A

LACHMI NARAIN ETC. ETC.

v.

UNION OF INDIA & ORS.

November 25, 1975

[Y. V. CHANDRACHUD, R. S. SARKARIA AND A. C. GUPTA, JJ.] B

Union Territories (Laws) Act, 1950, *s.* 2—*Bengal Finance (Sales Tax) Act*, 1941, *extended to Delhi with certain modifications by* 1951—*Notification—Notification more than* 6 *years later inserting further modification of the Bengal Act in the* 1951 *Notification—Validity—Section* 6(2) *of the Bengal Act requiring* 3 *months notice before withdrawing exemption from tax—If mandatory—If period of notice could be curtailed by Central Government by Notification—Legislation by reference, when can be inferred—Government, if can take advantage of its lapse—General Clauses Act* (10 *of* 1897), *s.* 21, *applicability.* C

Section 2 of the Part C States (Laws) Act, 1950, empowered the Central Government *to extend* by notification in the official gazette, to any Part C State, or to any part of it, *with such restrictions and modifications* as it thinks fit, any enactment in force in a Part A State. In 1951, the Central Government, in exercise of this power, extended by a Notification the Bengal Finance (Sales Tax) Act, 1941, to the then Part C State of Delhi with certain modifications in s. 6. The section, after such extension with modifications, provided : D

6(1) No tax shall be payable under this Act on the sale of goods specified in the first column of the Schedule subject to the conditions etc; and

(2) The State Government [Amended as Central Government in 1956] after giving by notification in the official gazette *not less than* 3 *months notice* of its intention to do so, may by like notification add to or omit from or otherwise amend the Schedule and thereupon the Schedule shall be amended accordingly E

A modified Schedule of goods exempted from tax under s. 6 was also substituted for the original Schedule in the Bengal Act, by the Notification.

After the passing of the States Reorganisation Act, 1956, the Part C States (Laws) Act became Union Territories (Laws) Act, 1950, with necessary adaptations. F

In 1957, the Central Government issued a Notification in purported exercise of the powers under s. 2 of the 1950—Act, amending the 1951—Notification. By the 1957—Notification an additional modification of s. 6 of the Bengal Act was introduced in the 1951—Notification, namely the words "such previous notice as it considers reasonable" were substituted for the words "not less than 3 months' notice" in s. 6(2).

In 1959, Parliament passed the Bengal (Sales Tax) (Delhi Amendment) Act, 1959, making some amendments in various sections of the Bengal Act but left s. 6 untouched. G

By various notifications, exemption from sales tax was granted to several commodities, but subsequently, the exemption was withdrawn by other notifications *after giving notice of less than* 3 *months.*

Dealers in those commodities, who were aggrieved by the withdrawal of the exemption, challenged the validity of the withdrawal. The High Court dismissed their petitions, on the main ground that Parliament, while enacting the Amending Act of 1959, had put its seal of approval to the curtailed period of notice in s. 6(2) and as such, it should be taken to have been provided by Parliament itself in the Bengal Act. H

A Allowing the appeals to this Court,

HELD : The 1957—Notification purporting to substitute the words "such previous notice as it considers reasonable" for the words "not less than 3 months' notice" in s. 6(2) of the Bengal Act, is beyond the powers of the Central Government, conferred on it, by s. 2 of the Union Territories (Laws) Act, 1950; and in consequence, the various notifications, in so far as they withdrew exemptions from tax with respect to the several commodities, are invalid and ineffective, as the exemption was withdrawn without complying with the B mandatory requirement of not less than 3 months' notice enjoined by the section. [808-D-E]

(1)(a) The primary power bestowed by s. 2 of the Union Territories (Laws) Act, 1950, on the Central Government is one of *extension*, that is, *bringing into operation and effect*, in a Union Territory, an enactment already in force in a State. The discretion conferred by the section to make "restrictions and modifications" in the enactment sought to be extended, is not a sepa- C rate and independent power, which can be exercised apart from the power of extension, but is an integral constituent of the power of extension. This is made clear by the use of the preposition "with" one meaning of which (which accords with the context) is "part of the same whole". [801 E-F]

(b) There are 3 limits on the power given by s. 2. (i) The power exhausts itself on extension of the enactment. It can be exercised only once, simultaneously with the extension of the enactment, but cannot be exercised repeatedly or subsequently to such extension. (ii) The power cannot be used D for a purpose other than that of extension. In the exercise of the power, only such restrictions and modifications can be validly engrafted in the enactment sought to be extended, which are necessary to bring it into operation and effect in the Union Territory. Modifications which are not necessary for, or ancillary and subservient to the purpose of extension, are not permissible. And only such modifications can be legitimately necessary for such purpose, as are required to adjust, adapt, and make the enactment suitable to the peculiar local conditions of the Union Territory for carrying it into operation and effect. (iii) The words "restrictions and modifications" do not cover such alterations E as involve a change in any essential feature of the enactment or the legislative policy built into it. [801G-H, 802A]

(c) If the words "such restrictions and modifications as it thinks fit" are given the wide construction of giving an unfettered power of amending and modifying the enactment sought to be extended, as contended by the respondent, the validity of the section itself becomes vulnerable on account of the vice of excessive delegation. Moreover, such a construction would be repugnant to F the context and content of the section, read as a whole. [802 B-C]

Rajnarain Singh v. *The Chairman Patna Administration Committee, Patna* [1955] 1 S.C.R. 291 and *Re : Delhi Laws Act*, [1951] S.C.R. 747, referred to.

(2) The 1957-Notification transgresses these limits in two respects :

(a) The power has not been exercised contemporaneously with the extension or for the purposes of the extension of the Bengal Act to Delhi but 6½ years G thereafter. The power of extension with restrictions and modifications had exhausted itself when the Bengal Act was extended to Delhi with some alterations by the 1951-Notification. [802D-E]

The power given under s. 2 of the 1950-Act, cannot be equated to the "Henry VIII clause" of the Acts of the British Parliament, because while the power under s. 2 can be exercised only once when the Act is extended, the power under a "Henry VIII Clause" can be invoked, if there is nothing contrary in the clause, more than once on the arising of a difficulty *when the Act* H *is operative*. [802F-H]

Observations of Fazal Ali. J. at p. 850 in *Re : Delhi Laws Act* case explained.

