

Amalgamated Coalfields Ltd. and ors. Vs. State of Madhya Pradesh and anr.

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Court : Madhya Pradesh

Decided On : May-03-1966

Reported in : AIR1967MP56

Judge : P.V. Dixit, C.J., ;Shiv Dayal and ;K.L. Pandey, JJ.

Acts : Madhya Pradesh Koyala Upkar (Manyatakarana) Adhiniyam, 1964 - Sections 3 and 3(1); [Code of Civil Procedure \(CPC\) , 1908](#); Central Provinces and Berar Local Government Act, 1920 - Sections 51; Central Provinces and Berar Local Government (Amendment) Act, 1948 - Sections 192; [Constitution of India](#) - Article 246; Madhya Pradesh High Court Rules - Rule 11

Appeal No. : Misc. Petn. Nos. 630, 552 and 553 of 1964 and 77, 219, 221, 224, 225 and 298 of 1965

Appellant : Amalgamated Coalfields Ltd. and ors.

Respondent : State of Madhya Pradesh and anr.

Advocate for Def. : M. Adhikari, Adv. General, ;K.K. Dubey, Govt. Adv. and ;B.L. Seth and ;G.P. Choubey, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Sachin Chaudhry and ;A.P. Sen, Adv.

Disposition : Petition allowed

Judgement :

Dixit, C.J.

1. This order will also govern the disposal of Misc. Petitions Nos. 552 and 553 of 1964 and Misc. Petitions Nos. 77, 219, 221, 224, 225 and 298 of 1965.

2. These are nine applications under Article 226 of the Constitution by colliers holding mining leases under the Government of Madhya Pradesh for the extraction of coal from collieries situated in the Chhindwara district of Madhya Pradesh State. All the petitioners challenge the vires of the, Madhya Pradesh Koyala Upkar (Manyata-karan) Adhiniyam, 1964 (Act No. 18 of 1964 [hereinafter referred to as the Validating Act]), and seek a declaration that the said Act is constitutionally invalid, ultra vires and unenforceable and pray that a suitable direction be issued to the opponents forbearing them from giving effect to the Validating Act in any manner whatsoever. The petitioners in Misc. Petitions other than Misc. Petition No. 630 of 1964 and Misc. Petition No. 77 of 1965 also pray that the notices of demand issued to them after the coming into force of the Validating Act for payment of 'coal cess' or 'coal tax' at the rate of nine pies per ton for the period stated in the notices be also quashed by issue of writs of certiorari.

3. The background of the controversy raised in these petitions may briefly be stated thus. The coal mines worked by the petitioners formerly lay within the jurisdiction and territorial limits of the Independant Mining Local Board which had the status and powers of a District Council under the Central Provinces Local Self-Government Act, 1920. Section 51 of the Act of 1920 was in the following terms:--

'51(1) Subject to the provisions of the law or enactment for the time being in force, a district council may, by a resolution passed by a majority of not less than two-thirds of the members present at a special meeting convened for the purpose, impose any tax, toll or rate other than those specified in Sections 24, 48, 49 and 50. (a) The first imposition of any tax, toll or rate under Sub-section (1) shall be subject to the previous sanction of the local Government.'

In exercise of the powers conferred by Section 51 of the Act of 1920 the Mining Board resolved on 12th March 1935 to levy what has been described as 'coal tax' or 'coal cess' at the rate of three pies per ton on 'coal, coal dust or coke,

manufactured at the mines, sold for export by rail or sold otherwise than for export by rail within the territorial jurisdiction of the Independent Mining Local Board.' This imposition received the sanction of the Local Government on 16th December 1935 and thereafter a notification imposing the levy was issued which came into force from 1st January 1936. By a notification issued under Clause (b) or Rule 6 of the Rules framed under Clause (xvi) of Sub-section (1) of Section 79 of the Act of 1920 on 22nd December 1943 under the signature of the Honorary Secretary of the Independent Mining Local Board the rate was increased to four pies per ton. It was thereafter enhanced to seven pies per ton by a notification issued on 29th July 1946 and again to nine pies per ton by a notification issued on 19th July 1947.

(3-A) The Central Provinces and Berar Local Self-Government Act, 1920, was repealed by the Central Provinces and Berar Local Government Act, 1948. Under the Act of 1948 the Janapada Sabha, Chhindwara, as the successor of the Independent Mining Board continued to levy and recover from the petitioners the tax in question. Section 192 of the Act of 1948 expressly repealed the Local Self-Government Act of 1920. The repeal was, however, not absolute and unconditional. It was modified by the savings clause contained in the proviso to Section 192. Originally, the proviso to Section 192, inter alia, gave to the Sabha the right to collect the rates, taxes and cesses which had accrued to the District Council or Independent Local Board and which had remained unpaid on the date when by virtue of the first part of Section 192 of the Act of 1920 stood repealed and the District Council or Independent Local Board ceased to exist; it did not authorize the successor bodies, namely the Janapada Sabha's, to continue the levy of cesses, taxes or rates which were in force immediately before the commencement of the Act of 1948 and which were being levied by the District Council or Independent Local Board functioning under the Act of 1920.

By an Amending Act of 1949 a new Clause (b) was inserted in the proviso to Section 192 of the Act of 1948 so as to give the right to the Janapada Sabha to continue the levy of taxes, fees, cesses etc. which had been imposed by the District Council or Independent Local Board and which were in existence at the commencement of the Act of 1948; and this amendment was made retrospective from 11th June 1948 when the parent Act of 1948 had come into force, Section

192 of the Act of 1948, in so far as it is material here, is as follows :--

'192. On and from the date on which this Act comes into force, the Central Provinces and Berar Local Self-Government Act, 1920, shall be repealed:

Provided that-

**** ** *** (b) all rules and byelaws and orders made, notifications and notices issued, licences and permits granted, taxes imposed or assessed, cesses (other than additional cesses imposed in accordance with Section 49 of the said Act), fees, tolls or rates levied, contracts entered into and suits instituted and proceedings taken under the said Act and in force immediately before the commencement of this Act shall continue to be in force and in so far as they are not inconsistent with this Act, they shall be deemed to have been respectively made, issued, granted, imposed or assessed, levied, entered into, instituted and taken under this Act until new provisions are made under the appropriate provisions of this Act; **** ** ***

4. The validity of the original imposition by the Independent Mining Local Board in 1935 at the rate of three pies per ton was challenged unsuccessfully in the Supreme Court by the petitioner, the Amalgamated Coalfields Ltd. and other colliers by filing a petition under Article 32 of the Constitution. By a judgment dismissing that petition reported in *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara* AIR 1961 SC 964: 1962-1 SCR 1 the Supreme Court held that the original imposition of the tax in 1935 was valid; that the tax did not cease to be legally leviable on the coming into force of the Government of India Act, 1935 and the Constitution; that these constitutional enactments contain express provisions whereby taxes, cesses etc. which were previously levied by local authorities for the purposes of their local areas might continue to be collected and applied for the same purposes notwithstanding that those taxes thereafter could be imposed only by the Central or the Union Government as the case may be; that the objection, therefore, that the coal tax could have been imposed by the Central Government or the Union Government was no ground for impugning the continued validity and exigibility of the tax; and that if the tax fell within the provincial or the State List the levy would be valid under Section 292 of the Government of India Act, 1935 and Article 372 of the Constitution, It appears that at the hearing of the petition under

Article 32 referred to earlier, an attempt was made to raise the contention that the increase in the rate of tax to nine pies per ton effected in 1947 was invalid. The Supreme Court did not permit the petitioners to raise this contention as it had not been even hinted in the petition under Article 32.

5. Thereafter, in 1961 the petitioners filed applications under Article 226 of the Constitution challenging the validity of notices of demand issued to them calling upon them to pay the amount of tax stated in the notice assessed at the rate of nine pies per ton on all coal despatched by them from their collieries during certain periods. These petitions were dismissed by taking the view that by reason of the principle of *res judicata* the petitioners were precluded from challenging the validity of those notices of demand in view of the decision of the Supreme Court in AIR 1961 SC 964: 1962-1 SCR 1 (*supra*). The applicants then filed appeals in the Supreme Court after obtaining Special Leave.

Those appeals were allowed by the Supreme Court taking the view that the petitioners were not precluded from raising new contentions challenging the validity of the notices issued to them; that the first imposition, spoken of in Sub-section (2) of Section 51 of the Act of 1920 meant not only the initial imposition but also included every fresh imposition levied at an increased rate; that such imposition required the previous sanction of the Government and as none had been obtained for the increases of the rates in 1943, 1946 and 1947 the increase of rate to nine pies in 1947 was invalid and the Janapada Sabha was entitled to levy tax only at the rate of three pies per ton which had received the sanction of the Government. On the material placed before it by the Janapada Sabha the Supreme Court held in *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara*, AIR 1964 SC 1013 that the enhancement of the rates made in 1943, 1946 and 1947 was not with the previous sanction of the Government but by the Mining Local Board itself.

