CHEVITI VENKANNA YADAV

v.

STATE OF TELANGANA AND ORS.

(Civil Appeal No. 13604 of 2015)

OCTOBER 24, 2016

[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]

Telangana (Agricultural Produce and Livestock) Markets Act, 1966 – s. 5 [As amended by Telangana (Agricultural Produce and Livestock) Markets (Amendment) Act, 2015] – Validity of – Constitution of Agricultural Market Committee by erstwhile State of Andhra Pradesh under Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 – After formation of new State of Telangana on 2.6.2014 (on bifurcation of the State of Andhra Pradesh), the State promulgated Ordinance No. 1 of 2014 to amend the principal Act – Thereby in s. 5, number of Members of Committee was reduced from 18 to 14 and the term of the Market Committee was reduced from 3 years to 2 years – The Ordinance also provided that the existing Members shall cease to hold office and the Government would be competent to appoint persons to exercise the powers and perform the functions of the Market Committee – Ordinance challenged – High Court held the amendment as discriminatory and violative of Art. 14 of the Constitution as the existing Chairman/Vice Chairman/Members of the Market Committee were sought to be removed prematurely taking away the procedural safeguards which would otherwise be available to the future Chairman/Vice Chairman/Members – After the judgment, State issued Ordinance No. 1 of 2015 to amend s. 5 of the Act [In due course the Ordinance 1 of 2015 came into force as Amendment Act 5 of 2015 called Telangana (Agricultural Produce & Livestock) Markets (Amendment) Act, 2015] – The Amendment was made retrospective w.e.f. 1.1.2012 and also added a validating provision – The Ordinance was challenged by the appellants by filing writ petition – High Court dismissed the petition upholding the amendment – On appeal, held: The State legislature had competence to amend the law with retrospective effect – The legislature by the impugned amendment substituting the word 'appointed' by the word

A *'nominated' with retrospective effect, removed the distinction between the existing members and the members who were to come in future – Thus an appointment initially made by nomination can be terminated by the State at its pleasure – Such provision neither offends any Article of the Constitution nor any public policy or democratic norms* B *enshrined in the Constitution – The amended provision also does not suffer from the vice of equality clause enshrined u/Art. 14 of the Constitution, so far as Market Committee and Special Market Committee are concerned, as both function in different areas – Constitution of India – Art. 14.*

C *Legislation:*

Statutory overruling – Held: When a law is enacted with retrospective effect, it is not an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum – Legislature cannot, by way of an enactment, declare a decision of a court as erroneous or nullity – However, it has the D *power to rectify a defect in law noticed in the decision of the court – When such an amendment is made, the purpose thereof is not to overrule the decision of the Court, but to enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment was* E *founded – This does not amount to statutory overruling by the legislature.*

Colourable legislation – Doctrine of colourable legislation does not involve any question of bona fide *or* malafide *on the part of the legislature – The whole doctrine revolves itself into question of* F *competence of a particular legislature to enact a particular law – Once it is held that the legislature has the power to enact the law as per its wisdom, and that too with retrospective effect, it cannot be said that the enactment is a colourable exercise.*

Competence of legislature – To enact a law w.e.f. the period G *when the legislature itself was not existent – Held: After legislature comes into existence, it has the competence to enact any law retrospectively or prospectively within the constitutional parameters.*

Dismissing the appeals, the Court

HELD: 1. After the legislature comes into existence, it has

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the competence to enact any law retrospectively or prospectively within the constitutional parameters. [Para 23] [706-B] A

M/s. Rattan Lal and Co. and Anr. etc v. The Assessing Authority, Patiala and Anr. **AIR 1970 SC 1742:1969 SCR 544 – relied on.**

2.1 There is a demarcation between legislative and judicial functions predicated on the theory of separation of powers. The legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. When a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past. The legislature has the power to rectify, through an amendment, a defect in law noticed in the enactment and even highlighted in the decision of the court. This plenary power to bring the statute in conformity with the legislative intent and correct the flaw pointed out by the court, can have a curative and neutralizing effect. When such a correction is made, the purpose behind the same is not to overrule the decision of the court or encroach upon the judicial turf, but simply enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. This does not amount to statutory overruling by the legislature. In this manner, the earlier decision of the court becomes non-existent and unenforceable for interpretation of the new legislation. No doubt, the new legislation can be tested and challenged on its own merits and on the question whether the legislature possesses the competence to legislate on the subject matter in question, but not on the ground of over-reach or colourable legislation. [Para 29] [709-E-H; 710-A-B] B C D E F G

2.2 Once it is held that the legislature has the power to enact the law as per its wisdom, and that too with retrospective effect, it cannot be said that the enactment is a colourable exercise. The doctrine of colourable legislation does not involve any question of *bona fide* or *mala fides* on the part of the H

legislature. The whole doctrine revolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really inconsequential, unless they, in the amended incarnation invite the frown of any Article of the Constitution. [Para 30] [710-C-D]

