

PETITIONER:
DELHI CLOTH & GENERAL MILLS CO. LTD. & ANR.

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 16/01/1996

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
VERMA, JAGDISH SARAN (J)
VENKATASWAMI K. (J)

CITATION:
1996 SCC (2) 449 JT 1996 (1) 390
1996 SCALE (1)332

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

BHARUCHA, J.

These are appeals by special leave against the judgment and order of a Division Bench of the High Court of Rajasthan. The Division Bench reversed the judgment and order of a learned single Judge, which, upon a writ petition filed by the present appellants, had struck down the Kota Municipal Limits (Continued Existence) Validating Act, 1975.

The appellants established a fertilizer unit in villages called Raipura and Ummedganj of District Kota in the State of Rajasthan in 1969.

On 1st March, 1958, the State of Rajasthan (the 1st respondent) issued a notification under Section 7(1) of the Rajasthan Town Municipalities Act, 1951, informing the public that, in exercise of powers under Section 5(1) of that Act, it proposed to extend the limits of the Kota municipality so as to include therein the village of Raipura and it invited objections thereto. On 16th October, 1958, in exercise of powers conferred by Section 5(1) of the 1951 Act, the State Government extended the limits of the Kota municipality to include therein the village of Ummedganj. This inclusion was challenged in a writ petition filed before the Rajasthan High Court. Pending the decision thereof, on 2nd May, 1960, the State Government excluded the village of Ummedganj from the said municipal limits. On 17th August, 1960, a Full Bench of the Rajasthan High Court held that Ummedganj was not validly included within the limits of the Kota town municipality inasmuch as the mandatory provisions in that behalf had not been followed.

It appears that the villages of Raipura and Ummedganj were treated as falling within the municipal limits of Kota and octroi was collected from the appellants. Realizing, in April 1974, that the levy and realization of octroi by the Kota Municipality (the 2nd respondent) was illegal, the

appellants filed a suit in the court of the Munsiff, Kota, seeking a permanent injunction restraining the Kota Municipality from levying or collecting octroi from it. An injunction was granted and was upheld in appeal. The appellants also filed a suit in the court of the District Judge, Kota, for refund of the amount of Rs.10,85,365.32, being the amount of octroi erroneously paid by the appellants to the Kota Municipality during the period of three years prior to the filing of the suit.

On 7th January, 1975, the State Government issued the Kota Municipal Limits (Continued Existence) Validating Ordinance, 1975. It was replaced by the Kota Municipal Limits (Continued Existence) Validating Act, 1975 (now called the "Validating Act"). Upon the promulgation of the Ordinance, the appellants filed a writ petition challenging its validity. When the Validating Act was passed, the writ petition was amended to challenge the same. The writ petition was allowed by a learned single Judge. Both the State Government and the Kota Municipality filed appeals. By the judgment and order under appeal, the Division Bench allowed the appeals and set aside the judgment of the learned single Judge.

The 1951 Act was replaced by the Rajasthan Municipalities Act, 1959. The provisions in regard to the de-limitation of municipalities and the procedure in that behalf was substantially similar to that contained in the 1951 Act. It is convenient to set out the relevant provisions, which are contained in Section 4 and 6.

"4. Delimitation of Municipalities - (1) Subject to the provisions of sections 5 and 6, the State Government may, from time to time, by notification in the official Gazette -

(c) include or exclude any area in or from any municipality;

6. Procedure preliminary to notification under section 4 - (1) Not less than two months before the issue of any notification under section 4 the State Government shall cause to be published in the Official Gazette, and to be posted in conspicuous spots or proclaimed by beat of drum in the area concerned, a proclamation announcing that it is proposed to constitute such local area to be a municipality, or to include or exclude it in or from any municipality, or to alter the limits of any municipality in a specified manner or to declare that such local area shall cease to be a municipality, as the case may be, and requiring all persons who entertain any objection to the said proposal to submit the same, with reasons therefore in writing, to the State Government within two months from the date of the said proclamation.

(2) No notification under section 4 shall be issued by the State Government, unless the objections, if any, so submitted are, in its opinion sufficient or invalid."