6. The decision of the Supreme Court in AIR 1964 SC 1013 invalidating the increases made in the rate of coal tax from three pies to nine pies per ton led to the promulgation on 20th May 1964 of the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhyadesh, 1964 (Ordinance No. 5 of 1964) validating the levy of

the tax at increased rates with retrospective effect from the dates of the increase. This Ordinance was replaced by the impugned Act, namely, the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964, which came into force on 25th September 1964. This validating Act is styled as 'An Act to validate the imposition and collection of cess on Coal by certain local authorities'. Section 3(1) of the Validating Act which deals with the matter before us runs as follows:

'3. Validation of imposition, assessment and collection of cess:--(1) Notwithstanding anything contained in any judgment, decree or order of any Court, cesses imposed, assessed or collected or purported to have been imposed, assessed or collected by the Board in pursuance of the notifications/notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been, validly imposed, assessed or collected as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications/notices and accordingly:--

(a) all acts, proceedings or things done or taken by the Board or by any officer of the Board in connection with the imposition, assessment or collection of such cess shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;

(b) any cess imposed or assessed in pursuance of the said notifications/notices before the 20th day of May, 1964 but not collected before such date may be recovered (after assessment of the cess where necessary) in the manner provided therefor;

(c) no suit or other proceedings shall be maintained or continued in any Court against the Board or any person or authority whatsoever for the refund of any cess so paid;

(d) no Court shall enforce any decree or order directing the refund of any cess so paid.'

The notifications spoken of in the main part of Section 3(1) and referred to in the Schedule to the Validating Act are those issued On 22nd December 1943, 29th

July 1946 and 19th July 1947 by which the rate of tax was increased first from three pies to four pies per ton, then to seven pies per ton and then again to nine pies per ton. If this legislation is valid, then the three notifications just referred to increasing the rate of tax stand validated and the petitioners would be liable to pay tax in accordance with the rate prevalent at the material time.

7. Shri Sachin Chaudhri, learned counsel appearing for the petitioners in Misc. Petition No. 630 of 1964, however argued that the validating Act did not bring about any change in the situation and that the three notifications referred to above were null and void now as before the enactment of the Validating Act and the respondent Janapada Sabha was entitled to levy tax Only at the rate of three pies per ton as held by the Supreme Court in AIR 1964 SC 1013. Learned counsel rested this contention on two grounds. First, it was said in AIR 1964 SC 1013 the Supreme Court held that the increases in the rate of tax from three pies to nine pies per ton were invalid inasmuch as they had been made not with the previous sanction of the Government but by the Mining Local Board itself; that it was competent for the State Legislature to cure the infirmity of want of previous sanction and pass a validating law so as to make the imposition of tax under Section 31 of the Act of 1920 effective without the previous sanction of Government from the date when the imposition was made; but that Section 3 of the Validating Act failed to do this and merely validated fee imposition made pursuant to the notifications dated 22nd December 1948, 29th July 1946 and 19th July 1947 without conferring on the Mining Local Board the power to levy coal tax or 'coal cess' in a manner or mode dispensing with the compliance of Sub-section (3) of Section 51 of the Act of 1920.

Learned counsel submitted that Section 3 purported to amend Section 31 of the Act of 1920 so as to say that the Mining Board had at the material time the power to issue the said three notifications, but the notifications were struck down as invalid by the Supreme Court as previous sanction to the increase had not been obtained and not on the ground that the Mining Board had no power to issue the notifications but that the Government or some other authority was empowered to issue the notifications. In support of his contention that Section 3 of the Validating Act did not, give to the Mining Board the power to enhance the rate of tax without

obtaining the previous sanction of the Government and that in the absence of such conferment of power the validation attempted by Section 3 was futile, learned counsel placed reliance on *United Provinces v. Atiqa Begum*, AIR 1941 FC 16, *Ramkrishna v. State of Bihar* AIR 1963 SC 1667 and *Dayalal Meghji and Co. Firm v. State of M. P.*, 1962 MPLJ 849; (AIR 1962 Madh Pra 342).

8. The second ground urged by Shri Sachin Chaudhri was that the amendment which Section 3 of the Validating Act purported to make in the Act of 1920 and especially in Section 51 thereof was of no effect whatsoever as the Act of 1920 was repealed by Section 192 of the Act of 1948 and was not in existence when the Validating Act was passed. Learned counsel proceeded to say that unless the Act of 1920 or Section 51 thereof was revived, no amendment made in it could be of any effect; that the only manner of reviving a repealed Act was by enacting a fresh statute or by enacting a statute expressly saying that the Act was revived; and that from the fact that Section 3 of the Validating Act purported to amend the Act of 1920 or Section 51 thereof, it could not be held as a matter of construction that the intention of the Legislature was to renew a dead Act or a dead provision and make a new provision with certain amendments incorporated therein with retrospective effect. On these grounds it was contended that Section 3 of the Validating Act was totally ineffective and invalid.

9. Shri Dharmadhikari, learned counsel appearing for the other petitioners, adopted the arguments put forward by Shri Sachin Chaudhri. All the petitioners have raised in their petitions other grounds challenging the validity of the Act and of the imposition. Learned counsel appearing for them did not urge those grounds before us. It was stated on behalf of the applicants that if need be, those grounds would be urged on a proper occasion in other cases.

10. In answer, the learned Advocate-General sold that though the Validating Act was described as 'An Act to validate the imposition and collection of cess on Coal by certain local authorities' and though Section 3 thereof used the expression 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications', it was in substance a legislation not validating the imposition and collection of cess made

under the Act of 1920 but one imposing under the legislative sanction of the State Legislature a cess on coal at the rates and in the manner imposed, assessed or collected under the Act of 1920 and the Rules made thereunder and the imposition was from the time the cess was imposed under the notifications dated 22nd December 1943, 29th July 1946 and 19th July 1947, albeit invalidly; that the State Legislature had the power to make a retrospective imposition of tax within its competence; and that the imposition under Section 3 of the Validating Act being quite independent of the provisions of the Act of 1920, no question of giving to the Board from a date in the past the power to impose a cess without the previous sanction of the Government or amending any provision of the Act of 1920 could arise. It was also submitted in the alternative that Section 3 of the Validating Act fully amended Section 51 of the Act of 1920 so as to give on the date on which the three notifications were issued the power to impose cess without obtaining the previous sanction of the Government.

Learned Advocate-General also said that from the records of the increase in the imposition made in 1943, 46 and 1947 in Government's possession it appears that as a matter of fact the increases in the rates were made with the previous sanction of the Government; and that this was not brought to the notice of the Supreme Court at the time of the hearing of the appeals and the State Government was not a party to those appeals decided by the Supreme Court by its judgment reported in AIR 1964 SC 1013 (supra). It was suggested that the Validating Act was passed because the enhancements in the rates were in fact with the sanction of the Government and the financial position of the Janapada Sabha would have been altogether dislocated if the imposition had not been validated.

11. In my judgment, the Validating Act is a futile attempt to cover a lost ground and to cure the infirmity on the basis of which the Supreme Court struck down as invalid the increase in the rate of coal cess from three pies to nine pies per ton and for that reason Section 3 of the Validating Act is ineffective and invalid. The principle is now firmly settled and does not admit of any doubt that the power of validation by subsequent legislation of any defective law or Act or any act, is subsidiary or ancillary to the power to deal with the particular subjects specified in Lists I, II and III of the Seventh Schedule to the Constitution; the power of

validation is included in the power of legislation: See AIR 1941 FC 16 (supra); *Piare Dusadh v. Emperor*, AIR 1944 FC 1 and AIR 1963 SC 1667 (supra). In AIR 1963 SC 1667 (supra) the Supreme Court re-stated the principle thus:

' there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate law which have been found to be invalid. If a law passed by a legislature is struck down by the Court as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law affective from the date when it was passed'. (Underlining (here into ' ') is mine).

The underlined statement in the above observation is very important. It fully support the proposition laid down in 1962 MPLJ 849, (AIR 1962 Madh Pra 342) (supra) that an invalid or illegal act can be validated by a subsequent statute of the competent legislative authority if the validating statute authorises the doing of the act at the time when it was done; and that in the absence of such authorisation for the doing of the act, the validation would be futile as that would only amount to an attempt to exercise a power which ex hypothesi did not exist. It is also well settled that subject to any limitation imposed by the Constitution, Parliament and the State Legislatures can give to their laws, otherwise valid, retrospective operation and can also impose a tax or a cess retrospectively, for a period before the commencement of the law: See *Union of India v. Madan Gopal Kabra*, 1954 SCR 541: AIR 1954 SC 158; *M. P. V. Sunderaramier and Co. v. State of Andhra Pradesh*, 1958 SCR 1422: AIR 1958 SC 468; *Mt. Jadap Bahuji v. Municipal Committee, Khandwa*, AIR 1961 SC 1486 and *J.K. Jute Mills Co. Ltd. v. State of U. P.* AIR 1961 SC 1534. As will be shown presently, the Validating Act does not, on its own authority and under its own sanction, impose coal cess at the rates mentioned in the notifications dated 22nd December 1943, 29th July 1946 and 19th July 1947 retrospectively, from the dates of those notifications quite independently of the provisions of the Act of 1920. Nor does it validate the imposition made by the Mining Board under the aforesaid notifications by giving to the Board the power to impose the cess without obtaining the previous sanction of the Government at the time the imposition was made.