(b) The alteration sought to be introduced in s. 6(2) by the 1957-Notification goes beyond the scope of the "restrictions and modifications" permissible under s. 2 of the 1950-Act, because, it purports to change the essential features of s. 6(2) and the legislative policy inherent therein. [803F] A

Section 6(2) before the issue of the 1957-Notification, requiring the Government to give "not less than 3 months' notice" of its intention to add to or omit from or otherwise amend the Schedule to the 1950-Act, embodies a determination of legislative policy and its formulation as an absolute rule of conduct could be diluted, changed or amended only by the legislature, in the exercise of its essential legislative function, which could not be delegated to the Government. [803G-804E, F, G] B

(i) The language of the sub-section as it stood is emphatically prohibitive and it commands the Government in unambiguous negative terms that the period of the requisite notice must not be less than 3 months, showing that the provision was mandatory and not directory. [804-A-B]

(ii) The scheme of the Bengal Act is that the tax is to be quantified and assessed on the quarterly turnover; and the period of not less than 3 months' notice conforms to the scheme and ensures that the imposition of a new tax or exemption does not cause dislocation or inconvenience either to the dealer or the Revenue. [804B-C] C

(iii) By fixing the period at not less than 3 months, purchasers on whom the incidence of tax really falls have adequate notice of taxable items. [804-C]

(iv) Dealers and others likely to be affected by an amendment of the Schedule get sufficient time to make representations and adjust their affairs. [804-D] D

The span of notice was thus the essence of the legislative mandate. The necessity of notice and the span of notice both are integral to the scheme of the provision and it cannot be split up into essential and non-essential components, the whole of it being mandatory. [804-E-F]

Raza Buland Sugar Co. Ltd. v. *Municipal Board, Rampur,* [1965] 1 S.C.R. 970, distinguished. E

(3)(a) *Pt. Benarsi Das Bhanot* v. *State of Madhya Pradesh* [1959] 2 S.C.R. 427 does not assist the respondent. That was a case where the contention that s. 6(2) of the C.P. & Bihar Sales Tax Act, 1947, was invalid on the ground of excessive delegation, was rejected by the Court. In the present case, it is the validity of a Notification purported to be issued under s. 2 of the 1950-Act, that is impeached as beyond the powers of modification conferred by the section. [804H, 805A] F

(b) In the present case, the Central Government did not directly amend s. 6(2). More than 6 years after the extension of the Act by the 1951-Notification, it amended the sub-section indirectly by amending the 1951-Notification. But on the extension of the Act to Delhi, the 1951-Notification had exhausted its purpose and the purported amendment, through the medium of such a "dead" Notification is an exercise in futility. Further, an amendment which was not directly permissible could not be done indirectly. [805-B, C] G

(4) The High Court was in error in holding that Parliament had validated or re-enacted referentially, with retroactive effect, what was sought to be done by the 1957-Notification when it passed the Amending Act, 1959. [807C]

The Amending Act leaves s. 6(2) untouched. It does not even indirectly refer to the 1957-Notification or the amendment purportedly made by it in s. 6(2). Nor does it re-enact or validate what was sought to be achieved by that notification. No indication of referential incorporation or validation of the 1957-Notification or the amendment sought to be made by it, is available either in the Preamble or in any other provision of the Amending Act. Parliament, despite its presumed awareness of the 1957-Notification, has said nothing in the Amending Act indicating that it has in any manner incorporated, re-enacted or H

A validated the 1957-Notification or the amendment sought to be made thereby, while passing the Amending Act, 1959. [805-E-F, 807-B-C]

Krishna Chandra v. *Union of India*, A.I.R. 1975 S.C. 1389, referred to.

(5) A mere amendment of an Act by a competent legislature does not amount to re-enactment of the parent Act. [807D]

B *Venkatarao Esajirao Limberkar's case* [1970] 1 S.C.R. 317, explained.

(6) The respondent cannot contend that if the withdrawal of exemption without giving 3 months' notice was illegal, then the grant of exemption without giving 3 months' notice was also void. [808-A]

(a) Some of the goods were granted exemption by the 1951-Notification itself and, hence, there is no question of giving notice for giving those exemptions. [807-G]

C

(b) The validity of the notifications granting exemptions after the extension of the Act to Delhi is not in issue in the writ petitions; and whether or not the requisite notice was given before granting exemption is a question of fact depending on evidence. [807G]

(c) To allow the respondent to take such a plea would be violative of the fundamental principle of natural justice, according to which, a party cannot be allowed to take advantage of his own lapse or wrong. [807-H]

D

(7) The respondent cannot also rely on s. 21 of the General Clauses Act, because, the source of the power to amend the Schedule to the 1950-Act is s. 6(2) of the Bengal Act and not s. 21 of the General Clauses Act, and the power has to be exercised within the limits of s. 6(2) and for the purpose for which it was conferred. [808-B-C]

Gopichand v. *Delhi Administration*, [1959] Suppl. 2 S.C.R. 87, referred to.

E

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2221-2225, 1801 and 2524 of 1972.

From the Judgment and orders dated the 18-11-71, 29-3-1972 and 5-2-1972 of the Delhi High Court in L.P. No. 53/71 and Civil Writ Petitions Nos. 612, 640, 643 and 649/71, 281/72 and 1052 of F 1971 respectively.

A. K. Sen, Sarjoo Prasad Balram Senghal and *C. P. Lal* for the Appellants in CAs 2221-2225/72

B. Sen, S. P. Nayar and *M. N. Shroff* for Respondents 2-3, (In CAs. 2221-2225/72) for Respondents 1-4 in C.A. 1801).

G *S. V. Gupte, Mrs. Leila Sait* and *U. K. Kaithan* for Interveners (In CAs. 2221-2225/72) and Appellants (In CAs. 2524/72)

M. C. Bhandare, Sardar Bahadur Saharya, B. N. Kirpal and *V. B. Saharya* for the Appellant in CA 1801/72.

The Judgment of the Court was delivered by

H SARKARIA, J. Whether the Notification No. SRO-2908, dated December 7, 1957 issued by the Central Government in purported exercise of its powers under s. 2 of the Union Territories (Laws)

Act, 1950, is *ultra vires* the Central Government, is the principal question that arises in these appeals which will be disposed of by a common judgment. A

The question has arisen in these circumstances :

Section 2 of the Part C States (Laws) Act, 1950, empowered the Central Government to extend by notification in the Official Gazette, to any Part C State, or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State. In exercise of this power, the Central Government by a Notification No. SRO 615 dated the 28th April 1951, extended to the then Part C State of Delhi, the Bengal Finance (Sales-Tax) Act, 1941 (for short, the Bengal Act), with, *inter alia*, these modifications : B C

"In sub-section (2) of Section 6. —

(a) ...

(b) for the words "add to the Schedule", the words "add to or omit or otherwise amend the Schedule" shall be substituted." D

For the Schedule of the Bengal Act, this Notification substituted a modified Schedule of goods exempted under s. 6. The relevant items in the modified Schedule were as follows:

"8. Fruits, fresh and dried (except when sold in sealed containers). E

11. Pepper, tamarind and chillies.

14. Turmeric.

16. Ghee.

17. Cloth of such description as may from time to time be specified by notification in the Gazette costing less per yard than Rs. 3/- or such other sum as may be specified. F

21A. Knitting wool."

Section 6 of the Bengal Act after its extension to Delhi, as modified by the said Notification, reads thus : G

"6(1) No tax shall be payable under this Act on the sale of goods specified in the first column of the Schedule subject to the conditions and exceptions if any set out in the corresponding entry in the second column thereof.

(2) The State Government after giving by Notification in the Official Gazette *not less than* 3 *months' notice* of its intention so to do may by like notification H

A add to or omit from or otherwise amend the Schedule and thereupon the Schedule shall be deemed to be amended accordingly." (*emphasis supplied*)

By a Notification, dated 1-10-1951, in sub-section (1) of s. 6, the words "the first column of" were omitted and for the words "in the corresponding entry in the second column thereof" the word B "therein" was substituted.

By a notification country liquor was included in the Schedule as item No. 40 of exempted goods with effect from 19-4-1952.

