, the person would be helpless; there would be no machinery to examine his claim. But then what does sub-section (3) mean and signify ? It must, therefore, be held that notwithstanding the cessation of levy created by Section 2(1) with April 4, 1991, the machinery requisite for realising and refunding the taxes/cesses yet to be collected or wrongly collected, as the case may be, is kept alive. It cannot also be suggested with any reasonableness that the said machinery is kept alive only for the purposes of refunding the excessively collected taxes but not for collecting/recovering the uncollected/unrecovered taxes and cesses. The last contention of the appellants-petitioners also fails accordingly.

37. Sri G. L. Singhi addressed a separate argument specific to the petitioners from the State of Madhya Pradesh. It is submitted that, in the first instance, cess on minerals was levied by the Madhya Pradesh Karadhan Adhiniyam, 1982 (being M.P. Act 15 of 1982). The levy was declared incompetent and void by the Courts, whereupon, it is stated, the Madhya Pradesh Legislature amended in 1987, the Madhya Pradesh Upkar Adhiniyam, 1981, levying the same cess. Even this levy was invalidated by the Courts, it is submitted. Sri Sanghi's apprehension is that the impugned Parliamentary enactment validates the relevant provisions of both the 1982 Madhya Pradesh Act as well as the 1981 Madhya Pradesh act (as amended in 1987) with the result that appellants-petitioners may be called upon to pay the cess on minerals twice over i.e., under both the 1982 Act as well as under the 1981 Act (as amended in 1987) simultaneously. We see no basis for such an apprehension. Be that as it may, Sri Gulab C. Gupta, learned counsel appearing for the State of Madhya Pradesh, stated clearly that no such double levy will take place and that there would be only one levy of cess on minerals in any given year or any given quantity removed. The said statement should allay any apprehensions on the part of appellants-petitioners from Madhya Pradesh.

38. For the above reasons, the appeals and writ petitions are dismissed with costs. Advocate's fee quantified at Rs.2,500/- in each appeal and writ petition.

39. No orders are necessary in Interlocutory Applications.

Order accordingly.