**MYSORE HIGH COURT**

India Sugars and Refineries Ltd

Vs

State of Mysore

Writ Petns. Nos.394, 395 and 396 of 1958

(S.R. Das Gupta, C.J. and H. Hombe Gowda, J.)

26.08.1959

**JUDGMENT**

**S.R. Das Gupta, C.J.**

1. The petitioner in these three petitions is the Indian Sugar and Refineries Ltd., Hospet carrying on business of Sugar Manufacturing Factory. These petitions raise the same questions and they can be conveniently taken up together. They relate to three Notifications dated 9-4-1956, 15-10-1957 and 12th/ 13th February 1958 issued by the Government purporting to act under Section 14 (1) of the Madras Sugar Factories Control Act, 1949, whereby cess was imposed on the petitioner for the crushing season 1955-56, 56-57 and 57-58 respectively.

2. The main questions raised in these petitions are (a) whether or not under Section 14 (1) of the said Act the Government has power to issue notification imposing a cess on Sugarcane brought and crushed in petitioner's factory for a period Prior to the date of the said notifications, and (b) whether or not the notifications issued in this case under the said section impose cess for the period prior to the dates of such notifications. Before mentioning the respective contentions of the parties before us on these questions, it would be necessary to set out the material provisions of the Madras Sugar Factories Control Act, 1949, rules framed under the said Act and the actual notifications issued by the Government under Section 14 thereof They are as follows:-

3. The Preamble of the Act shows that it is an Act to provide for the licensing of Sugar factories and regulating the supply and the prices of sugarcane used in such factories and for other incidental matters. Section 1 of the said Act reads as follows :-

> (1) This Act may be called the Madras Sugar Factories Control Act, 1949.
> (2) It extends to the whole of the State of Madras.
> (3) This section shall come into force at once, and the Government may, from time to time, by notification, apply all or any of the remaining provisions of this Act to the whole or any portion of the State of Madras from such date or dates as may be specified in the notification.

Sub-section (b) of Section 2 defines 'crushing season' as the period beginning on the 1st November in any year and ending on the 30th June next following. Sub-section (c) of Section 2 defines 'factory'. Sub-section (g) of the said section defines 'occupier of a factory'. Section 6 of the said Act inter alia provides that on and after such date as the Government may, by notification, specify in this behalf, no sugarcane shall be crushed in any factory unless a license for that purpose has been obtained in respect of that factory from Government. Section 7 inter alia lays down the conditions which the Government may impose at the time of the grants or renewal or at any time during the currency of the license. Section 8 of the Act makes it obligatory upon the occupier of every factory to submit to the Sugarcane Commissioner on or before a date specified by him in this behalf, an estimate, in the prescribed form and manner, of the quantity of sugarcane which would be required by that factory during the crushing season immediately following. Sub-section (1) of Section 10 provides that before each planting season, any sugarcane-grower in a reserved area may offer, in such form and on or before such date as may be prescribed, to sell such quantity as he may specify of the sugarcane which may be grown by him for crushing in the crushing season immediately following to the occupier of the factory for which the area has been reserved. Section 11 prohibits certain transactions mentioned in the said section in any area notified to be a reserved area except as mentioned in the said section. Sub-sections (1) and (2) of Section 12 read as follows :-

> (1) The Government may at any time before the commencement of a crushing season, after consulting the Advisory Committee, by notification, specify either generally or in respect of any factory, either the price which the occupier of a factory shall be bound to pay for any sugarcane purchased by him during the season or the method of calculating such price :
> Provided that the Government may specify different prices or different methods of calculating the prices of different varieties of sugarcane.
> (2) The Government may at any time, after consulting the Advisory Committee, by notification, vary any price or method of calculation specified under sub-section (1).
> Provided that no such notification shall apply to any sugarcane purchased by occupier of a factory before the publication of such notification.

4. The next section to be considered is Section 14, and that is the section with which we are mainly concerned in this petition. It reads as follows :-

14 (1) The Government may, after consulting the Advisory Committee, by notification, levy a cess not exceeding four annas per standard maund as defined in the Standards of Weight Act, 1939, on sugarcane brought into any area specified in such notification, for consumption, use or sale therein.

> (2) Subject to the maximum aforesaid, the Government may from time to time, after consulting the Advisory Committee, by notification, alter the rate of levy of such cess.
> (3) The Government may, by order, remit in whole or in part any cess paid or payable under this section in respect of any sugarcane specified in such order.

(4) The Government may, after consulting the Advisory Committee, make rules, specifying the authorities by which the persons from whom, and the manner in which, the cess levied under this section shall be collected.

(5) Any sum payable under this section may be recovered as if it were an arrear of land revenue. The only other section which remains to be referred to is Section 17 of the Act. Sub-section (1) of Section 17 provides that the Government may make rules to carry out the purpose of this Act. Sub-section (2) (f) reads as follows :-

(2) In Particular and without prejudice to the generality of the foregoing power, such rules may provide for - x x x x x x

(f) the form of the records to be kept and of the returns to be made, and the information to be furnished by persons liable to pay the cess under Section 14.

