DISTRICT MINING OFFICER AND ORS. A

v.

TATA IRON AND STEEL CO. AND ANR.

JULY 31, 2001

[G.B. PATTANAIK, S.N. PHUKAN AND B.N. AGRAWAL, JJ.] B

Cess and Other Taxes on Minerals (Validation) Act, 1992:

Sections 2(1), 2(2) and 2(3)—Nature and scope of—Held, validated only levy and collection of cess and other taxes imposed under the invalid C *state laws—But did not confer any right on state to levy, demand or collect fresh cess collectable upto 4.4.1991—Recovery of dues even after 4.4.1991 would contravene provisions of Article 265 as it would amount to imposing a tax without any authority of law-Duration of Validation Act being only for a specified period and there being no saving clause, it is in the nature of* D *temporary statute—Section 2(3) only provides a limited saving clause for recovery of excess tax paid by assessee and does not confer a substantive power to levy and collect cess even after expiry of 4.4.1991—Constitution of India, 1950 Article 265.*

Constitution of India, 1950—Article 14 validation Act validating E *collection already made under the invalid state laws but not authorising fresh collection and levy after 4.4.1991—Held, not violative of Article 14—Cess and other Taxes on Minerals (Validation) Act, 1992.*

General Clauses Act, 1897—Section 6—Applicability of—Held, not applicable to temporary statutes—Cess and Other Taxes on Minerals F *(Validation) Act, 1992.*

Interpretation of Statutes:

Legislative intent—Interpretation of—Held, a statute has to be construed according to the intent of its makers—True and legal meaning of an enactment has to be derived by considering the meaning of the words used in the enactment G *in the light of the mischief which the enactment intends to remedy.*

Words and Phrases:

"Imposition and collection" Meaning of in the context of the preamble of the Cess and Other Taxes on Minerals (Validation) Act, 1992. H

A In *India Cement* case and *Orissa Cement* case, this Court struck down various State laws authorising levy on minerals as *ultra vires* on the ground that the States were denuded of their power to levy tax on account of declaration made by the Parliament contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957. In view of the said B judgments, State Government became liable to refund cess and other taxes causing serious impact on State revenues and to prevent liability of refund, the Cess and Other Taxes on Minerals (Validation) Act, 1992 was passed by Parliament. Several writ petitions were filed in different High Courts challenging the constitutional validity of the said Validation Act. Patna High Court while upholding the constitutional validity of the Validation Act held C that it authorised retention of cess and taxes already collected under the invalid state laws but did not authorise fresh recovery of any tax or cess after 4.4.1991 even if the liability was incurred under the validation laws before 4.4.1991. Consequently, since the State was restrained from realising any demands, the present appeal was filed on behalf of the State of Bihar. However, this Court in *Kannadasan* case upheld the constitutional validity of D the Validation Act as well as the right of the State to levy and demand cess collectable upto 4.4.1991. Several High Courts following the judgment of this Court in *Kannadasan* case, upheld the right of the State Government to levy, demand and collect tax which was collectable upto 4.4.1991. The said judgments were also assailed by the assessees in different SLPs and transfer E petitions before this Court. Review Petitions were also filed by the assessees against the judgment of *Kannadasan* case which were to be disposed of after the disposal of present SLPs.

On behalf of State of Bihar it was contended that the Validation Act authorised the State Governments to levy and realise tax which were due up F to the date of validation, namely 4.4.1991 and there should not be any embargo on the State's power to realise the same notwithstanding the fact that the life of the validation was only upto 4.4.1991; that the Validation Act could not be held to be a temporary statute and remains as a valid piece of legislation, conferring the right to collect and make the levy which would be collectable G upto 4.4.1991 and the provisions of General Clauses Act would be applicable; that there was no quarrel with the constitutional proposition engrafted in Article 265 of the Constitution that levy and collection should be by authority of law. But in respect of minerals extracted upto 4.4.1991, if any cess or tax was to be levied and collected in accordance with the machinery provided for the same, that right of the State would not get frustrated, merely because H the legislation in question in the eye of law was effective till 4.4.1991.

On behalf of assessee it was contended that the Parliament in fact came forward with the Validation Act after different Cess Acts were struck down on the ground of lack of legislative competence solely to ensure that the levies collected are not required to be refunded by the States which would have a serious impact on the State revenues of the concerned State Governments, and therefore, in the absence of any law subsequent to 4.4.1991 the authority to collect has disappeared and consequently the decision of this Court in *Kannadasam's* case holding that not only the taxes already collected need not be refunded, but the taxes and cessess which have not already been collected also be collected is not correct in law; that the right to levy and collect which was there with the State having disappeared with effect from 4.4.1991, the date on which the life of the Acts expires, unless there was any provision conferring the right upon the State to make levy or collect any levy, that collection would be without the authority of law and would contravene Article 265 of the Constitution; that Section 2(2) of the Validation Act, on a plain readings, would suggest, that it validates all the past Acts of collection but has not conferred any right to make any fresh collection or levy any cess on minerals; that the fact that Parliament did not provide saving clause is indicative of the true intention namely, the Parliament never permitted the States to levy and collect the liabilities already accrued, but it only validated the collection of cess already made under an invalid law which otherwise the State would have been liable to refund; that the intention of the Parliament in enacting the Validation Act was only to save the State Governments from refunding the monies already collected under the Statutes declared void *ab initio* by the Courts and it never intended to confer a right on the State to make any fresh levy or collection in respect of the cess and taxes, which would be collected upto 4.4.1991; that the deliberate and conscious omissions by Parliament of a saving clause in the Validation Act, permitting levies or actions after 4.4.1991 points to the only effect that Parliament did not intend any levy to be imposed or any collection to be made after 4.4.1991.

Disposing of the matters, the Court

HELD 1.1. The Cess and Other Taxes on Minerals (Validation) Act, 1992 validated levy and collection of cess and other taxes on minerals imposed under the invalid State laws but it did not confer any right on State to levy, demand and collect fresh cess which would be collectable upto 4.4.1991. The Validation Act does not authorise any fresh levy or collection in respect of liabilities accrued prior to 4.4.1991 though it prohibits refund of the collection already made prior to that date. [187-D]

A *P. Kannadasan and Ors.* v. *State of Tamil Nadu and Ors.*, [1996] 5 SCC 670, overruled.

1.2. It is crystal clear from a plain reading of Section 2(1) of the Act that it purports to validate certain State laws and actions taken and things done thereunder, by providing that the provisions relating to cesses and other B taxes on minerals fictionally must be held to have been enacted by the Parliament and keeping those provisions alive till 4.4.1991. It may be borne in mind that under the Validation Act, Parliament never re-enacted the 11 Acts mentioned in the Schedule, but merely provided the legislative competence for those provisions in those Acts which related to cesses or taxes C on minerals. The legislative history behind the enactment of the Validation Act unequivocally points out to the fact that the State legislature had enacted different statutes conferring right of levy and collection of cess and taxes on minerals, and this Court came to the conclusion that the State legislature did not have the right to make law conferring right to levy and collection on minerals as the field had been occupied by the Union Legislature on the D enactment of the Mines and Minerals Regulation and Development Act, 1957. The judgment of this Court in *India Cement* as well as in *Orissa Cement* necessarily lead to a situation where under not only the 11 Acts mentioned in the Schedule of the Validation Act were declared null and void, but also the collections made under such invalid law became refundable. Thus, Parliament E came forward with a unique device of providing legislative competence in respect of certain provisions of the State laws and that too only keeping the Act alive upto 4.4.1991, the date on which this Court delivered the judgment in *Orrisa Cement* case. [174-G, H; 175-A-C, E]

India Cement Ltd. v. *State of Tamil Nadu,* [1990] 1 SCC 12 and *Orissa* F *Cement Ltd.* v. *State of Orissa,* [1991] Suppl. 1 SCC 430, referred to.

2.1. A Statute has to be construed according to the intent of its makers and the duty of the Court is to act upon the true intention of the legislature. The function of the Courts is only to expound and not legislate. The process of construction combines both literal and purposive approaches. In other G words, the legislative intention *i.e.*, the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same Statute but H

its preamble, the existing state of law, other Statutes in *pari materia* and the mischief which the Statutes was intended to remedy. [175-E, F, H; 176-C, E] A

State of Himachal Pradesh v. *Kailash Chand Mahajan,* [1992] Suppl 2 SCC 351 and *The Reserve Bank of India* v. *Pearless General Finance and Investment Co.,* [1987] 1 SCC 424, relied on.

Attorney-General v. *HRH Prince Ernest Augustus,* (1957) 1 All ER 49, referred to. B

2.2. Bearing in mind the rules of construction and examining the provisions of the validation Act, conclusion is irresistible that the Parliament adopted a unique device of providing the legislative competence to certain provisions of different State legislations which have already been struck down for lack of legislative competence. As the Parliament thought that on account of the judgments of the Supreme Court the State Governments would be liable to make refund of cess and other taxes collected by them, which was likely to have a serious impact on State revenue, and to prevent liability of refund, the Parliament intended to validate collection of levies already made by the State Government upto 4.4.1991. This conclusion is based on, not only the language used in Section 2(1) but also the statement of Objects and Reasons, which clearly enunciates the same. [176-B, C, D] C D

3. The expression 'imposition and collection' occurring in the Preamble of the Act would mean, imposition or collection already made under the relevant State laws and the preamble cannot be construed to mean to confer a further right of imposition and collection of cesses on the minerals extracted upto 4.4.1992. That apart, the very heading of Section 2(1), namely, "Validation of certain State laws and actions taken and things done thereunder." Would suggest that the Parliament by legal fiction injected legislative competence to the laws enacted by the State legislature and gave life to such laws upto 4.4.1991, the date on which the judgment of the Supreme Court in *Orissa Cement* case was delivered, for the purpose of validating the actions taken, things done under such laws declared void by the Supreme Court. Thus, neither the language of Section 2(1) nor the objects and Reasons appended to the Validation Act, confers a right on State Government to levy and collect cess or taxes on mineral which were collected upto 4.4.1991. But it merely validated the collections already made under the State laws so that State will not be burdened with the liability of refunding the amount already collected under void laws. [178-A, B, C, D, F] E F G

4.1. Under Article 265 of the Constitution, no tax shall be levied or H

A collected except by authority of law. It is thus explicit that not only the levy, but also the collection of a tax must be under the authority of some law. The authority of law refers to a valid law which in turn would mean that the tax proposed to be levied must be within the legislative competence of the legislature, imposing the tax and the law must be validly enacted. It must not also contravene the specific provisions of the Constitution and the tax in B question must be authorised by such valid law. The expression "levy and collection" are used in Article 265 in a comprehensive sense and are intended to include the entire process of taxation commencing from taxing Statute to taking away of the money from the citizen. What the Article enjoins is that every stage in this entire process must be authorised by law.