12. The description of the Validating Act itself says that it is An Act to validate the imposition and collection of cess on Coal by certain local authorities.' No doubt, the true nature of a Validating Act is to be determined not by the name given to it or by its form but by its substance. But the substance of the Validating Act which is contained in Section 3 thereof does not show that the above description of the Act is a mis-description. A bare perusal of Section 3 of the impugned Act is sufficient to show that ex facie it is a provision validating the impositions made under the three notifications mentioned in the Schedule to the Act from the dates of those notifications by retrospectively amending the Act of 1920 'so as to empower the Board to issue the said notifications'.

Now, Section 3 of the impugned Act first says that 'notwithstanding anything contained in any judgment, decree or order of any Court, cesses imposed, assessed or collected or purported to have been imposed, assessed or collected by the Board in pursuance of the notifications/notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been, validly imposed, assessed or collected.' But this non obstante provision cannot be construed as a provision imposing coal cess retrospectively at the rates mentioned in the notifications from the dates of those notifications. The non obstante expression cannot be read in isolation. It must be read with the expression 'as if the enactment under which they were issued stood amended at all material times so as to empower the Board to issue the said notifications.' The effect of the deeming provision contained in Section 3 is to treat the imposition of coal cess under the 1920 Act itself and under the notifications specified in the Schedule and issued under that Act and to validate them on the supposition that at the time the notifications were issued the Mining Board had the power to issue the said notifications.

The expression 'in pursuance of the notifications' occurring in Section 3 and the further provision made in it 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications' cannot be ignored. They are very important and significant and they show that what has been attempted to be done by Section 3 is not the imposition of a coal cess at enhanced rates from a past date independently of any provision

of the Act of 1920 or of any notification issued thereunder, but the validation of the coal cess as imposed by notifications issued under the Act and specified in the Schedule to the Act. The non obstante expression means nothing more than this, namely, that no judgment, decree or order of any Court shall be an impediment to the prevalence of the coal cess as imposed by the notifications referred to above which, as provided by Section 3, shall be regarded as having been issued under the Act of 1920 with an amendment incorporated therein empowering the Board to issue the said notifications.

13. The argument, therefore, of the learned Advocate-General that Section 3 of the impugned Act is a provision quite independent of the Act of 1920 or of any notifications issued thereunder imposing coal cess and that Section 3 itself imposed coal cess at the rates mentioned in the notifications from the dates of those notifications cannot be accepted. No analogy can be drawn between the provision of Section 3 of the Validating Act and the provision contained in Section 2 of the Khandwa Ginning and Pressing Cotton Tax Validating Act, 1938, to which a reference was made by the learned Advocate-General. That provision ran as follows :--

'2. Notwithstanding anything contained in the Central Provinces Municipal Act, 1903, or the Central Provinces Municipalities Act, 1922, or any decree or order of a civil Court, the tax on the trade or ginning and pressing cotton by means of steam or mechanised process within the limits of the Khandwa municipality which was imposed by Notification No. 2639-1298-VIII. dated the 21st November, 1922, shall be deemed to have been legally imposed from the date of its imposition to the date on which this Act comes into force.

Explanation--All decrees or orders of a civil Court directing a refund of the tax already recovered by the committee of the said municipality or restraining the committee from recovering the tax shall be deemed to have no legal effect.'

It was said that in the case of *Firm Radhakishan v. Municipal Committee, Khandwa*, 1940 Nag LJ 638 no doubt was felt about the legal efficacy of Section 2 as a provision validating the tax on the trade of ginning and pressing cotton which had been declared invalid by the Privy Council in *Radha Kishan v. Municipal*

Committee, Khandwa AIR 1934 PC 62 on the ground that it had not been imposed in conformity with the provisions of the Central Provinces Municipalities Act, 1922. The true nature of the Khandwa Ginning and Pressing Cotton Tax Validating Act, 1938, was pointed out by this Court in the case of 1962 MPLJ 849: (AIR 1962 Madh Pra 342) (supra) by making the following observations :--

'It will be seen that though the preamble of the Khandwa Ginning and Pressing Cotton Tax Validating Act, 1938, stated that it was an Act to validate the imposition of the tax, Section 2 did not purport to validate the imposition. It merely created a fiction that 'the tax on the trade of ginning and pressing cotton..... which was imposed by notificationdated the 21st November, 1922, shall be deemed to have been legally imposed from the date of its imposition to the date on which this Act comes into force.' The fictional imposition of the tax was quite independent of the provisions of the C. P. Municipal Act, 1903, or the C. P. Municipalities Act, 1922, or any notification issued thereunder. This is clear from the opening words of Section 2, namely, 'Notwithstanding anything contained in the Central Provinces Municipal Act, 1903, or the Central Provinces Municipalities Act, 1922.' There was no validation of any tax imposed under the 'Notification dated the 21st November 1922'. The tax which was fictionally imposed was referred to as the tax 'which was imposed by Notifications..... dated the 21st November 1922', that is to say, the tax which was factually brought into existence and imposed by the notification.'

Here, Section 3 of the impugned Act attempts to validate the imposition of coal cess made under the notifications specified in the Schedule with reference to the provisions of the Act of 1920 under which they were issued by saying that the enactment of 1920 under which the notifications were issued shall be read as having been 'amended at all material times so as to empower the Board to issue the said notifications'. There is thus no analogy whatsoever between Section 2 of the Khandwa Ginning and Pressing Cotton Tax Validating Act, 1938, and Section 3 of the Validating Act before us. In my opinion, on the language of Section 3 it is impossible to read it as a provision imposing coal cess from a date in the past quite independently of 'the provisions of the Act of 1920 or of the notifications issued thereunder and specified in the Schedule. So also there is no similarity between the case before us and the cases of Jaora Sugar Mills (P) Ltd. v. State of

M. P., 1964 MPLJ 17: (AIR 1964 Madh Pra 118) and *Narottamdas v. State of M.P.* 1964 MPLJ ,43; (AIR 1964 Madh Pra 45). In the case; of Jaora Sugar Mills it was held on a construction of Section 3 of the Sugarcane Cess (Validation) Act, 1961, that it was a piece of legislation not validating the imposition and collection of cesses made under the State Acts but one imposing under the legislative sanction of Parliament cesses at the rate and in the manner imposed, assessed or collected by various States under the relevant State Acts. In the case of *Narottamdas* 1964 MPLJ 43: (AIR 1964 Madh Pra 45) (supra), again, it was held on a construction of the provisions of the Madhya Pradesh Minimum Wages Fixation Act, 1962, that it was an independent enactment fixing the minimum rates of wages in certain employments and with out the necessity of following the procedure prescribed by the Minimum Wages Act, 1948; and that it did not attempt to validate the rates of wages as prescribed by a notification issued on 30th December 1958 under the Minimum Wages Act, 1948.

14. If, as I think. Section 3 of the impugned Act is not an ad hoc provision imposing from dates in the past coal cess at the rates mentioned in the three notifications referred to in the schedule to the Act but is a provision purporting to validate the said notifications issued under the Act of 1920 by amending that ACT, the question arises whether it has succeeded in conferring on the Mining Board on the dates on which the three notifications enhancing the rate of coal cess were issued the power to increase the rates without obtaining the previous sanction of the Government, ft is important to remember that in AIR 1961 SC 1013 (supra) the Supreme Court held the increase in the coal cess rate from three pies to nine pies per ton to be invalid on the ground that the previous sanction of the Government as required by Section 51 of the Act of 1920 had not been obtained. The notification dated 19th July 1947 raising the rate to nine pies per ton or the earlier two notifications were not struck down as invalid by the Supreme Court on the ground that the Mining Board was not empowered to issue under the Act or the Rules made thereunder a notification declaring the imposition and bringing it into effect.

In the Supreme Court there was no controversy at all on the question whether the Mining Board had any power at all to issue a notification imposing the coal cess

rate from a certain date and whether the Mining Board decided to make the imposition after obtaining the previous sanction of the Government or without it. Indeed, there can be no such controversy in the face of Rule 6(b) of the Rules made under Section 79(1)(xvi) of the Act of 1920 which provided that if the proposal to impose any cess, tax, rate etc. contained in a notice given under Rule 2 of the Rules framed under Section 79(1)(xvi) fell under Section 51, then the imposition 'shall be declared by the district council by notification and it shall come into effect from such date as may be specified in the notification.' Rule 5 of the aforesaid Rules no doubt said that if the proposal contained in the notice under Rule 2 fell under Section 51, then the District Council shall forward the proposal to the Government with the objections and suggestions, if any, received by it and its decisions thereon and the Government may sanction or refuse to sanction the proposal or sanction the same subject to such modifications as it may think fit. But neither Rule 5 nor Rule 6 expressly or by implication prohibited the District Council or the Mining Board from issuing under Rule 6 a notification imposing a tax, rate or cess and bringing it into force from a certain date even if the imposition required the previous sanction of the Government and if it had not been obtained.

A District Council or a Mining Board, if it was so minded, could issue a notification declaring the imposition and bringing it into effect even if the imposition was invalid for want of Government's sanction. It is noteworthy that the Rules framed under Section 79(1)(xvi) contained the procedure to be followed by the local authority in imposing any cess, tax, rate or toll under the Act of 1920. The procedure contained in Rule 6(b) of the Rules with regard to the declaration of the imposition by the issue of a notification did not in any way touch or cover the requirement of Section 51 about obtaining the previous sanction of the Government to the imposition declared by the notification.