5. Of the Rules framed under the said Act, Rule 11 only need be set out for the present. If reads as follows :-

11. Forms and returns: - (1) The occupier of every factory shall maintain, in the form given in Appendix II, a current daily account of the sugarcane entering the factory for consumption or use by the factory;

(2) within a fortnight of the close of each month, the occupier shall pay into the treasury, the amount due as cess on the quantity of sugarcane which has entered the factory during such month;

(3) within a fortnight of the close of each month, the occupier shall submit to the Sugarcane Commissioner, a return in the form given in Appendix III showing the quantity of sugarcane that has entered the factory during the month and the amount of cess Paid by him into the treasury on account of that quantity of sugarcane together with the treasury receipt in support thereof;

(4) The Sugarcane Commissioner shall on receipt of such return, verify that the amount of cess has been correctly calculated and that the full amount thereof has been remitted into the treasury;

(5) If the occupier of a factory :-

(a) fails to keep correct daily accounts in the prescribed form; or

(b) fails to submit on or before the due date, the monthly return in the prescribed form; or

(c) fails to credit into the treasury on or before the due date, the full amount payable on account of the cess or credits an amount less than the correct amount; or

(d) fails to submit with the monthly return the treasury receipt showing that the amount of cess has been duly credited into the treasury, he shall be punishable with fine which may be extended to ₹ 2,000/- (Rupees two thousand only).

The rest of the said rule need not be considered.

6. By virtue of the power conferred on it by Section 14 of the Act, to which I have already

referred, the Government issued three notifications imposing cess on the Petitioner. It is necessary for the purpose of this application to set out the full contents of all the three notifications. They are set out hereunder in the order of dates in which they were published and as notifications A, B and C, respectively :-

Notification A.
GOVERNMENT OF MYSORE
No. 1. 133 Mysore Government Secretariat,
Mo. 34-56-6 Bangalore, dated 9th April 1956.
Notification.
In exercise of the powers conferred by Section 14 of the Madras Sugar Factories Control Act, 1949 (Madras Act No. XX of 1949), as in force in Bellary District, as amended by the Madras Sugar Factories Control (Mysore Amendment) Act 1954, the Government of Mysore direct that a cess at the rate of three annas and six pies per standard Maund (as defined in the Standards of Weight Act, 1939) of sugarcane crushed by the Hospet Sugar Factory (The India Sugars and Refineries Ltd.,) be levied for the crushing season 1955-56.
By Order and in the name of
the Rajapramukh,
Sd/- M. S. Swaminathan,
Secretary to Government,
Development Department.
NOTIFICATION B.
Notification.
No. RD13 SCC/57 dated Bangalore 15th October, 1957. In exercise of the powers conferred by Section 14 of the Madras Sugar Factories Control Act, 1949 (Madras Act No. XX of 1949), as amended by the Mysore Sugar Factories Control (Mysore Amendment) Act, 1954 (Mysore Act No. VII of 1954), as in force in the Bellary District, the Government of Mysore hereby levies a cess at the rate of Twenty-two Naye Paise per standard maund as defined in the Standards of Weight Act, 1939 (Central Act 9 of 1939) on sugarcane brought into and crushed by the Hospet Sugar Factory (The Sugars and Refineries Ltd.) for the crushing season in 1956-57.
By Order and in the name of the Governor of Mysore
Sd/- K. Balasubramanyam,
Secretary to Government,
Revenue Department.
NOTIFICATION C.
Notification.
No. RD 4 SCC-58 dated Bangalore, 12-13th February 1958.
In exercise of the powers conferred by Section 14 of the Madras Sugar Factories Control Act, 1949 (Madras Act No. XX of 1949), as amended by the Madras Sugar Factories Control (Mysore Amendment) Act, 1954 (Mysore Act No. VII of 1954), as in force in the Bellary District, the Government of Mysore hereby levies a cess at the rate of twenty two Naye paise per standard Maund as defined in the Standards of Weight Act, 1939 (Central Act 9 of 1939), on sugarcane brought into and crushed by the Hospet Sugar Factory (The Sugars and Refineries Ltd.) for the crushing season in 1957-58.
By Order and in the name of the Governor of Mysore.
Sd/- K. Balasubramanyam,
Secretary to Government,

Revenue Department.

7. After the said notifications were issued, the Petitioner has filed the present petitions, in the first place, challenging the power of the Government to levy a cess for a period prior to the dates of the said notifications, and in the second place, contending that in any event on a true construction of the notifications in question, the cess has been levied for the period subsequent to the date of such notifications but limited to the respective crushing seasons mentioned in the said notifications. It was further contended before us on behalf of the petitioner that the Government could not issue orders upon the Tahsildar directing him to effect attachment for nonpayment of the cess payable by the petitioner which the Government has purported to do in this case, without first asking for a return and without investigating the same and without even making a demand for such dues.

8. The learned Advocate for the Petitioner in support of his first contention, viz., that the Government has no power under Section 14 of the Act to levy a cess for a period prior to the date of the notifications in question, urged that that section is prospective and not retroactive. His contention was that the said section when it says that the Government "may.....by notification levy cess on sugarcane brought into any area", only empowers the Government to levy cess on sugarcane that are brought into the specified area after the date of such notification, and not on sugarcane that had already been brought into the area before the notification. In support of his said contention he relied on the rules of interpretation of a statute and contended that unless a statute is made expressly retrospective it is always prospective. He further contended that if an event is mentioned on the happening of which a liability is to attach that event is to happen in future i.e. after the statute comes into force and he Vth Edn., page 367 in support of the said contention. He further relied on a decision of the Bombay High Court reported in *Tamboli Boghalal Chhotalal v. Mohan Lal Chunilal*[1], and on an English decision reported in *Bradford Union v. Clerk of the Peace for the County of Wilts*[2], and urged that unless a statute is expressly made retroactive, it cannot have that effect. In this case, he contended, the section is not expressly retroactive. The expression "brought into any area" may well mean "brought into any area after the date of the notification".