C [178-H; 179-A, B]

4.2. In the instant case, several tax legislations enumerated in the Schedule to the Validation Act having been declared *ultra vires,* on the ground that the State legislatures did not have the legislative competence to make the legislation, there existed no authority of law for making any levy or D collection of tax and cesses on minerals. The Parliamentary intervention was by enacting the Validation Act and giving it retrospective effect and making the law exist till 4.4.1991. What has been achieved is a valid and legal taxing provision and then by fiction, making the tax already collected to stand under the re-enacted law. In the absence of any provisions in the Validation Act, E the relevant provisions of the State laws, which stood expired on 4.4.1991, to hold that the Validation Act authorises, imposing and collection of tax and cesses on minerals, even after 4.4.1991, in respect of the minerals extracted till 4.4.1991 on which the cess was collectable, would contravene Article 265 of the Constitution. [179-C, D, E]

F 5.1. A Statute can be said to be either perpetual or temporary. It is perpetual when no time is fixed for its duration and such a Statute remains in force until it is repealed which may be express or implied. But a Statute is temporary when its duration is only for a specified time and such a Statute expires on the expiry of the specified time, unless it is repealed earlier. The G relevant provisions of the different State laws relating to cesses or taxes on minerals having been deemed to have been enacted by Parliament and having been deemed to have remained in force upto 4.4.1991 under the Validation Act, those laws relating to cesses or taxes on minerals must be held to be temporary Statute in the eye of law. Necessarily, therefore, its life expired and it would be difficult to conceive that notwithstanding the expiry of the H law itself, the collecting machinery under the law could be operated upon for

making the collection of the cess or tax collectable upto 4.4.1991. A
[180-A, B, C]

5.2. To a temporary Statute, the provisions of Section 6 of the General Clauses Act, 1987 will have no application. Very often legislature enacts in the temporary Statute a saving provision, similar in effect to Section 6 of the General Clauses Act. But in the absence of such a provision in the Validation B Act in question, the life of such State laws stood expired on 4.4.1991. Consequently, there would be no residuary provision or authority of law conferring a power on the state to make and levy or collection of cess or taxes one minerals, after the expiry of the relevant laws. [180-D, E]

5.3. When Parliament enacted the Validation Act and infused life into C the void Acts for lack of legislative competence, it must be assumed that the Parliament knew the constitutional position and was fully aware of the position of law and the necessity of providing a saving clause, in the event the Parliament intended to confer a right of collection as well as levy subsequent to 4.4.1991. The deliberate and conscious omission of the saving clause by the D Parliament is of considerable significance and cannot be lightly brushed aside. Section 2(1) of the Validation Act, having used the expression "upto 4.4.1991", unequivocally indicates that what is validated is the process of levy and collection made upto that date and no further. This being the position and the Validation Act not having provided any provision, permitting levy or collection after 4.4.1991 the Act never conferred a right of levy or colloection E after 4.4.1991. [185-D-H]

P. Kannadasan and Ors., v. *State of Tamil Nadu and Ors.*, [1996] 5 SCC 670, overruled.

Joura Sugar Mills Pvt. Ltd. v. *State of M.P.*, [1996] 1 SCC 523, referred to. F

State of Orissa v. *Bhupendra Kumar Bose,* AIR (1962) SC 945; *R.C. Jall* v. *Union of India,* [1962] Supp. 3 SCR 436; *Hansraj Moolji* v. *State of Bombay,* [1957] SCR 634 and *T. Venkata Reddy and Ors.* v. *State of Andhra Pradesh,* [1985] 3 SCC 198, held inapplicable.

Steavenson v. *Oliver* 1841 (151) ER 1024, referred to. G

6. It was erroneously held in *Kannadasan's* case that Article 14 would be attracted unless the provisions of the Validation Act is interpreted to mean that it not only validates the collection made but also entitles fresh collection and levy, even after 4.4.1991 of the dues which was collectable upto 4.4.1991. [186-D] H

A *P. Kannadasan and Ors.*, v. *State of Tamil Nadu and Ors.*, **[1996] 5 SCC 670, overruled.**

Mafat Lal Industries Ltd., v. *Union of India*, **[1997] 5 SCC, followed.**

7. It cannot be held that Section 2(3) of the Act confers a substantive B **power to levy and collect cess and other taxes on minerals even after expiry 4.4.1991. The said section which has been introduced for removal of difficulty only provide a limited saving clause, conferring a right of refund on the assessee, if such assessee has paid in excess of what is due and the said provision cannot be invoked to give a wider interpretation of Section 2(1) or** C **Section 2(2). [186-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4803-4808 of 2001.

From the Judgment and Order dated 17.1.96 of the Patna High Court in C.W.J.C. Nos. 1280, 1507, 1639, 1702, 1711 and 1870 of 1992 (R)

D

WITH

C.A. Nos. 4809-4850/2001, R.P. (C) No.1432/97 in C.A. No. 9850/96 R.P. (C) No. 1460/97 in W.P. (C) No. 408/96, R.P. (C) No. 1423/97 in W.P. (C) No. 518/95, C.A. Nos. 4851-93/2001, R.P. (C) No. 966/98 in C.A.No. 9917/96, C.A. Nos. 4894-4911/2001, T.P. (C) No. 708/98, R.P. (C) No. E 1636/98 in C.A. No. 9914/96, R.P. (C) No. 1581/98 in C.A. No. 9915/96, C.A. Nos. 4912-24/2001, W.P. (C) Nos. 594, 649/98, C.A. Nos. 4925-27/ 2001, 1664-65, 1666-67, 1668-69/99, R.P. (C) No. 2363/98 in C.A. No. 9913/96, R.P. (C) No. 2364/98 in C.A. No. 9905/96, R.P. (C) No. 2365/98 in C.A. No. 9912/96, C.A. Nos. 3883-87/99, T.P. (C) No. 452/99, W.P. (C) F Nos. 156, 160, 161, 166, 408/99, T.P. (C) No. 771/99, C.A. Nos. 4928-29/ 2001, T.P. (C) Nos. 471, 465, 483, 485/99, W.P. (C) No. 129/2000, T.P. (C) Nos. 797/99, 172/2000, 173 and 173A/2000, W.P. (C) No. 403/2000, C.A. No. 4930/2001, T.P. (C) No. 480/99, 390/2000 and C.A. No. 4931 of 2001.

Rakesh Dwivedi, A.K. Ganguli, Ranjit Kumar, K. Parasaran, K.K. G Venugopal, Dr. AM. Sighyim, M.L. Jaiswal, S.K. Gambhir, Shanti Bhushan, N.N. Goswami, Anoop G. Choudhary, B.B.Singh, Ms. Binu Tamta, Krishnamurthi Swami, Ajit Kumar Sinha, P.N. Gupta, Shahid Rizvi, Ms. Gauri Rasgotra, Suman J. Khaitan, Mrs. Sarla Chandra, S.K. Kulkarni, D.L. N. Rao, Ms. Sangeeta Kumar, Vijay Kumar, A.V. Rangam, A Ranganadhan, Praveen Kumar, Anil Sharma, Avanish Sharma, Vivek Gambhir, U.A. Rana, H Arvind Kumar, Ms. Shalini Mittal, K.V. Viswanathan, K.V. Venkataraman,

Sudhir Kumar Gupta, Ms. Sheetal Sharma, S. Chakraborty, K.V. Sreekumar, Ramesh Babu M.R, T.N. Singh, Anip Sachthey, Ms. Sandhya Rajpal, Arijit Prasad, Prakash Shrivastava, P.S. Narasimha, P. Sridhar, V.G. Pragasam, Badri Prasad Singh, Ravinder Narain, A.K. Jain, Ms. Deepa Das, S. Dukumaran, S. Ganesh, M.C. Dhingra, K.N. Srivastava, Ms. Gauri Rasgotra, Suman Jyoti Khaitan, Dhruv Mehta, S.K. Mehta, C.L. Kalia, Ms. Shobha, S.R. Ghosh, S.V. Balram Das, Dinesh Kumar Garg, Ms. Sangeeta Mandal, Ms. Varsha Choudhary, Krishnanand Pandeya, Rakesh K. Sharma, Deba Prasad Mukherjee, B.K. Satija, Gopal Prasad, B.B. Singh, Mrs. Rekha Pandey, Mrs. Sunita Sharma, A.S. Rawat, D.S. Mahra, N. Ganpathy, B. Partha Sarthy, Satish, K. Agnihotri, R.M. Sharma, Rohit K. Singh, Anil Kumar Pandey, Mrs. Amita Gupta, Sakesh Kumar, Sanjay R. Hegde, Satya Mitra, A. Mariarputham, Mrs. Aruna Mathur, T.V. Ratnam and K. Subba Rao, Advs. with them for the appearing parties.

The Judgment of the Court was delivered by

PATTANAIK, J. Delay condoned.

Leave granted in all the SLPs.

This batch of cases relate to the Cess and other Taxes of Minerals (Validation) Act, 1992 [hereinafter referred to as 'the Act']. The question for consideration is, by the aforesaid Act, what in fact has been validated, is it only the taxes on minerals already realised under the invalid law or the right to levy tax and realise the same, which became due upto 4th of April, 1991? Several cases arising from different States have been tagged on to the main matter arising out of the judgment of the Patna High Court, were listed together, but we think it appropriate to decide the Bihar matter, so that the law laid down therein would be followed in other cases. Incidently, the earlier judgment of this Court arising out of the said Validation Act in relation to the levy of tax on minerals in the State of Tamil Nadu in the case of *P. Kannadasan and Ors.* v. *State of Tamil Nadu and Ors.*, [1996] 5 SCC 670, is required to be reconsidered and it is for that purpose, these cases have been referred to a three Judge Bench. In the case arising out of the judgment in Patna High Court in S.L.P. (Civil) No. 13102-13107 of 1996, the State through the District Mining Officer is the petitioner and by the impugned judgment, the High Court though has upheld the validity of the Validation Act, but has held that the said Validation Act does not authorise the recovery of any tax or cess after 4.4.91, even if the liability was incurred under the Validated laws before 4.4.1991 and consequently, the demand raised by the State were quashed and the State was restrained from taking any steps to realise such

A demand. Be it be stated that a batch of writ petitions were filed by several assessees, assailing the legality of the demands raised by the Mining Authorities for payment of cess in respect of such dues, which would be leviable till 4th of April, 1991. In the batch of cases relating to State of Madhya Pradesh, after the judgment of this Court in *Kannadasan's* case, the State of Madhya Pradesh issued notice to several assessees, raising the demand and such demand B was assailed by filing writ petitions in the High Court. Applications had been filed in this Court for getting those writ petitions transferred, but no order of transfer has been passed by this Court and as such the writ petitions are still pending before the High Court of Madhya Pradesh and we, therefore, do not propose to deal with those matters, since the High Court can well dispose of C the same, on the basis of our judgment in the Bihar Case. Civil Appeal No. 9917 of 1996, however is directed against the judgment of Madhya Pradesh High Court dated 10.5.1995. Before the High Court, the validity of the Ordinance No. 7 of 1992 as well as Cess Validation Act 16 of 1992 had been assailed. The High Court, by the impugned judgment upheld the validity of the aforesaid Validation Act. We are in respectful agreement with the said D conclusion and hold the Validation Act to be constitutionally valid. Hence no interference is called for in the Civil Appeal. But the dispute, whether fresh notice could be issued for collection and levy of dues in respect of liability accrued till 4.4.91 is the subject matter in pending writ petitions in the High Court. In the cases arising out of the judgment in Karnataka High Court, the E High Court has followed the judgment of this Court in *Kannadasan* and thus upheld the right of the State to levy demand and collect, which was collectable upto 4.4.1991 and the assessees are challenging the said judgment in this Court. Several Writ Petitions were filed under Article 32, challenging the constitutional validity of the Validation Act as well as for quashing the demand notices dated 1.8.98 and 2.9.98, issued by the Department of Mines and F Zoology in the State of Karnataka. In the cases arising out of judgment of Andhra Pradesh High Court, the High Court followed the judgment of this Court in *Kannadasan* and upheld the Constitutional validity of the Validation Act as well as the right of the State of make the demand upto 4.4.1991 and this judgment of the Andhra Pradesh High Court is being assailed by the G assessees in different special leave petitions. In *Kannadasan's* case, which arises out of the judgment of Madras High Court, after the judgment of this Court, review petitions were filed by the assessees and this Court had merely directed those review petitions to be tagged on to the special leave petitions filed against the judgment of Patna High Court, but in those petitions, no formal notice had been issued to the State of Tamil Nadu and necessarily H therefore, those review petitions have to be de-linked and only after disposal

of the special leave petitions filed, arising out of the judgment of Patna High Court, the review petitions can be listed for observance of formalities and disposal.

