JAWAHARMAL

v.

STATE OF RAJASTHAN AND OTHERS

September 22, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

Rajasthan Passengers and Goods Taxation (Amendment and Validation) Act 1964 (22 *of* 1964), *ss.* 2 *and* 4—*Act validating State Finance Acts of* 1961 *and* 1962—*Whether legislature can itself validate defect caused by non-observance of Art.* 255 *of the Constitution—Retrospective taxation whether valid and reasonable.*

The Rajasthan State Legislature passed Act 18 of 1959 to levy tax on passengers and goods carried in motor vehicles. For the purpose of the tax roads were divided into two categories *i.e.* those which were asphalted etc. and those which were not. In respect of goods carried on the former category of roads the State Government was authorised by s. 3 of the Act to levy tax at a maximum of ¼th of the value of the fares and freights; in respect of goods carried on the second category of roads the maximum was 1/12th. By a notification under the Act the maximum rates were levied with effect from May 1, 1959. The said s. 3 was amended by the Finance Acts of 1961 and 1962 to raise the maximum rates leviable under that section and the relevant notifications actually levied the same. The Acts of 1961 and 1962 however suffered from the infirmity that the assent of the President had not been obtained in respect of them as required by Art. 255 of the Constitution. To cure the defect Ordinance No. 4 of 1964 was issued. The Ordinance was replaced on September 9, 1964 by Act 22 of 1964 for which the assent of the President was duly obtained. Section 2 of the Act of 1964 retrospectively re-enacted the amendments to s. 3 of the principal Act made by the Acts of 1961 and 1962. Section 4 of the Act validated all the collections and levies under the earlier Acts and also purported to cure the infirmity in the said earlier Act arising from non-compliance with Art. 255. The petitioner who was asked to pay tax under the Ordinance of 1964 challenged the validity of the said Ordinance as well as the Act of 1964 in petitions under Art 32 of the Constitution of India.

It was contended on behalf of the petitioners that ss. 2 and 4 of the impugned Act purported to validate the earlier invalid Finance Act of 1961 and 1964. It was urged that the failure of the legislature to comply with the provisions of Art. 255 rendered the said Acts void *ab initio* and as such they could not be validated by subsequent legislation. It was further urged that the said earlier Acts had been held invalid by the Rajasthan High Court in the case of *Vijai Singh* and it would be incompetent to the State Legislature to validate the said Acts in spite of the decision of a court of competent jurisdiction.

HELD : (i) It was factually not correct to say that the Acts of 1961 and 1962 had been struck down as void *ab initio* by a court of competent jurisdiction. The High Court in *Vijai Singh's* case had on the other hand though it unnecessary to pronounce its considered opinion on that aspect of the matter. Act 22 of 1964 was passed on September 9, 1964 while the judgment of the High Court was delivered in Novem-

A ber 1964, and so at the time when the Act was passed the earlier Finance Acts had not been struck down at all. [899 B-E]

Vijai Singh and Another v. *Deputy Commissioner, Excise & Taxation (Appeals) Ajmer and Kotah Divisions, Jaipur & Ors.* I.L.R. (1965) 15 Raj. 285, referred to.

(ii) An Act which suffers from the infirmity that it does not comply with the requirements of Art. 255 can be validated by subsequent legis-
B lation. Article 255 itself provides that no Act of the Legislature or a State and no provision in any such Act shall be invalid by reason only that some recommendation or previous sanction required by the Constitution was not given, if assent to the Act was given by the President later. If an Act is passed without obtaining the previous assent of the President it does not become void but remains unenforceable till such assent is obtained. The said infirmity is cured by subsequent assent and
C the law becomes enforceable. The legislature can also in a suitable case adopt the course of passing a subsequent law re-introducing the provisions of the earlier law which had not received the assent of the President and obtaining his assent thereto as prescribed by the Constitution. Legally there is no bar to the legislature adopting either of the courses mentioned above. [899 F-H; 900 A-D]

(iii) Section 2 of the Act of 1964 does not in fact purport to validate the Finance Acts of 1961 and 1962. What it does is to amend retros-
D pectively s. 3 of the principal Act by inserting a proviso to sub-s. (1) of the said section. On its plain reading s. 2 has the effect of inserting the said proviso to s. 3(1) of the principal Act; and since the amendment so made is, in term retrospective, when a tax is levied for the periods covered by clauses (a) and (b) of the proviso thus introduced in s. 3(1) of the principal Act, the Court must proceed to deal with the matter on the basis that these clauses had been introduced in the principal Art right up from the commencement. [900 E-G]

E

The power to legislate includes the power to legislate prospectively as well as retrospectively and in that behalf, tax legislation is no different from any other legislation. The power to tax can be competently exercised by the legislature either prospectively or retrospectively; and that is precisely what s. 2 has done in the present case. Therefore there was no substance in the argument that s. 2 of the Act was invalid. [900 H]