9. In support of his contention that the Act does not give any power to the Government to impose cess retrospectively the learned Advocate for the petitioner also referred us to the preamble and other provisions of the Act and contended that the preamble and the provisions of the Act are all of a prospective nature and that being so, it would not be possible to give a retroactive effect to the power conferred by Section 14 of the Act. He further contended that sub-section (4) of Section 14 as also clause (f) of sub-section (2) of Section 17 show that rules have to be framed before effect can be given to the provisions of Section 14 of the Act and the fact that something has to be done before levy can be imposed shows that the said levy cannot be a retrospective one. He further contended that an inference should always be drawn against retrospective operation of a statute and in support thereof cited In re, Athlumney; Ex parte, Wilson, (1898) 2 QB 547. Lastly, the learned Advocate

[1] AIR 1957 Bom 130

[2](1867) 3 QB 604

contended that in any event if the section is capable of two meanings, then the meaning which is favorable to the assessee should be accepted.

10. These in short are the contentions urged before us by the learned Advocate for the petitioner in support of the first ground mentioned above.

11. As against the said contentions of the learned Advocate for the petitioner the learned Advocate-General appearing for the State contended that when a legislative power is conferred, then if the Act which confers such power is couched in general terms, then there is no restriction on the delegated authority to legislate retrospectively. In other words, his contention was that whenever a statute confers a power to legislate then, in the absence of any restriction, the power so conferred includes the power to legislate retrospectively. In support of this proposition he relied on the decision of the Supreme Court in *Union of India v. Madan Gopal Kabra*[3], The learned Advocate-General further contended before us that the notification when issued becomes a part of the statute and, therefore, the power to issue notification tantamounts to a power to legislate. This power, he contended, has been conferred by Section 14, and Section 14 being couched in general terms a notification issued by virtue of the said power can be retrospective in operation. In this case, there being no such restriction imposed by Section 14, a retrospective notification under that section can be issued.

12. As for the rules of interpretation on which the learned Advocate for the petitioner relied, the learned Advocate-General conceded that if the levy was directly made by the Act itself then the expression "brought into" must be construed as prospective, but the position, according to him, becomes different when a power to legislate is conferred and there is no express prohibition against making retrospective legislation. In other words, Mr. Advocate-General's contention was that although a charging section, unless it is made expressly retrospective, cannot have that effect, if a power to legislate is conferred and the said power does not expressly prohibit retrospective legislation, then such power may be exercised to make a retroactive legislation. The rules of interpretation, Mr. Advocate General contended, relate to interpretation of a Statute and not to conferment of power to legislate. Section 14, he contended, did not impose a tax but only conferred the power to impose a tax.

13. I have given anxious consideration to the contentions of the learned Advocate General on this point but I am unable to accept the same. I am unable to hold that a power conferred by the Legislature on a subsidiary body e.g. Government, to issue notifications if couched in general language can be exercised retrospectively. On the other hand, I am of the opinion that such power, unless it is expressly stated that the same can be exercised retrospectively, can only be exercised prospectively. In other words, it is only those powers which are expressly conferred that can be exercised by the delegated authority. I am not for the moment considering the question and the same was not raised or argued before us as to whether or not the Legislature in this case can at all confer a power upon the executive body to impose tax retrospectively, such imposition being a matter of policy which the Legislature alone can determine. In my opinion, unless the power to legislate, conferred on an executive body by the

[3] AIR 1954 SC 158

Legislature, expressly mentions that such power can be exercised retrospectively, it can only be exercised prospectively.

14. At this stage, I should mention that there is difference in this respect between the power of a Legislative body and that of the delegated authority e.g. executive Government. A Legislative body can always legislate retrospectively unless there is any prohibition under the Constitution

which has created it. The Supreme Court's decision, on which the learned Advocate-General relied, viz., AIR 1954 SC 158 is an authority for this proposition. That decision, in my opinion, in no way supports the contention of the learned Advocate, namely that the power conferred by the Legislature on an executive Government to legislate, if there is no express prohibition, can be exercised retrospectively. The extent of the powers of a Legislature and those of an executive Government, exercising delegated legislative power, in this respect are not the same. This view has been clearly expressed in the Allah bad decision reported in *Modi Food Products Ltd. v. Commr. of Sales Tax, U. P*[4]*.,* Their Lordships in the course of their judgment in the said case observed as follows :-

> "A Legislature can certainly give retrospective effect to pieces of Legislation passed by it but an executive Government exercising subordinate and delegated legislative powers, cannot make legislation retrospective in effect unless that power is expressly conferred".

It was no doubt argued before us by the learned Advocate General that the actual decision in the above case was based on the interpretation of the notification in question issued in exercise of the power so conferred. That may be so, but their Lordships in the said observations enunciated the principle with which I respectfully agree for determining the extent of the powers of a delegated body e.g. Government to make retrospective legislation.