Though large number of counsel argued for different sets of persons, but basically two contentions were advanced. One by Mr. Rakesh Dwivedi, the learned senior counsel, appearing for the State of Bihar, contending that the Validation Act authorises the State Governments to levy and realise tax which were due up to the date of validation, namely, 4.4.1991 and there should not be any embargo on the State's power to realise the same notwithstanding the fact that the life of the Validation Act was only upto 4.4.1991. This stand of Mr. Dwivedi, learned senior counsel appearing for the State of Bihar was supported by Mr. Chaudhary, appearing for the State of Madhya Pradesh, Mr. Sanjay Hegde, appearing for the State of Karnataka as well as Mr. Mariarputham, appearing for the State of Tamil Nadu. According to Mr. Dwivedi, the judgment of this Court in *Kannadasan's* case squarely covers the point and has rightly been decided and the same does not require any reconsideration. On behalf of different sets of assessees, arguments were advanced by different counsel, particularly by Mr. Shanti Bhushan, Mr. Parasaran, Mr. KK Venugopal, Dr. A.M. Singhvi, Mr. AK Ganguli and Mr. Ranjit Kumar, all senior counsel, and the essential contention was that the Parliament in fact came forward with the Validation Act after different Cess Acts were struck down on the ground of lack of legislative competence solely to ensure that the levies collected are not required to be refunded by the State which would have a serious impact on the State revenues of the concerned State Governments, and therefore, in the absence of any law subsequent to 4.4.1991 the authority to collect has disappeared and consequently the decision of this Court in *Kannadasan's* case holding that not only the taxes already collected need not be refunded, but the taxes and cesses which have not already been collected also be collected is not correct in law. It was also further contended that this Court while examining the provisions of the Validation Act in the light of the purpose that was sought to be achieved by the Parliament has not borne in mind the very Statement of Objects and Reasons as well as the language of Section 2 of the Validation Act, and the absence of a provision in the Validation Act, corresponding to the provisions contained in Section 6 of the General Clauses Act. It is the uniform contention of all the counsel appearing for different sets of assessees that the judgment of this Court in *Kannadasan* conferring right on the State to levy and collect the taxes on minerals, which could be leviable until 4th April, 1991, would run contrary to Article 265 of the Constitution and would traverse beyond the

A object of the Validation Act, and consequently it would be appropriate for this larger Bench to re-consider the earlier judgment of two Judge Bench in *Kannadasan's* case.

Before we proceed further in enumerating and examining the contentions raised by the counsel for the parties, it would be appropriate to notice the B history leading to the enactment of the Validation Act. The States of Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Tamil Nadu, Maharashtra and Orissa had enacted several legislations authorising levy on minerals. In the case of *India Cement Ltd.* v. *State of Tamil Nadu,* [1990] 1 Supreme Court Cases 12, a Seven Judge Bench of this Court came to hold that the levy in C question is essentially a levy on minerals and is relatable to Entries 23 and 50 of List II, but on account of declaration made by Parliament contained in Section 2 of Mines and Minerals (Regulation and Development) Act, 1957, the State Legislatures have been denuded of the power to levy tax on minerals and, as such, the imposition of tax on minerals under Section 115 of the Tamil Nadu Panchayat Act, 1958 is *ultra vires.* This Court further hold that D the earlier decision of this Court in *HRS Murthy's* case—[1964] 6 Supreme Court Reports 666, has not been correctly decided. Sometime thereafter a Three Judge Bench of this Court decided the case of *Orissa Cement,*—[1991] Suppl. 1 Supreme Court Cases 430, and following the larger Bench decision of this Court in *India Cement* declared identical levies imposed by the States E of Orissa, Bihar and Madhya Pradesh to be incompetent and void. The Court further held that the decision to be operative prospectively with effect from the date of the judgment i.e. 4.4.1991 so far as the State of Bihar is concerned, and 22.12.1989 so far as Orissa was concerned, the date on which the Orissa High Court struck down the levy, and 28.3.1989 so far as Madhya Pradesh was concerned, the date on which the Madhya Pradesh High Court struck F down the levy. It is after the aforesaid two judgment the Parliament came forward initially by promulgating an Ordinance, called the Cess and other Taxes on Minerals (Validation) Ordinance, 1992, and thereafter by replacing the same by Act 16 of 1992 which was published in the Gazette of India on 4.4.1992. Under Section 2 of the Validation Act the Parliament by legal G fiction purports to have enacted the provisions of the Acts mentioned in the Schedule keeping the provisions of such Act to have remained in force upto 4th April, 1991. The Schedule consists of 11 different Acts, which Acts had been declared by this Court to be *ultra vires* as the State Legislatures were denuded of their powers to make those laws in view of declaration made by the Parliament contained in Section 2 of Mines and Minerals (Regulation and H Development) Act, 1957. In the eye of law, therefore, those 11 Acts must be

held to have been enacted by the Parliament upto 4th April, 1991. After the enactment of the Validation Act Writ Petitions were filed in the High Court challenging the Validity of the said Validation Act. Those Writ Petitions having been dismissed by the High Court, the matter was carried to this Court in *Kannadasan's* case and the said case was disposed of by judgment dated July 26, 1996, reported in [1996] 5 SCC, 670. A two judge Bench of this Court considered the 7 contentions raised by the assessee and rejected all the contentions and held as follows:-

(i) That by enacting the Validation Act, the Parliament does not seek to over-turn the decision rendered by this Court.

(ii) A perusal of Section 2 of the impugned enactment and Section 2 of the 1969 Validation Act considered in Krishna Chandra Gangopadhyaya would show that Section 2 of the impugned enactment is a faithful reproduction and repetition of Section 2 of the 1969 Validation Act, word to word. The only additional words are in Section 2(1), *viz.* 'and such provisions shall be deemed to have remained in force upto the 4th day of April, 1991.

(iii) The preamble of the Act stating "to validate imposition and collection of cesses and certain taxes on minerals under certain State laws" as well as the provisions of the Validation Act create the levy as well as validate the recovery already made and the expression 'collection' does not mean what is already collected alone but means the future collection as well. Neither the preamble nor Section 2 say that what has already collected alone is validated.

(iv) The contention of the assessee that a Parliamentary enactment will not permit the levy of taxes and cesses at different rates in different States in the country as that would be discriminatory and validation of Article 14 of the Constitution is misconceived as Parliament has intervened and by enacting the impugned law in exercise of its undoubted power validated the levy and all that flows from it.

(v) The contention of the assessee that the denudation of the power of the State legislature to levy taxes on minerals is not an absolute and unlimited one, is wholly misconceived, particularly in view of the decision of this Court in India Cement and Orissa Cement.

(vi) The contention of the assessee that the taxes realised by virtue of the Validation Act can only be realised for the purpose of

A Regulation of Mines and Minerals Development is also based upon a misconception about the law relating to taxes and what is levied under the impugned enactment is a tax/cess and not a fee and as such, it is not necessary that element of quid pro quo should be established in each and every case.

B (vii) Merely because the levy created by an enactment is limited to a particular period, the Act itself cannot be said to be a temporary Statute and the Act very much continues in force and will remain in force till Parliament chooses to repeal it and, therefore, Section 6 of the General Clauses Act should apply. Notwithstanding the cessation of levy created by Section 2(1) with 4th day of April, C 1991, the machinery requisite for realising and refunding the taxes/ cesses yet to be collected or wrongly collected, as the case may be, is kept alive and it cannot be suggested with any reasonableness that the said machinery is kept alive only for the purposes of refunding the excessively collected taxes but not for collecting/ D recovering the uncollected/unrecovered taxes and cesses.

With the aforesaid conclusions this Court dismissed the appeals preferred by the assessee against the judgment of the Madras High Court.

The Patna High Court disposed of the batch of Writ Petitions on 17th E January, 1996 before the judgment of this Court in Kannadasan's case. In the impugned judgment the High Court has held that:

(a) the Parliament has not enacted the entire Cess Act of 1880 but has merely re-enacted the provisions contained therein which relate to cess and other taxes on minerals;

F (b) The laws which have been enacted by the State Legislature are deemed to have been enacted by the Parliament.

(c) It became necessary for the Parliament to intervene and to enact a law with a view to protect a State from the consequences that followed declaration made by the Supreme Court in India Cement G and Orissa Cement.

(d) The Parliament took precaution to itself re-legislate on the subject matter in exercise of its legislative power and it chose to legislate by incorporation, a method of legislation well recognised by law.

H (e) The laws enacted were deemed to have remained in force upto

4th April, 1991. A

(f) The Statute in question can be described as promulgated a temporary legislation.

(g) The submission that Parliament did not have the competence to legislate on the subject matter fell within the exclusive jurisdiction of the State Legislature, proceeds on the erroneous assumption B that the subject matter with which the Parliament dealt with in the Validation Act was a State subject contained in List II of 7th Schedule.

(h) The competence of Parliament to make enactment is beyond challenge. C

(i) The Validation Act cannot be impugned on the ground that it sought to re-validate the said Act which was declared unconstitutional by the Supreme Court. The power of the Parliament to legislate retrospectively cannot be disputed. Consequently the Parliament had power to legislate on the topic D it could make an Act on the topic by any drafting means including by referential legislation.

(j) There is nothing in the impugned Act with regard to the assignment of the taxes collected or its distribution between the States. It cannot therefore be urged that any provision in the impugned Act E runs contrary to the constitutional scheme with regard to the assignment to the States of the taxes realised, or their distribution between the States.

(k) Considering the background, facts and having regard to the purpose for which the law was passed and the objective sought to be F achieved it cannot be said that the Validation Act was discriminatory merely because different rates of cess on royalty were prescribed for different States. The dominant objective of the Act was to validate the levies already made, and not to legislate on the subject by naming a law imposing cess on royalty. It was G because of this objective which the law sought to achieve, that the law was given a limited life i.e. till 4th April, 1991. The legislative history and the march of events, earlier justified by a Supreme Court judgment, could not be ignored by the Parliament and, therefore, taking into account the reality of the situation, the Parliament was left with no option but to validate the levy of cess H

A on royalty till 4th April, 1991, the date of the Supreme Court judgment in Orissa Cement. ? The law ceases to have any effect after the date which makes it clear that the legislation was not with a view to levy cess on royalty, but only to validate what had happened in the past.

B (l) Sub-section (1) of Section 2 of the Act makes it clear that the impugned Act does not enact by validation a perpetual law but a temporary Act.

(m) In the impugned Act admittedly there is no provision similar to Section 6 of General Clauses Act nor is there any saving Clauses C which may justify the application of principles contained in Section 6 of General Clauses Act.