Shri Prithvi Cotton Mills Ltd. and another v. Broach Borough Municipality and Ors. **(1969) 2 SCC 283:1970 (1) SCR 388**; *Tara Prasad Singh and Ors. v. Union of India and Ors.* **(1980) 4 SCC 179:1980 (3) SCR 1042**; *State of T.N. v. Arooran Sugars Ltd* **(1997) 1 SCC 326:1996 (8) Suppl. SCR 193 – followed.**

Bhubaneshwar Singh and Anr. v. Union of India and Ors. **(1994) 6 SCC 77:1994 (1) Suppl. SCR 639**; *Central Coal Fields Ltd. v. Bhubaneswar Singh and Ors.* **(1984) 4 SCC 429:1985 (1) SCR 618**; *State of Himachal Pradesh v. Narain Singh* **(2009) 13 SCC 165:2009 (10) SCR 821**; *Dharam Dutt and Ors. v. Union of India & Ors.* **(2004) 1 SCC 712:2003 (6) Suppl. SCR 151 – relied on.**

3.1 The High Court in its earlier judgment had struck down the amended provision on the foundation that there was discrimination between the existing appointees and future appointees to the office of members, Vice-Chairmen and Chairmen. The High Court had opined that the classification between the two categories was not reasonable and it caused discomfort to Article 14 of the Constitution. It had given emphasis on the statutory safeguards meant for removal. The legislature after the decision of the High Court has amended the provision and thereby removed the distinction between the existing members and the members who are to come in future. It has substituted the word "appointed" by "nominated". The members were not elected. They were not appointed by any kind of selection. They were chosen by the State Government from certain categories. The status of the members have been changed by amending the word "appointed" by substituting it with the word "nominated". Thus, the legislature has retrospectively changed the meaning. Therefore, by virtue of the amendment,

the term which has been reduced for a nominated member stands on a different footing. If an appointment has been made initially by nomination, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. Such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. [Para 31] [710-E-H; 711-E-H]

Om Narain Agarwal and Ors. v. Nagar Palika, Shahjahanpur and Ors. **(1993) 2 SCC 242:1993 (2) SCR 34 – relied on.**

3.2 The legislature, in its wisdom, has substituted the word "appointment" and made it "nomination with retrospective effect". To enable it to curtail or reduce the term, the procedure for removal remains intact. A nominee can go from office by efflux of time when the period is over. That is different than when he is removed. A nominated member, in praesenti, can also be removed by adopting the procedure during the period. Otherwise, he shall continue till his term is over; and the term is one year. It cannot be said that by virtue of amendment vested rights of the appellants have been affected. [Para 32] [712-A-C]

4. The composition, function and purpose of the Market Committee and Special Market Committee are different. They basically fall into different categories. It is difficult to weigh them in the scale of Article 14. The equality clause, is not affected. The characteristics of the committees being different, Article 14 is not attracted. [Para 33] [712-D]

D.S. Reddy v. Chancellor, Osmania University and Ors. **(1967) 2 SCR 214;** *P. Venugopal v. Union of India* **(2008) 5 SCC 1:2008 (8) SCR 1 – referred to.**

Case Law Reference

(1967) 2 SCR 214	relied on	Para 8
2008 (8) SCR 1	referred to	Para 8
1969 SCR 544	relied on	Para 23

A	**1970 (1) SCR 388**	**followed**	**Para 24**
	1994 (1) Suppl. SCR 639	**relied on**	**Para 25**
	1980 (3) SCR 1042	**followed**	**Para 25**
	1985 (1) SCR 618	**relied on**	**Para 26**
B	**2009 (10) SCR 821**	**relied on**	**Para 27**
	1996 (8) Suppl. SCR 193	**followed**	**Para 28**
	2003 (6) Suppl. SCR 151	**relied on**	**Para 30**
	1993 (2) SCR 34	**relied on**	**Para 31**

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 13604 of 2015.

From the Judgment and Order dated 18.06.2015 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in WP No. 11512 of 2015

D WITH

C. A. Nos. 13613 of 2015.

V. V. S. Rao, Sr. Advocate, K. Parameshwar and Ms. Vijayasri Patnaik, Advocates for the appellant.

E V. Giri, Sr. Advocate, K. Ramkrishna Reddi, Advocate General, Mohan Rao, S. Udaya Kumar Sagar and T. V. Ratnam, Advocates for the respondents.

The Judgment of the Court was delivered by

F **DIPAK MISRA, J.** 1. In these appeals, by special leave, the appellants have called in question the legal acceptability of the judgment and order passed by the High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh in a batch of writ petitions wherein the Division Bench has upheld the constitutional validity of sub-section (3) of Section 5 of the Andhra Pradesh (Agricultural G Produce and Livestock) Markets (Amendment) Act, 2015 (for brevity, "the Act").