F (iv) The Act of 1964 and all its provisions had received the assent of the President and so *prima facie* the assent of the President to the Act would help the Act to validate the provisions of the earlier Acts which were not enforceable by reason of the fact that they had not secured his assent as required by Art. 225. But the assent of the President could not serve to make s. 4 valid. [902 C-D]

What s. 4 in truth and in substance says is that the failure to comply
G with the requirements of Art. 255 does not invalidate the Finance Acts in question and will not invalidate any action taken or to be taken, under their respective relevant provisions. In other words the legislature seems to say by s. 4 that even though Art. 255 may not have been complied with by the earlier Finance Acts, it is competent to pass s. 4 whereby it will prescribe that the failure to comply with Art. 255 does not really matter and the assent of the President to the Act amounts to this that the President also agrees that the Legislature is empowered
H to say that the infirmity resulting from the non-compliance with Art. 255 does not matter. This approach is entirely misconceived. [902 D-F]

The legislature no doubt can validate an earlier Act which is invalid by reason of Art. 255 and such an Act may receive the assent of the

President which will make the Act effective. The legislature cannot, however, itself declare by a statutory provision that the failure to comply with Art. 255 can be cured by its own enactment, even if the said enactment received the assent of the President. Even the assent of the President cannot alter the constitutional position under Art. 255. The assent of the President cannot by any legislative provision be deemed to have been given to an earlier Act at a time when it was not so given. In this context there is no scope for a retrospective deeming provision in regard to the assent of the President. The infirmity in question can be cured only by obtaining the assent of the President and not by any legislative fiat. In enacting s. 4 the State Legislature clearly exceeded its jurisdiction. [903 A-D, F-G] A B

M. P. V. Sundararamier & Co. v. *The State of Andhra Pradesh & Another*, [1958] S.C.R. 1422, distinguished.

(v) It is idle to contend that merely because a taxing statute purports to operate retrospectively the retrospective operation *per se* involves contravention of the fundamental right of the citizen guaranteed under Art. 19(1) (f) or (g). In the present case having regard to the legislative background of the provision prescribed by s. 2 there could be little doubt that there was no element of unreasonableness involved in the retrospective operation of cl. (b) of the proviso added by the said section to s. 2(1) of the principal Act. [905 D-F] C

(vi) Section 2 of the impugned Act had laid down the rates of tax only up to the period ending March 26, 1962. It was silent about the period after that date. The petitioner therefore could not be taxed for the period after that date on the strength of cls. (a) and (b) of the proviso to s. 2. If s. 4 had been valid then the tax at the enhanced rates prescribed by the Act of 1962 would also have been valid; but since s. 4 was invalid the tax could be validly and legitimately levied for the period after March 26, 1962 only at the rates prescribed in 1959. [906 D-F] D E

ORIGINAL JURISDICTION.—Writ Petition No. 19 of 1965.

Petition under Art. 32 of the Constitution of India for enforcement of fundamental rights.

M. M. Tiwari and *Ganpat Rai*, for the petitioner. F

G. C. Kasliwala, Advocate-General Rajasthan, *K. K. Jain* and *R. N. Sachthey*, for the respondents.

The Judgment of the Court was delivered by

Gajendragadkar C.J. The petitioner, Jawaharmal, carries on business of plying his motor buses on four routes under the Stage Carriage Permits granted to him under the relevant provisions of the Motor Vehicles Act, 1939. The three respondents to his petition respectively are: The State of Rajasthan, the Deputy Commissioner, Excise and Taxation (Appeals), Jaipur, and the Taxation Officer, (The Rajasthan Motor Vehicles) Sikar, State of Rajasthan. It appears that respondent No. 3 passed several assessment orders imposing different amounts of tax against his G H

A five vehicles which were running on the four routes in question. The periods for which these assessment orders were passed differed from vehicle to vehicle; but, on the whole, they covered the period between the 1st April, 1962 and the 30th September, 1964. The total amount of tax imposed in respect of these vehicles by the assessment orders in question is Rs. 19,062-93P.
B These orders have been passed under section 2 of the Rajasthan Passengers and Goods Taxation (Validation) Ordinance, 1964 (Ordinance No. 4 of 1964). This Ordinance was made and promulgated by the Governor of Rajasthan on May 15, 1964.