(n) The Act was promulgated for a limited purpose. The Parliament intervened and granted sanctity to laws declared void by the Supreme Court only with a view to absolve the States of their D liability to refund the taxes illegally collected as that would have cast heavy financial burden on the State. It also provided for the same cut off date instead of different cut off dates. The Parliament did not intend to keep alive after 4.4.91, the obligations or liabilities accrued or incurred under the temporary laws and, therefore, did not provide for the enforcement of such obligations or liabilities E in future. As a result the taxes collected before 4.4.91 are not required to be refunded, but the Act does not sanction the recovery of any tax after 4.4.91.

With the aforesaid conclusions, the demands made by the State having been quashed and the State having been restrained from taking any steps to F realise the demands the State through its mining officer is in appeal before this Court.

Mr. Rakesh Dwivedi, the learned senior counsel appearing for the State of Bihar contended that the language of Section 2(1) of the Validation Act G is unambiguous and is susceptible of the only construction that the relevant law specified in the schedule was enacted by the Parliament and remained valid upto 4th of April, 1991 and consequently, the State is entitled to collect the cess or taxes on minerals, which became payable upto 4th of April, 1991. Absence of any law subsequent to 4th of April, 1991 would not stand as a bar on levy and collection of the cess and taxes on minerals and any tax or H cess, which is validly leviable under a valid law could be collected even after

the expiry of the law in question. The High Court, therefore, was in error in limiting the provisions of Section 2(1) of the Validation Act by making reference to the Statement of Object and Reasons. Mr. Dwivedi further contended that the preamble also unequivocally indicates that the Act is to validate the imposition and collection of cess and certain other taxes on minerals under certain State laws. Necessarily, therefore, the right to impose the levy and collect the same by virtue of the Validation Act, cannot be nullified or taken away, merely because the Act had its life till 4th of April, 1991. Mr. Dwivedi also further contended that the Act itself having been enacted on 4th of April, 1992, the date on which it received the assent of the President and was published in the Gazette of India and indicating therein that the enactment in question must be deemed to have been made by Parliament and keeping the provisions valid upto 4th of April, 1991 is clearly suggestive of the fact that the Parliament intended to enact the relevant provisions of the State laws dealing with the levy and collection of cess and taxes on minerals, thereby, conferring right upon the State to make the levy and collect the same in respect of the minerals on which the cess could be leviable upto 4th of April, 1991, and unless such an interpretation is given, the Validation Act would be meaningless and would not subserve the purpose for which Parliament by deeming fiction, legislate the relevant provisions of the State Acts, as if it was an enactment of the Parliament. Adjudged from this stand point, Mr. Dwivedi contends that the decision of this Court in *Kannadassan's* case, does not require any re-consideration and the Court rightly held that the validation in question is not only in relation to the cess already collected under an invalid law, but also in relation to the right of the State to levy, demand and collect, which would be collectable upto 4th of April, 1991. According to Mr. Dwivedi, the two fictions engrafted in Section 2(1) of the Validation Act, must be given full play and effect and, therefore, in the eye of law, a valid statute enacted by the Parliament having legislative competence for the same being operative till 4th of April, 1991, there is no rhyme or reason to debar the State from making any demand or collect the cess, which is collectable upto 4th of April, 1991 on the minerals extracted. According to the learned counsel, the impugned Validation Act is a unique piece of legislation, but the legislative intent is apparent from the language used as well as in the settings in which the enactment was made, conferring thereby upon the State Government, a right to levy and collect taxes in respect of the past period, even after the expiration of 4th of April, 1991. Mr. Dwivedi urged that in construing such a unique piece of legislation, the Courts must adopt a dynamic approach and it does not require any elaborate argument to discover the legislative intent which has been well expressed in

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A the language used in the Statute itself. According to Mr. Dwivedi, the Validation Act cannot be held to be a temporary statue and remains as a valid piece of legislation, conferring the right to collect and make the levy which would be collectable upto 4th April, 1991 and the provisions of General Clauses Act would be applicable. Mr. Dwivedi urged that there is no quarrel with the constitutional proposition engrafted in Article 265 of the Constitution B that levy and collection should be by authority of law. But in respect of minerals extracted upto 4th of April, 1991, if any cess or tax is to be levied and collected in accordance with the machinery provided for the same, that right of the State will not get frustrated, merely because the legislation in question in the eye of law was effective till 4th of April, 1991. The counsel C urged that what the Parliament intended, is that the State could levy and collect cess on minerals extracted till 4th of April, 1991, but would not be entitled to make any levy or collect cess on minerals extracted subsequent to 4th of April 1991. According to Mr. Dwivedi, even while the relevant Act was struck down by the judgment of this Court in *Orissa Cement's* case, in the very judgment, it was indicated that there would be no liability on the D part of the State to refund the cess already collected till the date of the judgment i.e. 4.4.1991, and it was unnecessary for the Parliament to include that Act in the schedule and validate the provisions of the Act by a deeming fiction of enactment by the Parliament merely for the purpose of absolving the State from the liability of refunding the cess already collected as such a E direction was part of the judgment of this Court in *Orissa Cement* case. It cannot be assumed that the Parliament enacted the provisions of the relevant Act upto 4th of April, 1991 without any purpose or object. It would, therefore, be rational to construe that the purpose of the enactment in question was to have a valid law till 4th of April, 1991, thereby, conferring the State the right to levy and collect all cess and taxes on minerals, which was collectable upto F the 4th of April, 1991. The construction put-forth by the Patna High Court in the impugned judgment is, therefore, erroneous. With reference to the Press Note that was issued on 17.2.1992, Mr. Dwivedi contends that the expression "that the Government has decided to validate the collection of cesses and other levies upto 4.4.91" would unequivocally indicate that the G collection already made as well as the collection to be made in respect of the collectable dues upto 4.4.91 was intended to be validated. It is the contention of the learned counsel that all levies which would be validily impossible upto 4.4.91 could be collected by the State and that was the object for which the Parliament made the enactment. It was also urged that if the language used in Section 2(2) is read in juxtaposition to language used in Section 2(1), it H would be apparent that Section 2(1) was not confined to the validation of the

levy that has already been collected, but it was a valid law, making the State entitled to collect the cess realisable upto 4.4.91. In response to the conclusions of the High Court on the question of a Saving Clause, Mr. Dwivedi contends that the said absence of a saving clause is not decisive and even if the Act is held to be a temporary Act, if the liability is of an enduring nature, the same would survive even after the expiry of the Act itself, as was held by this Court in the case of *Bhupendra Bose,* [1962] Supp. 2 SCR. 380. According to Mr. Dwivedi, by process of re-enactment of the State legislations by the Parliaments itself, the Parliament was in fact balancing between the Public Interest involved in the matter of direction of refund by the Supreme Court and as such wanted to place all the States uniformly by making the legislation enacted till 4th of April, 1991. In the matter of balancing such Public Interest, it would be unreasonable to hold that persons from whom tax could not be collected would be in a better position than the persons from whom the tax had already been collected. On the other hand, it would be more logical to hold that liability to pay the tax on the minerals extracted upto 4th of April, 1991 would be uniformly applied and therefore, the State would have the right to make the levy and collect the same. With reference to the various Validating Acts and the pattern of validation, as demonstrated by the assessees, Mr. Dwivedi contends that while construing the provisions of a particular Statute, the language used in that statute is of paramount consideration inasmush the intention of the legislature is well expressed in the language used. Further the decision of this Court in *Joura Sugar Mills,* [1996] 1 SCR 523, and the ratio therein would squarely apply to the case in hand and, therefore, it would be only reasonable to construe that the State could recover all the cess and tax on minerals, which would be found due upto 4.4.91 and there should not be any fetter on the power of the State to collect such dues merely because the life of the Act has expired on 4.4.91. According to Mr. Dwivedi, this Court while deciding the true import and effect of the Validation Act in Kannadasan's case, borne in mind the backdrop of a special historical situation where cess and taxes on minerals were being collected by different States under their laws at different rates over a long period, which laws were struck down by the Supreme Court, on the ground of lack of legislative competence. The decision rendered by this Court in Kannadasan's case, therefore, must be held to be correct and does not require any reconsideration.

Mr. Chaudhary, learned counsel appearing for the State of Madhya Pradesh in the transferred applications supported the arguments advanced by Mr. Rakesh Dwivedi, appearing for the State of Bihar and further contended that the purpose of the Validation Act is to provide the legislative competence

A for the enactment in question up to 4th April, 1991. The consequences flowing there from would confer an unfettered right on the State Government to impose and collect cess and taxes on minerals which was imposable up to 4th April, 1991, and that right cannot be nullified merely because the Act remained in force till 4th April, 1991. Mr. Chaudhary contended that the amplitude of the substantive provision contained in Section 2(1) of the Validation Act B cannot curtailed by looking to the objects and reasons of the legislation, and judged from this stand point the conclusion is irresistible, as was held by this Court in *Kannadasan's* case, that it permits both levy and collection even after 4.4.1991 in respect of the liabilities accrued until 4th April, 1991. In support of this contention he placed reliance on the decision of this Court in C the case of *M/s. Burrakur Coal Co. Ltd.* v. *The Union of India and Ors.*, [1962] 1 SCR 44. Mr. Sanjay Hegde, learned counsel appearing for the State of Karnataka adopted the arguments advanced by Mr. Rakesh Dwivedi, appearing for the State of Bihar. Mr. N.N. Goswami, learned senior counsel, appearing for the Union of India, submitted that to avoid any discrimination between the group of persons from whom the cess and tax on minerals have D been collected, and the others from whom it has not been collected though they are liable, the legislation in question even though goes beyond the object, must be construed to hold that it permits levy and collection of the dues which would be collectable upto 4.4.1991.

E Mr. Shanti Bhushan, learned senior counsel appearing for the assessee in Bihar case contended that Article 265 of the Constitution puts an embargo that no tax could be levied or collected except by an authority of law, and if, law in question never remained in force after 4.4.1991 then the question of conferring right upon the State to levy or collection does not arise. The right to levy and collection, which was there with the State having disappeared F with effect from 4.4.1991, the date on which the life of the Act expires, unless there is any provision conferring the right upon the State to make levy or collect any levy, that collection would be without the authority of law and would contravene Article 265 of the Constitution. According to Mr. Shanti Bhushan, Section 2(1) of the Validation Act cannot be held to be an enactment G and repeal, as contended by Mr. Dwivedi, appearing for the State of Bihar. The learn counsel urged that it is true that in view of the judgment this Court in *Orissa Cement's* case it was not necessary for the Parliament to make the enactment, but merely because it was so enacted it cannot be construed which is not apparent in the Act itself. According to the learned counsel the Validation Act was enacted only for preventing any refund of the tax, already H collected, as it would have got serious repercussions on the State revenue,

and that is also explicit from the objects and reasons of the Validation Act, as well as the Press Note issued, and therefore, the High Court under the impugned judgment was fully justified in coming to the conclusion that because of the Validation Act, the State cannot be said to have been conferred any right to levy and collect dues, which was collectable upto 4.4.1991. Mr. Shanti Bhushan contends that Section 2(2) of the Validation Act, on a plain reading, would suggest, that it validates all the past Acts of collection but has not conferred any right to make any fresh collection or levy cess on minerals. Mr. Shanti Bhushan contended that in Kannadasan's case this Court considered from a wrong premise, in as much as, what was necessary for consideration is as to whether the relevant statute which lack legislative competence and was enacted is a temporary legislation or not ? And as such, the fact that Parliament did not provide saving clause is indicative of the true intention, namely, the Parliament never permitted the States to levy and collect the liabilities already accrued, but it only validated the collection and levy already made under an invalid law which otherwise the State would have been liable to refund. Mr. Shanti Bhushan also referred to the judgment of this Court in *Joura Sugar Mills'* case [1996] 1 SCR 523 and pointed out the difference in the Validation Act which would clinch the issue.