2. The High Court, for the sake of convenience, has stated the facts as adumbrated in W.P. No. 11512 of 2015 and, therefore, we shall advert to the facts of the said writ petition. Needless to say, the averments H in all the writ petitions are fundamentally the same.

3. The petitioners in the said writ petition were appointed as Chairmen of Agricultural Market Committees by the State for a term of 3 years. It is worthy to note that vide G.O. Rt. No. 435 dated 04.03.2013 the Government of Andhra Pradesh in exercise of powers conferred under Section 6(1) read with sub-sections (1) and (2) of the Section 5 of the Act constituted the Agricultural Market Committee, Kubeer, Adilabad District with one B. Chandra Shekar as Chairman and others as members. It was mentioned that the said B. Chandra Shekar was nominated as Chairman and one D. Dattaram as Vice-Chairman and 16 others as members. Similar notifications were issued in respect of other Agricultural Market Committees vide notifications dated 04.03.2013, 31.08.2013, 18.11.2013, 27.11.2013 and after such nomination the persons who were nominated as Chairman, Vice-Chairman and members continued in their respective assignments.

4. On 02.06.2014 the State of Telangana was carved out of erstwhile State of Andhra Pradesh and the statehood came into effect from the said date by virtue of Andhra Pradesh Reorganization Act, 2014 [Act 6 of 2014] (hereinafter referred to as "The Reorganization Act"). After formation of the new State the Governor of Telangana promulgated Ordinance No. 1 of 2014 to amend the Act and by virtue of the said Ordinance Section 5 of the Act underwent two major changes. The total number of members in the market committee was reduced from 18 to 14 and the term of the market committee was reduced from 3 to 2 years. It was also provided in the Ordinance that notwithstanding anything contained in the principal Act, the existing members shall cease to hold office and the Government would be competent to appoint person or persons, to exercise the powers and perform the functions of the market committee.

5. To appreciate the controversy in proper perspective, the relevant part of the Ordinance is reproduced below:-

> "2. In the Telangana (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as the principal Act) in section 5.
>
> (amendment of section 5, (act No. 16 of 1966))
>
> (1) in sub-section (1)
>
> (a) in the opening paragraph, for the words "eighteen

A members", the word "fourteen members" shall be substituted;

(b) in clause (i) :- for the words "eleven members", the words "eight members" shall be substituted;

(c) in the second proviso, for the words "five members", B the words "three members" shall be substituted;

(d) in clause (ii) for the words "three members", the words "two members" shall be substituted;

(2) In sub-section (3) for the words "three years", the words C "two years" shall be substituted.

3. Existing Members, Vice-Chairman and Chairman of the Market Committee to cease hold Office: (1) Notwithstanding anything contained in the principal Act, all the members, Vice-Chairman and Chairman of every Market Committee holding office at the commencement of D the Telangana (Agricultural Produce and Livestock) Markets (Amendment) Ordinance, 2014 shall cease to hold office as such and thereupon it shall be competent for the Government to appointment a person or persons to exercise the powers and perform the functions of the Market E Committee until the Market Committee is re-constituted in accordance with the provisions of section 5 of the principal Act as amended by this Ordinance."

[emphasis added]

6. After the Ordinance was issued, the Agriculture and Cooperation F (MKT.I) Department vide G.O.MS. No. 11 dated 18.08.2014 passed the following order:-

"In pursuance of an Ordinance issued in the reference 3rd read above and in accordance with clause (3) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets G (Amendment) Ordinance, 2014, all the members, Vice-Chairmen and Chairmen of the existing Market Committees shall cease to hold office. The Commissioner and Director of Agricultural Marketing, Telangana, Hyderabad is directed to appoint a person or persons with immediate effect to exercise the powers and perform the functions of each H

Market Committee until the Market Committee is re-constituted in accordance with the provisions of section 5 of the Telangana (Agricultural Produce and Livestock) Markets Act, 1966 as amended by an Ordinance in the 3rd read above.

2. The Commissioner and Director of Agricultural Marketing, Telangana, Hyderabad shall take further necessary action in the matter accordingly."