15. It is plain from what has been said above that the expression 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications' does not in any way improve the situation and confer on the Board retrospectively, and on and from the date of the notifications mentioned in the Schedule to the Act, the power to increase the coal cess rate without obtaining the previous sanction of the

Government. It is one thing to say that the Board shall have the power to issue a notification about declaration of imposition and bringing it into effect from a certain date and quite different to say that the Board shall have the power to make the imposition without obtaining the previous sanction of the Government to it. The increase in the coal cess rate having been struck down by the Supreme Court on the ground that the previous sanction of the Government was not obtained to it, the notifications mentioned in the Schedule to the Act could not be validated unless and until the Mining Board could be and had been retrospectively invested with the power to make the imposition without obtaining the previous sanction of the Government. Section 3 of the impugned Act utterly fails to make the conferment of this power, and for that reason it is utterly ineffective for validating the impositions made pursuant to the notifications mentioned in the Schedule.

16. In fact, the amendment purported to have been made by Section 3 of the impugned Act in the Act of 1920 'so as to empower the Board to issue the said notifications' is of no legal affect. The reason is that the Act of 1920 was repealed by section 192 of the Local Government Act, 1948. The repeal was no doubt subject to the saving stated in the proviso to Section 192. Clause (a) of the proviso continued the operation of the Act of 1920 only for a limited purpose, namely, for the continuance of the local authorities constituted under the Act of 1920 till the administration of Local Self-Government was taken over by the Deputy Commissioners in accordance with section 186A of the Act of 1948. The Act of 1920 was not continued for any other purpose.

The result was that the Act of 1920 ceased to exist except for a limited purpose when the Act of 1948 came into force and on the date on which the Validation Act was passed it was in no sense and in no manner alive. Now, it is axiomatic that there cannot be any amendment of an enactment which is not in existence. If the Act is not in existence, it cannot be amended unless it is first revived. The only manner in which a repealed enactment can be revived is by enacting a fresh statute or by enacting a statute expressly saying that the Act is herewith revived. In this connection it would be pertinent to refer to section 12 of the Madhya Pradesh General Clauses Act, 1957, which lays down that in any Madhya Pradesh Act, it shall be necessary for the purpose of reviving, either wholly or partially, any

enactment wholly or partially repealed, expressly to state that purpose Here, there was no revival of any provision of the Act of 1920 which Section 3 of the impugned Act purported to amend. From the mere fact that Section 3 purported to amend the Act of 1920 in a certain respect, it cannot be held that the provision of the Act of 1920 intended to be amended was revived.

17. The decision of the Federal Court in *Jatindra Nath v. Province of Bihar*, AIR 1949 FC 175 fully supports the view that the amendment purported to have been made by Section 3 of the Validating Act in the enactment of 1920 without reviving it is of no effect. That was a case in which the effectiveness of an amendment made in the Bihar Maintenance of Public Order Act, 1947, after it had died a natural death on 16th March 1948, was considered. Section 1(3) of the Bihar Maintenance of Public Order Act, 1947, provided that it would remain in force for a period of one year from the date of its commencement.

The proviso to that section gave to the Government the power to extend the Act for a further period of one year on a resolution being passed by the Bihar Legislative Assembly and agreed to by the Legislative Council. On 15th March 1949 the Bihar Legislature passed an Act amending the Bihar Maintenance of Public Order Act, 1947, saying that in Section 1(3) of the Act of 1947 for the words 'for a period of one year from the date of its commencement' the words and figures 'till 31st March 1950' shall be substituted. The Federal Court held that the proviso to Section 1(3) of the Act of 1947 fell within the ambit of delegated legislation and was, therefore, an improper piece of legislation and void. On this proviso being declared void the Bihar Maintenance of Public Order Act, 1947, ceased to exist on 16th March 1948. In regard to the amendment made in 1949 in the Bihar Act of 1947 the Federal Court held that it was of no effect as it was made after the Act of 1947 had died a natural death and that Act had not been revived. On this point Mahajan J. (as he then was) said:

'Act V (5) of 1949 enacted an amendment in the original Act of 1947 which had died a natural death on 16th March 1948. Unless that Act was revived, no amendment made in it could be of any effect. The only manner of reviving the expired Act was by enacting a fresh statute or by enacting a statute expressly

saying that Act is herewith revived.'

Mukherjea J. (as he then was) expressed himself thus on the point:

'It is certainly competent to the Legislature in exercise of its plenary powers to revive or re-enact a legislation which has already expired by lapse of time. The Legislature is also competent to Legislate with retrospective effect, but neither of these things seems to have been done in the present case. The Legislature proceeds on the footing that the old Act was alive at the date when the new Act was passed, and the new Act merely purports to amend one of the provisions of the old Act. There could be no amendment of an enactment which is not in existence and from the fact that the Legislature purports to amend an Act, it could not be held as a matter of construction that the intention of the Legislature was to renew a dead Act or make a new enactment on the same terms as the old with retrospective effect.'

In view of this decision of the Federal Court it must be held that the amendment purported to be made in the enactment of 1920 empowering the Mining Board to issue the notifications specified in the Schedule to the Act without reviving any provision of the Act of 1920 in any manner is ineffective.

18. The argument that if the validating legislation had not been passed, then the economy of the Janapada Sabha would have been ruined and that in fact the impositions notified in 1943, 1946 and 1947 had received the sanction of the Government cannot advance any further the case of the respondents. The motive of the Legislature in enacting the Validating Act does not cure the invalidity of Section 3. In view of the decision of the Supreme Court in AIR 1964 SC 1013 (supra) it is not now open to the respondents to urge here that the enhancement in the rates of coal cess in 1943, 1946 and 1947 were with the previous sanction of the Government. If the records in possession of the Government now reveal that the enhancements were in fact with the sanction of the Government and if the Janapada Sabha was unable to trace the record, whether because of its inaction or even after efforts, then one can only sympathize with the Janapada Sabha for the consequences of the lapse in not placing before the Supreme Court the proper material.

19. For the foregoing reasons, I am of the view that all these petitions must be allowed, and section 3 of the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964, must be declared to be invalid and the opponents restrained from giving effect to Section 3 of the Act in any manner whatsoever. The notices of demand issued to the petitioners except in Misc. Petitions Nos. 630 of 1964 and 77 of 1965 calling upon them to pay coal cess at the rate of nine pies per ton for the period stated in the notices should also be quashed by the issue of writs of certiorari, and the petitioners in each case should get costs of their application. I would fix counsel's fee in each case at Rs. 200 and direct that the outstanding amount of the security deposit should be refunded to the petitioners in each case.

Pandey, J.

20. I have had the advantage of reading the judgment prepared by my Lord the Chief Justice and I regret I find myself unable to agree.

21. The circumstances in which the present controversy has arisen have been set out in the judgment of my Lord and need not be restated. The point for consideration is Whether the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964 (hereinafter called the Act), has achieved the object for which it was enacted or whether it is in effect no more than an invalid and futile attempt at validating the enhancements in the rate of coal cess which were found to have been incompetently made in AIR 1964 SC 1013.

22. The enactment, which is challenged before us, is Section 3(1) of the Act which reads:

'Notwithstanding anything contained in any Judgment, decree or order of any Court, cesses imposed, assessed or collected or purported to have been imposed, assessed or collected by the Board in pursuance of the notifications/notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been, validly imposed, assessed or collected as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications/notices and accordingly:

(a) all acts, proceedings or things done or taken by the Board or by any officer of the Board in connection with the imposition, assessment or collection of such cess shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;

(b) any cess imposed or assessed in pursuance of the said notifications/notices before the 20th day of May, 1964 but not collected before such date may be recovered (after assessment of the cess where necessary) in the manner provided therefor;

(c) no suit or other proceeding shall be maintained or continued in any Court against the Board or any person or authority whatsoever for the refund of any cess so paid;

(d) no Court shall enforce any decree or order directing the refund of any cess so paid.'

Shri Sachin Chaudhuri attacked its validity only on two grounds. The first ground is that it does not confer power on the Board to make the enhancements in the manner in which they were effected at the time when they were made and, therefore, the validation was no more than an unavailing and futile attempt to exercise a power which did not exist. The second is that it has invalidly and ineffectively sought to amend a dead Act, namely, the repealed Central Provinces Local-Self-Government Act, 1920, without reviving it.

23. In regard to the first ground, I am of opinion that, for validating past acts, it is not always necessary to amend the law with retrospective effect with a view to authorising the going of those acts at the time when they were actually done without such authority. It is well settled that diverse methods are available to the Legislature for effecting validation of past acts and any one of them is as efficient and sufficient to achieve the object as any other. One of them is simple validation effected by employing an appropriate enacting clause without amending the law with retrospective effect. Another is the making of a retrospective amendment and this is usually adopted when it is desired to change the law. A third may well be a combination of two or more methods.