On 1-11-1956, as a result of the coming into force of the States Reorganization Act, 1956, and the Constitution (Seventh Amend- C ment) Act, 1956, Part C States were abolished. Part C State of Delhi became a Union Territory and the Delhi Legislative Assembly, was also abolished. In 1956, Part C State (Laws) Act, 1950 (hereinafter referred to as Laws Act) also became the Union Territories (Laws) Act, 1950, with necessary adaptations.

On 1-12-1956, Parliament passed the Bengal Finance (Sales-Tax) D (Delhi Amendment) Act, 1956 which introduced amendments in different sections of the Bengal Act as applicable to Delhi. It made only two changes in s.6 Firstly, the word 'Schedule', wherever it occurred, was replaced by the words "Second Schedule". Secondly, the words "Central Government" were substituted for the words "State Government".

E On December 7, 1951, in the Gazette of India Extraordinary there appeared a notification, which reads as below :

"S.R.O. 3908—In exercise of the powers conferred by section 2 of the Union Territories (Laws) Act, 1950 (30 of 1950), the Central Government hereby makes the following amendment in the notification of the Government F of India in the Ministry of Home Affairs No. S.R.O. 615, dated the 28th April, 1951 (extending to the Union Territory of Delhi and the Bengal Finance (Sales Tax) Act, 1941, subject to certain modifications) namely :—

In the said notification, in the modifications to the Bengal Act aforesaid, in item 6 (relating to sub-section (2) G of section (6), after sub-item (a), the following sub-item shall be inserted, namely :—

"(aa) for the words "not less than three months' notice," the words "such previous notice as it considers reasonable" shall be substituted".

H The *vires* of this notification dated 7-12-1957, is the subject of primary challenge in these appeals (hereinafter it will be referred to as the impugned notification).

Item 17 in the Second Schedule of the Bengal Act was amended with effect from December 14, 1957 by Notification No. SRO 3958, as under : A

> "17. All varieties of cotton, woollen, rayon or artificial silk fabric but not including real silk fabrics".
>
> "Conditions subject to which tax shall not be payable : B
>
> In respect of tobacco-cotton fabrics, rayon or artificial silk fabrics and woollen fabrics as defined in item 9, 12, 12A, 12B at the First Schedule to the Central Excises and Salt Act, 1944 (I of 1944) included in entries (a) and (c) above, no tax under the Bengal Finance (Sales Tax) Act 1941, shall be payable in the Union Territory of Delhi C only if additional duties of excise have been levied on them under the Additional Duties of Excise (Goods of Special Importance) Act 1957".

The aforesaid condition was withdrawn by Notification No. GSR 203, dated 1-4-1958.

By Notification No. GSR 202, dated 1-4-1958, the Central Government withdrew the exemption of country liquor from tax D by omitting item No. 40 from the Second Schedule.

By Notification No. GSR 1076 dated 19-9-1959, the Central Government withdrew the exemption from tax of Items, 8, 11, 14 and 21A by omitting them from the Second Schedule with effect from 1-10-1959.

E

On 1-10-1959, the Bengal (Sales-Tax) (Delhi Amendment) Act, 1959 (Act XX of 1959) came into force whereby Parliament made some amendments in different sections of the Bengal Act but left s.6 untouched.

By a Notification No. GSR 964 dated 16-6-1966, notice was given that item 17 of the Second Schedule would be substituted with F effect from 1-7-1966, as follows :

> "Item-17—All varieties, cotton, woollen, nylon, rayon, pure silk or artificial silk fabrics but excluding Durries, Druggets and carpets".

The proposed amendment was given effect to from 1-7-1966, by Notification No. GSR 1061 dated 29-6-66. One result of this G amendment was that exemption of Durries from tax was withdrawn, while, such exemption was among others, extended to 'pure-silk'.

By a Notification GSR 1038, dated 14-7-1970, notice was given that item 17 in the Second Schedule would be substituted with effect from 1-8-1970, as follows :

H

> "17. All varieties of cotton fabrics, rayon, or artificial silk fabrics and woollen fabrics but not including Durries, Druggets and carpets".

A Such substitution of item 17 was made with effect from 1-8-70 by Notification GSR 1119 dated 31-7-1970. One result of this notification was that the exemption of 'pure-silk' from tax was withdrawn.

The appellants in Civil Appeal No. 2221 of 1972 are dealers in *durries*. They feel aggrieved by the Notification GSR 1061 dated
B 29-6-1966 whereby exemption of Durries from sales-tax was withdrawn.

The appellants in Civil Appeals 2222, 2223 and 2225 of 1972 deal in knitting wool. Their cause of action arose when exemption of knitting wool was withdrawn by Notification dated 19-9-1959, w.e.f. 1-10-1959.

C The appellants in Civil Appeals 2524 of 1972 deal *inter alia* in pure silk. They are aggrieved by Notification, dated 31-7-1970 by which exemption of 'pure-silk' was withdrawn w.e.f. 1-8-1970.

The appellants in Civil Appeal No. 2224 of 1972 is a Kiryana dealer. He feels aggrieved by the Notification dated 19-9-1959 whereby items 8, 11 and 14 were deleted from the Second Schedule with effect from 1-10-1959.
D

The appellants in Civil Appeal No. 1801 of 1972 are licensed vendors of country liquor. They feel adversely affected by Notification GSR 1076, dated 19-9-1959 whereby exemption of country liquor from tax was withdrawn with effect from 1-10-1959.

Several writ petitions were filed in the High Court to question
E the validity of the Government action withdrawing the exemptions with notice far less than three months. A learned Judge of the High Court allowed eight of these petitions by a common judgment recorded in Civil Writ 574-D of 1966, *Lachmi Narain* v. *Union of India and others*. Against that judgment, the Revenue carried appeals under Clause 10 of the Delhi High Court Act, 1966, to a Bench of the High Court. In the meanwhile more writ petitions (C. Ws.
F 593 to 652, 792 to 806 of 1971) were instituted in which the same question was involved. The Division Bench, by a common judgment, allowed the appeals and dismissed the writ petitions.

The writ petitioners have now come in appeal to this Court on the basis of a certificate granted by the High Court under Article 133 (1) (a) and (c) of the Constitution.

G In the High Court the validity of the withdrawal of the exemptions was challenged on these grounds :

(1) The power given by s.2 of the Laws Act to the Central Government to extend enactments in force in a State to a Union Territory, with such restrictions and modifications as it thinks fit, could be
H exercised only to make such modifications in the enactment as were necessary in view of the peculiar local conditions. The modification in s. 6(2) of the Bengal Act made by SRO 3908, dated

7-10-1957, was not necessitated by this reason. It was therefore, *ultra vires* s. 2 of the Laws Act; A

(2) Such a modification could be made only once when the Bengal Act was extended to Delhi in 1951. No modification could be made after such extension.