The relevant portion of the Statement of Objects and Reasons of the Validating Act reads thus :

"1. According to the provisions of the

Rajasthan Municipalities Act, 1959, the village of Raipura was never included in the limits of the Kota Municipality and though the village of Ummedganj was included therein but it was thereafter excluded from these limits. However, the Kota Municipality to all intents and for all purposes treated them as existing within its limits. During the period from 1958 to 1974 elections were held and taxes were levied in relation to these villages as existing within the limits of the Kota Municipality. These actions were challenged in law courts. Doubts have, therefore, arisen as to the validity of the continued existence of these villages within these limits and as to the legality of the action taken or things done, including the levy and collection of taxes within these limits.

2. It was, therefore, expedient to remove these doubts and to validate the continued existence of these villages within the limits of the Kota Municipality and the things done, action taken, taxes levied and collected and other matters connected therewith."

(Emphasis supplied.)

Section 3 of the Validating Act is its most relevant provision and it reads thus :

"3. Validation of the continued existence of certain limits of the Kota Municipality and of other matters connected therewith - Notwithstanding anything contained in sections 4 to 7 both inclusive, or any other section of the Municipal Act or in any provisions of the Panchayat Act or in any judgment, decree, order or direction of any court -

(a) the villages of Raipur and Ummedganj in Kota tehsil in the Kota district shall be deemed always to have continued to exist and shall hereafter continue to exist within the limits of the Municipality at Kota to all intents and for all purposes; and

(b) all persons who but for the inclusion of the villages of Raipura and Ummedganj within the limits of the municipality at Kota were not liable to pay any tax due under the Municipal Act shall, upon the inclusion of these villages within the said limits or upon the validation of the continued existence of these villages within the said limits, according to the provisions of this Act, be liable and shall be deemed always to have been liable to pay the taxes due under the Municipal Act and such taxes shall be levied on and collected from them according to the provisions of the Municipal Act;

(c) the areas constituting the aforesaid villages shall be deemed never

to have been included in any Panchayat Circle under the Panchayat Act, and accordingly -

(i) all actions taken, things done, appointments and transfers made and powers exercised by the State Government or by any officers or authorities subordinate to it or by or on behalf of the Municipality at Kota, in relation to the aforesaid villages of Raipur and Ummedganj treating them as existing within the limits of the Municipality at Kota shall be deemed to have been lawfully taken, done, made or exercised; (ii) all taxes levied and collected in exercise of the statutory powers or purported exercise of such powers under the Municipal Act or under any law for the time being in force, by treating these villages as existing within the limits of the Municipality at Kota, shall be deemed always to have been lawfully levied and collected and no claim for their refund shall arise or shall be deemed ever to have arisen; as if the said villages had legally existed within the limits of the Municipality at Kota.

By reason of Section 4, no court is permitted to question the validity of anything done or power exercised on the ground that the villages of Raipura and Ummedganj were not within the municipal limits of Kota. Sections 6 and 7 read thus :

"6. Cancellation of notifications with retrospective effect. - As from the commencement of this Act, all notifications from time to time issued under the Municipal Act or the Panchayat Act, providing for the exclusion of the villages of Raipura and Ummedganj from the limits of the Municipality at Kota or for their inclusion in any Panchayat Circle, shall be deemed to have ceased to have effect and be cancelled as if they never came into force.

7. Act to have over-riding effect. - The provisions of this Act shall have effect notwithstanding anything contained in any law for the time being in force."

Mr. Shanti Bhushan, learned counsel for the appellants, submitted that the Validating Act was bad in law inasmuch as the defects which had been pointed out in the judgment of the Full Bench of the Rajasthan High Court had not been removed by it. Reliance was placed upon the judgment of this Court in *Shri Prithvi Cotton Mills Ltd. and anr. vs. Broach Borough Municipality and ors.*, 1970-1 S.C.R. 388. The case of *Prithvi Cotton Mills Ltd.* is undoubtedly the leading case on the subject of validating statutes. Hidayatullah, C.J., speaking for a Constitution Bench, said :

"Before we examine s. 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a legislature sets out to validate a tax

declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, 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. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralize the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes

adequate provisions in the Validating law for a valid imposition of the tax."

(Emphasis supplied.)