Mr. Parasaran, the learned senior counsel appearing for the respondents in some of the Special Leave Applications, arising out of the judgment of the Patna High Court contended, that as several State legislations were being given life through Parliamentary enactment, the Parliament though if fit to put up the common date for all the State laws till the date of the judgment in Orissa Cement case, 4th April, 1991, with the sole object that none of the collection made would be required to be refunded. But in the absence of any provision in the validating Act providing for a right to take levy and collection beyond the date and since Section 6 of the General Clauses Act has no application it would be wholly illegal to hold that the State can make levy and collect tax even after 4.4.1991 in respect of the dues which were collectable upto that date. According to Mr. Parasaran, the Parliament came forward by fictionally enacting provisions of different State laws dealing with the tax and cess on minerals as an act of balancing public interest, as otherwise it was felt that it would be a severe blow on the State revenue if the State is required to refund the taxes and cess already collected. It is thus contended by Mr. Parasaran that the judgment of this Court in *Kannadasan* is erroneous and it must be held that by the Validation Act, State would not be liable to refund the cess already collected but no right can be said to have been conferred upon the State to make any further levy or collection in respect of

A dues collectable up to 4.4.91, as was held in *Kannadasan's* case.

Mr. K.K. Venugopal, learned senior counsel appearing for the respondent Hindalco in Special Leave Petition No. 13106 of 1996, contended with vehemence, that in *India Cement's* case as well as in *Orissa Cement's* case the question for consideration was whether the State legislature can make any B law/tax on minerals and this Court in no uncertain terms held that the State legislature did not have the legislative competence. But having held so the Court innovated the device of prospective over ruling following the principle enunciated in *Golaknath's* case. The true import is that the prospective invalidation was postponed till 4..4.1991 but there being no legislation after C 4.4.1991 notwithstanding the re-enactment of the State laws by the Parliament up to that date there cannot be any authority of law to make any demand by the State of any tax or cess on minerals. According to Mr. Venugopal, the laws having met a natural death on 4.4.1991 and only past actions having been sought to be validated by virtue of the Validation Act no power can be said to have been conferred on the State to collect the past liability incurred, D but which are not collected. Even if there has been a levy but not collected prior to 4.4.1991 cannot be permitted to be collected in the absence of any valid law, as in that event it would contravene Article 265. According to Mr. Venugopal, if there is no authority of law after 4.4.1001 then there would be no question of either imposing levy or collecting levy, which might have E been imposed, and judged from this angle the judgment of this Court in *Kannadasan's* case must be held to be wrongly decided.

Dr. A.M. Singhvi, the learned senior counsel, appearing for the assessee-respondent in S.L.P. (Civil) No. 13106/96 and S.L.P. (Civil) No. 15442-15443/98 contended that the intention of the Parliament in enacting the F Validation Act was only to save the State Governments from refunding the monies already collected under Statutes declared void ab-initio by the Courts and it never intended to confer a right on the State to make any fresh levy or collection in respect of the cess and taxes, which could be collected upto 4.4.91, as contended by Mr. Dwivedi, appearing for the State of Bihar. G According to Dr. Singhvi, when this Court in *Orissa Cement's* case, following the earlier judgment of the Court in *India Cement,* invalidated levies made under different Statutes enacted by the States of Orissa, Madhya Pradesh and Bihar and issued a mandamus, directing refund of the monies collected under such void Statutes, the State Governments would have been under a constitutional obligation to carry out the directions issued and were bound to H refund the monies collected from the respective States from the date of the

Judgment of the High Court, which would have ruinous consequences on the States' economy. When the State Governments apprised these problems to the Central Government, the Parliament intervened and to save the State Governments from refunding the monies collected, enacted the Cess and Other Taxes on Minerals (Validation Act, 1992 to validate imposition and collection of such levies under the State laws which were declared void by the Court. The Statement of Object and Reasons of the Validation Act unequivocally proclaims that the Act was promulgated to validate collection of such levies by the State Governments upto 4th of April, 1991. The date 4.4.92 was chosen because on that date, the Supreme Court delivered the judgment in *Orissa Cement* case. To bring about the uniformity among all the States, the cut off date was selected in the Validation Act as 4.4.91. Parliament also consciously did not desire or choose to prescribe different dates for different States in the schedule to Validation Act containing 11 enactments in respect of 7 States. The Parliament, thus devised the method of prospective overruling and the language used in sub-section (2) of Section 2 of the Validation Act makes the intention more explicit, and as such it must be held that it allowed the States to retain the amount of cess already collected but did not authorise to make any fresh collection which has not been collected upto 4.4.91. Dr. Singhvi further contends that the deliberate and conscious omissions by Parliament of a saving clause in the Validation Act, permitting levies or actions after 4.4.91 points to the only effect that Parliament did not intend and levy to be imposed or any collection to be made after 4.4.1991. Had it been the intention a specific and unambiguous saving clause could have been provided as was done in *Joura Sugar Mills'* case [1966] 1 SCR 523 and *Prithvi Cotton Mills Ltd.,* case [1969] 2 SCC 283. A bare persual of the Validation Act in *Joura Sugar Mills'* case and the Validation Act in the present case would unequivocally indicate that in the case in hand, the Parliament never intended to confer a right on the States to collect and impose any levy subsequent to 4.4.91 and on the other hand merely allowed the State to retain the collection already made. According to Dr. Singhvi in *Kannadasan's* case, this Court drew wrong analogy from *Gangopadhayaya's* case and held that the provisions therein were identical to the provisions in the Validation Act, which was under consideration. Dr. Singhvi further urged that this Court in *Kannadasan's* case, has not appreciated the fact that Parliament deliberately and consciously omitted to incorporate a saving clause in the Validation Act. Dr. Singhvi urged that by the Validation Act life was infused into void State Statutes only upto 4.4.91 and consequently, the levies which may have accrued prior to 4.4.91 could not be permitted to be collected after 4.4.91. With reference to Article 265 of the Constitution, the learned

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A counsel urged that the Constitution of India imposes a limitation on the taxing power of the State in so far as it provides that no tax can be levied or collected except by authority of law. Thus, not only the levy, but also the collection must be only by authority of law. The expression "authority of law" would mean that there should be in existence, a lawful enactment, which authorises the levy or collection of a tax. After 4.4.91, there being no B valid law in existence, which could authorise collection of the levy of cess and taxes on minerals, it is difficult to comprehend how the State could be permitted to make the levy and collection of the dues subsequent to 4.4.91. According to Dr. Singhvi, any interpretation of the provisions of the Validation Act, authorising realisation of levy after 4.4.91 for the past period would be C contrary to equity, justice and fair-play.

Mr. Ganguli, the learned senior counsel, appearing for the Indian Aluminium Co. Ltd., respondent in SLP (Civil) No. 13104 of 1996 as well as intervenor India Cement, contended that the judgment in *Kannadasan's* case is erroneous in the teeth of the provisions of Section 2(2) of the Validation D Act which validates only "Cesses or other taxes on minerals realised under any such laws". According to Mr. Ganguli, the Judgment in *Kannadasan,* runs contrary to the purpose and intent of the Validation Act, as indicated in the Statement of Objects and Reasons and the limited purpose of the Validation Act is to declare that enactments mentioned in the Schedule thereto be deemed E to have been enacted by the Parliament and be deemed always to have been valid, as regards the provisions relating to cesses and other taxes on minerals are concerned and declare that the provisions contained in the said enactments be deemed to have remained in force upto 4.4.91, the date on which this Court delivered the judgment in *Orissa Cement* case. According to Mr. Ganguli, the Validation Act merely declares that the laws specified in the F Schedule to the Act shall be deemed always to have been as valid, as if the provisions contained therein relating to cess and other taxes on minerals had been enacted by the Parliament, and such provisions shall be deemed to have been remained in force till 4th of April, 1991. Thus on 15th of February, 1992, the Parliament merely declared that it had enacted the laws in question G in the past, and that all the said laws stood expired even before the Validation Act itself came into force. In sub-section (1) of Section 2, Parliament did not make any further provision, except making the aforesaid declaration. In Sub-section (2) of Section 2, the Parliament declared that all actions taken, things done, cesses and other taxes on minerals realised in any of the State laws shall be deemed to have been taken or realised as if Section 2 have been in H force, when such actions were taken, things done or cesses and other taxes

were realised, notwithstanding any judgment, decree or order of any Court. Sub-section (2) of Section 2 further provides that no suit or other proceedings shall be maintained or continued in any Court for the refund of cesses and other taxes realised under any such laws. Thus, while the first part of the declaration in sub-section (2) entirely relates to the past actions, the second part of the declaration also relates to past actions namely cesses and other taxes realised but the effect of the declaration operates as on the date of coming into force the Act i.e. 15.2.1992. Sub-section (3) of Section 2 incorporates the constitutional mandate in Article 265 and, therefore, any amount paid without the authority of law becomes refundable to the assessee and could not be retained by the State. Sub-section (3), thus was enacted to clarify that only to a limited extent such proceedings for refund of taxes could be maintained, and it incorporates a limited saving clause and is a special provision regarding saving. Parliament thus did not wish that the general principles contained in Section 6 of the General Clauses Act be made applicable to the Validation Act and hence chose to enact a limited saving clause, as contained in sub-section (3) of Section 2. This being the position, the Patna High Court was fully justified in interpreting the provisions of the Validation Act and in holding that there is no right in the State to make any fresh levy or collection and only the levies already collected would not be refunded. According to Mr. Ganguli, the enactments mentioned in the Schedule remained in force only upto 4th of April, 1991 and, therefore, neither there would be any charging provision, nor machinery under the Act mentioned in the Schedule after 4th of April, 1991, which would authorise the State to make any levy or collection of tax referable to the period prior to 4th of April, 1991. According to Mr. Ganguli, the decision of this Court in *Kannadasan*, relying upon the Constitution Bench decision in *Joura Sugar Mills'* case, must be held to be erroneous, as specific provisions contained in Section 3 of the Act in *Joura Sugar Mills'* case have not been properly appreciated. With reference to Sub-section (3) of Section 2, Mr. Ganguli contends that the same is an exception to the substantive provision contained in Sub-section(2) of Section 2. It is clear from the wordings of Sub-section(3). All that sub-section provides is that if an assessee had made an application for refund within the time prescribed by the State enactment, but the same had not been refunded, then the excess tax paid will have to be refunded, even though the State enactment in the eye of law remained valid till 4th of April, 1991. According to the learned counsel, the provisions of Section 6 of the General Clauses Act would have no application and could not be invoked to widen the limited saving provisions in Section 2(3). In support of the contention that no fresh tax beyond the life of the Statute be permissible, the

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A counsel relies upon the decision of the Court in Royal a Corporation [1970] 1 SCR 639. Mr. Ganguli urged that the Act could not be interpreted to be an authorisation for imposition of a fresh levy and collection thereof, after 4.4.1991, pertaining to a period prior thereto, special by when there is no express provision to that effect in the impugned Act.