(3) The modification could not change the policy of the legislature reflected in the Bengal Act. The impugned modification was contrary to it, and B

(4) The modifications giving notice to withdraw the exemptions and the notifications issued pursuant thereto withdrawing the exemptions from sales-tax with respect to Durries, Ghee, (and other items relevant to these petitions) were void as the statutory notice of not less than three months as required by s. 6(2) prior to its modification by the impugned notification of 7th December, 1957, had not been given. C

Finding on all the four grounds in favour of the writ petitioners, the learned Single Judge declared "that the purported modification of s. 6(2) of the Bengal Finance (Sales-Tax) Act 1941 by the Government of India's notification No. SRO 3908, dated 7th December, 1957, was ineffective and s. 6(2) continues to be the same as before as if it was not so modified at all." In consequence he quashed the Government notifications GSR 964, dated 16-6-1966 and GSR 1061 dated 29-6-1966 because they were not in compliance with the requirement of s. 6(2) of the Bengal Act. D E

The contentions canvassed before the learned Single Judge were repeated before the appellate Bench of the High Court. The Bench did not pointedly examine the scope of the power of modification given to the Central Government by s.2 of the Laws Act with specific reference to the purpose for which it was conferred and its precise limitations. It did not squarely dispel the reasoning of the learned Single Judge that the power of modification is an integral part of the power of extension and "cannot therefore be exercised except for the purpose of the extension". It refused to accept that reasoning with the summary remark—"from the extracts quoted by the learned Single Judge from the judgment of the Supreme Court in *Re : Delhi Laws Act*(1) and from the Judgment in *Rajnarain Singh* v. *The Chairman Patna Administration Committee Patna and anr.*(2) the principle deduced by the learned Judge does not appear to follow. We are therefore not inclined, as at present advised to support the above observations". The Bench however hastened to add : F G H

"However, since the matter was not argued at great length and the appellants' Counsel rested his submissions on the other aspects of the case, we would not like to express

(1) [1951] S.C.R. 747. (2) [1955] 1 S.C.R. 291.

A any definite opinion on the question as to whether the power of making any modifications or restrictions in the Act can only be exercised at the time of extending the Act and that it cannot be done subsequently by the Central Government in exercise of its power."

B Seeking support from the observations of this Court in *Raza Buland Sugar Co. Ltd.* v. *Municipal Board, Rampur,*(1) the Bench held that what is mandatory in s. 6(2) is the requirement as to the giving of *reasonable notice* of the Government's intention to amend the second Schedule, for the information of the public, and that "no special significance or sanctity is attached to the span of time of three months provided in sub-section (2) of s. 6." The Bench found that since the withdrawals of the exemptions in question, had C been made after reasonable notice, the same were not invalid.

However, the main ground on which the decision of the Bench rests is that the infirmity, if any, in the impugned notification dated 7-12-1957, had been cured and rectified when "Parliament while enacting the Amendment Act, 1959 (Act No. 20 of 1959) put its seal of approval to the curtailed period of notice. As such the cur- D tailed period of notice shall be taken to have been provided by Parliament on the *ratio* of Supreme Court's decision in *Venkatarao Esajirao Limberkar's case*(2)".

Apart from the grounds taken in their writ petitions, the learned Counsel for the appellants have tried to raise before us another ground under the garb of what they styled as merely an additional argument". E They now seek to challenge the *vires* of the Notification SRO 615, dated the 28th April, 1951 in so far as it relates to the insertion in sub-section (2) of s. 6 of that Act, between the words "add to" and "the Schedule", of the words "or omit or otherwise amend". It is argued that this insertion was beyond the power of modification conferred on the Central Government by s. 2 of the Laws Act. The F point sought to be made out is that if the insertion made by the Notification dated 28-4-1951, in sec. 6(2) was ineffective and *non est* in the eye of law, the Central Government would have no power to "omit" anything from the exempted goods itemised in the Schedule. It is argued that under s. 6(2) sans this insertion, the Central Government was empowered only to "add to" and not "omit" from the exempted items enumerated in the Schedule, and consequently, the G withdrawal of the exemptions in question was *ultra vires* the Central Government.

The entertainment of this plea at this stage is stoutly opposed by Shri B. Sen, learned Counsel for the Revenue.

We are not inclined to permit the appellants to add to the list of impugned Notifications, now in section appeal. In their writ peti- H tions, the appellants did not challenge the validity of the Notification dated 28-4-51. They never raised this point before the learned

(1) [1965] 1 S.C.R. 970. (2) [1970] 1 S.C.R. 317

Single Judge. Of course, before the appellate Bench, an argument was addressed on this point, but it does not appear to have been pressed. The Bench noted :

> "In the present appeal, the Bengal Act as extended by SRO 615, dated the 28th April 1951, did not suffer from any infirmity. It is conceded by the learned Counsel for the respondent that the Central Government at the time it extended the Bengal Act, was competent to introduce such modification and restrictions as it thought fit."

The certificate under Art. 133 of the Constitution was neither sought, nor granted on any ground touching the validity of the Notification, dated 28-4-1951. In the face of all this, it is now too late for the appellants to commit a *volte face*. Accordingly, we decline to entertain this new ground of challenge.

The learned Counsel for the parties have, more or less, reiterated the same contentions which they had advanced in the High Court.

On behalf of the appellants, it is contended that the power of modification conferred on the Central Government by s. 2 of the Laws Act is not an unfettered power of delegated legislation but a subsidiary power conferred for the limited purpose of extension and application to a Union Territory, an enactment in force in a State. It is maintained that only such modifications are permissible in the exercise of that power which are necessary to adapt and adjust such enactment to local conditions.

According to Shri Ashok Sen, the power given by s. 2 is a power of conditional legislation which is different from the power of delegated legislation. It is submitted that it is not a recurring power; it exhausts itself on extension, and in no case this power can be used to change the basic scheme and structure of the enactment or the legislative policy ingrained in it. The submission is that the impugned notification, dated 7-12-1957, is bad because it has been issued more than 6½ years after the extension of Bengal Act, and it attempts to change the requirement of s. 6(2) as to "not less than three months notice" which is the essence of the whole provision.

Reference has been made to this Court's opinion in *Re : Delhi Laws Act* (supra) and the decision in *Raj Narain Singh case* (supra).

Shri Ashok Sen further submits that by the amending Act 20 of 1959, Parliament did not put its seal of approval on the impugned notification or the changes sought to be made by it in s. 6 of the Bengal Act. It is stressed that the amending Act of 1959, did not touch s. 6 at all and therefore it could not be said with any stretch of imagination, that Parliament had referentially or impliedly incorporated or approved the purported change made by the impugned notification, in the Bengal Act.

As against the above, Shri B. Sen, the learned Counsel for the Revenue submits that the impugned notification does not change the essential structure or the policy embodied in s. 6(2) of the Bengal Act.

A According to Counsel, the policy underlying s.6(2) is that *reasonable notice* of the Government's intention to add to or omit anything from the Second Schedule must be given by publication in the Official Gazette. It is maintained that the requirement as to "not less than three months' notice" in the section was not a matter of policy but one of detail or expedience; it was only directory, and the modification made by the impugned notification did not go beyond adjusting and B adapting it to the local conditions of Delhi. Bengal, it is pointed out, is a big, far-flung State while the Territory of Delhi is a small, compact area and therefore, it would not be necessary or unreasonable to give a notice of less than three months for every amendment of the Schedule. Reliance has been placed on this Court's dictum in *Raza Buland Sugar Co.'s case* (supra). It is argued that the power to add or omit from the Second Schedule conferred on the Government is in conso- C nance with the accepted practice of the Legislature; that it is usual for the legislature to leave a discretion to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be levied or rates at which it is to be charged in respect of different classes of goods and the like. Reference has been made to the observations of this Court in *Pt. Benarsi Das Bhanot* v. *State of Madhya Pradesh*(1) in the context of s. 6(2) of D the Central Provinces and Berar Sales Tax Act 1947.