Mr. S.J. Sorabjee, learned counsel for the Kota Municipality, submitted that Section 3 of the Validating Act required the court to deem the villages of Raipura and Ummedganj always to have been within the Kota municipal limits to all intents and for all purposes. All corollaries for such assumption had, therefore, necessarily to follow. Accordingly, the court had to assume that the procedural requirements of Sections 4 to 7 of the 1959 Act had been satisfied. The use of the non-obstante clause in Section 3 of the Validating Act fortified the submission.

Mr. Sorabjee cited the following passage in the judgment in *The State of Bombay vs. Pandurang Vinayak Chaphalkar & Ors.*, 1953 S.C.R. 773 :

"When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. (Vide Lord Justice James in *Ex parte Walton : In re Levy* [17 Ch.D.746 at p. 756]."

He brought to our attention the oft-quoted observations of Lord Asquith in *East End Dwellings Co. Ltd. vs. Finsbury Borough Council*, 1952 A.C. 109, cited therein :

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The judgment in *M. Venugopal vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. & Anr.*, (1994) 2 S.C.C. 323, also cites Lord Asquith and says that the legislature can introduce a statutory fiction and the courts have to proceed upon the assumption that that state of affairs existed on the relevant date. Reliance was placed by Mr. Sorabjee upon *J.K. Cotton Spinning and Weaving Mills Ltd & anr. vs. Union of India & ors.*, (1988) 1 S.C.R. 700. The Explanations to Rules 9 and 49 of the Central Excise Rules, 1944, had provided that excisable goods produced or manufactured in any place or premises at an intermediate stage and consumed or utilised for the manufacture of another commodity in a continuous process would be deemed to have been removed from such place or premises immediately before such consumption or utilisation. This court said that it was well settled that a deeming provision was an admission of the non-existence of the fact deemed. Therefore, in view of the deeming provision under the Explanations, although the goods which were produced or manufactured at an intermediate stage and, thereafter,

consumed or utilised in the integrated process for the manufacture of another commodity were not actually removed, they had to be regarded as having been removed.

It is to be noted that what is to be deemed is a matter of fact; there is a "deeming fiction". It is also to be noted that when a fact is to be deemed, its consequences and incidents are also to be deemed; that is to say, what follows from the deemed fact is also to be deemed.

Mr. Sorabjee relied upon the judgment in R.L. Arora vs. State of Uttar Pradesh and Ors., (1964) 6 S.C.R. 784. This Court in R.L. Arora vs. State of U.P., (1962) Supp. 2 S.C.R. 149, had considered the provisions of Section 40(1)(b) of the Land Acquisition Act, 1894, read with clause (5) of Section 41 thereof and had held that valid acquisitions thereunder could only be for work that would be directly useful to the public and the relevant agreement should contain a term setting out that the public would have a right to use the work directly. Acquisitions that failed to comply with this requirement fell through. Parliament thereupon enacted the Land Acquisition (Amendment) Ordinance, 1962, which was replaced by the Land Acquisition (Amendment) Act, 1962. Thereby, amendments to Sections 40 and 41 of the principal Act were made and acquisitions invalidated by reason of the earlier judgment were validated. Section 40 was amended to include the acquisition for a company which was engaged or was taking steps for engaging in any industry or work which was for a public purpose. Section 41 was amended to include clause 4(A) to cover agreements which provided for such acquisitions. Section 7 of the Amendment Act, 1962, validated the acquisitions invalidated by reason of the earlier judgment by stating that such acquisitions should be deemed to have been made for the purpose and in accordance with Sections 40 and 41 of the principal Act, as amended, as if these amended provisions were in force at all material times. This Court held that the deeming provision in Section 7 laid down that where the acquisition did not fall within the provisions as they existed before the Amendment Act, 1962, came into force, it should be deemed to come within the amendment made thereby, provided, of course, that it was of a kind that could so come. Reliance was placed by Mr. Sorabjee also upon Udai Ram Sharma & Ors. etc. vs. Union of India & Ors., (1968) 3 S.C.R. In the case of State of Madhya Pradesh vs. V.P. Sharma, (1966) 3 S.C.R. 557, this Court had held that once a declaration under Section 6 of the Land Acquisition Act, 1894, had been made, the notification under Section 4(1) of the Act was exhausted and there could be no successive notifications under Section 6 with respect to land specified in one notification under Section 4(1). A validating ordinance was promulgated, to be succeeded by the Land Acquisition (Amendment and Validation) Act, 1967. The Amendment and Validation Act, 1967, amended Section 5-A of the principal Act to allow for the making of more than one report in respect of land which had been notified under Section 4(1). It also amended Section 6 so that different declarations made from time to time in respect of different parcels of land covered by the same notification under Section 4(1) were permissible. The Amendment and Validation Act, 1967, also validated all acquisitions which had been rendered invalid by reason of the judgment in V.P. Sharma's case. The Amendment and Validation Act, 1967, was challenged. This Court rejected the challenge. It observed :