15. In the case reported in *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Worker's Union*[5]*,* their Lordships of the Supreme Court also expressed the same view. In that case the Labour Commissioner of U. P. to whom the dispute between a Company and its employees was referred for adjudication made his award 8 days after the expiry of the time originally fixed for the making of the award. About 13 days after the delivery of the award the notification in question was issued whereby the Governor allowed the said Adjudicator to submit his award by 30-4-1950. The question which arose for their Lordships' determination was whether or not the award was null and void and in deciding that question the other question which arose was whether or not the Governor could issue a notification giving retrospective effect. One of the contentions urged before their Lordships, in support of the view that the Governor could issue such retrospective notification, was that in view of the provisions of Section 21 of the U. P. General Clauses Act, 1904 this notification should be taken as an amendment or modification, within the meaning of that section, of the first order by virtue of which the dispute in question was referred to the Labour Commissioner, U. P. Their Lordships negatived this contention and held that "in view of the absence" of any

[4] AIR 1956 All 35
[5] AIR 1953 SC 95

distinct provision in Section 21 that the power of amendment and modification conferred on the State Government may be so exercised as to have retrospective operation the order of 26-4-1950, viewed merely as an order of amendment or modification, cannot, by virtue of Section 21, have that effect". The learned Advocate General contended before us that the said case was distinguishable from the present inasmuch as in that case the Tribunal had become 'functus officio' by reason of efflux of time and once a tribunal had become functus officio it cannot be re-invested with jurisdiction. That may be so, but in my opinion, their Lordships clearly laid down the proposition that a power conferred on the State Government by Legislature, unless there is a distinct provision to show that the same can be so exercised as to have retrospective operation, can only be exercised prospectively.

16. In the case reported in *Howell v. Falmouth Boat Construction Co. Ltd*[6]*.,* the House of Lords in England, also took the same view as was expressed by their Lordships of the Supreme Court in the above mentioned case. In this case a licence was granted to operate retrospectively and to cover works already done under oral sanction of the proper authority as well as the work to be done in future. The question arose as to whether or not such retrospective license can be issued. In dealing with that question, their Lordships observed as follows :

> "This, again, is a question of construction. Counsel for the respondents naturally took the point that retrospective authority is a familiar conception in our law. That is true and not unimportant for this case. But it needs more than this to justify the construing of a license to carry on an activity otherwise prohibited by statutory order as including a license with retrospective effect. It would be a dangerous power to place in the hands of Ministers and their subordinate officials to allow them, whenever they had power to license, to grant the license ex post facto; and a statutory power to license should not be construed as a power to authorize or ratify what has been done unless the special terms of the statutory provisions clearly warrant the construction".

17. In the case of *Agarwal, Ayengar and Co. v. The State*[7]*,* Chainani J. (as he then was) of the Bombay High Court sitting with Bavdekar J. after referring to the Full Bench decision of the Bombay High Court in *Fram Nusserwanji v. State of Bombay*[8]*,* in which it was observed that the sovereignty of the Provincial Legislature to legislate with regard to the items mentioned in list 2, in the 7th schedule carries with it the power to legislate with regard to all ancillary and subsidiary matters, observed as follows :-

> "The principle laid down in these cases applies, in my opinion, to laws passed by a Legislature, whose powers have to be ascertained by reference to lists, in which the various matters or items on which it could legislate are mentioned in general terms. It cannot apply in cases in which the executive Government or any other authority is empowered by the Legislature to issue orders, the powers which the executive government or the other authority can exercise in such cases are the powers which are expressly conferred upon it or which are

[6]1951 AC 837 [8]52 Bom LR 799 : AIR 1951 Bom 210

[7] AIR 1951 Bom 397

> derived by necessary implication from the provisions of the Act by which the powers are conferred".

Thus the proposition laid down by their Lordships in the said case is that the powers which an executive Government in case where it is empowered by legislature to issue orders, can exercise are the powers which are expressly conferred upon it. If therefore, a power to issue orders with retrospective effect has not been expressly conferred on the Government, it cannot exercise such powers. At this stage, I should mention that it was not the contention of the learned Advocate-General that in this case a power to legislate, i.e. to issue notification, having retrospective effect was expressly conferred on the Government by Section 14 of the Act, nor was it his contention

that any such power was derived by necessary implication from the provisions of the said Act. On the other hand, he conceded that if the levy was made by the section itself, then it could not have been said that it was made expressly retrospective and must be held to be prospective in its operation. But his contention was that in a case where a power to legislate is conferred and if that power does not expressly prohibit retrospective legislation it can be exercised to make retroactive legislation - a proposition with which I am unable to concur and which is contrary to the views expressed in the case to which I have referred.

18. The position, however, of a sovereign legislature is different. It can, as has been held by their Lordships of the Allahabad High Court in AIR 1956 Allahabad 35, give retrospective effect to a piece of legislation passed by it. That also seems to me to be the effect of the Supreme Court decision - AIR 1954 SC 158 on which the learned Advocate-General relies. In that case what had to be determined by their Lordships was whether or not the Parliament can make retrospective legislation, the contention urged before their Lordships being that as the Constitution is not retrospective in its operation the power to legislate conferred upon Parliament by the Constitution cannot also be exercised retrospectively. It is this contention which their Lordships negatived in the said case. Their Lordships held that as no limitation or restriction is imposed in regard to retroactive legislation by the Constitution it is competent for the Parliament to make a law imposing a tax on the income of any area prior to the commencement of the Constitution and no retrospective operation of the Constitution is involved in the conferment of those powers. Thus, it would appear that their Lordships of the Supreme Court were dealing in that case with the powers of the Parliament. In my opinion a different principle would apply to the case of an executive Government exercising subordinate and delegated legislative powers. In such cases unless the power to act retrospectively is expressly conferred by the Legislature on the Government, the Government cannot act retrospectively.