24. Numerous examples illustrating the first method are found in reported cases. In the leading case of 1940 FCR 110: (AIR 1941 FC 16) the law was not retrospectively amended to confer authority for giving any remission in rent without prior remission of revenue and the validation was effectuated by the simple expedient of providing that any such remission, whether granted before or after the Act, could not be called in question in any Civil or Revenue Court. In 1944 FCR 61: (AIR 1944 FC 1) the sentences passed by Special Criminal Courts which had functioned under an Ordinance found later to be ultra vires were validated by Section 3 of the Special Criminal Courts (Repeal) Ordinance (19 of 1943) in the following terms:

'3(1) Any sentence passed by a Special Judge, a Special Magistrate or a Summary Court in exercise of jurisdiction conferred or purporting to have been conferred by or under the said Ordinance shall have effect, and subject to the succeeding provisions of this section, shall continue to have effect, as if the trial at which it was passed had been held in accordance with the Code of Criminal Procedure, 1898 (V of 1898), by a Sessions Judge, an Assistant Sessions Judge or a Magistrate of the first class respectively. exercising competent jurisdiction under the said Code.

(2) Notwithstanding anything contained in any other law, any such sentence as is referred to in Sub-section (1) shall, whether or not the proceedings in which the sentence was passed were submitted for review under Section 8, and whether or not the sentence was the subject of an appeal under Section 13 or Section 19, of the Ordinance, be subject to such rights of appeal as would have accrued, and to such powers of revision as would have been exercisable under the said Code if the sentence had at a trial so held been passed on the date of the commencement of this Ordinance.

(3) Where any such sentence as aforesaid has been altered in the course of review or on appeal under the said Ordinance, the sentence as so altered shall for the purposes of this section be deemed to have been passed by the Court which passed the original sentence.'

The law was not amended with retrospective effect.

25. Another well-known case is *Jadao Bahu Ji v. Municipal Committee, Khandwa*, ILR 1956 Nag 83: (AIR 1966 Nag 167). The majority Judgment rendered in that case by this Court was affirmed by the Supreme Court in 1962-1 SCR 633, (AIR 1961 SC 1486). The validating provision of the Khandwa Municipality (Validation of Tax) Act, 1941, was made in Section 2 of the Act which read as follows:

'2. The tax the imposition of which purported to be sanctioned in the Notification of the Local Government (Ministry of Local Self-Government) No. 2639-1298-VIII dated the 21st November, 1922 shall be, and shall be deemed always to have been, validly recoverable by the Municipal Committee of Khandwa in respect of the period from the 21st November, 1922, to the 31st March, 1938 (both days inclusive).'

It is obvious that the imposition of tax which was sanctioned by a notification issued under the Central Provinces and Berar Municipalities Act, 1922, was directly validated with retrospective effect without any amendment of that Act.

26. The Full Bench case of *Gulabrao v. Pandurang*, ILR (1957) Bom 714: (AIR 1957 Bom 268) is another striking illustration of validation, without any amendment of the original Act, or certain electoral rolls and the elections held on the basis of those rolls. The Madhya Pradesh Janapada Election Matters Validating Act (I of 1955) was enacted to undo the effect of the Full Bench decision in *Kanglu v. Chief Executive Officer, Janapada Sabha, Durg*, ILR (1954) Nag 875: (AIR 1955 Nag 49). Section 3(1) of that Act provided:

'Notwithstanding the Order of any Court to the contrary or any provision in the Act or the rules thereunder:

(a) the electoral rolls shall be and shall always be deemed to have been validly prepared, published and republished; and

(b) the electoral rolls shall be deemed to have come in force on the date of republication and shall continue to be in force until they are revised in accordance with the rules made in this behalf under the Act.'

Section 3(2) provided that the validity of the electoral rolls could not be called in question on any of the grounds therein mentioned and Section 3(3) read:

'Any Order of a Court declaring any electoral roll invalid on all or any of the grounds specified in Sub-section (2) or directing preparation of fresh electoral rolls shall be deemed to be and always to have been of no legal effect whatsoever.'

Section 4, which validated the elections, read as follows:

'(1) No election shall be deemed to be or to have been invalid merely on the ground that the electoral roll on the basis of which the election was held was invalid on all or any of the grounds specified in Sub-section (2) of Section 3.

(2) Any order of a Court declaring any election invalid merely on the ground that the electoral rolls were invalid on all or any of the grounds specified in Sub-section (2) of section 3 shall be deemed to be and always to have been of no legal effect whatsoever.'

It was urged there, as it has been argued before us, that an amendment of the original Act was necessary for effectuating the validation. Chagla C. J., who spoke for the Court, observed:

'Mr. Badkas says that the proper way to bring about this effect was to have amended the original Act under which the electoral rolls were maintained and the elections were held, and inasmuch as the original Act has not been amended, the real effect of this law is to compel the Courts to construe that Act differently from the manner in which it has construed it. It is true that it would have been open to the Legislature retrospectively to have amended the Act, but it was equally open to the Legislature to allow the Act to stand, to allow the interpretation put upon it by the High Court to stand, and to say that notwithstanding the interpretation put by the High Court upon the Act, the electoral rolls shall be deemed to be validly prepared and maintained and the elections held to be valid.' (pages 716-7 of ILR Bom): (at p. 268 of AIR).

27. In the case of *State of Orissa v. Bhupendra Kumar Bose*, 1962 Supp (2) SCR 380: (AIR 1962 SC 945), the Supreme Court upheld the validity of a similar

enactment relating to electoral rolls and elections which had been set aside by the Orissa High Court. The relevant provisions, which were made in Sections 3 and 4 of the Orissa Municipal Election Validation Ordinance (1 of 1950) read as follows:

'3(1) Notwithstanding the Order of any Court to the contrary or any provision in the Act or the rules thereunder:

(a) the electoral rolls of the Cuttack Municipality shall be, and shall always be deemed to have been validly prepared and published; and

(b) the said electoral rolls shall be deemed to have come in force from the date of publication and shall continue to be in force until they are revised in accordance with the rules made in this behalf under the Act.

(2) The validity of the electoral rolls shall not be called in question in any Court on the ground that the date on which a person has to be not less than 21 years of age was fixed under Section 13 of the Act after the publication of the preliminary electoral rolls.

(4) Any order of a Court declaring the election to the Cuttack Municipality invalid on account of the fact that the electoral rolls were invalid on the ground specified in Sub-section (2) of section 3 or on the ground that the date of polling of the election was not fixed in accordance with the Act or the rules made thereunder, shall be deemed to be, and always to have been, of no legal effect whatsoever, and the elections to the said Municipality are hereby validated.'

28. In *Krishi Upaj Vyavasai Mandal v. State of Madhya Pradesh*, 1964 MPLJ 637: (AIR 1965 Madh Pra 6), we were required to consider the validity and efficacy of section 3 of the Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962. That section reads:

'3 (1) Notwithstanding any judgment decree or order of any Court or any provision in the Act, or the rules made thereunder.

(a) the 'mandi' or market areas purported to have been declared by the notifications set out in Part A of the Schedules hereto annexed shall be and shall

always be deemed to have been validly declared for the purpose of the Act and in respect of the agricultural produce specified therein and the validity of the said notifications or of the constitution or continuance or such mandi or market areas thereunder with respect to the items of agricultural produce mentioned therein shall not be called in question in any Court whatsoever;

(b) no act done or action taken (including any appointment or delegation made, notification, order, instruction or direction issued, rate or byelaw framed, permit or licence granted, proceedings instituted) by the State Government or any of its officers or a mandi or market committee under the Act in respect of a mandi or market area referred to in Clause (a) shall be called in question on the ground that such mandi or market area was not declared as such in accordance with the provisions of the Act.

(2) Any order of a Court declaring any of the notifications set out in Part A or Part B of the Schedule invalid on the ground mentioned in Clause (b) of Sub-section (1) shall be deemed to be and always to have been of no legal effect whatsoever'

We repelled the contention that validation could not be effected without a retrospective amendment of the law This is what we stated:

'In support of the contention that a retrospective amendment of the law was necessary because only then could the notifications issued earlier be validated, reliance is placed upon 1962 MPLJ 849: (AIR 1962 Madh Pra 342) Our attention is also drawn to 1964 MPLJ 43: (AIR 1964 Madh Pra 45) to show that, instead of validating the notifications, the Legislature could have established the Chimanganj market The case of Firm Dayalal Meghji and Co.. 1962 MPU 849: (AIR 1962 Madh Pra 342) (supra) is distinguishable because there the petitioners concentrated their attack on Section 31A, which was inserted in the principal Act by the Minimum Wages (Madhya Pradesh Amendment and Validation) Act (23 of 1961) Upon examination. the language employed in that section was not found either api or sufficient to effectuate the result that was sought to be achieved It is true that, for validating an Act the law itself may be retrospectively amended: (1962) 2 SCR 1 (AIR 1951 SC 1534) But as pointed out by the Supreme Court in Muhammadbhai v State of Gujarat AIR 1962 SC 1517 such retrospective

amendment is necessary only when it is desired to change the law with retrospective effect Speaking for the Court Wanchoo J. stated:

'It could have been retrospective also and in that case Sub-section (1) of Section 29-B may not have been necessary. The Legislature, however, adopted the method of amending Section 5-AA prospectively and making a separate provision for validating the establishment of markets in Sub-section (1) of Section 29-B. We see no reason why it should be held that the validation made by Sub-section (1) is not sufficient because the Legislature has adopted one method rather than the other for carrying out its purpose. We are therefore of opinion that Section 29-B is sufficient to cure the defects pointed out in the earlier judgment of the Court and to validate actions taken and things done before the promulgation of the Ordinance which would otherwise have been invalid in view of the earlier judgment of this Court.' It is, therefore, clear that validation may be brought about without retrospective amendment of the law We may add that such validation was considered sufficient not only in the case just mentioned but also in AIR 1957 Bom 266 (FB) and AIR 1962 SC 945,' (Page 643 of MPLJ) : (at p. 10 of AIR).