Shri B. Sen further contends that the power of modification given by s. 2 of the Laws Act, does not exhaust itself on first exercise; it can be exercised even subsequently if through oversight or otherwise, at the time of extension of the enactment the Central Government fails to adapt or modify certain provisions of the extended enactment for E bringing it in accord with local conditions. In this connection support has been sought from the observations of Fazl Ali J. at p. 850 of the Report in *Re : Delhi Laws Act* (supra). Our attention has also been invited to s. 21 of the General Clauses Act which according to Counsel, gives power to the Central Government to add to, amend, vary or rescind any notification etc. if the power to do so does not run counter to the policy of the legislature or affect any change in its essen- F tial features.

Learned Counsel has further tried to support the reasoning of the appellate Bench of the High Court, that whatever infirmity may have existed in the impugned notification and the modification made thereby in s. 6(2), it was rectified and cured by Parliament when it passed the Amendment Act 20 of 1959. It is urged that the Bengal Act together with the modifications made by notifications, dated 28-4-51, G and 7-12-1957, must have been before Parliament when it considered and passed the Amendment Act of 1959. Our attention has been invited to its preamble which is to the effect : "An Act further to amend the Bengal Finance (Sales-Tax) Act, 1941, as in force in the Union Territory of Delhi," and also to the words "as in force in the Union Territory of Delhi" in s. 2 of the amending Act. Reference has been made to this Court's decisions in *Venkatrao Esajirao's case* H (supra), and *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* v. *The Assistant Commissioner of Sales-tax and ors.*(2).

(1) [1959] 2 S.C.R. 427. (2) [1974] 2 S.C.R. 879-A.I.R. 1974 S.C. 1660.

An alternative argument advanced by Shri B. Sen is that if in s. 6(2) the requirement as to "not less than three months' notice" was mandatory and a matter of legislative policy, then the exemptions from tax granted to Durries, pure silk etc. after the issue of the impugned notification must be treated *nonest* and void *ab initio,* inasmuch as the amendments of the Second Schedule whereby those exemptions were granted, were made without complying with the requirement of "not less than three months' notice". It is argued that if this requirement was a *sine qua non* for amendment of the Second Schedule, it could not be treated mandatory in one situation and directory in another. If it was mandatory then compliance with it would be absolutely necessary both for granting an exemption and withdrawing an exemption from tax. In this view of the matter, according to Shri B. Sen, the withdrawal of the exemption through the impugned notification was a mere formality; the notifications simply declared the withdrawal of something which did not exist in the eye of law. Appellants cannot therefore have any cause of grievance if the invalid and still-born exemptions were withdrawn by the questioned notifications.

In reply to this last argument, learned Counsel for the appellants submit that this ground of defence was not pleaded by the Revenue in its affidavit before the learned Single Judge. This, according to the Counsel, was a question of fact which required evidence for its determination, and was therefore required to be pleaded. Since the Respondents did not do so, they should not have been allowed to take it for the first time at the time of arguments. Even otherwise—proceeds the argument—the Respondents are not competent to take this stand which is violative of the basic canon of natural justice, according to which no party can be allowed to take advantage of its own wrong. It is stressed that the object of the requirement of not less than three months' notice, was to afford an opportunity to persons likely to be adversely affected, to raise objections against the proposed withdrawal or curtailment of an exemption from tax. That being the case, only the persons aggrieved could have the necessary *locus standi* to complain of a non-compliance with this requirement.

In *Re* : *Delhi Laws* (supra) this Court *inter alia* examined the constitutional validity of s. 2 of the Laws Act in the light of general principles relating to the nature, scope and limits of delegated legislation.

Section 2 as it then stood, was as follows :

> "The Central Government may, by notification in the Official Gazette, extend to any Part C State (other than Coorg and the Andaman and Nicobar Islands) or to any part of such State with such restrictions and modifications as it thinks fit any enactment which is in force in a Part A State at the date of the notification and provision may be made in any enactment so extended for the repeal or amendments of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State."

The Court by a majority held that the first part of this section which empowers the Central Government to extend to any Part C State or to any part of such State with such modifications and restrictions as it

A thinks fit any enactment which is in force in a Part A State, is *intra vires*, and that the latter part of this section which empowers the Central Government to make provision in any enactment extended to a Part C State, *for repeal or amendment of any law* (other than a Central Act) which is for the time being applicable to that Part C State, is *ultra vires*. Consequent upon this opinion, the latter part of the section was deleted by s. 3 of the Repealing and Amending Act, 1952 B (Act XLVIII of 1952) with effect from 2-8-1951.

The majority opinion in upholding the validity of the first portion of s. 2 of the Laws Act drew a good deal from the observations of the Privy Council in *Queen* v. *Burah*(1) wherein it was said :

> C "If what has been done is legislation *within the general scope of the affirmative words which give the power and if it violates no express condition or restrictions by which that power is limited*..... it is not for any court of justice to enquire further or to enlarge constructively those conditions and restrictions".
>
> x x x
>
> D "Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordships judgment) be well exercised, either absolutely or conditionally. Legislation conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the legislature to E persons in whom it places confidence, is no uncommon thing; and, in any circumstances it may be highly convenient."
>
> (*emphasis supplied*)

Before proceeding further, it will be proper to say a few words in regard to the argument that the power conferred by s. 2 of the Laws F Act is a power of conditional legislation and not a power of delegated legislation. In our opinion, no useful purpose will be served to pursue this line of argument because the distinction propounded between the two categories of legislative powers makes no difference, in principle. In either case, the person to whom the power is entrusted can do nothing beyond the limits which circumscribe the power; he has to act—to use the words of Lord Selborne—"within the general scope of the G affirmative words which give the power" and without violating any "express conditions or restrictions by which that power is limited". There is no magic in a name. Whether you call it the power of "conditional legislation" as Privy Council called it in *Burah's case* (supra) or 'ancillary legislation' as the Federal Court termed it in *Choitram* v. *Commissioner of Income-tax, Bihar*(2) or 'subsidiary legislation' as Kania C.J. styled, it or whether you camouflage it under H the veiling name of 'administrative or quasi-legislative power'—as Professor Cushman and other authorities have done it—necessary for

(1) 5 I.A. 178. (2) [1947] FCR 116.

bringing into operation and effect an enactment, the fact remains that it has a content, howsoever small and restricted of the law-making power itself. There is ample authority in support of the proposition that the power to extend and carry into operation an enactment with necessary modifications and adaptations is in truth and reality in the nature of a power of delegated legislation. In *Re : Delhi Laws Act* (supra) S. R. Das J. said that on strict analysis it was "nothing but a delegation of a fractional legislative power". Anglin J. in *Grays case*(1) regarded this what is called conditional legislation' as "a very common instance of limited delegation. More or less to the same effect is the view taken by Evatt J. of Australia in *Dignams case*(2). Prof. Kennedy (vide his treatise 'Constitution of Canada', 2nd Edn. p. 463), is also of opinion that 'conditional legislation' is "a form of delegation".