C Aggrieved by these orders, the petitioner filed appeals before respondent No. 2, but respondent No. 2 refused to entertain the said appeals unless the petitioner paid in advance the tax imposed by the orders under appeal. Whilst these appeals were pending before respondent No. 2, the petitioner moved for stay in respect of the recovery of the tax assessed, but the said application was
D rejected on the ground that there was no provision in law to entertain any such application. That is why the petitioner submitted an application before the Commissioner, Commercial Taxes, Rajasthan on the 3rd February, 1962 and prayed that his buses should not be attached and sold in execution of the orders of assessment, against which he had preferred appeals, pending
E the hearing and final disposal of the said appeals. The Commissioner rejected this application on the 8th February, 1962. Respondent No. 3 then proceeded to attach one of the buses of the petitioner, *viz.*, Bus No. RJP-854 and took possession of it. The petitioner thereupon paid the amount of the taxes as assessed by the impugned orders, but the payment was made under protest.
F The present petition has been filed by the petitioner under Art. 32 of the Constitution challenging the validity of the assessment orders in question. The main ground on which the validity of the said orders is challenged, is that the Ordinance under which the impugned orders were passed and the Rajasthan Passengers and Goods Taxation (Amendment and Validation) Act 1964
G (No. 22 of 1964) (hereinafter called the Act) which repealed and replaced the said Ordinance, are constitutionally invalid. The petitioner prays that this Court should hold that the Act is invalid, and should, by an appropriate writ, quash the impugned orders of assessment passed against him. The petitioner also claims that pending the final disposal of his petition, the respondents, their
H servants, and agents should be restrained from realising the tax as directed by the impugned orders and from seizing the other buses of the petitioner for the purpose of recovering the said tax.

In order to appreciate the contention of the petitioner that the Act is invalid, it is necessary to mention the legislative background of the Act. The Legislature of respondent No. 1 passed an Act in 1959 (No. 18 of 1959 known as the Rajasthan Passengers and Goods Taxation Act, 1959 (hereinafter called 'the principal Act'). This Act received the assent of the President on April 2, 1959; was published in the Rajasthan Gazette on April 30, 1959, and came into force on May 1, 1959. The validity of this Act has been upheld by this Court in *M/s Sainik Motors, Jodhpur & Ors.* v. *The State of Rajasthan*(1). Section 3 of the principal Act authorised the State Government to levy, charge and collect tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles in Rajasthan. The said section further provided that the rate of the tax shall not exceed 1/8th of the value of fare or freight in the case of cemented, tarred, asphalted, metalled, gravel and kankar roads, and shall not exceed 1/12 of such value in other cases as may be notified by the State Government from time to time.

Section 21 of the principal Act authorised the Government of Rajasthan to frame rules consistent with the said Act for securing the payment of tax and generally for the purposes of carrying into effect its provisions. Accordingly, the Government of Rajasthan framed suitable rules which came into force on the 21st May, 1959. Thereupon, a notification was issued by respondent No. 1 on the 30th April, 1959 under s. 3 of the said Act and it came into force on May 1, 1959; it directed the manner in which, and the rates at which, the tax shall be charged and recovered. These rates were the same as had been prescribed by s. 3 of the same Act as maximum permissible rates. This notification was made effective on and from the 1st May, 1959. There is no dispute that the principal Act is valid and that the notification issued under it is also valid.

In 1961, the Rajasthan Finance Act (No. 14 of 1961) was passed. Section 8 of this Act purported to amend s. 3 of the principal Act. As a result of this amendment, the maximum rate at which the State Government could levy, charge and collect tax on fares and freights was increased from 1/8th to 15 per cent in the first category of cases; and in the second category of cases it was increased from 1/12th to 10 per cent. In pursuance of the provisions of this Finance Act, respondent No. 1 issued a notification on the 9th March, 1961 levying tax at the said maximum permissible rates. Neither the bill in respect of this Act received

(1) [1962] 1 S.C.R. 517.

A the assent of the President before it was introduced in the State Legislature, nor did this Act receive his assent after it was passed.

In 1962, the Rajasthan Finance Act (No. 11 of 1962) was passed. Section 9 of this Act amended s. 3 of the principal Act and authorised the increase of the two respective taxes to 20 per B cent and 15 per cent respectively. A notification was then issued by respondent No. 1 under the provisions of s. 9 of the said Act. This notification authorised levy of taxes at the maximum rates permissible under s. 9. Neither the bill in respect of this Act before it was introduced in the State Legislature, nor this Act after it was passed received the assent of the President.

C Then followed the Finance Act (No. 13 of 1963). This Act purported to amend s. 11 of the principal Act; but with this amendment we are not concerned in the present proceedings.

It appears that the constitutional validity of the material provisions of the principal Act and rules and notifications issued D under it as well as the constitutional validity of the Finance Acts of 1961 and 1962 and the notifications issued respectively thereunder was challenged by a number of bus operators by writ petitions filed by them before the Rajasthan High Court under Art. 226 of the Constitution. During the pendency of these writ petitions, the Rajasthan Ordinance No. 4 of 1964 was promulgated. E Later, the said Ordinance was repealed and replaced by the Act with which we are concerned in the present proceedings. This Act came into force on the 9th September, 1964, having received the assent of the President on the 8th September, 1964.

