

CASE NO.:
Appeal (civil) 4093 of 1991

PETITIONER:
M/S SOMAIYA ORGANICS (INDIA) LTD.

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH & ANR.

DATE OF JUDGMENT: 17/04/2001

BENCH:
RUMA PAL

JUDGMENT:

With C.A. No. 2853 of 2001
(@ SLP(C) No. 20018 of 1991)
L...I...T.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

RUMA PAL, J

While I respectfully concur with the reasoning and conclusions reached by my learned brother Kirpal, J., I wish to add my views on an aspect of the prospective over-ruling which was sought to be effected by the decision of the Constitution Bench of this Court in *Synthetics and Chemicals Ltd. and Others vs. State of U.P. and others* 1990 (1) SCC 109.

One of the arguments of the appellant as noted by my learned brother was that the Court in the *Synthetics* case by resorting to prospective over-ruling had in a fact sought to uphold a law upto the period of the judgment which law had held to have been passed without competence. It is submitted that the finding that the States were not competent to levy tax on industrial alcohol meant that the State Acts were non est and that the Court could not by giving prospective effect to its judgment breathe life into a dead statute up to the date of the judgment. It was also contended by the appellant that even under Article 142, the Court could not whittle down or act in derogation of any constitutional provision. By declaring that the statute was valid up to the date of the judgment, according to the appellant, the specific constitutional provisions, namely, Articles 246 and Article 245 were infringed. Reliance has been placed on the decision of this Court in *Prem Chand Garg vs. Excise Commissioner, U.P., Allahabad* 1963 (1) SCR 885 and *Supreme Court Bar Association V. Union of India* and *Another* 1998 (4) SCC 409.

The argument of the appellant proceeds on a misunderstanding of the effect of prospective over-ruling. As has been elaborately stated in my learned brothers judgment, by prospective over-ruling the Court does not grant the relief claimed even after holding in the

claimants favour. In this case, the Court held that the statutory provision imposing vend fee was invalid. Strictly speaking, this would have entitled the appellant to a refund from the respondents of all amounts collected by way of vend fee. But because, as stated in the Synthetics decision itself, over a period of time imposts and levies had been imposed by virtue of the earlier decision and that the States as well as the petitioners and manufacturers had adjusted their rights and their positions on that basis, this relief was denied. The Court did not, by denying the relief, authorise or validate what had been declared to be illegal or void nor did it imbue the legislature with competence upto the date of the judgment.

JUDIS