7. The Ordinance and the consequent order passed on that basis were challenged in a batch of Writ Petitions being Writ Petition No. 24877 of 2014 and connected matters before the High Court. The High Court came to hold that the removal of all of the petitioners vide clause-3 by way of legislative action was discriminatory as future appointees in the office of the members, Vice-Chairmen and Chairmen were liable to be removed or denuded of their power under the existing provisions as provided under Sections 5, 6, 6(A) & 6(B) of the said Act whereas the writ petitioners were sought to be removed prematurely taking away the procedural safeguard established by law. The High Court further ruled that the writ petitioners had been picked up as a class and were being treated discriminately compared to the same class of future members, Vice-Chairmen and Chairmen without any intelligible differentia inasmuch as similar provision of removal had not been made applicable to the future members, Vice-Chairmen and Chairmen who are entitled to have the procedural safeguard. On that ground it opined that the amended provision invited the frown of Article 14 of the Constitution, for it was incomprehensible as regards the difference between the existing members, Vice-Chairmen and Chairmen of the market committee and future members of the same committee for which different provision is envisaged with regard to their removal. Eventually the High Court held:-

"We hold that by making the above provision by insertion of clause-3 of the Ordinance the petitioners and each of them have been treated with naked discrimination. In other words equal protection of laws has not been given as guaranteed in Article 14 of the Constitution of India. The petitioners are entitled to be protected as regards their term of office and their functioning as Chairmen qua members against arbitrary, whimsical removal like present one by Sections 5(3) (5) (7), 6(A) & 6(B) of the said Act at par

A with future counterpart. This right of equality has been taken away by above clause."

8. Thereafter, the High Court referred to decisions in ***D.S. Reddy v. Chancellor, Osmania University and others***[1] and ***P. Venugopal v. Union of India***[2] and further opined thus:-

B "In the case on hand, of course, it is a not a singular candidate but a group of candidates who were equally aggrieved and equally placed and those were clubbed in one class and treated differently from other groups in the same office viz., future members and office bearers of the C market committee.

x x x x x

We, therefore, accepting the contention of the learned counsel for the writ petitioners while overruling that of the learned Advocate General hold Clause-3 of the said D Ordinance is not constitutionally valid. Accordingly, the same is struck down. In view of this declaration and striking down, consequential Government Order issued pursuant thereto is also void and illegal, the same is also struck down and that the petitioners and each of them shall be restored E to their respective positions. We accordingly direct the Government to do so forthwith."

9. After the judgment of the High Court in Writ Petition No. 24877 of 2014 and connected matters, the Government of Telangana issued Ordinance No. 1 of 2015 dated 13.02.2015 to amend Section 5 of the F Act. The Ordinance was challenged before the High Court which issued notice and directed *status quo* to be maintained with regard to functioning of the market committee. In due course, the Amendment Act No. 5 of 2015 came into force. The said Amendment Act is called the Telangana (Agricultural Produce & Livestock) Markets (Amendment) Act, 2015. The said Amendment Act has been made retrospective with effect from G 01.01.2012. The Amendment Act amends Sections 5, 5A, 6, 11, 22 and 33. It also adds a validating provision. The High Court in a tabular form has referred to the statutory scheme under the principal Act of 1966 and the Amendment Act. We think it appropriate to refer to the relevant

[1] (1967) 2 SCR 214: AIR 1967 SC 1305

H [2] (2008) 5 SCC 1

provisions of the principal Act and the Amendment Act. Section 5(1) of the principal Act provided that every market committee shall consist of eighteen members and shall be constituted by the Government by notification in the manner prescribed therein. Section 5(1)(i) stipulated that eleven members to be appointed by the Government in consultation with the Director of Marketing from among certain categories mentioned thereafter, namely, growers of agricultural produce who are small farmers, growers of agricultural produce other than small farmers, owners of livestock and products of livestock in the notified areas. The principal Act provided certain members in respect of certain categories which has been changed by the Amendment Act. We need not advert to the same in detail. Section 5(2) of the principal Act provided composition of the market committee and it was couched in a different language. Section 5(2) of the principal Act is reproduced below:-

> "(2) Every market committee shall have a Chairman appointed from among its members specified in Clause (i) of sub-section (1) and Vice-Chairman be appointed from among its members specified in Clause (i) or Clause (ii) of sub-section (1), by the Government in consultation with the Director of Marketing;"

10. Section 5(3) of the principal Act stipulated about the term of office of the members appointed under sub-section (1). Sub-sections (3), (5), (6) and (7) of Section 5 which are relevant for adjudication of the *lis*, are reproduced below:-

> "(3) Save as otherwise provided in this Act, the term of office of the members appointed under sub-section (1) shall be three years from the date of appointment:
>
> Provided that a member appointed under clause (ii) of sub-section (1) shall cease to hold office, if he ceases to be a trader:
>
> Provided further that a non-official member of the market committee shall cease to hold his office if he absents himself from three consecutive meetings of the committee, including meetings which for want of quorum could not be held.
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> ***Explanation*** :- For the purposes of the second proviso, no meeting of the market committee from which a member

absents himself shall be counted against him if due notice of that meeting was not given to him.

x x x x x

(5) The Government may, by notification, remove the Chairman or Vice-Chairman, who in their opinion willfully omits or refuses to carry out or disobeys the provisions of this Act or any rules or bye-laws of lawful orders issued hereunder or abuses his position or the power vested in him, after giving him an opportunity for explanation, and the said notification shall contain a statement of the reasons of the Government for the action taken.