The writ petitions filed by the other bus operators were decid- F ed by the said High Court on the 30th November, 1964 *vide Vijai Singh and another* v. *Deputy Commissioner, Excise & Taxation (Appeals), Ajmer and Kotah Divisions, Jaipur & other*(1). In substance, the High Court has held in that case that the earlier Finance Acts of 1961 and 1962 suffered from the infirmity that they did not comply with the requirements of Art. 255 of the G Constitution. It, however, did not think it necessary to finally determine the question as to whether by reason of the said infirmity, the said earlier Acts were void or not, because in its opinion, the Act of 1964 "is not merely an amending and a curative Act in that limited sense, but it is really an Act which virtually re-enacts the provisions of the earlier Acts which suffered H from a constitutional infirmity" (p. 300). The High Court examined the contentions raised by the petitioners that

(1) [1965] I.L.R. 15 Raj. 285.

the provisions of the Act were invalid, and has rejected the petitioners' case that the said provisions suffered from any constitutional infirmity. In the result, the petitions filed before it challenging the validity of the Act failed. It appears that the petitioners had also challenged the validity of the recovery of penalty for non-payment of tax, and the High Court held, following its earlier decisions, that the levy of any penalty in the cases before it would be illegal and, therefore, must be struck down. In other words, except for the limited relief granted in respect of the levying of the penalty, the substantial contention raised by the petitioners challenging the validity of the Act has been rejected by the High Court. Against this judgment, the High Court has granted certificates of fitness for leave to appeal to this Court and the record in the said appeals is being printed in the High Court. In that sense, the said appeals can be said to be pending before this Court.

The learned Advocate-General who has appeared for the respondents in the present writ proceedings, requested us to postpone the hearing of this writ petition and take it up along with the appeals to which we have just referred. We did not, however, accede to this request, because we thought that it would not be right to postpone the hearing of the present writ petition for an indefinitely long period, and so, we allowed the learned Advocate-General to argue the matter fully and refer us to the judgment of the Rajasthan High Court which is under appeal in the said appeals. We made it clear to the learned Advocate-General that our decision in the present writ petition would cover the decision of the said appeals in so far as it would relate to the validity of the provisions of the Act which are impugned before us by the present petitioner and not to that part which covered the question of penalty. Accordingly, the learned Advocate-General has elaborately addressed us on the relevant points and has taken us through the relevant portions of the judgment of the Rajasthan High Court in the case of *Vijai Singh*(1).

The respondents filed their written statement in the present proceedings and they urged that the petitioner's challenge to the validity of the relevant provisions of the Act should not be sustained. According to them, the Act is constitutionally valid and the impugned orders of assessment are fully justified by the said provisions. That is how the main question which falls to be considered in the present writ petition is whether the relevant provisions of the Act are valid or not.

(1) (1965) I.L.R. 15 Raj. 285.

A Let us therefore proceed to refer to the provisions of the Act and enquire whether the petitioner is justified in challenging their validity. The Act consists of five sections. Section 1 gives its title; s. 2 amends s. 3 of the principal Act; s. 3 deals with validation of certain lump sum payments in lieu of tax; s. 4 purports to validate certain sections of the Rajasthan Acts 14 of 1961, 11 of B 1962 and 13 of 1963; it also purports to validate the tax levied, paid or payable and action taken or things done during the period between the 9th day of March, 1961 and the date of commencement of this Act. The last section 5 repeals Ordinance No. 4 of 1964. In the present proceedings we are not concerned with lump C sum payments; and so, s. 3 does not fall to be considered.

At this stage it is convenient to set out sections 2 and 4; they read as under :

"2. In section 3 of the Rajasthan Passengers and Goods Taxation Act, 1959 (Rajasthan Act 18 of 1959) D hereinafter referred to as the principal Act, to sub-section (1), the following proviso shall be and be deemed always to have been added, namely :—

Provided that the tax shall be charged in respect of all passengers carried and goods transported by motor vehicles,— E

(a) during the period between the 1st day of May, 1959 and the 8th day of March, 1961, at the rate of—

(i) one-eighth of the value of the fare or freight in case of cemented, tarred, asphalted, F metalled, gravel and kankar roads and

(ii) one-twelfth of the fare or freight, in other cases, subject to a minimum of one Naya Paisa in any one case, the amount of tax being calculated to the nearest Naya Paisa; G and

(b) during the period between the 9th day of March, 1961 and the 25th day of March, 1962, at the rate of—

(i) fifteen per cent of the value of the fare or H freight in the case of cemented, tarred, asphalted, metalled, gravel and kankar roads, and

(ii) ten per cent of the fare or freight in other cases subject to a minimum of one Naya Paisa in any one case, the amount of tax being calculated to the nearest Naya Paisa".