29. Having regard to the view taken by the Supreme Court in AIR 1962 SC 1517, this point must now be regarded as firmly settled. In that case, their Lordships were considering the provisions of the Bombay and Saurashtra Agricultural Produce Markets (Gujarat Amendment and Validating Provisions) Ordinance (I of 1961). The Supreme Court found the effect of the validating provisions contained in Section 29-B as follows:

'Sub-section (1) of Section 29-B provides that in the case of a market area declared before the commencement of the Ordinance, a market for such market area shall be deemed always to have been established for the purpose of the Act with effect from the date on which a market yard for such market area was declared for the first time under the Rules or the Act and such market shall include and shall be deemed always to have included the said market yard. By this provision the defect that was pointed out in the earlier judgment with respect to the establishment of a market is intended to be validated. The sub-section further provides that any action taken or anything done by a market committee or any

other authority after the establishment of a market therein as aforesaid but before the commencement of the Ordinance which but for the provisions of this clause would have been invalid, shall be and shall be deemed always to have been valid and shall not be called in question merely on the ground that no market was established for such market area when such action was taken or thing done Sub-section (2) then provides that any fees levied and collected on agricultural produce bought and sold in a market area before the commencement of the Ordinance by a market committee at the rates specified in its bye-laws shall be deemed to have been validly levied and collected and such levy and collection shall not be called in question merely on the ground that at the time of such levy the maxima were prescribed as required by Section 11. The intention of this provision is to cure the defect which was noticed in the earlier judgment inasmuch as no maxima had been prescribed under Section 11 by the State Government. Sub-section (3) finally provides that all licences issued to operate in a market area or any part thereof and fees charged therefor before the commencement of the Ordinance by a market committee under the Rules and bye-laws and any action taken or thing done relating to licensing of persons, or obtaining of a licence, to operate in the market area or any part thereof, taken or done by a market committee or any other authority or person under the Rules and bye-laws before the commencement of the Ordinance shall be and shall be deemed always to have been valid and the validity thereof shall not be called in question merely on the ground that when such action was taken or thing done, the power, right or obligation therefor was not duly conferred or imposed by the Act on such market committee, authority or person. This provision is intended to cure the defect arising from Rules 65 and 67 being declared ultra vires by this Court in its earlier judgment. '

The contention that a retrospective amendment of the law was necessary was rejected by Wanchoo J., who, speaking for the Court, observed:

'The contention on behalf of the petitioners is that these provisions are insufficient to validate the defects which were noticed in the earlier judgment of this Court inasmuch as the relevant provisions of the Act and the Rules have not been retrospectively amended. We see no force in this argument, for the provisions as they stand certainly validate the defects pointed out in the earlier judgment of this

Court. It is true that the relevant sections and the Rules have not been retrospectively amended by the Ordinance, but this in our opinion was unnecessary. Retrospective amendment may be necessary when it is desired to change the law; but it seems that so far as Section 11 is concerned, the legislature did not intend that the control of the State Government over levy of fees should be done away with for the future also. Therefore, all that was necessary in that respect was to validate the past actions and this is specifically provided for by Sub-sections (2) and (3) of Section 29-B.'

30. The case of 1962 MPLJ 849: (AIR 1962 Madh Pra 342) no doubt lends some support to the petitioners, but we explained the conclusion reached in that case in 1964 MPLJ 43. (AIR 1964 Madh Pra 45) and 1964 MPLJ 637: (AIR 1965 Madh Pra 6) and, in the last mentioned case, we pointed out that, in that case, the petitioners had concentrated their attack on the new Section 31-A, which had been inserted by the Minimum Wages (Madhya Pradesh Amendment and Validation) Article 1961, and that, upon examination, its language was not found either apt or sufficient to effectuate the result sought to be achieved.

31. The case of 1964-1 SCR 897: (AIR 1963 SC 1667) illustrates that, when it is also desired to change the law prospectively, validation may be effected by amending the relevant enactment and giving to it retrospective effect. The observations of Gajendragadkar, J. (as he then was) to the effect that, in order to cure an infirmity on account of which a law was struck down, it is competent to the appropriate legislature to pass a validating law so as to make it retrospectively effective do not indicate that that is the only allowable method of effecting validation.

32. The case of AIR 1962 SC 1517 (supra) discloses a combination of two methods. Wanchoo, J., delivering the judgment, stated:

'As for the establishment of market committees, an amendment has been made in Section 5-AA of the Act deleting the provision by which a market could be established only if so required by the State Government. This amendment is prospective. It could have been made retrospective also and in that case sub section (1) of Section 29-B may not have been necessary. The legislature however

adopted the method of amending Section 5-AA prospectively and making a separate provision for validating the establishment of markets in Sub-section (1) of Section 29-B. We see no reason why it should be held that the validation made by Sub-section (1) is not sufficient because the Legislature has adopted one method rather than the other for carrying out its purpose.'

33. Since, as I have endeavoured to show in the foregoing paragraphs, it is not always necessary for validating past acts to amend the law with retrospective effect, the point is whether, apart from that consideration, Section 3 (1) of the Act has succeeded in achieving the object for which it was enacted. It is urged that the provisions of Section 3 (1) of the Act amended the Central Provinces Local Self-Government Act, 1920, and therefore it had to be made retrospective in operation. Although retrospection is postulated by the clause 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications/notices', I do not consider that it can be construed as actually amending the repealed Act of 1920.

34. In my opinion, the amendment contemplated by the clause 'as if the enactment stood amended. . . ' is fictional and not factual. The Legislature had, for certain purposes, introduced a legal fiction. In doing so it has enacted, not that the notifications/notices specified in the Schedule shall be valid as having been issued under an actually amended Act but that they shall be treated as valid as they would be treated if the enactment had stood amended and they had been issued under the amended enactment. When certain acts done under an enactment are required to be regarded as valid 'as if the enactment. . . stood amended. . . ', the only meaning possible from the clear and unmistakable sense of the words is that, although the enactment is not in reality amended, it is required to be treated as if it were so amended,

An example of legal fiction presaged by the words 'as if' will be found in the case of *Peare Dusadh*, AIR 1944 FC 1 (supra) in Section 3 (1) of the Special Criminal Courts (Repeal) Ordinance (19 of 1943). Another example is furnished by Section 7 of the Land Acquisition (Amendment) Act, 1962, which has been considered in *R.L. Arora v. State of Uttar Pradesh*, AIR 1964 SC 1230. The principle that an

expired or repealed Act cannot be amended without re-enacting or reviving it has no application to a legal fiction because, in such a case, no factual amendment is made or contemplated. In *Kedarnath Gupta v. Nagindra Narayan*, AIR 1954 Pat 97, an expired Act was revived and amended and then brought into force. In 1949 FCR 595: (AIR 1949 FC 175), an expired Act was actually amended, without being revived or re-enacted, and then sought to be enforced. It is obvious that both these cases are distinguishable on facts. In this view, I am of opinion that the second ground of challenge also is of no avail to the petitioners.

35. It will be recalled that the coal cess was imposed under Section 51 of the Central Provinces Local Self-Government Act, 1920. which read as follows:

'51 (1) Subject to the provisions of any law or enactment for the time being in force, a district council may, by a resolution passed by a majority of not less than two-thirds of the members present at a special meeting convened for the purpose, impose any tax, toll or rate rather than those specified in Sections 24, 48, 48-A, 49, 49-A and 50.

(2) The first imposition of any tax, toll or rate under Sub-section (1) shall be subject to the previous sanction of the Provincial Government.

The provisions of Sub-section (2) of Section 51 of the said Act added by Section 7 of this Act shall apply to all taxes, tolls or rates which have been imposed under Section 51, but for the assessment and collection of which no rules have been made under Clause (xv) of Sub-section (1) of Section 79 of the said Act, before the commencement of this Act.

(3) Nothing in this section shall authorise the imposition of any tax, toll or rate which the Provincial Legislature has no power to impose in the province under the Government of India Act, 1935.

Provided that a district council, which immediately before the commencement of Part III of the said Act, was lawfully levying any such tax, toll or rate under this section as then in force, may continue to levy that tax, toll or rate until provision to the contrary is made by the Central Legislature.'