(6) Any person removed under sub-section (5) from the office of Chairman or Vice-Chairman shall be ineligible for appointment to either of the said offices, until the date of next reconstitution of the market committee under sub-section (1) of section 6.

(7) Any other member of a market committee may, at any time, be removed from office by the Government for such reasons and after such inquiry, as may be prescribed."

11. Section 6 of the principal Act provided thus:-

"Section 6. Reconstitution of the Market Committee:- (1) The Government shall reconstitute the market committee on the expiration of the term of office of the members of the market committee or of the term as extended under sub-section(2).

(2) The Government may extend the term of office of the members of a market committee for a period not exceeding one year:

Provided that no such extension shall be given for a period exceeding six months at a time.

(3)(a) Where, for any reason, there is delay in the constitution or reconstitution of the market committee in accordance with the provisions of this Act, the Government or the Director of Marketing may appoint a person or persons to manage the affairs of the market committee until

the market committee is re-constituted.

(b) The person or persons so appointed shall, subject to the control of the Government and to such instructions or directions as they may issue from time to time, exercise the powers, discharge the duties and perform the functions of the market committee and take all such action as may be required in the interests of the market committee.

(c) The Government may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs, if any, incurred in the management of the market committee shall be payable out of the Market Committee Fund.

(d) The Government may at any time, and shall at the expiration of the period of appointment of person or persons so appointed, arrange for the constitution or reconstitution of the market committee in accordance with the provisions of this Act. The person or persons so appointed shall cease to manage the affairs of the market committee on such constitution or reconstitution."

12. There were other provisions empowering the State Government and the Director of Marketing to suspend the Chairman of the market committee, withdraw the power of Chairman and make certain other arrangements which are not relevant for the present purpose.

13. The Amendment Act No. 5 of 2015 received the assent of the Governor on 13th April, 2015. Sub-section (2) of Section 1 provides that it shall be deemed to have come into force with effect from 01.01.2012. The amendment to Section 5 of the principal Act is as follows:-

"(1) In sub-section (1)-

(a) in the opening paragraph, for the word "eighteen" the word "fourteen" shall be substituted;

(b) in clause (i), for the word "eleven", the word "eight" and for the word "appointed", the word "nominated" shall be substituted respectively;

(c) in the second proviso to clause (i) for the word "five", the word "three" shall be substituted;

A (d) in clause (ii) for the word "three", the word "two" and for the word "appointed", the word "nominated" shall be substituted respectively.

(e) in clause (iii), for the word "appointed", the word "nominated" shall be substituted.

B (2) In sub-section (2), for the word "appointed", occurring at two places, the word "nominated" shall be substituted;

(3) for sub-section (3) along with the first proviso thereunder, the following shall be substituted, namely-

C "(3) Save as otherwise provided in this Act, the term of office of the members nominated under sub-section (1) shall be one year from the date of nomination;

Provided that a member nominated under clause (ii) of sub-section (1) shall cease to hold office, if he/ she ceases to be a trader".

D (4) in sub-section (6), for the word "appointment", the word "nomination" shall be substituted.

(5) in sub-section (9), for the word "appointed" the word "nominated" shall be substituted;

E (6) in sub-section (10), for the word "appointment", the word "nominated" shall be substituted;

(7) after sub-section (10), the following sub-section shall be inserted, namely-

F "(11) Notwithstanding anything contained in any provisions of this Act, members of the Committee including the Chairman and Vice-Chairman shall hold the office during the pleasure of the Government".

14. Certain amendments have been made in Section 6 of the G principal Act which are extracted below:-

"(i) in clause (a), for the words "may appoint" the words "may nominate" shall be substituted;

(ii) in clause (b), for the word "appointed" the word "nominated" shall be substituted;

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(iii) in clause (c), for the word "appointed" the word "nominated" shall be substituted;

(iv) in clause (d),—

(a) for the words "appointment" the word "nomination" shall be substituted;

(b) for the word "appointed" occurring at two places the word "nominated" shall be substituted."

15. In a similar manner, in sub-section (1) of Section 11 of the principal Act, the word "appointed" has been substituted with the word "nominated". In Section 33 in sub-section (2) in clause (a) of the principal Act, the word "appoint" has been substituted with the word "nominate". Be it stated, wherever the words "appointment", "appointed" and "appoint" are used in the principal Act, they have been substituted with the words "nomination", "nominated" and "nominate" respectively. The provision relating to validation, which is a part of Section 33, reads as follows:-

"Notwithstanding anything contained in any provisions of this Act, the members of the Committee, including Chairman and Vice-Chairman, whose term expiring under the provisions of this Act, their continuation in the office from the date of expiring of their term, are validated in all respects, as if they deemed to have been validly nominated for the said period."