"4. Notwithstanding any judgment, decree or order of any Court, but subject to the provisions of this Act, section 8 of the Rajasthan Finance Act, 1961 (Rajasthan Act 14 of 1961), section 9 of the Rajasthan Finance Act, 1962 (Rajasthan Act 11 of 1962), and section 14 of the Rajasthan Finance Act, 1963 Rajasthan Act 13 of 1963) shall not be deemed to be invalid, or ever to have been invalid during the period between the 9th day of March, 1961 and the date of commencement of this Act, merely by reason of the fact that the Bills, which were enacted as the Acts aforesaid, were introduced in the Rajasthan State Legislature without the previous sanction of the President under the proviso to Art. 304(b) of the Constitution and were not assented to by the President and the tax levied, paid or payable, the composition fee paid or payable and any action taken or things done or purporting to have been taken or done during the period aforesaid under the Rajasthan Passengers and Goods Taxation Act, 1959 (Rajasthan Act 18 of 1959), as amended by the Acts aforesaid, shall be deemed always to have been validly levied, paid, payable, taken or done in accordance with law and the aforesaid enactments shall be, and be deemed always to have been, validly enacted, notwithstanding the aforesaid defects, and accordingly.

(a) no suit or other proceeding shall be instituted, maintained or continued in any court for the refund of any tax or fee so paid or for any other relief on the ground of invalidity of the said sections of the Acts aforesaid; and

(b) no court shall enforce any decree or order directing any such refund or relief".

Mr. Tiwari for the petitioner contends that ss. 2 and 4 purport to validate the earlier invalid Finance Acts of 1961 and 1962. He argues that the failure of the Legislature to comply with the provisions of Art. 255 of the Constitution renders the

A said Acts void *ab initio* and as such, they cannot be validated by subsequent legislation. Mr. Tiwari also urges that the said earlier Acts have been held to be invalid by the Rajasthan High Court in the case of *Vijai Singh*(1) and it would be incompetent to the State Legislature to validate the said Acts in spite of the decision of a court of competent jurisdiction.

B

We are not impressed by this argument. In the first place, it is not clear that the Rajasthan High Court has held that the said earlier Finance Acts are void *ab initio;* in fact, as we have already pointed out, the said High Court thought it unnecessary to pronounce its considered opinion on that aspect of the matter,
C because it held that the Act of 1964 with which it was primarily dealing in the said proceedings not merely amended or cured the earlier Finance Acts, but re-enacted the provisions of the said Acts, and so, the provisions of the said Acts became operative by their own force. Therefore, factually, it is not correct to say that the said earlier Acts have been struck down as void *ab initio*
D by any court of competent jurisdiction. Besides, in assessing the validity of this argument, it is necessary to remember that the Act was passed on September 8, 1964 and the judgment of the Rajasthan High Court was pronounced on November 30, 1964; and so, it is clear that at the time when the Act was passed the earlier Finance Acts had not been struck down at all.

E

The next question to consider is whether an Act which suffers from the infirmity that it does not comply with the requirements of Art. 255, can be validated by subsequent legislation. There are two answers to this question. Article 255 provides, *inter alia,* that no Act of the Legislature of a State and no provi-
F sion in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to the Act was given by the President later. The position with regard to the laws to which Art. 255 applies, therefore, is that if the assent in question is given even after the Act is passed, it serves to cure the infirmity arising from
G the initial non-compliance with its provisions. In other words, if an Act is passed without obtaining the previous assent of the President, it does not become void by reason of the said infirmity; it may be said to be unenforceable until the assent is secured. Assuming that such a law is otherwise valid, its validity cannot be challenged only on the ground that the assent of the President
H was not obtained earlier as required by the other relevant provisions of the Constitution. The said infirmity is cured by the

(1) (1965) I.L.R. 15 Raj. 285.

subsequent assent and the law becomes enforceable. It is unnecessary for the purpose of the present proceedings to consider when such a law becomes enforceable, whether subsequent assent makes it enforceable from the date when the said law purported to come into force, or whether it becomes enforceable from the date of its subsequent assent. Besides, it is plain that the Legislature may, in a suitable case, adopt the course of passing a subsequent law re-introducing the provisions of the earlier law which had not received the assent of the President, and obtaining his assent thereto as prescribed by the Constitution. We see no substance in the argument that an Act which has not complied with the provisions of Art. 255, cannot be validated by subsequent legislation even where such subsequent Act complies with Art. 255 and obtains the requisite assent of the President as prescribed by the Constitution. Whether the infirmity in the Act which has failed to comply with the provisions of Art. 255, should be cured by obtaining the subsequent assent of the President or by passing a subsequent Act re-enacting the provisions of the earlier law and securing the assent of the President to such Act, is a matter which the Legislature can decide in the circumstances of a given case. Legally, there is no bar to the legislature adopting either of the said two courses. Therefore, the preliminary objection raised by Mr. Tiwari against the validity of the Act fails.