19. The learned Advocate General also relied in the course of his argument before us on two other decisions, one of the Madras High Court *Guruviah Naidu v. State of Madras*[9], and another of the Supreme Court reported in *Mohammad Ghouse v. State of Andhra*[10] The decision of the Madras High Court was a decision of a Single Judge. It appears from the judgment of his Lordship that the learned Counsel appearing in that case for the petitioner did not dispute "that as a general proposition that the

[9] AIR 1958 Mad 249

[10] AIR 1957 SC 246

Legislature might by specific enactment retrospectively impose a tax" and the learned counsel "did not even contest the proposition that rules made under Statute might, if so expressed, validly be made to operate with retrospective effect". There is also, no doubt, an observation of his Lordship "that these are not really concessions by counsel but are established law" but it would appear that there was no contest on this point and his Lordship was not called upon to decide this question and except making the observation as aforesaid his Lordship did not deal with it. In the Supreme Court decision, also AIR 1957 SC 246, the question which is now raised before us was not raised before their Lordships and their Lordships were not called upon to determine the same. What their Lordships held was that the rule in question on which the respondent relied has subsequently been amended by a Government Order and it was expressly provided in the said order that the amendment shall be deemed to have come into force on 1-10-1953 and therefore the point raised by the respondent was one of academic interest. On that view their Lordships dismissed the appeal. The question as to whether or not the said order could at all be made

retrospective in its operation was not raised before their Lordships and their Lordships were not called upon to decide that question. That being so, these cases, in my opinion, are of little assistance to Mr. Advocate-General for his present contention.

20. I am also in agreement with the contention of the learned Advocate for the Petitioner, viz., the Act itself, having regard to its preamble, its provisions, and the rules framed thereunder, is prospective in its character and that being so, it is not possible to hold that the intention of the Legislature was to give a retrospective effect to the power conferred under Section 14, thereof. The preamble of the said Act shows that it is an Act to provide for the licensing of sugar factories and regulating the supply and the prices of sugarcane used in such factories and for other incidental matters. An Act to provide for the licensing of Factories and for regulating the supplies and prices of goods used in such factories is an Act which is of prospective nature. Sub-section (3) of Section 1 provides that the Government may, from time to time, by notification, apply all or any of the provisions of this Act, other than the provisions contained in sub-section (1) and sub-section (2) of the said Section, to the whole or any part of the State of Madras from such date or dates as may be specified in the notification. Sub-sections 1 and 2 of Section 1 merely say that the Act may be called the Madras Sugar Factories Control Act, 1949 and it would extend to the whole of the State of Madras. Thus all other provisions of this Act would come into operation prospectively as and when the Government by notification may choose to apply the same. Section 6 of the Act also Provides that on and after such elate as the Government may, by notification, specify in this behalf, no sugarcane shall be crushed in any factory unless a license for that purpose has been obtained in respect of that factory from the Government. The remaining provisions of the said section indicate the manner in which the application for license should be made and the conditions under which the license should be granted or refused. Section 7 lays down that the license granted or renewed under Section 6 shall be subject to such conditions as the Government may, after consulting the Advisory Committee, impose at the time of its grant or renewal or at any time during its currency, in respect of all or any of the matters mentioned in the said section. Thus Sections 6 and 7 are both prospective in their effect. Section 8 requires the occupier of every factory to submit to the Sugarcane Commissioner on or before a date specified by him in this behalf, an estimate, in the prescribed form and manner of the quantity of sugarcane which would be required by that factory during the crushing season immediately following. Section 9 inter alia provides that the Commissioner may, after taking into consideration the estimate, if any, submitted to him in accordance with Section 8 and any other circumstance which he may consider material, by notification, declared any area to be a reserved area for such factory and during such a crushing season or seasons, as may be specified in the notification. Section 10 inter alia provides that before each planting season, any sugarcane-grower may offer, in such form and on or before such date as may be prescribed, to sell such quantity as he may specify of the sugarcane which may be grown by him for crushing in the crushing season immediately following to the occupier of the factory for which the area has been reserved. Sub-section (1) of Section 11 inter alia provides that so long as the notification as issued under sub-section (1) of Section 9 or as modified under sub-section (2) of that section, remains in force, no one shall sell any sugarcane grown in any area declared to be a reserved area, to any person other than the occupier of the factory specified in it unless such occupier has refused to buy the sugarcane under the proviso to sub-section (2) of Section 10. Section 12 entitles the Government at any time before the commencement of a crushing season, after consulting the Advisory Committee, by notification to specify either generally or in respect of any factory, either the price which the occupier of a factory shall be bound to pay for any

sugarcane purchased by him during the season or the method of calculating such price. Section 13 is a penal section. It would thus appear that all these sections which precede Section 14 are prospective in their nature. There is no reason why the legislature would make Section 14 only retrospective it its operation so far as it relates to conferment of power on the Government although all other provisions of the said Act are made prospective. It is difficult to imagine that that was the intention of the Legislature. The position becomes clearer when we come to sub-section (4) of Section 14 and Clause (f) of sub-section (2) of Section 17 of the said Act. Sub-section (4) of Section 14 provides that the Government may, after consulting the Advisory Committee, make rules, specifying the authorities by which the persons from whom and the manner in which, the case levied under this section shall be collected. Clause (f) of Sub-section (2) of Section 17 enables the Government to make rules providing for the form of the records to be kept and of the returns to be made, and the information to be furnished by persons liable to pay the cess under Section 14. The learned Advocate for the Petitioner rightly contended before us that sub-section 4. of Section 14 indicates that something has to be done before a notification under sub-section (1) of Section 14 can be issued and cess can be levied. In other words, rules have to be framed specifying the authorities by which, the persons from whom, and the manner in which, the cess levied under this section shall be collected. It is after all that is done that the Government can act under sub-section (1) of Section 14, and this shows that the intention of the Legislature was that the power to levy cess conferred on the Government could only be exercised prospectively and not retrospectively. Clause (f) of sub-section (2) of Section 17 would also lead to the same conclusion. Under the said Clause rules have to be framed prescribing the forms of the records to be kept and of the returns to be made and the information to be furnished by persons liable to pay cess under Section 14. The fact that such forms, returns and information for purposes of Section 14 have to be prescribed by rules to be framed by the Government indicate that for the period prior to the date when the said rules come into operation there can be no question of paying any cess, as there was no question of keeping any records or making any returns or furnishing any information for that purpose during that period. Again when I turn to the rules framed under the said sections I find that it is not possible to reconcile the said rules with the view that the power conferred under Section 14 can be exercised retrospectively. The rule framed for the aforesaid purpose is Rule 11 and the material portions thereof read as follows :