We do not want to multiply authorities nor wish to carry this academic discussion to a final conclusion because it is not necessary for solution of the problem in hand.

In the instant case, the precise question with which we are faced is whether the purported substitution of the words "such previous notice as it considers reasonable" for the words "not less than three months notice" in s. 6(2) by the impugned notification dated 7th December 1957, was in excess of the power of 'modification' conferred on the Central Government by s. 2 of the Laws Act.

This question has to be answered in the light of the principles enunciated by this Court in *Re : Delhi Laws Act* relating to the nature and scope of this power.

Out of the majority who upheld the validity of this provision of s. 2 of the Laws Act, with which we are concerned, Fazl Ali J. explained the scope of the words "much modifications as it thinks fit" in s. 2, thus :

> "These are not unfamiliar words and they are often used by careful draftsmen to enable laws which are applicable to one place or object to be so adapted as to apply to another. The power of introducing necessary restrictions and modifications is incidental to the power to apply or adapt the law, and in the context in which the provision as to modification occurs it cannot bear the sinister sense attributed to it. The modifications are to be made within the framework of the Act and they cannot be such as to affect its identity or structure or the essential purpose to be served by it. The power to modify certainly involves a discretion to make suitable changes, but it would be useless to give an authority the power to adapt a law without giving it the power to make suitable changes."

Vivian Bose J. also observed in a similar strain, at p. 1124;

(1) 57 S.C.R. 150 (Canada). (2) [1931] 46, C.L.R. 73

A "The power to "restrict and modify" does not import the power to make essential changes. It is confined to alterations of a minor character such as are necessary to make an Act intended for one area applicable to another and to bring it into harmony with laws already in being in the State, or to delete portions which are meant solely for another area. To alter the essential character of an Act or to change it in
B material particulars is to legislate, and that, namely, the power to legislate, all authorities are agreed, cannot be delegated by a legislature which is not unfettered."

Mukherjea J. was of the view that the "essential legislative function" which consists in the determination or choosing of the legislative policy and of formally enacting that policy into a "binding rule of con-
C duct" cannot be delegated. Dealing with the construction of the words "restrictions" and "modification" in the Laws Act, the learned Judge said, at pages 1004—1006 :

"The word "restrictions"..... connotes limitation imposed on a particular provision so as to restrain its application or limit its scope, it does not by any means involve any
D change in the principle. It seems to me that in the context and used alongwith the word "restriction" the word "modification" has been employed also in a cognate sense, *and it does not involve any material or substantial alteration.* The dictionary meaning of the expression "to modify" is to "tone down" or to "soften the rigidity of the thing" or "to make
E partial changes without any radical alteration". It would be quite reasonable to hold that the word "modification" in s. 7 of the Delhi Laws Act (which is almost identical with the present s. 2, Laws Act) *means and signifies changes* of such character as are necessary to make the statute *which is sought to be extended suitable to the local conditions of the province.* I do not think that the executive Government is entitled to
F change the whole nature or policy underlying any particular Act or to take different portions from different statutes and prepare what has been described before us as "amalgam" of several laws..... these things would be beyond the scope of the section itself." (*emphasis supplied*).

S. R. Das J. (as he then was) delineated the scope of the power
G of "modification" given under s. 7 of the Delhi Laws Act, 1912 (for short the Delhi Act) at p. 1089 as follows :

"It may well be argued that the intention of section 7 of the Delhi Laws Act was that the permissible modifications were to be such as would, after modification, leave the general character of the enactment intact. One of the meanings of
H the word "modify" is given in the Oxford Dictionary Vol. I, page 1269 as "to alter without radical transformation". If this meaning is given to the word "modification" in section 7 of the Delhi Laws Act, then the modifications contemplated

thereby were nothing more than adaptations which were included in the expressions *mutatis mutandis* and the "restrictions, limitations or proviso" mentioned in the several instances of conditional legislation referred to by the Privy Council (in *Burah's* case)."

(*emphasis supplied & parenthesis added*)

It is to be noted that the language of s.7 of the Delhi Act was substantially the same as that of the first portion of s. 2 of the Part C State Laws Act, as it then stood. What Das J. said about the scope of "restrictions and modifications" in the context of s. 7 of the Delhi Act substantially applies to the ambit and meaning of these words occurring in s. 2 of the Laws Act.

Again, in *Rajnarainsingh's case* (supra), Vivian Bose J. speaking for the Court, summed up the majority view in regard to the nature and scope of delegated legislation in *Re : Delhi Laws* (supra), thus :

"In our opinion the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above : it cannot include a change of policy".

Bearing in mind the principles and the scope and meaning of the expression "restrictions and modifications" explained in Delhi Laws Act, let us now have a close look at s. 2. It will be clear that the primary power bestowed by the section on the Central Government, is one *of extension,* that is, *bringing into operation and effect,* in a Union Territory, an enactment already in force in a State. The discretion conferred by the Section to make 'restrictions and modifications' in the enactment sought to be extended, is not a separate and independent power. It is an integral constituent of the powers of extension. It cannot be exercised apart from the power of extension. This is indubitably clear from the preposition "with" which immediately precedes the phrase "such restrictions and modifications" and conjoins it to the principal clause of the section which gives the power of extension. According to the Shorter Oxford Dictionary, one meaning of the word "with", (which accords here with the context), is "part of the same whole".

The power given by s. 2 exhausts itself on extension of the enactment; it cannot be exercised repeatedly or subsequently to such extension. It can be exercised only once, simultaneously with the extension of the enactment. This is *one* dimension of the statutory limits which circumscribe the power. The *second* is that the power cannot be used for a purpose other than that of extension. In the exercise of this power, only such "restrictions and modifications" can be validly engrafted in the enactment sought to be extended, which are necessary to bring it into operation and effect in the Union Territory. "Modifications" which are not necessary for, or ancillary and subservient to the purpose

A of extension, are not permissible. And, only such "modifications" can be legitimately necessary for such purpose as are required to adjust, adapt and make the enactment suitable to the peculiar local conditions of the Union Territory for carrying it into operation and effect. In the context of the section, the words "restrictions and modifications" do not cover such alterations as involve a change in any essential feature, of the enactment or the legislative policy built into it. This B is the third dimension of the limits that circumscribe the power.

It is true that the word "such restrictions and modifications as it thinks fit", if construed literally and in isolation, appear to give unfettered power of amending and modifying the enactment sought to be extended. Such a wide construction must be eschewed lest the very validity of the section becomes vulnerable on account of the vice of C excessive delegation. Moreover, such a construction would be repugnant to the context and the content of the section, read as a whole, and the statutory limits and conditions attaching to the exercise of the power. We must, therefore, confine the scope of the words "restrictions and modifications" to alterations of such a character which keep the inbuilt policy, essence and substance of the enactment D sought to be extended, intact, and introduce only such peripheral or insubstantial changes which are appropriate and necessary to adapt and adjust it to the local conditions of the Union Territory.

The impugned notification, dated 7-12-1957, transgresses the limits which circumscribe the scope and exercise of the power conferred by s. 2 of the Laws Act, at least, in two respects.