That takes us to the construction of section 2 and 4 of the Act. It would be noticed that s. 2 in fact does not purport to validate the earlier Finance Acts of 1961 and 1962. What it does is to amend retrospectively s. 3 of the principal Act by inserting a proviso to sub-s. (1) of the said section. On its plain reading, s. 2 has the effect of inserting the said proviso to s. 3(1) of the principal Act; and since the amendment so made is, in terms, retrospective, when a tax is levied for the periods covered by clauses (a) & (b) of the proviso thus introduced in s. 3(1) of the principal Act, the Court must proceed to deal with the matter on the basis that these clauses had been introduced in the principal Act right up from the commencement. We have already noticed that the principal Act has been held to be valid by this Court; and so, we see no basis for the argument that in amending s. 3(1) of the principal Act, s. 2 of the Act has contravened any Constitutional prohibition.

It is well-recognised that the power to legislate includes the power to legislate prospectively as well as retrospectively, and in that behalf, tax legislation is no different from any other legislation. If the Legislature decides to levy a tax, it may levy such tax

A either prospectively or even retrospectively. When retrospective legislation is passed imposing a tax, it may, in conceivable cases, become necessary to consider whether such retrospective taxation is reasonable or not. But apart from this theoretical aspect of the matter, the power to tax can be competently exercised by the legislature either prospectively or retrospectively; and that is precisely B what s. 2 has done in the present case. Therefore, there is no substance in the argument that s. 2 of the Act is invalid.

As the said s. 2 has been drafted, it appears clear that clause (a) of the priviso added by it to s. 3(1) of the principal Act, covers the period between 1st of May, 1959 and the 8th of March, C 1961, whereas clause (b) covers the period between the 9th March, 1961 and the 25th March, 1962. The first period had in fact been already covered by a notification validly issued on April 30, 1959 under s. 3 of principal Act; and so, it is not easy to understand why it was thought necessary to refer to this period by the said retrospective amendment. The second period had been D attempted to be covered by Finance Act 14 of 1961 and the notification issued thereunder. In order to make the provisions of the said notification effective, the Legislature has adopted the legitimate expedient of making the said provisions a part of the amendment which has been introduced to s. 3(1) of the principal Act; and so, the rates prescribed by clause (b) can be validly imposed during E the said retrospective amendment. The second period had been the Finance Act 11 of 1962 and the notification issued under it has not been included in the retrospective amendment introduced by s. 2; this period ranges between 26th March, 1962 and the 9th September, 1964; and so, the rates prescribed by the notification issued under the relevant provisions of the said Finance Act are F not re-enacted by the amendment made by s. 2. In other words, s. 2 does not purport to re-enact, by retrospective amendment, the rates prescribed by the notification issued under the Finance Act 11 of 1962. We are inclined to take the view that the draftsmen of the Act have referred to the first period unnecessarily in the said proviso, and have failed to refer to the third period, through G oversight. This infirmity tends to show that the drafting of s. 2 has been casual and somewhat careless. As we will presently point out, the consequence would be that the higher rates prescribed for the period between 26th March, 1962 and the 9th September, 1964 by the notification issued under Finance Act 11 of 1962, are not saved by the general provisions of s. 4 of the Act. It is to the H said provisions that we must now turn.

Section 4 consists of three parts. In its first part, it provides that the several sections of the three Finance Acts enumerated by

it, shall not be deemed to be invalid, or ever to have been invalid, during the period there specified, merely by reason of the fact that Art. 255 of the Constitution had not been complied with. Part 2 of the said section provides *inter alia* that the tax levied, paid or payable during the period as amended by the said specified Acts, shall be deemed always to have been validly levied, paid or payable; and part 3 prescribes that the aforesaid enactments shall be, and be deemed always to have been, validly enacted, notwithstanding the aforesaid defects. The question which arises for our decision is whether this section is valid.

In dealing with this question, we must, of course, bear in mind the fact that the Act and all its provisions have received the assent of the President; and so, *prima facie*, the assent of the President to the Act would help the Act to validate the provisions of the earlier Acts which were not enforceable by reason of the fact that they had not secured his assent as required by Art. 255. But can the assent of the President to the Act serve the purpose of making s. 4 valid ? What s. 4 in truth and in substance says is that the failure to comply with the requirements of Art. 255 will not invalidate the Finance Acts in question and will not invalidate any action taken, or to be taken, under their respective relevant provisions. In other words, the Legislature seems to say by s. 4 that even though Art. 255 may not have been complied with by the earlier Finance Acts, it is competent to pass s. 4 whereby it will prescribe that the failure to comply with Art. 255 does not really matter, and the assent of the President to the Act amounts to this that the President also agrees that the Legislature is empowered to say that the infirmity resulting from the non-compliance with Art. 255 does not matter. In our opinion, the Legislature is incompetent to declare that the failure to comply with Art. 255 is of no consequence; and, with respect, the assent of the President to such declaration also does not serve the purpose which subsequent assent by the President can serve under Art. 255.