In AIR 1964 SC 1013 (supra), the Supreme Court held that the first imposition mentioned in Sub-section (2) above included every enhancement in the rate and required previous sanction of the State Government and that, since such sanction had not been obtained, the enhancements made in the rate of coal cess in the years 1943, 1946 and 1947 were invalid. It is contended that the Supreme Court struck down the enhancements for want of the previous sanction requisite under Sub-section (2) and, therefore, those enhancements could not be validated without giving to the Independent Mining Local Board the power to make them without such sanction. In my opinion, a simple enacting formula like '. . . shall be deemed to be, and to have always been, valid. . . .' is usually adequate for validation because it is regarded as sufficiently comprehensive to cover and cure all infirmities. The Khandwa Municipality (Validation of Tax) Act, 1941, which has already been noticed, is such an example. The point is that, for validating past acts, the Legislature is not expected to meet the reasons given for regarding them as invalid. So, in 19G2 Supp (2) SCR 380: (AIR 1962 SC 945) (supra). Gajendragadkar, J. observed:

'In validating the elections to the Cuttack Municipality, the Ordinance was not expected or required to cover the reasons given by the judgment or the finding recorded in it.' (page 394 of SCR Supp): (at p. 952 of AIR).

This apart, the legal fiction introduced by the Legislature does envisage, as I will show in the sequel, the existence of such power in the Board without the sanction of the State Government.

36. As I have already indicated, Section 3 (1) of the Act would have been fully effective as a validating enactment if, without any qualification, it had merely said '... cesses imposed, assessed or collected or purported to have been imposed, assessed or collected by the Board in pursuance of the notifications/notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been, validly imposed, assessed or collected....'. The question is whether this position is affected by the addition of the clause 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications/notices'. It is contended that the addition of

this qualifying clause renders Section 3 (1) of the Act to be an act of superfluous effort because, without conferring any power on the Board to impose the rate without previous sanction of the State Government, it purports to clothe it with the power which it had already possessed under Section 51 (1) of the Act of 1920 and the rules made thereunder. Plausible as this argument is, it is, in my opinion, unconvincing.

37. By inserting the clause 'as if the enactment. .. stood amended at all material times so as to empower the Board to issue the said notifications....', the Legislature created a legal fiction and required the notifications to be treated as issued under the amended enactment though, in reality, they were not so issued. Now, whenever a statute enacts a legal fiction, the Court must ascertain for what purpose it was created and give full effect to it So Lord Justice James in *Ex Parte, Walton, In re Levy*, (1881) 17 Ch D 746 at p. 756 observed:

'When a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.'

Again, in *East End Dwelling Co. Ltd. v. Finsbury Borough Council*, 1952 AC 109, Lord Asquith observed at p. 132 as follows:

'If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.'

These observations were recalled with approval in *State of Bombay v. Pandurang Vinayak Chaphekar*, 1953 SCR 773: (AIR 1953 SC 244) and *Commissioner of Income-tax v. Teja Singh*, 1959 Supp (1) SCR 394: (AIR 1959 SC 352). In the last-mentioned case, Venkatarama Aiyar. J. stated:

'It is a rule of interpretation well settled that in constructing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate.' (page 401 of SCR Supp): (at p. 355 of AIR).

38. If, as I think, Section 3 (1) of the Act would have validated the past imposition and collection of the cess at the enhanced rates even without the clause beginning with the words 'as if', it seems to me that that clause has been inserted, not for validating them, but for qualifying the validation already effectuated by the preceding words and thereby delimiting the gamut of its operation. In other words, the validation as made by an Act of the State Legislature passed in 1964 is not intended to be absolute. It is qualified and conditioned by the following words incorporated in the clause to the effect that the acts sought to be validated are to be deemed to be as valid as they would be valid if competently done under the Central Provinces Local Self-Government Act, 1920, enacted with the previous sanction of the Governor-General as required by Section 79(2) of the Government of India, 1915. In AIR 1964 SC 1230 (supra), the Supreme Court construed a like clause occurring in Section 7 of the Land Acquisition (Amendment) Act, 1962, in a similar sense. Section 7, which has been just mentioned, reads:

'Notwithstanding any judgment, decree or order of any Court, every acquisition of land for a company made or purporting to have been made under Part VII of the principal Act before the 20th day of July 1962, shall in so far as such acquisition is not for any of the purposes mentioned in Clause (a) or Clause (b) of Sub-section (1) of Section 40 of the Principal Act be deemed to have been made for the purpose mentioned in Clause (aa) of the said subsection, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be. and shall be deemed always to have been, as valid as if the provisions of Sections 40 and 41 of the Principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken.

Explanation, xx xx xx'.

Wanchoo, J., who delivered the majority judgment, spoke of the clause beginning with the words 'as if' as creating the second fiction in regard to which he observed as follows:

'In the view we have taken of the meaning of Clause (aa) and the meaning of the first fiction introduced in Section 7 of the Amendment Act, all that the second fiction in Section 7 of the Amendment Act says is that when the first fiction is satisfied the second fiction will come into force and every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of Ss, 40 and 41 of the Act, as amended by the Amendment Act, were in force at all material times. In effect therefore Section 7 provides that even though acquisitions made before July 20, 1962, do not satisfy the conditions of Clause (a) and Clause (b) of Section 40 (1), they will be valid if they satisfy the conditions of Clause (aa) as introduced by the Amendment Act, as if that clause was in existence when the acquisition was made before July 20, 1962.'

The advantage of making such a provision attracting Section 143 (2) of the Government of India Act, 1935, and Article 277 of the Constitution, which save certain taxes already lawfully levied by municipalities and other local authorities like the Board and thus make them immune from challenge on certain grounds, is obvious. It is not, however, necessary to consider here that aspect of the case.

39. Having indicated the purpose for which the fiction was created, it is now necessary to construe it and to give effect to it within its proper scope. The fiction requires:

(i) that the Central Province Local Self-Government Act, 1920, shall at all material times be treated as amended; and

(ii) that it shall be treated as so amended that it empowered the Board to issue the notifications/notices which had been successfully challenged.

In my opinion, this power of the Board to issue the notifications/notices has to be considered, not independently, but in the context of the original Act being treated

as amended and the two together have to subserve the purpose of the fiction, namely, to condition and limit the validation and not to destroy it altogether because the principles of construction are that the actual words of a statute must be construed, that they should be read together and that, if possible, they should be so construed as to give to them a meaning and not to render them meaningless. These principles have been stated in Halsbury's Laws of England, Simond's Edition, Volume 13. page 389, as follows:

'If it is possible, the words of a statute must be construed so as to give a sensible meaning to them, *ut res magis valeat quam pereat*. A statute must, if possible, be construed in the sense which makes it operative, and nothing short of impossibility so as to construe it should allow a Court to declare a statute unworkable. Thus where a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the Courts must decide what meaning the statute is to bear, rather than reject it as a nullity. It is not permissible to treat a statutory provision as void for mere uncertainty, unless the uncertainty cannot be resolved, and the provision can be given no sensible or ascertainable meaning and must therefore be regarded as meaningless.

Where the main object and intention of a statute are clear, it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge on the part of a draftsman, unless such language is infractable.'

The construction commended to us for acceptance lays undue stress upon empowering the Board to issue the notifications/notices in disregard of other words of Section 3 (1) of the Act indicating that such power has to flow from the original Act, not unamended. but regarded as amended and also in disregard of the further consideration that, if we were to adopt that construction, we should be construing the Act in order to defeat its object rather than with a view to carrying its object into effect. I am unable to accept this construction because, in my opinion, the object of the Act can be carried into effect by Section 51 of the Central Provinces Local Self-Government Act, 1920, being treated as so amended that the requirement of previous sanction of the Provincial Government for a first imposition of tax is regarded as dispensed with. I need hardly say that the words employed in Section

3 (1) of the Act are sufficiently wide in amplitude to permit that course. It is no doubt true that the meaning would have been clearer and more explicit if the words 'without previous sanction of the Provincial Government' were inserted at an appropriate place in Section 3 (1) but, even as it stands, such a construction is, as shown, not only possible but also necessary for carrying the object of the Act into effect.

40. The petitioners in these nine cases have raised other grounds also for challenging the validity of the Act but, since those grounds were not argued. I have not expressed any opinion about them In regard to the two grounds pressed before us, I am of the view that they cannot be regarded as showing, for the reasons already set out in the foregoing paragraphs, either that the provisions of Section 3 of the Act are invalid or that they are altogether ineffective I would, therefore, dismiss these nine petitions with all costs.

ORDER OF REFERENCE

41. As our reasoning and conclusions differ, let these petitions be placed before the Chief Justice for the constitution of a Bench for the hearing and disposal of the petitions.

OPINION

Shiv Dayal, J.

42. This matter has been referred to me because of difference of opinion between the Chief Justice and Pandey, J. In this petition and the other 8 petitions, which are allied, the effectiveness of the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964 (Act No. 18 of 1964) has been challenged. This Act will hereinafter be referred to as the Validating Act.

43-44. Under the Central Provinces Local Self-Government Act, 1920, a District Council was given the power to impose any tax, toll or rate (except those which were specified in certain sections of that Act) but the first imposition was subject to the previous sanction of the Local Government. Section 51 read as follows:

'51 (1) Subject to the provisions of any law or enactment for the time being in force, a district council may, by a resolution passed by a majority of not less than two-thirds of the members present at a special meeting convened for the purpose, impose any tax, toll or rate other than those specified in Sections 24, 48, 49 and 50.