16. Before the High Court, as the impugned order depicts, the principal challenge was to Section 5 of the Act whereby the term of the market committee was reduced from three years to one year by giving retrospective effect in the Amendment Act. It was contended before the High Court that the Amendment Act had no rationale or nexus to the objects sought to be achieved through the retrospective operation of the Amendment Act and Section 5(3) which has reduced the term is *ex facie* illegal, discriminatory and suffers from vice of absolute unreasonableness. A contention was advanced that the Amendment Act so far as market committees are concerned is violative of Article 14 of the Constitution as special market committees have been left out from such reduction of term.

17. It may be noted here that during the final disposal of the matter,

A the High Court took note of the question framed at the initial stage which is as follows:-

> "Whether the Legislature while making an enactment can flout the constitutional provisions and that the retrospective operation of Amendment Act from the date even before
B the State of Telangana was formed stands to scrutiny of constitution provisions."

18. It was also urged that reducing the term of the market committee was not only an unreasonable act but also against the judgment rendered by the High Court on the previous occasion inasmuch as the provision
C relating to validation has not removed the base of the judgment.

19. On behalf of the State, it was argued before the High Court that in the absence of challenge to the competence of the State Legislature, the petitioners' submissions were not acceptable. As regards competence of the legislature, it was also urged that Telangana State
D Legislature is competent to make law on the subject in question and is entitled to make amendments to all the Acts in vogue in the composite State. It was canvassed on behalf of the State that an amendment to the existing law with retrospective effect would not be unconstitutional. As regards comparison drawn between the market committee and special market committee, it was contended that the two function in different
E areas and as a matter of fact, only a few special market committees were constituted.

20. The High Court, appreciating submissions advanced at the Bar, came to hold that the legislature of State of Telangana has authority to legislate with retrospective effect before coming into force of the
F Reorganization Act; that the petitioners therein did not have any vested right to continue; that the amended provisions does not usurp the judicial power and that the provisions are neither arbitrary nor discriminatory and do not offend any limb of Article 14 of the Constitution. Being of this view, the High Court by the impugned judgment and order declined to
G interfere and resultantly dismissed the writ petitions.

21. We have heard Mr. V.V.S. Rao, learned senior counsel with Mr. K. Parameshwar, learned counsel for the appellants and Mr. V. Giri, learned senior counsel with Mr. S. Udaya Kumar Sagar, learned counsel for the respondents.

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22. Having heard learned counsel for the parties, we are disposed to think, the following issues arise for delineation:- A

a) Whether the State Legislature could have legislated for the period prior to coming into existence of the State?

b) Whether the base of earlier judgment has been removed to erase the effect of the judgment? B

c) Whether by virtue of the amendment the vested rights have been affected?

d) Whether the amended provisions suffer from the vice of the equality clause as enshrined under Article 14 of the Constitution? C

23. We shall deal first point first. The Reorganization Act came into force on 02.06.2014. Submission is, prior to the said date, the legislature that was not in existence as an entity could not have legislated relating to some aspect that covers the prior period. The aforesaid submission should not detain us long. In ***M/s. Rattan Lal and Co. and another etc v. The Assessing Authority, Patiala and another***[3] the Court was dealing with competence of State of Haryana pertaining to a legislation enacted by State of Haryana by way of an amendment prior to the reorganisation of the State. In that context the Court held:- D

> "It is argued that the reorganisation of the State took place on November 1, 1966 and the amendment in some of its parts seeks to amend the original Act from a date anterior to this date. In other words, the legislature of one of the States seeks to amend a law passed by the composite State. This argument entirely misunderstands the position of the original Act after the reorganisation. That Act applied now as an independent Act to each of the areas and is subject to the legislative competence of the legislature in that area. The Act has been amended in the new States in relation to the area of that State and it is inconceivable that this could not be within the competence. If the argument were accepted then the Act would remain unamendable unless the composite State came into existence once more. The scheme of the States Reorganization Acts makes the laws applicable to the new areas until superseded, amended or E F G

[3] AIR 1970 SC 1742 H

A altered by the appropriate legislature in the new States. This is what the legislature has done and there is nothing that can be said against such amendment."

The aforesaid passage makes it clear as crystal that after the legislature came into existence, it has the competence to enact any law B retrospectively or prospectively within the constitutional parameters.

24. The second issue that emanates for consideration is whether the base of the earlier judgment has really been removed. Before stating the factual score it is necessary to state how this Court has viewed the said principle. In ***Shri Prithvi Cotton Mills Ltd. and another v. Broach*** C ***Borough Municipality and others***[4], the Constitution Bench while dealing with the legislation which intended to validate the tax declared by law to be illegal, opined that when a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important D condition, of course, is that the Legislature must possess the power to impose the tax, for if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind, for that tantamount to reversing the decision in exercise of judicial power which the E Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Thereafter, the Court proceeded to state that validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the F tax thus made legal. The legislature does it many a way. One of the methods it may adopt is to give its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. On such legislation being brought, it neutralizes the effect of the earlier decision as a consequence of which G it becomes ineffective. The test of validity of a validating law depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax.