The learned Advocate-General has strenuously contended before us that we should look at the substance of the matter and not decide the validity of s. 4 merely because the words used in it may not be happy or appropriate. We agree that questions of this character must be judged on considerations of substance and not merely of form, and we have tried to read s. 4 as favourably as we can while appreciating the argument of the learned Advocate-General; but the words used in all the three parts of s. 4 are clear and unambiguous; they indicate that the Legislature thought that it was competent to it to cure, by its own legislative process, the

A infirmity resulting from the non-compliance with Art. 255 when it passed the earlier Finance Acts in question, and it was probably advised that such a legislative declaration would be valid and effective, provided it received the assent of the President. In our opinion, the approach adopted by the Legislature in this case is entirely misconceived. The Legislature, no doubt, can validate an B earlier Act which is invalid by reason of non-compliance with Art. 255 and such an Act may receive the assent of the President which will make the Act effective. The Legislature cannot, however, itself declare by a statutory provision that the failure to comply with Art. 255 can be cured by its own enactment, even if the said enactment received the assent of the President. In our C opinion, even the assent of the President cannot alter the true constitutional position under Art. 255. The assent of the President cannot, by any legislative process, be deemed to have been given to an earlier Act at a time when in fact it was not so given. In this context there is no scope for a retrospective deeming provision in regard to the assent of the President. It is somewhat un- D fortunate that the casual drafting of s. 2 leaves the period covered by Act 11 of 1962 and the notification issued thereunder as unenforceable as before, and the omnibus and general provisions of s. 4 are of no help in regard to the said period.

The learned Advocate-General strongly relied on the last part E of s. 4. This part provides that the aforesaid enactments shall be, and be deemed always to have been, validly enacted, notwithstanding the aforesaid defects. The clause "notwithstanding the aforesaid defects" emphatically points to the fact that the Legislature thought that it could legislate retrospectively, and by such retrospective legislation, it could itself cure the infirmity in question. F What has been overlooked by the Legislature is the fact that the infirmity in question can be cured only by obtaining the assent of the President and not by any legislative fiat. We have given our anxious consideration to the problem raised by the wording of s. 4 and we have come to the conclusion that it would not be possible to uphold its validity. On many occasions, this Court has tried to G look at the substance of the matter and determine the issue in spite of the fact that the words or expressions used in the relevant provisions are either slovenly inappropriate or unhappy. But in the present case, however benevolently or favourably we look at the provisions of s. 4, we see no escape from the conclusion that in enacting it, the Legislature appears to have clearly assumed that it H can by itself cure the infirmity resulting from the non-compliance with Art. 255 and all that it has to do in such a case is to obtain the assent of the President to its own view about its power to cure

such an infirmity. We are satisfied that it is necessary that the true position in regard to the scope and effect of Art. 255 must be clearly brought out in order to avoid any misapprehension in future. A

In support of his argument that the form adopted by the Legislature in enacting s. 4 is not inappropriate, the learned Advocate-General has referred us to a decision of this Court in *M.P.V. Sundararamier & Co.* v. *The State of Andhra Pradesh and Another*(1). It is true that in that case, s. 2 of the Sales Tax Laws Validation Act, 1956 (No. 7 of 1956), which is a Central Act, used phraseology which is similar to the phraseology adopted by s. 4 of the Act; but it would be fallacious to compare the said provision with s. 4, because the ban which s. 2 of the said Act intended to lift could validly be lifted by a Parliamentary statute. Art. 286(2) of the Constitution which was in force at the relevant time had provided, *inter alia,* that except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce. What s. 2 of the said Act did was to make a law as expressly authorised by Art. 286(2); and naturally in exercise of the power conferred on it by the said provision, it enacted the provisions of s. 2 and made them retrospective. It is significant that the power to lift the ban which was exercised retrospectively by Parliament, vested in Parliament and not in any outside authority like the President; and so, Parliament was perfectly competent to validate the several State Acts which were held to be invalid, by adopting the legislative expedient of making a law as authorised by Art. 286(2) and providing for its retrospective operation. The position with regard to s. 4 is logically and fundamentally different; the infirmity which rendered the earlier Finance Acts unenforceable, could be cured not by the Legislature itself acting on its own, but by the assent of the President; and in so far as the Legislature by enacting s. 4 purports to prescribe by its own fiat that the infirmity in question should be deemed to have been cured, it has clearly exceeded its legislative jurisdiction. Therefore, we do not think that the decision of this Court in *Sundararamier & Co.'s* case(1) can be of any help to the learned Advocate-General in support of his argument that s. 4 has been validly enacted. B C D E F G

There is one more point which still remains to be considered. Mr. Tiwari urged that the retrospective operation of the amend- H

(1) [1958] S.C.R. 1422.