> "(1) The occupier of every factory shall maintain, in the form given in Appendix II, a current daily account of the sugarcane entering the factory for consumption or use by the factory;
> (2) Within a fortnight of the close of each month, the occupier shall pay into the treasury, the amount due as cess on the quantity of sugarcane which has entered the factory during such month;
> (3) Within a fortnight of the close of each month, the occupier shall submit to the sugarcane Commissioner, a return in the form given in Appendix III showing the quantity of sugarcane that has entered the factory during the month and the amount of cess paid by him into the treasury on account of that quantity of sugarcane together with the treasury receipt in support thereof;
> (4) The Sugarcane Commissioner shall on receipt of such return, verify that the amount of cess has been correctly calculated and that the full amount thereof has been remitted into

the treasury."

Sub-rule (5) of Rule 11 lays down the punishment which is to be imposed if the occupier of a factory fails to keep correct daily accounts in the prescribed form or fails to submit on or before the due date, the monthly return in the prescribed form; or fails to credit into the treasury on or before the due date, the full amount payable on account of the cess or credits an amount less than the correct amount; or fails to submit with the monthly return the treasury receipt showing that the amount of cess has been duly credited into the treasury, and the punishment indicated in the said section is fine which may be extended to ₹ 2,000/-. These rules, as I said before, are not reconcilable with the view that the Government can under Section 14 impose a cess retrospectively, that is, for a period anterior to the date of its notification. It would be seen that the terms of the said rule which relate to payment of cess would become unworkable in a case where cess is imposed for a period prior to the date of the notification. For instance, sub-rule (2) of the said rule which provides that within a fortnight of the close of each month the occupier shall pay into the treasury the amount due as cess on sugarcane on the quantity of sugarcane which has entered the factory during such month, cannot be given effect to if the cess is imposed for a period prior to the date when the notification under Section 14 was issued. During that period there was no question of the occupier paying into the treasury any amount due as cess. Similarly sub-section (3) and sub-section (4) would also be inapplicable to such cases of retrospective imposition. It is also difficult to see how the penal provisions of sub-rule (5) of the said rule can be or should be enforced against a person in respect of the period prior to the date of notification. These rules, in my opinion, also support the view that the Legislature did not confer a power upon the Government to act retrospectively under Section 14 of the said Act.

21. This view also finds support from the fact that there is no limit fixed up to which the Government could act retrospectively. In other words, if it is conceded that a power to act retrospectively in this matter has been conferred upon the Government by Section 14 then it must also be conceded that such power can be exercised up to any length of time, as there is no limitation as to time in respect thereof in the section itself. It is difficult to imagine that the Legislature could intend to confer such unlimited retrospective power upon the Government. If that was its intention, then the Legislature, in the first place, would have expressly said so and the Legislature in that case also would have put a limitation as to the period upto which such power could be retrospectively exercised. The same view has been taken by the Bombay High Court in the case reported in AIR 1957 Bombay 130 and in the English case reported in (1867) 3 QB 604. In the case reported in AIR 1957 Bombay 130, which was decided by Vyas, J. the question which arose was whether the tenancy rights created in favor of a tenant before the coming into force of the Bombay Tenancy and Agricultural Lands Act and enjoyed by a tenant after the Act came into force could be affected as the result of a notification issued by the State Government under clause (d) of sub-section (1) of Section 83, specifying the lands as reserved for urban, non-agricultural or industrial development. In dealing with that question Vyas, J. observed as follows :

> "Power was given to the State Government, to specify certain areas as reserved areas for urban, non-agricultural or industrial development, but there was no obligation cast upon the Government to take a decision in that direction immediately on coming into force of the Act. The Government may take a decision after 5, 10 or 20 years after coming into

> force of the Act and during all that indeterminate time the peasants would not know whether the area in which they lived and tilled the lands might ultimately be reserved for urban, non-agricultural or industrial development.
> XX XX XX

Now, if the State Government, instead of making up its mind immediately on coming into force of the Act whether particular lands are necessary or not necessary for urban, non-agricultural or industrial development, allowed the tenants to acquire and enjoy tenancy rights under Sections 3A and 5(1) of the Act, it is difficult to hold that the Legislature would have intended to wipe out those rights when it empowered the State Government to issue a notification under clause (d) of sub-section (1) of Section 88." It might, no doubt, be contended that what his Lordship held in that case was that the Legislature could not have intended to wipe out the vested rights when it empowered the State Government to issue a notification which accrued after the Act came into force and before notification was issued. But it seems to me that the principle of that decision is that the Legislature could not have intended to give such unrestricted power to the Government and that principle would also apply to the present case. To the same effect was the decision reported in (1867) 3 QB 604. Following observations of Cockburn C. J., would make the point clear.