H [4](1969) 2 SCC 283

25. In ***Bhubaneshwar Singh and another v. Union of India and others***[5] in view of Section 3 of the Coking Coal Mines (Emergency Provisions) Act, 1971 which has promulgated in the year 1971 the custodian being appointed by the Central Government took over the management of Coking Coal Mines and the said mines remained under the management of the Central Government through the custodian during the period from 17.10.1971 to 30.04.1972. The Coking Coal Mines (Nationalisation) Act, 1972 came into force w.e.f. 1.5.1972, and the right, title and interest of the owners in relation to Coking Coal Mines stood transferred to and vested absolutely in the Central Government free from all encumbrances. The provisions of the said Act were challenged before this Court in the case of ***Tara Prasad Singh and others v. Union of India and others***[6] and the Constitution Bench upheld the validity of the said Act. The writ petitioner before the High Court making a grievance that the Custodian had debited the expenses for raising the coal while the Coking Coal Mine was under the Management of the Custodian but had not credited the price for the quantity of the coal raised, which was lying in stock on the date prior to the date the said Coal Mine vested under the Central Government. The High Court allowed the writ petition and a direction was issued that account be recast and payment be made to the petitioner. The appeal before this Court by special leave was dismissed, as this Court was of the view that sale price of stock of extracted coal lying at the commencement of the appointed date had to be taken into account for determining the profit and loss during the period of management of the mine by the Custodian. After the appeal preferred by the Coal Fields was dismissed, Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986 was promulgated and later on replaced by Coal Mines Nationalisation Laws (Amendment) Act, 1986 came into force. By Section 4 of the Amendment Act, sub-section (2) was introduced in Section 10 of the Coking Coal Mines (Nationalisation) Act, 1972. The said provision declared that the amounts specified in the fifth column of the First Schedule against any coking coal mines or group of coking coal mine specified in the second column of the said schedule are required to be given by the Central Government to its owner under sub-section (1) shall be deemed to be included, and deemed always to have included, the amount required to be paid to such owner in respect of coal in stock or other assets referred to in clause (j) of Section 3 on the date

[5] (1994) 6 SCC 77
[6] (1980) 4 SCC 179

A immediately before the appointed day and no other amount shall be paid to the owner in respect of such coal or other assets. Section 19 was the validating provision.

26. The writ petition was filed questioning the validity of the said ordinance primarily on the ground that it purported to nullify the judgment B rendered in the case of ***Central Coal Fields Ltd. v. Bhubaneswar Singh and others***[7]. The Court referred to the provisions and opined that:-

> "...if sub-section (2) as introduced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 in Section C 10 had existed since the very inception, there was no occasion for the High Court or this Court to issue a direction for taking into account the price which was payable for the stock of coke lying on the date before the appointed day. The authority to introduce sub-section (2) in Section 10 of the aforesaid Act with retrospective effect cannot be D questioned. Once the amendment has been introduced retrospectively, courts have to act on the basis that such provision was there since the beginning. The role of the deeming provision need not be emphasised in view of series of judgments of this Court. Hence reading sub-section (2) E of Section 10 along with Section 19, it has to be held that respondents are not required to take into account the stock of coke lying on the date prior to the appointed day, for the purpose of accounting during the period when the mine in question was under the management of the Central Government, because it shall be deemed that the F compensation awarded to the petitioner included the price for such coal lying in stock on the date prior to the appointed day. Neither any compensation is to be paid for such stock of coal nor the price thereof is to be taken into account for the purpose of sub-section (1) of Section 22 of the Coking G Coal Mines (Nationalisation) Act, 1972."

Being of this view, the Court dismissed the writ petition.

27. In ***State of Himachal Pradesh v. Narain Singh***[8] while dealing with the validation of statute the Court ruled that:-

[7](1984) 4 SCC 429

H [8](2009) 13 SCC 165

"It is therefore clear where there is a competent legislative provision which retrospectively removes the substratum of foundation of a judgment, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation." A

28. To arrive at the said conclusion, the two-Judge Bench reproduced from the decision in Constitution Bench in ***State of T.N. v. Arooran Sugars Ltd***[9] which is to the following effect:- B

"It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect." C D

29. From the aforesaid authorities, it is settled that there is a demarcation between legislative and judicial functions predicated on the theory of separation of powers. The legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. When a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past. The legislature has the power to rectify, through an amendment, a defect in law noticed in the enactment and even highlighted in the decision of the court. This plenary power to bring the statute in conformity with the legislative intent and correct the flaw pointed out by the court, can have a curative and neutralizing effect. When such a correction is made, the purpose behind the same is not to overrule the decision of the court or encroach upon the judicial turf, but simply enact a fresh law with E F G H

[9] (1997) 1 SCC 326

A retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. This does not amount to statutory overruling by the legislature. In this manner, the earlier decision of the court becomes non-existent and unenforceable for interpretation of the new legislation. No doubt, the new legislation can be tested and challenged on its own merits and on the question whether the legislature possesses the competence to legislate on the subject matter in question, but not on the ground of over-reach or colourable legislation.