B Mr. Ranjit Kumar, appearing for the Petitioner India Cement Limited in S.L.P. (Civil) Nos. 12994-12995 of 1998, submitted that what has been validated under the parliamentary enactment is what has been already collected, so that the State Governments will not be liable for any refund and it never authorised any imposition or collection of the levy after 4.4.1991 even for the C earlier period. According to Mr. Ranjit Kumar, the very language of the Validation Act when read with the Statement of Objects and Reasons, would make it explicitly clear that it does not authorise any fresh imposition or collection for an anterior period, if there has been no such collection prior to 4.4.1991. In other words, the Act only validates what had been illegally collected and the lack of legislative competence was cured by the Parliament D stepping in, for ensuring that the States which were affected by the judgment of this Court in *India Cement* case and *Orissa Cement* case would not be required to refund. According to Mr. Ranjit Kumar, the Statement of Objects and Reasons can be well looked into for ascertaining the intention of the Parliament in enacting the Validation Act and the said Statement of Objects E and Reasons are categorical in terms and only refers to what had already been collected, would not be required to be refunded. According to the learned counsel, the relevant State laws, which became the Central law by virtue of fictional re-enactment, undoubtedly are temporary Act and after the expiry does not allow any further action under the expired Act. In support of this contention, the learned counsel placed reliance on the *Statutory interpretation* F *by Francis Bennion, First Edition, paragraph 178 as well as Craies on Statute Law at pages 407-409.* With reference to the observations made by this Court in *Kannadasan* that the Act must be held to be an Act by incorporation, Mr. Ranjit Kumar submitted that the legislation by incorporation of provisions in the Act has been held to be archival drafting in the words of Francis Bennion, G wnere the learned author states: "The technique of incorporation has received so much judicial and other criticism that it is seldom used today". The learned author further states : "The technique may be called archival drafting because it requires persons applying the Act after a considerable period has elapsed since the relevant date to engage in historical research in order to find out what the law thus imported amounts to". Mr. Ranjit Kumar also placed reliance H on the observations made by *Craies on Statute Law, 7th Edition at Page 29,*

to the effect :- "Legislation by reference, which was increasing in 1875, was described by the Select Committee of that year as making an Act so ambiguous, so obscure and so difficult, that judges themselves can hardly assign a meaning to it, and the ordinary citizen cannot understand to it, without legal advice. With this parliamentary criticism judicial opinion coincides". According to Mr. Ranjit Kumar, the enhancement of royalty by issuance of a notification by the Central Government under Section 9 of the Mines and Minerals (Regulation & Development) Act, 1957, as noticed in the decision of this Court in the case of *State of Madhya Pradesh* v. *Mahalaxmi Fabrics,* [1995] Supp. 1 SCC 642, and the observations made by this Court in the said case that the aforesaid notification was for the purpose of adequately compensating the States for the loss that they have sustained on account of the declaration of law made by this Court in *India Cement* case and *Orissa Cement* case, and the notification was held to be valid, protecting the State Governments from the loss of revenue in the future and the Validation Act protecting the State Governments in respect of the collection already made. Consequently, by virtue of the Validation Act, the State Governments would retain what had already been collected but cannot claim to have a right to make any fresh levy or collection subsequent to 4.4.1991. Mr. Ranjit Kumar also urged that the India Cement Limited had challenged the levy of cess, right from the date of inception of the levy under the Tamil Nadu Act and the High Court had granted stay of the operation of the Act. Even after the judgment of the High Court, while the matter was pending in this Court in appeal, the stay order was operating and the assesse, therefore, never passed on the cess levied to any consumer nor could it do so because the commodity was a controlled commodity and the litigation ended with a judgment in favour of the assesse. To re-open such cases in the garb of the Validation Act and seeking to impose levy and collection from the year 1964 would not only be unreasonable, but also would be contrary to the very judgment passed inter-parties and the Court having stayed the operation of the Act in favour of the assessee. According to Mr. Ranjit Kumar, the assessee having not collected cess from the end user, would be required to pay the same, in view of the interpretation given by this Court in *Kannadasan's* case, and such a view will be wholly unreasonable and would be beyond the object for which the Parliament intervened and validated, to save the State Governments from a difficult financial situation. Mr. Ranjit Kumar, lastly submitted that the judgment of this Court in *Kannadasan* must be held to be wrongly decided and must have to be reconsidered.

Mr. Ajit Kumar Sinha, appearing for Bharat Coking Coal Limited,

A petitioner in SLP(Civil) No. 7555 of 1998, submitted that the Validation Act was to confer the authority of law to meet the requirement of Article 265 of the Constitution. The said need arose as the State was denuded of its competence and jurisdiction to levy cess on royalty in the occupied field under the MMRD Act, 1957. He also brought to our notice the fact that with effect from the date of the judgment of the High Court on 6.11.90, the B petitioner company stopped the collection of cess from the consumers and the order/judgment of the High Court dated 6.11.90 was assailed by the State of Bihar in Civil Appeal No. 3010-3024 of 1991. The Court had passed an order to the following effect:-

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> "In the meantime, we hold that the State Government is bound to comply with the judgment of this Court and refund all amount collected on or after 4.4.1991. If there is any delay beyond August, 1991 in making the refunds, the amount of refunds will bear interest of 18% from 4.4.1991 till the refund is made."

D Notwithstanding the aforesaid orders, the State Government started raising demand because of the Validation Act and when the company raised the demand against the consumers, the consumers challenged the same and obtained stay orders from the Calcutta High Court as well as the Ranchi Bench of Patna High Court and, therefore, no demand could be realised in view of the orders of the Court. Now under such situation if the provisions E of the Validation Act are interpreted in the manner as contended by State of Bihar, and if the judgment of this Court in *Kannadasan* is upheld, then the petitioner-company would be grossly prejudiced, as it would be liable to pay cess to the State Government and yet could not collect the same from the consumers. According to the learned counsel, Section 2 of the impugned F Validation Act does not create any fresh levies and, therefore, what purports to have been validated is the collection already made and by no stretch of imagination, a fresh right to make any levy or collection.

In the context of the submissions made by the counsel for different parties, noted above, the crucial question that arises for consideration is what G really Parliament intended to validate by enacting the Validation Act ? On a plain reading of Section 2(1) of the said Act it is crystal clear, that it purports to validate certain State laws and actions taken and things done thereunder, by providing that the provisions relating to cesses and other taxes on minerals fictionally must be held to have been enacted by the Parliament, and keeping those provisions alive till 4th April, 1991. It may be borne in mind that under H the Validation Act Parliament never re-enacted the 11 Acts mentioned in the

Schedule, but merely provided the legislative competence for those provisions in those Acts which related to cesses or taxes on minerals. The legislative history behind the enactement of the aforesaid Validation Act unequivocally points out to the fact that the State Legislature had enacted different Statutes conferring right of levy and collection of cess and taxes on minerals, and the Supreme Court came to the conclusion that the State legislature did not have the right to make law conferring right to levy and collection on minerals as the field had been occupied by the Union Legislature on the enactment of the Mines and Minerals Regulation and Development Act, 1957. The judgment of this Court in India Cement as well as in Orissa Cement necessarily lead to a situation whereunder not only the 11 Acts mentioned in the Schedule of the Validation Act were declared null and void, but also the collections made under such invalid law became refundable. It is no doubt true, that in Orissa Cement case the Supreme Court borne in mind the principle of prospective over-ruling, as had been done in *Golaknath's* case, indicated the dates with effect from which the judgment would operate but the Acts having been declared null and void the State Governments became apprehensive that a huge amount of tax, already collected under laws, for which State legislatures did not have the competence to legislate would be required to be refunded. The Parliament also was of the same opinion, as would appear from the Statements of Objects and Reasons of the Validation Act and the Parliament came forward by a unique device of providing legislative competence in respect of certain provisions of the State laws and that too only keeping the Act alive upto 4th April, 1991, the date on which the Supreme Court delivered the judgment in Orissa Cement case. It is in this context the provisions of the Validation Act as well as the object for which the Act was enacted will have to be ascertained. A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the legislature. This task very often raises the difficulties because of various reasons, in as much as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is

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A only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to B anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In C other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. The aforesaid principle was enunciated and applied by this Court in the case of *State of Himachal Pradesh* v. *Kailash Chand Mahajan*, [1992] Suppl. 2 SCC 351. D *Lord Somervell in the case of Attorney-General* v. *HRH Prince Ernest Augustus*, (1957) 1 All ER 49 has stated "The mischief against which the statute is directed and, perhaps though to an undefined extent the surrounding circumstances can be considered. Other statutes in *pari materia* and the state of the law at the time are admissible." It is also a cardinal principle of E construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in *pari materia* and the mischief which the statute was intended to remedy. *Chinnappa Reddy, J.* in The *Reserve Bank of India* v. *Pearless General Finance and Investment Co.*, [1987] 1 SCC 424, had observed, "Interpretation must depend on the F text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. Most fair and rational method for interpreting a G statute is by exploring the intention of the legislature through the most natural and probable signs which are 'either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of H what is enacted 'by necessary implication' can hardly be determined without

keeping in mind the purpose or object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility. The Courts, however, are always warned that they are not entitled to usurp legislative function under the disguise of interpretation and that they must avoid the danger of determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. Bearing in mind the aforesaid rules of construction and examining the provisions of the Validation Act, the conclusion is irresistible that the Parliament adopted a unique device of providing the legislative competence to certain provisions of different State legislations which legislations have already been stuck down for lack of legislative competence. As the Parliament thought that on account of the judgments of the Supreme Court the State Governments would be liable to make refund, of cess and other taxes collected by them, which was likely to have a serious impact on State revenue, and to prevent the liability of refund, the Parliament intended to validate collection of levies already made by the State Governments up to 4th April, 1991. This conclusion of ours is based on, not only the language used in Section 2(1) but also the Statement of Objects and Reasons, which clearly enunciates the same. The Statements of Objects of Reasons is extracted herein below in extenso:-

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

Though Mr. Dwivedi, the learned senior counsel, appearing for the State of Bihar, contended that the preamble to the effect, "an Act to validate the imposition and collection of cesses and certain other taxes on minerals under certain State laws" is much wider than the Statement of Objects and Reasons

A and is in consonance with the language used in Section 2(1) of the Act. But, we are of the considered opinion, that the expression "imposition and collection" would mean, imposition already made or collection already made under certain State laws and the preamble cannot be construed to mean to confer a further right of imposition and collection of cesses on the minerals extracted up to 4th April, 1991. That apart, the very heading of Section 2(1), B namely "Validation of certain State laws and actions taken and things done thereunder", would suggest that the Parliament by legal fiction injected legislative competence to the laws enacted by the State legislature and gave life to such laws upto 4th April, 1991, the date on which the judgment of the Supreme Court in *Orissa Cement* case was delivered, for the purpose of C validating the actions taken, things done under such laws declared void by the Supreme Court. It is no doubt true, that in *Kannadasan's* case, a Bench of two learned judges of this Court interpreted the provisions and held that the effect of validation would confer a right on the State Government to make fresh levy and collection of dues which was collectable upto 4th April, 1991, but we are in respectful disagreement with the aforesaid conclusion, as D in our considered opinion, neither the language of Section 2(1) nor the Objects and Reasons appended to the Validation Act, as Prefatory Note, stipulates that to be the object, nor even the Parliament thought it fit of have a saving clause in the Validation Act, as was done in *Joura Sugar Mills* case. On a construction of the provisions of the Validation Act, and bearing in mind the E situation under which the Act was enacted and a void Act was given life upto a particular period by drafting legislative competence for the same in the teeth of the provisions contained in Article 265 of the Consititution, we are persuaded to accept the arguments advanced by the learned counsel appearing for the assessee in different cases, Mr. Shanti Bhushan, Mr. KK Venugopal, Mr. Parasaran, Dr. Singhvi, Mr. Ranjit Kumar, and others that the said F Validation Act cannot be construed to have conferred a right to make levy and collection of cess or taxes on minerals which was collectable up to 4th April, 1991, as was held in *Kannadasan's* case, but it merely validated the collections already made so that the State will not be burdened with the liability of refunding the amount, already collected under void law. In our G considered opinion, therefore, the earlier decision in *Kannadasan's* case to the contrary must be held to have been not correctly decided.