E *Firstly,* the power has not been exercised contemporaneously with the extension or for the purposes of the extension of the Bengal Act to Delhi. The power given by s. 2 of the Laws Act had exhausted itself when the Bengal Act was extended, with some alterations, to Delhi by Notification dated 28-4-1951. The impugned notification has been issued on 7-12-1957, more than 6½-years after the extension.

F There is nothing in the opinion of this Court rendered in *Re : Delhi Laws Act* (supra) to support Mr. B. Sen's contention that the power given by s. 2 could be validly exercised within one year after the extension. What appears in the opinion of Fazl Ali J. at page 850, is merely a quotation from the report of the Committee on Minister's Powers which considered the propriety of the legislative practice of G inserting a "Removal of Difficulty Clause" in Acts of British Parliament, empowering the executive to modify the Act itself so far as necessary for bringing it into operation. This device was adversely commented upon. While some critics conceded that this device is "partly a draftsman's insurance policy, in case he has overlooked something" (*e.g.* Sir Thomas Carr, page 44 of his book "Concerning English Administrative Law"), others frowned upon it, and nick-H named it as "Henry VIII Clause" after the British Monarch who was a notorious personification of absolute despotism. It was in this perspective that the Committee on Minister's Powers examined this practice and recommended :

> ".....first, that the adoption of such a clause ought on each occasion when it is, on the initiative of the Minister in charge of the Bill, proposed to Parliament to be justified by him upto the essential. It can only be essential for the limited purpose of bringing an Act into operation and it should accordingly be in most precise language restricted to those purely machinery arrangements vitally requisite for that purpose; and the clause should always contain a maximum time-limit of one year after which the power should lapse".

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It may be seen that the time-limit of one year within which the power under a Henry VIII Clause should be exercisable, was only a recommendation, and is not an inherent attribute of such power. In one sense, the power of extension-cum-modification given under s. 2 of the Laws Act and the power of modification and adaptation conferred under a usual 'Henry VIII Clause,' are kindred powers of fractional legislation, delegated by the legislature within narrow circumscribed limits. But there is one significant difference between the two. While the power under s. 2 can be exercised only once when the Act is extended, that under a 'Henry VIII Clause' can be invoked, if there is nothing to the contrary in the clause—more than once, on the arising of a difficulty *when the Act is operative.* That is to say, the power under such a Clause can be exercised whenever a difficulty arises in the working of the Act after its enforcement, subject of course to the time-limit, if any, for its exercise specified in the statute.

C

D

Thus, anything said in *Re : Delhi Laws Act* (supra), in regard to the time-limit for the exercise of power under a 'Henry VIII Clause', does not hold good in the case of the power gkiven by s. 2 of the Laws Act. Fazl Ali J., did not say anything indicating that the power in question can be exercised within one year of the extension. On the contrary, the learned Judge expressed in unequivocal terms, at page 849 :

E

> "Once the Act became operative any defect in its provision cannot be removed until amending legislation is passed."

F

Secondly, the alteration sought to be introduced by this Notification (7-12-1957) in s. 6(2), goes beyond the scope of the 'restrictions and modifications' permissible under s. 2 of the Laws Act; it purports to change the essential features of sub-s. (2) of s. 6, and the legislative policy inherent therein.

G

Section 6(2), as it stood immediately before the impugned notification, requires the State Government to give by Notification in the Official Gazette "not less than 3 months notice" of its intention to add to or omit from or otherwise amend the Second Schedule. The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law, itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the legislative intent is expressed clearly and strongly in imperative words, such as the use of 'must' instead of "shall", that will itself be sufficient to hold

H

A the provision to be mandatory, and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is *per se* indicative of the intent that the provision is to be mandatory (Crawford, the Construction of Statutes pp. 523-24). Here the language of sub-section (2) of s. 6 is emphatically prohibitive, it commands the Government in unambi-
B guous negative terms that the period of the requisite notice must not be less than three months.

In fixing this period of notice in mandatory terms, the legislature had, it seems taken into consideration several factors. According to the scheme of the Bengal Act, the tax is quantified and assessed on the quarterly turnover. The period of not less than three months
C notice conforms to that scheme and is intended to ensure that imposition of a new burden or exemption from tax causes least dislocation and inconvenience to the dealer in collecting the tax for the Government, keeping accounts and filing a proper return, and to the Revenue in assessing and collecting the same. Another object of this provision is that the public at large and the purchasers on whom the incidence of the tax really falls, should have adequate notice of taxable
D items. The third object seems to be that the dealers and others likely to be affected by an amendment of the Second Schedule may get sufficient time and opportunity for making representations, objections or suggestions in respect of the intended amendment. The dealers have also been ensured adequate time to arrange their sales adjust their affairs and to get themselves registered or get their licenses amended and brought in accord with the new imposition or exemption.

E Taking into consideration all these matters, the legislature has in its judgment solemnly incorporated in the statute, fixed the period of the requisite notice as "not less than three months" and willed this obligation to be absolute. The span of notice was thus the essence of the legislative mandate. The necessity of notice and the span of notice both are integral to the scheme of the provision. The sub-
F section cannot therefore be split up into essential and non-essential components, the whole of it being mandatory. The rule in *Raza Buland Sugar Co.'s case* (supra) has therefore no application.

Thus section 6(2) embodies a determination of legislative policy and its formulation as an absolute rule of conduct which could be diluted, changed or amended only by the legislature in the exercise of its essential legislative function which could not, as held in *Re*
G *Delhi Laws Act* (supra) and *Rajnarainsingh's case* (supra) be delegated to the Government.

For these reasons we are of opinion that the learned single Judge of the High Court was right in holding that the impugned notification was outside the authority of the Central Government as a delegate under s. 2 of the Laws Act.

H Before proceeding further, we may mention here in passing that the point for decision in *Benarsi Das Bhanot's case* (supra) relied on by the Division Bench of the High Court, was different from the one

before us. There, the constitutional validity of s. 6(2) of the Central Provinces and Berar Sales Tax Act, 1947, was questioned on the ground of excessive delegation. In the instant case the validity of s. 6(2) of the Bengal Act, as such is not being impeached. A

There is yet another facet of the matter. By the impugned notification, the Central Government did not directly seek to amend s. 6(2). Perhaps it was not sure of its competence to do so more than 6½ years after the extension of Bengal Act to Delhi. It therefore chose to amend s. 6(2) indirectly through the amendment of its earlier notification dated 28-4-51, which was only a vehicle or instrument meant for extension of the Bengal Act to Delhi. On such extension, the notification had exhausted its purpose and had spent its force. It had lost its utility altogether as an instrument for modification of the Bengal Act. Therefore, the issue of the impugned notification which purported to amend s. 6(2) through the medium of a "dead" notification, was an exercise in futility. In any case, an amendment which was not directly permissible could not be indirectly smuggled in through the back-door. B C

We now turn to the main ground on which the judgment of the appellate Bench of the High Court rests. The question is, was the invalidity from which the impugned notification, dated 7-12-1957, suffered cured by the Amendment Act of 1959? The Bench seems to think that by passing this Amendment Act, Parliament had put its seal of approval on the Bengal Act as it stood extended and amended by the Notifications of 1951 and 1957. D