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30. Once we hold that the legislature has the power to enact the law as per its wisdom, and that too with retrospective effect, the contention that the enactment is a colourable exercise, must fail and should be rejected. In ***Dharam Dutt and others v. Union of India and others***[10], the Court has highlighted that the doctrine of colourable legislation does not involve any question of bona fide or mala fides on the part of the legislature. The whole doctrine revolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really inconsequential, unless they in the amended incarnation invite the frown of any Article of the Constitution.

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31. Having so stated, it is to be scrutinized whether the base of earlier judgment has been removed. The High Court in its earlier judgment had struck down the amended provision on the foundation that there was discrimination between the existing appointees and future appointees to the office of members, Vice-Chairmen and Chairmen. The High Court had opined that the classification between the two categories was not reasonable and it caused discomfort to Article 14 of the Constitution. It had given emphasis on the statutory safeguards meant for removal. The legislature after the decision of the High Court has amended the provision. By such amendment, it has removed the distinction between the existing members and the members who are to come in future. It has substituted the word "appointed" by "nominated". It is worth noting that as per the earlier provision members were to be appointed by the Government in consultation with the Director of Marketing from among certain categories of growers of agricultural produce, owners of livestock and products of livestock in the notified area. The Chairmen and the Vice-Chairmen

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[10] (2004) 1 SCC 712

were appointed from amongst its members by the Government in consultation with the Director of Marketing. As has been stated earlier, the word "appointed" has been substituted as "nominated". Submission of Mr. Rao, learned senior counsel appearing for the appellants is that by such an amendment the vested right of the appellants has been affected. It is noticeable that under the scheme of the Act, the word "appointed" as was used in the earlier provision was really not an appointment which can be equated to a post under the service jurisprudence. The members were meant to be members for the purpose of composition of market committee. What is urged is that the members, the Chairmen and the Vice-Chairmen had a fixed term, who could be removed after inquiry or under certain conditions. Our attention has been drawn to sub-section (5) of Section 6 but after the amendment the members had ceased to become members prior to expiry of their tenure, that is, three years. We may make it clear that the competent authority of the State Government still can remove member or Vice-Chairman or Chairman taking recourse to other provisions prior to expiry of the period. The grievance of the appellants is that the period is curtailed and the vested right is affected. The argument is that it could not have been done by retrospective amendment of the provision. The aforesaid argument suffers from a fallacy. The members were not elected. They were not appointed by any kind of selection. They were chosen by the State Government from certain categories. The status of the members have been changed by amending the word "appointed" by substituting it with the word "nominated". Thus, the legislature has retrospectively changed the meaning. In our considered opinion, by virtue of the amendment, the term which has been reduced for a nominated member stands on a different footing. In ***Om Narain Agarwal and others v. Nagar Palika, Shahjahanpur and others***[11] it has been held that if an appointment has been made initially by nomination, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. It is because the nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. The Court further observed that such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution.

[11] (1993) 2 SCC 242

A 32. The word "appointment" has been substituted by "nomination". It is an appointment by nomination. It is from certain categories for the purpose of representation. It is not appointment as the word ordinarily connotes. The legislature, in its wisdom, has substituted the word "appointment" and made it "nomination with retrospective effect". To enable it to curtail or reduce the term, the procedure for removal remains B intact. A nominee can go from office by efflux of time when the period is over. That is different than when he is removed. A nominated member, in praesenti, can also be removed by adopting the procedure during the period. Otherwise, he shall continue till his term is over; and the term is one year. The plea of vested right is like building a castle in Spain. It C has no legs to stand upon and, therefore, we unhesitatingly repel the said submission.

33. The last issue that has arisen pertains to different kinds of delineation with regard to market committee and the special market committees. Their composition, function and purpose are different. They D basically fall into different categories. It is difficult to weigh them in the scale of Article 14. The equality clause, in our considered view, is not affected. The characteristics of the committees being different, Article 14 is not attracted. Thus, the said submission is sans substratum.

34. In view of the aforesaid analysis, we do not perceive any merit E in these appeals and, accordingly, they are dismissed. There shall be no order as to costs.

Kalpana K. Tripathy Appeals dismissed.