At this stage it would be appropriate to discuss the provisions of Article 265 of the Constitution and its impact on the interpretation of the Validation Act. Under Article 265 of the Constitution, no tax shall be levied or collected H except by authority of law. It is thus explicit that not only the levy, but also

the collection of a tax must be under the authority of some law. The authority of law refers to a valid law which in turn would mean that the tax proposed to be levied must be within the legislative competence of the legislature, imposing the tax and the law must be validly enacted. It must not also contravene the specific provisions of the Constitution and the tax in question must be authorised by such valid law. The expression "levy and collection" are used in Article 265 in a comprehensive sense and are intended to include the entire process of taxation commencing from taxing statute to the taking away of the money from the citizen. What the Article enjoins is that every stage in this entire process must be authorised by the law. This being the position, in the case in hand, several tax legislations enumerated in the Schedule to the Validation Act having been declared *ultra vires*, on the ground that the State Legislature had not the legislative competence to make the legislation, there existed no authority of law for making any levy or collection of tax and cesses on minerals. The Parliamentary intervention by enacting the Validation Act and giving it retrospective effect and making the law existed till 4.4.91. What has been achieved is a valid and legal taxing provision and then by fiction, making the tax already collected to stand under the re-enacted law. In the absence of any provisions in the Validation Act, the relevant provisions of the State laws, which stood expired on 4.4.1991, to hold that the Validation Act authorises, imposing and collection of tax and cesses on minerals, even after 4.4.1991, in respect of the minerals extracted till 4th of April, 1991, on which the cess was collectable, would contravene Article 265 of the Constitution, inasmuch as there did not exist any valid provision or authority of law for making such collection. In this view of the matter, we are persuaded to agree with the submission made by Mr. Shanti Bhushan on this question that the Parliament never intended to confer an authority on the State Government to make any fresh levy and collection of the cess and taxes on minerals, which was collectable upto 4th of April, 1991 under the Validation Act and the judgment of this Court in *Kannadasan's* case, must, therefore, be held not to have been correctly decided.

Let us now examine the question, as to whether the Statute is a temporary Statute or not? When we examine this question in the case in hand, we are not examining the Validation Act, but we are required to examine the relevant provisions of the different State laws, included in the Schedule to the Validation Act, which laws had been declared *ultra vires* by this Court in the decision of *India Cement* and *Orissa Cement*, on the ground of lack of legislative competence and that legislative competence has been purported to have been conferred by virtue of a deeming enactment by Parliament and further enacting

A that such provisions shall be deemed to have been remained in force upto the 4th day of April, 1991. A Statute can be said to be either perpetual or temporary. It is perpetual when no time is fixed for its duration and such a statute remains in force until its repeal which may be express or implied. But a Statute is temporary when its duration is only for a specified time and such a Statute expires on the expiry of the specified time, unless it is repealed earlier. The relevant provisions of the different State laws relating to cesses or taxes on minerals having been deemed to have been enacted by Parliament and having been deemed to have remained in force upto 4th day of April, 1991 under the Validation Act, those laws relating to cesses or taxes on minerals must be held to be temporary Statute in the eye of law. Necessarily, therefore, its life expired and it would be difficult to conceive that notwithstanding the expiry of the law itself, the collecting machinery under the law could be operated upon for making the collection of the cess or tax collectable upto 4.4.1991. Admittedly, to a temporary Statute, the provisions of Section 6 of the General Clauses Act, 1897 will have no application. Very often legislature enacts in the temporary Statute a saving provision, similar in effect to Section 6 of the General Clauses Act, as was done in *Joura Sugar Mills,* [1966] 1 S.C.R. 523. But in the absence of such a provision in the Validation Act in question, which has purported to have conferred the legislative competence in respect of the several State Laws mentioned in the Schedule and kept it alive till 4.4.91, and not beyond that date, the life of such State laws stood expired on 4th of April, 1991. Consequently, there would be no residuary provision or authority of law conferring a power on the State to make any levy or collection of cess or taxes on minerals, after the expiry of the relevant laws. A temporary Statute even in the absence of a saving provision like Section 6 of the General Clauses Act may not be construed dead for all purposes and the effect of expiry is essentially one of the construction of the Act. The leading authority on the point is the case of *Steavenson* v. *Oliver,* (1841) 151 ER. 1024. These principles have been applied by this Court in the case of *State of Orissa* v. *Bhupendra Kumar Bose,* AIR (1962) SC Page 945, and it is in this context, the argument of Mr. Dwivedi, regarding law of an enduring nature requires consideration. In *State of Orissa* v. *Bhupendra Kumar Bose,* on which Mr. Dwivedi heavily relied upon, what arose for consideration before this court, is whether the electoral rolls were improperly prepared, and the Court having declared the elections invalid and validating the Ordinance, which had been promulgated validating the elections to the municipality as well as validating the electoral rolls prepared in respect of other municipalities. When the validity of the ordinance was assailed before the High Court, the High Court struck down the ordinance as having

contravened Article 14 and it was held to have offended Article 254(1) of the Constitution. On appeal, this Court held that the ordinance did not offend Article 14 of the Constitution and that it effectively removed the defects in the electoral rolls found by the first Judgment of the High Court. When arguments were advanced that the invalidity of the electoral rolls and the elections to the municipality did not revive on the expiry of the Ordinance, that was repelled by this Court, that the right that had been created by the Statute namely the validating ordinance, is of an enduring character and has vested in the person concerned namely the voters, a right to vote as well as the elected councillors. That right cannot be taken away merely because the ordinance has lapsed, since the object of the ordinance was to remove the invalidity permanently. It is in that context the Court observed that if the right created by a Statute is of an enduring nature and has vested in the person, that right cannot be taken away, because the Statute by which it created has expired. In applying that principles to the facts of that case, the Court observed:

> "In our opinion, having regard to the object of the Ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired the validity of the elections came to an end and their invalidity was revived. The rights created by this Ordinance are, in our opinion, very similar to the rights with which the Court was dealing in the case of Steavenson and they must be held to endure and last even after the expiry of the Ordinance."

Applying the ratio of the aforesaid case to the case in hand and in view of our conclusion earlier as to the true object and import for which the Validation Act had been enacted by the Parliament, giving the life to a State law till 4th of April, 1991, it is not possible for us to hold that any right can be said to have been created in favour of the State of an enduring nature, which could be enforced even after the expiry of the life of the Act itself. The Parliament had stepped in and had fictionally enacted certain provisions of the State laws being confronted with the situation that the liability to refund the taxes, illegally collected would have a disastrous effect on the State economy. It was indicated also that a Validation Ordinance had been promulgated by the President to validate collection of such levies by the State Government upto the 4th of April, 1991. In the context, it obviously refers to the collection of levies already made and would never relate to any collection to be made thereafter. In this view of the matter, we are not in a position to accept the

A submission of Mr. Dwivedi, appearing for the State of Bihar that on account of the Validation Act, the relevant provisions of the Cess Act of 1880, as applicable in the State of Bihar, conferred an indefeasible right on the State Government to make levy and collect cess or taxes on minerals, which was collectable upto 4th of April, 1991, even after the expiry of the very law itself. In our considered opinion, the decision of this Court in *State of Orissa* B v. *Bhupendra Kumar Bose* case, will have no application to the facts of the present case. The next case, Mr. Dwivedi relied upon was the case of *R.C. Jall* v. *Union of India,* [1962] Supp. 3 SCR 436. In that case, an Ordinance had been promulgated on 26th August, 1944 in exercise of powers vested in the Governor General of India under Section 72 of the Ninth Schedule to the C Government of India Act, 1935 read with India and Burma (Emergency Provisions) Act, 1940, called the Coal Production Fund Ordinance, 1944, for constituting a fund for financing of activities for the improvement of production, marketing and distribution of coal and coke. The said Ordinance was a permanent one and was to be continued to be in force till repealed, as in apparent from the judgment of this Court in *Hansraj Moolji's* case, [1957] D SCR 634. A second Ordinance was promulgated repealing the earlier one on 26th of April, 1947 and in the repealing Ordinance, an express term was there, making the provisions of Section 6 of the General Clauses Act, shall apply in respect of the repeal. The question arose whether after expiry of the life of the repealing Ordinance on November 01, 1947, what would be its E effect in respect of the liability continued in respect of the past transactions? This Court held that the repealing Ordinance had continued the life of the original, which was a permanent one, respect of past transactions and, therefore, the expiry of its life (life of repealing Ordinance) Could not have any effect on that law to the extent saved, and, therefore, it must be held to have continued to have force under Article 372 of the Constitution, until it was F altered, repealed or amended by competent Legislature, and consequently, it cannot be said that the coal cess was levied or collected without the authority of law. We fail to understand how this decision will be of any assistance to the case in hand, where the original law namely the Cess Act of 1880, as applicable in the State of Bihar, did not have the legislative competence and G as such was declared void. By the Validation Act, Parliament fictionally and by a deeming provision, enacted the provisions of the invalid law in relation to cess or taxes on minerals and that also till 4th of April, 1991. Thus, there was no permanent law, authorising the levy which was being validated but on the other hand by a fictional enactment, a law permitting collection made upto 4th of April, 1991 was allowed to be retained. As has been observed H earlier in the Validation Act, no provision has been made, corresponding to

the provision contained in Section 6 of the General Clauses Act, and therefore, after the expiry of the life of the law that is after 4.4.1991, there cannot be any authority of law for making any levy or collection of the cess and taxes on minerals. This decision also will have no application to the case in hand. The other decision of this Court relied upon by Mr. Dwivedi is the case of *M/s. Velji Lakshmi and Co. and Ors.* v. *M/s. Benett Coleman and Co. and Ors.*, [1977] 3 SCC 160. In this case the question for consideration was whether the Municipal Commissioner could order demolition of a building in exercise of power under the provision of City of Bombay (Building Works Restriction) Act, 1944, after the expiry of the said Act, which was a temporary Statute? This Court in the aforesaid case held that question whether the restrictions, rights and obligations flowing from the provisions of a temporary statute which came to an automatic end by efflux of time expire with the expiry of the statute or whether they endure and survive after the expiry of the statute depends upon the construction of the statute and the nature and character of the rights, restrictions and obligations and no rigid and inflexible rule can be laid down in this behalf. It is in that context, the Court also further observed that the transactions which are concluded and completed under the temporary statute while the same was in force often endure and continue in being despite the expiry of the statute and so do the rights or obligations acquired or incurred thereunder depending upon the provisions of the statute and nature and character of the rights and liabilities. Applying the aforesaid ratio to the case in hand, it is difficult for us to hold that the State laws which infused life into it under the Validation Act by a fictional enactment of the laws by Parliament and keeping it alive till 4th April, 1991, can at all be said to have created any right on the State to levy and collect the cess and tax on minerals which can be held to be of enduring nature so as to enable the State to levy and collect even after the expiry of the State laws in question. Consequently, the aforesaid decision is also of no assistance to the State of Bihar. The only other case relied upon by Mr. Dwivedi is the case of *T. Venkata Reddy and Ors.* v. *State of Andhra Pradesh*, [1985] 3 SCC 198. In this case by virtue of promulgation of an Ordinance certain posts were abolished, but the Ordinance could not be made an Act as the State Legislature did not approve of the same. The question for consideration was whether after the expiry of the life of an Ordinance, the post which stood abolished can be said to have been revived? This Court, on examining the provisions of Section 3 of the Ordinance itself came to hold that the post of part-time village officers stood abolished on 6th January, 1984 and the employees ceased to be employees of the State Government. These matters became accomplished on that date and were completed events and consequently even