"All these decisions lay down that the power to legislate for validating actions taken under statute which were

not sufficiently comprehensive for the purpose is only ancillary or subsidiary to legislate on any subject within the competence of the legislature and such Validating Acts cannot be struck down merely because courts of law have declared actions taken earlier to be invalid for want of jurisdiction. Nor is there any reason to hold that in order to validate action without legislative support the Validating Act must enact provisions to cure the defect for the future and also provide that all actions taken or notifications issued must be deemed to have been taken or issued under the new provisions so as to give them full retrospective effect.

It is to be noted that in each of these two cases under the Land Acquisition Act, that Act was amended with retrospective effect. Under the amended Act, the acquisitions that had been rendered invalid by earlier judgments became valid and the validation was effected on the strength of such amendment.

In the case of the village of Raipura there was a preliminary notification calling for objections to the extension of the limits of the Kota municipality to include it, but it was not followed by a final notification. In the case of the village of Ummedganj there was a notification extending the limits of the Kota municipality to include it, but it had not been preceded by a notification inviting the objections of the public thereto. Later, another notification was published whereby the village of Ummedganj was excluded from the limits of the Kota municipality. The provisions of Sections 4 to 7 of the 1959 Act and the earlier provisions of the 1951 Act in the same behalf were, therefore, not met in the case of either the village of Raipura or the village of Ummedganj. The Full Bench of the Rajasthan High Court has held that these provisions were mandatory and that judgment has become final.

The Validating Act provides that, notwithstanding anything contained in Sections 4 to 7 of the 1959 Act or in any judgment, decree, order or direction of any court, the villages of Raipura and Ummedganj should be deemed always to have continued to exist and they continue to exist within the limits of the Kota municipality, to all intents and for all purposes. This provision requires the deeming of the legal position that the villages of Raipura and Ummedganj fall within the limits of the Kota municipality, not the deeming of facts from which this legal consequence would flow. A legal consequence cannot be deemed nor, therefrom, can the events that should have preceded it. Facts may be deemed and, therefrom, the legal consequences that follow.

Sections 4 to 7 remained on the statute book unamended when the Validating Act was passed. Their provisions were mandatory. They had admittedly not been followed. The defect of not following these mandatory provisions in the case of the villages of Raipur and Ummedganj was not cured by the Validating Act. The curing of the defect was an essential requirement for the passing of a valid validating statute, as held by the Constitution Bench in the case of Prithvi Cotton Mills Ltd.. It must, therefore, be held that the Validating Act is bad in law and it must be struck down.

It must be made clear that in the suit that the appellants have filed in the court of the District Judge, Kota, for refund of the amount of octroi paid by them to the

Kota municipality, which is stated to be pending, it shall be open to the defendants to take every defence available to them other than that concluded by this judgment.

At the stage when special leave to appeal was granted, no stay was ordered except for the year 1974-75. Counsel on behalf of the Kota municipality agreed that if the appeals were allowed and the Kota municipality was required to refund the amount paid by the appellants by way of octroi duty, it would refund the same with interest at the rate of 8 per cent per annum. The time within which the refund would have to be made was left to be determined when the court heard and disposed of the appeals. The Kota municipality is now directed to refund to the appellants the amounts of octroi duty paid by the appellants to it subsequent to the year 1974-75 with interest at the rate of 8 per cent per annum from the dates of payment till refund or realisation. Such refund shall be made on or before 15th July, 1996.

The appeals are allowed. The judgment and order under appeal is set aside. The Kota Municipal Limits (Continued Existence) Validating Act, 1975, is declared to be invalid. Refund of octroi duty by the Kota municipality to the appellants shall be made as aforesaid.

The Kota Municipality shall pay to the appellants the costs of its appeal, quantified in the sum of Rs.15,000/-.