We find no basis for this surmise. This Amendment Act leaves s. 6(2) untouched; it does not even indirectly, refer to the impugned notification or the amendment purportedly made by it in s. 6(2). Nor does it re-enact or validate what was sought to be achieved by the impugned Notification. No indication of referential incorporation or validation of the impugned notification or the amendment sought to be made by it, is available either in the preamble or in any other provision of the Amendment Act. E F

In *Krishna Chandra* v. *Union of India*,(1) relied upon by the learned Counsel for the Respondents, the central issue for consideration was, whether R. 20(2) framed by the Bihar Government under s. 15 of the Mines and Minerals (Regulation and Development) Act, 1957 and the second proviso to s. 10(2) of the Bihar Land Reforms Act, 1950 were constitutionally valid. By the combined operation of these statutory provisions, the petitioners therein were called upon to pay certain rent and royalties in respect of mining operations. Those demands were challenged in *Baijnath Kedia* v. *State of Bihar*(2) wherein this Court held that the Bihar legislature had no jurisdiction to enact the second proviso to s. 10(2) of the Bihar Act because s. 15 of the Central Act, read with s. 2 thereof, had appropriated the whole field relating to mining minerals for Parliamentary legislation. The upshot of that decision was, that the action taken by the G H

(1) A.I.R. 1975 S.C. 1389. (2) [1970] 2 S.C.R. 100.

A Bihar Government in modifying the terms and conditions of the leases which were in existence anterior to the Rules and the levy sought to be made on the strength of the amended Bihar Act and Rule, were unsustainable. Thereupon the State persuaded Parliament to enact the Validation Act of 1969 with a view to remove the road-blocks which resulted in the decision in *Kedia's case* (supra). Section 2 of the Validation Act runs thus :

B

> "Validation of certain Bihar State laws and action taken and things done connected therewith.
>
> (1) The laws specified in the Schedule shall be and shall be deemed always to have been, as valid as if the provisions contained therein had been enacted by Parliament.
>
> (2) Notwithstanding any judgment, decree or order of any court, all actions taken, things done, rules made, notification 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 was taken, things were done, rules were made, notifications were issued, or rents or royalties were realised, and no suit or other proceeding 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."

C D E F

The precise question before the Court was, whether a statute or a rule earlier declared by the Court to be unconstitutional or otherwise invalid can be retroactive through fresh validating legislation enacted by the competent legislature. Answering this question in the affirmative, this Court, speaking through Krishna Iyer, J. observed :

G

> "where Parliament having power to enact on a topic actually legislates within its competence but, as an abbreviation of drafting, borrows into the statute by reference the words of a State Act not *qua* State Act but as a convenient shorthand, as against a longhand writing of all the sections into the Central Act, such legislation stands or falls on Parliament's legislative power, *vis-a-vis* the subject *viz.*, mines and minerals. The distinction between the two legal lines may sometimes be fine but always is real.

H

* * *

If Parliament has the power to legislative on the topic, it can make an Act on the topic by any drafting means, including by referential legislation." A

"Taking a total view of the circumstances of the Validation Act Parliament did more than simply validate an invalid law passed by the Bihar Legislature but did re-enact it with retrospective effect in its own right adding an amending Central Act to the statute book." B

The position in the instant case is entirely different. Here, Parliament despite its presumed awareness of the impugned Notification, has said nothing in the Amending Act of 1959, indicating that it (Parliament) has by 'longhand' or 'shorthand' method incorporated, re-enacted or validated the impugned notification or the amendment sought to be made thereby, while passing the Amendment Act, 1959. The appellate Bench was therefore in error in holding that Parliament had validated or re-enacted referentially with retrospective effect what was sought to be done by the impugned notification, when it passed the Amending Act, 1959. C

The High Court has tried with the aid of this Court's decision in *Venkatrao* v. *State of Bombay* (supra) to spell out the proposition that mere amendment of an Act by a competent legislature, amounts to re-enactment of the parent Act. We find nothing in this Court's decision in *Venkatrao's* case which warrants the enunciation of such a sweeping rule. All that was decided in *Venkatrao's* case was that the assent given by the President to the Amending Act would be deemed to be an assent accorded to the parent Act, also. The decision in *Venkatrao's* case therefore does not advance the case of Shri B. Sen. D E

Shri B. Sen's alternative argument that the notifications whereby the exemptions from tax have been withdrawn in regard to Durries, pure silk, country liquor etc. are not assailable because those exemptions were earlier granted without giving three months' notice, is manifestly unsustainable. F

Firstly, so far as fruits, fresh and dried (item 8), Pepper, tamarind and chillies (item 11), Turmeric (item 14), ghee (item 16), and knitting wool, (item 21A) are concerned, they were exempted goods in the Schedule of the Bengal Act, as modified and extended by the Notification, dated 28-4-1951, to Delhi. No question of giving notice for granting these exemptions therefore arose. Secondly, the validity of the notifications whereby *exemptions* were granted to pure silk, liquor etc. after the extension of the Bengal Act to Delhi is not in issue. This plea was not set up by the Respondents in their affidavits. Whether or not notice for the requisite period was given before issuing the exemption notifications, was a question of fact depending on evidence. Thirdly, to allow the Respondents to take their stand on such a plea would be violative of the fundamental principle of natural justice, according to which, a party cannot be allowed to take advantage of its own lapse or wrong. The statute G H

A has imposed a peremptory duty on the Government to issue notice of not less than three months, of its intention to amend the Second Schedule. It therefore cannot be allowed to urge that since it had disobeyed this mandate on an earlier occasion when it granted the exemptions it can withdraw the exemptions in the same unlawful mode. Two wrongs never make a right.

B Nor could the Respondents derive any authority or validity from s. 21 of the General Clauses Act, for the notifications withdrawing the exemptions. The source from which the power to amend the Second Schedule, comes is s. 6(2) of the Bengal Act and not s. 21 of the General Clauses Act. Section 21, as pointed out by this Court in *Gopichand* v. *Delhi Administration*(1) embodies only a rule of construction and the nature and extent of its application must be C governed by the relevant statute which confers the power to issue the notification. The power therefore had to be exercised within the limits circumscribed by s. 6(2) and for the purpose for which it was conferred.

For all the foregoing reasons, we are of opinion that the impugned notification, dated 7-12-1957, purporting to substitute the words D "such previous notice as it considers reasonable" for the words "not less than three months notice" in s. 6(2) of the Bengal Act is beyond the powers of the Central Government, conferred on it by s. 2 of the Laws Act. In consequence, the notification dated 1-4-1958, 19-9-1959, 29-6-1966 and 31-7-1970 in so far as they withdrew the exemptions from tax in the case of Durries, pure silk, country liquor, *kirayana* articles etc. were withdrawn without complying with the E mandatory requirement of not less than three months notice enjoined by s. 6(2) of the Bengal Act, are also invalid and ineffective.

In the result we allow these appeals, set aside the judgment of the appellate Bench of the High Court and declare the Notification dated 7-12-1957, and the subsequent notifications in so far as they withdrew the exemptions from tax, mentioned above, to be unconsti- F tutional. In the circumstances of the case, we leave the parties to bear their own costs.

V.P.S. *Appeals allowed.*

(1) [1959] Suppl. 2 S.C.R. 87.