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A if the Ordinance is assumed to have ceased to operate from a subsequent date the effect of Section 3 of the Ordinance was irreversible except by express legislation. In our considered opinion, this decision is also of no assistance to support the contention of Mr. Dwivedi, appearing for the State of Bihar, in as much as while infusing life into the void State laws by fictional Parliamentary enactment under the Validation Act and keeping it alive till
B 4th April, 1991, the Parliament never conferred any right upon the State Government to make any levy or collect cess which have not been collected though collectable upto 4.4.1991. The parliament merely conferred the life to the void statute by fictional re-enactment and granting legislative competence for limited purpose so that the State would not be called upon to refund the
C cess already collected under such void law. In the aforesaid premises, we do not find much force in the contention of Mr. Dwivedi about the enduring nature of the law in question and we hold that relevant provisions of the State laws which were validated under the Validation Act and were alive till 4.4.1991 having expired on that date there is no authority of law under which the State would raise any demand or make any collection of cess and tax on minerals
D under the expired provisions of the State laws. The conclusion of this Court in *Kannadasan's* case to the contrary, therefore, must be held to be not correct in law. In *Orissa Cement* Case, this Court though declared the levy of cess to be unconstitutional, but further directed that there shall be no direction to refund to the assessee of any amounts of cess collected until the
E date on which the levy in question has been declared unconstitutional. This date so far as Bihar was concerned, was the date of judgment i.e. 4.4.91, in case of Orissa, the State was 22nd December, 1989 and in case of Madhya Pradesh, the date was 28th of March, 1986. It was held that any cess collected after the aforesaid dates by the respective States has to be refunded and the States cannot be permitted to retain the cess collected. It is to obviate the
F aforesaid difficulty, particularly in case of States of Orissa and Madhya Pradesh, though such difficulty was not there in case of Bihar, the Parliament came forward with the Validation Act. It is true, as Mr. Dwivedi contended that there was no necessity for including the Bihar Act in the Schedule, since the Parliament was enacting the Act only till 4.4.1991, but since several State
G laws were being re-enacted and 4.4.91 was the last date of the judgment of this Court in Orissa Cement, it was thought fit to have the legislation effective till 4.4.91 but for the limited purpose, so that the State would not be liable to refund any cess which it might have collected even subsequent to the relevant State laws having been declared unconstitutional. We find sufficient force also in the contention of Mr. K.K. Venugopal that the law never existed
H after 4.4.1991 and consequently, there cannot be any right with the State to

make any levy or collection of the cess, which was collectable upto 4.4.91. Mr. Venugopal is right in his submission that under the Validation Act, only past actions have been sought to be validated and that too by a fictional enactment of the State laws by the Parliament, keeping it alive till 4.4.91. There is also some force in the contention of Mr. Venugopal that even if there might have been an imposition of levy but not collected the same cannot be collected after 4.4.91, as the machinery for collection would not be available and permitting any such collection beyond that date would contravene Article 265 and such an action may be violative of Article 300A of the Constitution. The expression "law" in the context of Article 300A must mean an Act of Parliament or of a State legislature, a rule or a statutory order having the force of law, as has been held by this Court in *Bishambhar Dayal,* [1982] 1 SCC 39. Consequently, in the absence of any such law after 4.4.91 being in force, the State cannot be conferred a right to levy or collection after 4.4.91.

When Parliament enacted the Validation Act and infused life into the void Act for lack of legislative competence, it must be assumed that the Parliament knew the constitutional position and was fully aware of the position of law and the necessity of providing a saving Clause, in the event, the Parliament intended to confer a right of collection as well as levy subsequent to 4.4.91. The deliberate and conscious ommission of the saving clause by the Parliament, as contended by Dr. A.M. Singhvi, is of considerable significance and cannot be lightly brushed aside, as contended by Mr. Dwivedi, appearing for the State of Bihar. It is true that the pattern of validation, as indicated by Mr. Parasaran, may not be a clinching factor in construing the provisions of the Act, but at the same time the fact that in *Joura Sugar Mills* case as well as in some other cases, while validating, laws have been enacted and saving clause has been provided which are in *pari materia* with Section 6 of the General Clauses Act and absence of such a provision in the present Validation Act is in consonance with the very object and reasons, as appended to the Act. The said object being to validate the cess and taxes on minerals, already collected under a void law. Dr. Singhvi is also right in his submission that this Court in *Kannadasan's* case drew wrong analogy from *Gangopadhyay's* case and erroneously held that provisions therein were identical to the provisions of the Validation Act of 1992. Section 2(1) of the Validation Act having used the expression "upto 4.4.91", it unequivocally indicates that what is validated is the process of levy and collection made upto that date and no further. This being the position and the Validation Act not having provided any provision, permitting levy or collection after 4.4.91,

A we are of the opinion that the Act never conferred right of levy or collection after 4.4.91. The Judgment of Patna High Court, therefore, must be held to be in accordance with law and the judgment of this Court in *Kannadasan's* case must be held to have been wrongly decided.

In *Kannadasan's* case, this Court while interpreting the Validation Act, B held that the Act authorised levy and collection even after 4.4.91, as otherwise it will be held to be discriminatory and violative of Article 14 inasmuch as if two persons would be equally liable to pay, the person who has paid the tax would be at the disadvantage, than the person, who did not pay and challenge the demand. This reasoning of the Court in *Kannadasan* runs C contrary to the observations of this Court in *Mafatlal Industries,* [1977] 5 SCC 536, while this Court dealing with the principle of unjust enrichment, categorically stated that a person who has not paid and has successfully challenged the demand in a Court of law stands on a different footing from a person who has chosen to pay and has not challenged the same. We are, therefore, of the considered opinion that this Court erroneously held that D Article 14 would be attracted unless the provision of the Validation At is interpreted to mean that it not only validates the collection made but also entitles fresh collection and levy, even after 4.4.91 of the dues which was collectable upto 4.4.91.

E The contention advanced by the State with reference to Section 2(3) of the Validation Act to the effect that it is indicative to confer a substantive power to levy and collect cess and other taxes on minerals, is in our opinion, wholly misconceived. All that sub-section (3) of Section 2 means, which has been introduced for removal of difficulty is that notwithstanding the fact that the State law remained in force till April, 1991, if an assessee has paid more F than what he is legally liable to pay and an application for refund had already been made, then he would have the right to get refund of the excess tax paid, even though the life of the Act expires on April 04, 1991. This can be held to be a limited saving clause, conferring a right of refund on the assessee, if such assessee has paid in excess of what is due and the said provision cannot be invoked to give a wider interpretation of Section 2(1) or Section 2(2). In G this context, we are persuaded to accept the submission of Mr. Ganguli that the removal of difficulty clause, engrafted in Section 2(3) of the Validation Act is of a limited application, dealing with the right of the assessee to get refund of the excess tax paid and by no stretch of imagination could be construed to hold that it conceives of both levy and collection of cess and H taxes on minerals by the State even after expiry of 4.4.1991.

It will be appropriate to notice one of the contentions raised by Mr. Ranjit Kumar, appearing for India Cement Limited in S.L.P. (Civil) Nos. 12993-12995 of 1998 to the effect that notwithstanding the promulgation of the Tamil Nadu Act, the assessee challenged the levy and the High Court had granted stay of the levy and collection of cess. Even after the judgment of the High Court, while the appeal was pending in this Court, the stay order was operating and the assessee never passed on the cess component to the consumer or end user, and also could not have passed on the same, as the commodity was a controlled commodity. If after this length of time, the Validation Act is interpreted to mean a right being conferred upon the State to impose the levy and collection of the same from 1964, it would work out gross injustice to the assessee and even would run contrary to the very judgment of the Court inter-parties. Though this contention may not be a clinching issue in interpreting the provisions of the Validation Act, but it cannot be totally lost sight of, and if any other interpretation is permissible then the same must be adhered to particularly, in relation to a taxing Statute. We do find considerable force in the aforesaid submission, as in our view, the interpretation, we have already given to the Validation Act was the real intention of the Parliament and it never intended to confer a right of collection of cess. In agreement with the conclusion arrived at by Patna High Court, we hold the Validation Act to be valid but such validated Acts do not authorise any fresh levy of collection in respect of liabilities accrued prior to 4.4.91, though it prohibits refund of the collection already made prior to that date.

In view of our conclusions, as aforesaid, we do not find any infirmity with the conclusion of the Division Bench of Patna High Court requiring our interference with the same. The said judgment of the Division Bench of Patna High Court is accordingly upheld. C.A. as arising out & S.L.P. (c) Nos. 13102-13107 stand dismissed. The batch of cases from the judgment of Karnataka High Court are allowed and the judgment of Karnataka High Court following the decision of this Court in *Kannadasan's* case is set aside. The batch of cases arising out of the judgment of Andhra Pradesh High Court for the self same reason are allowed and the judgment of Andhra Pradesh High Court is set aside. The Review Petitions filed in this Court for Reviewing the judgment of *Kannadasan's* case at the behest of the assessees cannot be disposed of notwithstanding our conclusion that the decision of this Court in *Kannadasan's* case is not correct in law in as much as no formal notice had been issued to the State of Tamil Nadu. Notice may, therefore, be issued to the State of Tamil Nadu in those Review Petitions whereafter the Review Petitions could be posted for disposal. So far as the batch of cases which are

A pending before Madhya Pradesh High Court, though application under Article 139(a) had been filed for getting Writ Petitions transferred, but no order of transfer had been passed and, as such, the Writ Petitions are still pending before the High Court of Madhya Pradesh. In these circumstances, the Transfer Applications filed stand disposed of with the direction that the High Court will dispose of the pending Writ Petition in the light of our judgment in Bihar
B case. But Civil Appeal No. 9917/96 against the judgment of Madhya Pradesh High Court, directed against the judgment of the said Court dated 10.5.95, stands disposed of. Similarly, Review Petitions Nos. 2363, 2364 and 2365 of 1998, filed in Civil Appeal Nos. 9913 of 1996, 9912 of 1996 and 9905 of 1996 also stand disposed of.

C

All these appeals and applications stand disposed of accordingly. There will be no order as to costs.

S.V.K. Matters disposed of.