A ment made by s. 2 of the Act in s. 3(1) of the principal Act, should be held to be unconstitutional inasmuch as the retrospective operation of the provision prescribed by cl. (b) of the proviso added by s. 2 suffers from the infirmity that it imposes enhanced tax duty retrospectively. His argument is, where a taxing statute purports to impose a tax retrospectively, it necessarily involves an B element of unreasonableness and that virtually amounts to contravention of the citizens' fundamental rights guaranteed under Art. 19(1)(f) or (g) of the Constitution. For the purpose of the present writ petition, we will assume that notwithstanding the proclamation of emergency issued by the President under Art. 352, the constitutional bar created by Art. 358 does not operate C against the petitioner inasmuch as he relies upon the contravention of his fundamental right prior to the date of the proclamation. It is on that assumption that we wish to deal with the contention raised by Mr. Tiwari. In our opinion, the said contention is plainly unsound. We have already stated that the power to make laws involves the power to make them effective prospectively as well as D retrospectively, and tax laws are no exception to this rule. So, it would be idle to contend that merely because a taxing statute purports to operate retrospectively, the retrospective operation *per se* involves contravention of the fundamental right of the citizen taxed under Art. 19(1) (f) or (g). It is true that cases may E conceivably occur where the Court may have to consider the question as to whether excessive retrospective operation prescribed by a taxing statute amounts to the contravention of the citizens' fundamental right; and in dealing with such a question, the Court may have to take into account all the relevant and surrounding facts and circumstances in relation to the taxation. In the present F case, having regard to the legislative background of the provision prescribed by s. 2, there can be little doubt that there is no element of unreasonableness involved in the retrospective operation of cl. (b) of the proviso added by the said section to s. 3(1) of the principal Act.

The result is that s. 2 of the Act is valid and the tax in ques- G tion can be recovered from the petitioner for the periods covered by clauses (a) and (b) of the proviso as therein prescribed. In this connection, it will be recalled that the provision prescribed by cl. (a) of the proviso is really superfluous, because the same tax could have been validly recovered at the prescribed rates under the notification issued on April 30, 1959 under s. 3 of the principal H Act. But as we have already pointed out, the period between March 26, 1962 to September 9, 1964 is not covered by the provisions inserted by s. 2 in s. 3(1) of the principal Act; and so,

the provisions of s. 2 are of no assistance to the respondents in imposing a tax against the petitioner at the enhanced rates initially prescribed by s. 9 of the Finance Act, 11 of 1962. If we had held that s. 4 of the Act was valid, then the imposition of the tax at the enhanced rates prescribed by the said s. 9 would also have been valid; but in view of the fact that we have come to the conclusion that s. 4 is invalid, it follows that the tax which can be legitimately and validly imposed against the petitioner for the said period must be levied under the notification issued on April 30, 1959 under s. 3 of the principal Act. No doubt, Mr. Tiwari attempted to argue that in view of the fact that the said s. 3 had been amended by s. 9 of the Finance Act 11 of 1962, the notification issued under the original section 3 of the principal Act ceases to be operative. This contention is clearly misconceived. If the said Finance Act is unenforceable and the notification issued thereunder is of no effect, then s. 3 of the principal Act would remain unamended for the period in question and the notification initially issued under it would remain operative.

As a consequence of this conclusion, it follows that the petitioner is entitled to claim that the tax assessed against him in respect of his vehicles for the period between 26th March, 1962 and the 9th September, 1964 at the enhanced rates is invalid, and that the taxing authorities concerned will have to levy the tax at the rates prescribed by the notification issued on the 30th April, 1959 under s. 3 of the principal Act as it originally stood. It is true that this result sounds very anomalous, because for the period immediately preceding the period in question, the tax is validly recoverable at the enhanced rates, whereas for the period in question, it has to be recovered at a lower rate; but, for this anomaly, the defective drafting of s. 2 and s. 4 of the Act is entirely responsible.

Before we part with this petition, we would like to refer briefly to two decisions of this Court to which reference was made during the course of the arguments before us. In *Rai Ramkrishna & Others* v. *The State of Bihar*(1), the validity of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (No. 17 of 1961) was challenged on the ground that it sought to validate taxes already recovered under an invalid Finance Act. Rejecting the argument that such retrospective validation of tax illegally recovered amounts to the contravention of the citizens' fundamental right under Art. 19(1)(f) or (g), this Court held that if in its essential features a taxing

(1) [1964] 1 S.C.R. 897.

A statute is within the competence of the Legislature which passed it, its character is not necessarily changed merely by its retrospective operation so as to make the said retrospective operation either unreasonable or outside its 'legislative competence.

A similar view has been expressed by this Court in *Jaora Sugar Mills (Pvt.) Ltd.* v. *The State of Madhya Pradesh & Others*(1).

The result is, the writ petition is partly allowed and the impugned orders of assessment are set aside in so far as they relate to the period between 26th March, 1962 and the 9th September, 1964, and we direct the assessing authorities to levy a proper assessment in the light of this judgment. The assessment orders in respect of the remaining period are valid and the petitioner's prayer that they should be set aside, is rejected. In view of the fact that the petitioner has succeeded only partially, we direct that parties should bear their own costs.

Petition allowed in part.

(1) [1966] 1 S.C.R. 518.