> "Thirdly, it is said that the order is bad so far as it is retrospective. The order provides that the parish shall pay all arrears from the period at which the man was sent to the asylum to the time of the making of the order, viz., 114£ 15s. 4d. and the question is whether Section 2 of 3 and 4 Vict. C.54, authorises the making of such an order for past expenses. I feel the force of Mr. Coleridge's observations, and no doubt it is a very serious result to contemplate, that a lunatic prisoner may be sent to an asylum, and yet the keeper, who has no alternative but to receive him, cannot recover the expense of his maintenance unless an order of justices has been made. The position of the lunatic is not satisfactory. On the other hand if the legislature has omitted to provide for such a case, it is not incumbent or even open to us to legislate in order to supply the omission. I am of opinion we cannot so construe Section 2 as to make it operate on past maintenance.
> ..... ..... ..... .....
> "Prima facie this language is prospective, there is nothing which treats of past maintenance, and we start with the proposition, that in all such cases the rate must be prospective, and not retrospective."

That being a principle adopted long ago and long acted on, whenever the Legislature has thought it expedient to authorize the making of retrospective rates or orders, it has fixed the period as to which the rate or order may be retrospectively made: but the effect of holding that the present section authorizes retrospective orders, unless we could find some reasonable time to which to limit it would be to allow it to be made no period of limitation whatever; and it might extend to a period even of ten years or more." Having carefully considered all aspects of this question I have come to the conclusion that the power conferred on the Government under Section 14 of the Act to levy cess did not include a power to impose such cess retrospectively. This contention of the learned advocate for the petitioner should, therefore, succeed.

22. I shall now deal with the second contention urged before us by the learned advocate for the petitioner in support of this petition. That contention was that in any event on a true construction of the notifications in question it should be held that the cess has been levied for the period subsequent to the dates of such notifications but limited to the respective crushing seasons mentioned in the said notifications. In view of my decision on the first contention of the learned advocate for the petitioner, viz., that Section 14 of the Act does not confer a power upon the State Government to impose cess retrospectively it would be unnecessary for me to deal with this contention of the learned advocate for the petitioner. But as this matter has been fully argued before us, I should also give my decision thereon.

23. The contention of the learned advocate for the petitioner on this point was that the notifications did not say that the levy was being imposed on all the sugarcane crushed during the season. The said notifications only say "sugarcane crushed" and not "sugarcane crushed during the season". The learned Advocate further contended that in all the said notifications levy was for "the crushing season mentioned" which meant that the levy was limited to that season. In other words the levy was not to extend beyond the said season. The effect therefore, according to the learned advocate for the petitioner of the said notifications was that cess was levied on sugarcane brought and crushed in the factory, such levy being limited only to the season. Therefore, according to him, by the said notifications the levy was on sugarcane brought and crushed after the notifications were issued but limited to the seasons mentioned. The learned advocate contended that if the notifications are capable of two meanings then the meaning which is favorable to the tax-payer should be accepted. The learned advocate further contended that the manner in which the said notifications have been punctuated shows that "levy" goes with "crushing season", supporting thereby his contention that the levy is to be limited to the crushing season. He drew our attention to the fact that except in the notification dated 9th April 1956, comma has been placed before the words "for the crushing season" and also before the words "on sugarcane brought." The way in which these commas have been placed shows that the words "for the crushing season" is connected with the word 'levy' and not with the words "sugarcane brought into and crushed."

24. I am unable to accept the contentions of the learned advocate for the petitioner on this point. The true intent of the notifications in question seem to me to be clear. The said notifications are clearly retrospective in their operation and not prospective. I am unable to hold that the words "for the crushing season" would mean only up to the end of a crushing season. Crushing season has been defined in the Act itself as meaning the period beginning on the 1st November in any year and ending on 30th June next following. If, therefore, for the words "crushing season" words "for the period beginning with 1-11-56 and ending with 30th June 57" are put then it would be difficult, if not impossible, to put the construction, which the learned advocate for the petitioner wants us to put on the said notifications. In other words in that case it would no longer be possible to hold that the levy in question is to be limited to the period commencing from the date of the notifications, two of which were issued in the middle of the crushing season, and ending with the close of the crushing seasons. Even on the view that the levy goes with the words "for the crushing season" the natural and obvious meaning of the notifications would be that the said levy is for the whole period beginning with 1st of November and ending with 30th June of the next year. Otherwise, as the learned Advocate-General rightly contended before us, there was no point in referring to the crushing season, which means the period commencing from 1st

November of any year and ending with June next year, as in that event the notification could have and would have said that the levy would be from the date of the notification up to the end of the crushing season. In my opinion, there is some meaning in drafting the notifications in that manner and the whole period of crushing season, i.e., 1st November to June next would be the period for which the notifications would be operative.

25. That the construction which the learned advocate is seeking to put on the said notifications cannot be accepted is, at least clear from the terms of the second notification, which was issued on 15th October 1957 and the crushing season mentioned therein is the crushing season in 1956-57 (that is the period between the 1st November 1956 and 30-6-57). Thus, the said notification was issued after the crushing season was over. It cannot, therefore, be said, by any stretch of imagination, that the intention of the State Government at least with regard to this notification was that the levy was to be from the date of the notification up to the end of the crushing season, the notification having been issued after the crushing season. This notification also makes it impossible for me to accept the other contentions of the learned advocate for the petitioner, viz., that the "sugarcane crushed" as mentioned in the said notification would be sugarcane brought in and crushed after the date of the notification. It on the other hand supports the view that by the notification in question the levy was to be on all sugarcane brought into and crushed during the whole period of crushing seasons.

26. I am also of the view that by the said notifications levy was to be on sugarcane brought into and crushed in the factory for the crushing season mentioned and not on sugarcane brought into and crushed after the date of the notification but limited only up to the end of the crushing season mentioned, as contended by the learned advocate for the petitioner.

27. As for the contention of the learned advocate for the petitioner that the manner in which the notifications have been punctuated shows that the words "for the crushing season" should betaken to apply to the words 'levy' or 'levies' appearing in the said notifications, I am also unable to accept the same. As observed by their Lordships of the Supreme Court in the case reported in *Ashwini Kumar v. Arabinda Bose*[11], "Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English Courts". Their Lordships in that case further observed as follows :

> "When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation. Vide Crawford on Statutory Construction, p. 343. I need not deny that punctuation may have its uses in some cases, but it cannot be allowed to control the plain meaning of a text."

In this case there is no doubt in my mind about the plain meaning of these notifications. The plain meaning of the notifications is that they are retrospective in their operation, i.e., the levy is imposed on sugarcane brought into and crushed in the factory for the entire period of the crushing season - mentioned. That being so, punctuation cannot be allowed to control it. I am also of the opinion that the notifications in this case have not been carefully punctuated. As the learned Advocate-General pointed out, "commas" have been more or less indiscriminately put in these notifications and no significance can, in my opinion, be attached to them. In this connection I should refer to the view expressed by their Lordships of the Privy Council in the case reported

in *Lewis Pugh v. Ashutosh Sen*[12], Their Lordships observed as follows :

> "The truth is that, if the article is read without the commas inserted in the print, as a Court of law is bound to do, the meaning is reasonably clear."

Following these observations of the Privy Council the High Court of Allahabad in the case reported in *Niaz Ahmad Khan v. Parsottam Chandra*[13], held as follows :

> "The difficulty is caused mainly by the punctuation, viz., a comma after the word "silence" which seems to indicate that the words "fraudulent within the meaning of Section 17" apply both to 'misrepresentation" and to "silence". But as observed by their Lordships of the Privy Council in the case of *Maharani*

[11] AIR 1952 SC 369 [13] AIR 1931 All 154

[12] AIR 1929 PC 69

> *of Burdwan v. Krishnakamini Dasi*[14], and AIR 1929 PC 68 at p. 71, punctuation is no part of the statute, and a Court of law is bound to interpret the section without the commas inserted in the print. If the comma after the word "silence" is to be ignored the expression "fraudulent within the meaning of Section 17" might well apply to "silence" exclusively and not to "misrepresentation".

If, in this case, the comma, on which the learned advocate for the petitioner relied, used before the words "crushing season" and before the words "on sugarcane brought into and crushed" are ignored then the "sugarcane brought into and crushed by the factory" must be the sugarcane brought into and crushed for the crushing season mentioned in the notifications. I am, therefore, of the opinion that this contention of the learned advocate for the petitioner must fail.

28. I now come to the last contention urged in support of this petition. That contention was that the Government could not issue orders upon the Tahsildar directing him to effect attachment for non-payment of the cess payable by the petitioner, which the Government has purported to do in this case, without asking for a report without investigating the same and without even making a demand for such dues. He contended that there has been no computation or assessment of the amount payable as cess by the petitioner or even a demand from the petitioner and the Government has straightway issued orders upon the Tahsildar directing him to effect attachment for non-payment of the cess payable by the petitioner and the Thasildar has issued a distraint order in the form Appendix J (Rule 96 of the Mysore Land Revenue Code).

The learned advocate contended that there should have been computation of assessment and a demand for payment before the Government could direct the Thasildar to effect attachment for non-payment of the cess and before the Thasildar could issue a distraint order. The answer to this contention seems to me to be that under Rule 11(3) of the Madras Sugar Factories Control Act, 1949 it is the duty of the occupier of every factory to submit a return in the form given in Appendix III thereto showing the quantity of sugarcane that has entered the factory during the month and the amount of cess paid by him into the treasury on account of that quantity of sugarcane together with the treasury receipt in support thereof. Under sub-rule (4) of the said rule on receipt of such return, the Sugarcane Commissioner shall verify that the amount of cess has been correctly calculated and that the full amount thereof has been remitted into the treasury. It

thus appears that it is the duty of the occupier of every factory to submit within a fortnight of the close of every month a return showing the quantity of sugarcane that entered into the factory during the month and the amount of cess paid by him on account of that quantity. Thus, the cess became payable within a fortnight of close of each month for the said month under the said rule. I should at this stage mention that I am not now considering the effect of the said rule on the contention of the Government that Section 14 gives power to the Government to impose cess retrospectively. I have already dealt with that question. I am for the moment considering the said rule only for the purpose of determining the present contention of the learned advocate for the petitioner, viz., that a computation of assessment and demand has to be made before the Thasildar issued a distraint order for that purpose.

[14] ILR 14 Cal 365

It would be seen that the cess becomes payable within the period mentioned and it is not necessary that a demand should be made before the said cess becomes payable. That being the position, under Section 14 (5) of the Madras Sugar Factories Control Act, 1949, any sum payable under Section 14 - amount of cess is payable under the said section - may be recovered as if it were an arrear of land revenue. That being so, I do not think there is any substance in this contention of the learned advocate for the petitioner.

29. In the result, therefore, having regard to the view I have taken on the question as to whether or not the Government has the power to levy cess under Section 14 for a period prior to the date of the notifications by which the said cess is levied, these petitions should succeed. There will be an order quashing the notifications dated 9th April 1956, 15th October 1957 and 12/13th February 1958, so far as they relate to the period to the dates on which they were issued. The petitioner will get the costs of these petitions. Advocate's fee ₹ 100/-. One set of costs allowed.

30. H. HOMBE GOWDA, J

31. I agree.

Petitions allowed.