(2) The first imposition of any tax, toll or rate under Sub-section (1) shall be subject to the previous sanction of the Local Government.'

The Independent Mining Local Board (hereinafter called the Board) had the status and powers of a District Council under the Act. On 12 March 1935, the Board, in exercise of the powers conferred by Section 51 of the Act resolved to impose 'coal tax' or 'coal cess' at three pies per ton on 'coal, coal dust or coke, manufactured at the mine, sold for export by rail or sold otherwise than for export by rail within the territorial jurisdiction of the Independent Mining Local Board' Having received the sanction of the Local Government on 16th December 1935, this imposition was brought into effect from 1st January 1936 by a notification. Subsequently, on 22nd December 1943, by another notification issued by the Board, the rate was increased to four pies per ton. Again, on 29th July 1946, by yet another notification issued by the Board it was raised to seven pies. Lastly, by a notification issued by the Board on 19th July 1947, it was raised to 9 pies. The imposition under the last mentioned three notifications, whereby the rate was increased to four pies, seven pies and nine pies respectively, did not receive any sanction of the local Government as required under Section 51 (2) of the Act.

45. The Act of 1920 was repealed and replaced by the C.P. and Berar Local Government Act, 1948. Section 192 of the latter Act contained the usual saving clause under which 'all taxes imposed or assessed, cesses fees, tolls or rates levied and in force immediately before the commencement of this Act shall continue to be in force and, in so far as they are not inconsistent with this Act, they shall be deemed to have been respectively... .imposed, assessed or levied... .under this Act until new provisions are made under the appropriate provisions of this Act.'

46. By a petition under Article 32 of the Constitution, the validity of the original imposition, which was made in 1935 at the rate of three pies per ton was challenged before the Supreme Court. The petition was dismissed. Their Lordships held that the original imposition of the tax in 1935 was valid under Section 292 of the Government of India Act, 1935, and Article 872 of the Constitution. The judgment is reported in 1952-1 SCR 1: AIR 1961 SC 964. It appears that at the hearing of that petition, it was sought to contend that the increase in the rate of tax was invalid, but the Supreme Court did not permit that contention to be raised as it did not find place in the petition.

47. The petitioners then filed separate applications under Article 226 of the Constitution in this Court. They challenged the validity of the notice of demand under which they were called upon to pay coal tax at the rate of nine pies per ton. The petitions were dismissed by applying the principle of res judicata. On appeal, the Supreme Court held that the petitioners were not precluded from raising new contentions. Their Lordships came to the conclusion that every fresh imposition levied at an increased rate fell within the purview of Sub-section (2) of Section 51 of the Act and, therefore, such imposition necessarily required the previous sanction of the Government. In the result, the three increased impositions (four pies, seven pies and nine pies respectively) were struck down. The decision of the Supreme Court in AIR 1964 SC 1013 is dated 24th September 1962.

48. On 20th May 1964, the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhyadesh, 1964, (Ordinance No. 5 of 1964) was promulgated. Eventually the Ordinance was replaced by the impugned validating Act, the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964, which came into force on 26th September 1964. The preamble of the Act reads thus:

'An Act to validate the imposition and collection of cess on coal by certain local authorities.'

Section 3 reads thus:

'3. Validation of imposition, assessment and collection of cess--Notwithstanding anything contained in any judgment, decree or order of any Court, cesses

imposed, assessed or collected or purported to have been imposed, assessed or collected by the Board in pursuance of the notifications/notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been, validly imposed, assessed or collected as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications/notices and accordingly:

(a) all acts, proceedings or things done or taken by the Board or by any officer of the Board in connection with the imposition, assessment or collection of such cess shall, for purposes, be deemed to be and to have always been done or taken in accordance with law;

(b) any cess imposed or assessed in pursuance of the said notifications/notices before the 20th day of May 1964 but not collected before such date may be recovered (after assessment of the cess where necessary) in the manner provided therefor:

(c) no suit or other proceedings shall be maintained or contained in any Court against the Board or any person or authority whatsoever for the refund of any cess so paid;

(d) no Court shall enforce any decree or order directing the refund of any cess so paid.

49. In the opinion of the Chief Justice, the Validating Act is a futile attempt to cover a lost ground and to cure the infirmity on the basis of which the Supreme Court struck down as invalid the increase in the rate of cess from 3 pies to 9 pies, and for that reason Section 3 of the Validating Act is ineffective and invalid. In his view, the Validating Act does not, on its own authority and under its own sanction, impose coal cess at the rates mentioned in the three notifications independently of the provisions of the Act of 1920. Nor does it validate the imposition made by the Board under the aforesaid notifications by giving to the Board power to impose the cess without obtaining the previous sanction of the Government at the time the imposition was made.

50. On the other hand, Pandey, J. is of the opinion that it is not always necessary to amend the law with retrospective effect with a view to authorising the doing of these acts at the time when they were actually done without such authority and that diverse methods are available to the legislature for effecting validation of past acts and any one of them is as efficient and sufficient to achieve the object as any other. One of such methods is simple validation effected by employing an appropriate enacting clause without amending the law with retrospective effect. The second method is to make a retrospective amendment, which method is usually adopted when it is desired to change the law. There could also be combination of two or more methods. Referring to the clause 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue notifications/notices ', he is of the opinion that the amendment contemplated by it is fictional and not factual and the legislature created a legal fiction and required the notifications to be treated as issued under the amended enactment, though in reality they were not so issued, and that this clause does not affect the position as it would have been if that clause was not there. In his judgment that clause is an act of superfluous effort. He has also observed that the meaning would have been more clear and explicit, if the words 'without previous sanction of the provincial Government' were inserted at an appropriate place in Section 3 (1) of the Validating Act, but, even as it stands, such a construction is not only possible but also necessary for carrying the object of the Act into effect.

51. At the hearing of these petitions Shri Dharmadhikari made an application before me for being permitted to address on certain other points, which he had raised in the other petitions but on which the referring Division Bench has expressed no opinion. He wanted to press all the other grounds embodied in those petitions. I did not hear him on those points because, in my view. I can express my opinion on those points alone on which the Judges constituting the Division Bench have differed. Shri Dharmadhikari relied on Rule 11, Ch. I, Part I. of the High Court Rules. It reads thus:

'When in any appeal or civil matter heard by a Bench of two Judges, the Judges composing the Bench differ on a point of law and state the point on which they

differ the proceedings shall be placed before the Chief Justice for the purpose of nominating one or more of the other Judges to deal with the matter.'

The argument is that 'matter' here denotes the whole case. Learned counsel further lays emphasis on the order passed by the Division Bench. It is in these words:

'As our reasoning and conclusion differ, let these petitions be placed before the Chief Justice for constitution of a Bench for the hearing and disposal of petitions.'

In order to truly interpret Rule 11 and the order passed by the Division Bench, I must turn to Clause 26 of the Letters Patent.

'26. Single Judges and Division Courts: And we do hereby declare that any function which is hereby directed to be performed by the High Court... in exercise of its original or appellate jurisdiction may be performed by any Judge or any Division Court thereof.... and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges be equally divided, they shall state 'the point on which they differ' and the case shall then be 'heard upon that point' by one or more of the other Judges and 'the point shall be decided' according to the opinion of the 'majority' of the Judges who have heard the case including those who first heard it.' (Underlined (here in ' ') by me)

It is quite clear that the case was to be heard by me upon that point, that is to say, the point on which the Judges constituting the Division Court have differed, but no other point. The point on which they have differed shall be decided in the manner indicated. The very language of Clause 26 makes it undoubted that the Judge to whom the matter is referred in consequence of the difference of opinion between the Judges constituting the Division Bench, shall not hear the case upon any other point, because his opinion on such other points will not itself be the decision of the Court; his opinion on the point or points on which the Judges constituting the Division Court have differed will be the decision of the Court. The reason is that every point has to be decided according to the opinion of the majority of the

Judges who first heard the case and the Judge who has heard the case in consequence of the difference of opinion. This is not possible unless and until the Judges constituting the Division Bench have heard upon the other points.

The duty of the referee Judge is only to express an opinion on the point or points of difference and to return the case with his opinion to the Division Bench. It is the Division Bench, seized of the case, which must pronounce the final judgment according to the method provided by Clause 26 of the Letters Patent. If the referee Judge passes the final order, it would cause difficulty and anomaly with regard to the question of forum in case of a further appeal. If the referee is a single Judge and he decides the appeal or other matter finally, will a further appeal lie? If it will, the position will be anomalous. Useful assistance can be derived from the analogous provisions contained in Section 98, Civil Procedure Code. My view finds support in *Royal Calcutta Turf Club v. Kishan Chand*, AIR 1943 Lah 84 (KB) (89 column 1; also observations of Blacker, J. on the same page, column 2 FB); *Mt. Akbari Begam v. Rahmat Hussain*, AIR 1933 All 861 (874) (FB); and *State of Bihar v. Ram Ballabh Das*, AIR 1960 Pat 400 (402).

For these reasons, I am of the opinion that 'matter' in Rule 11 of the High Court Rules, means the point or points on which the Judges constituting the Division Bench have differed and not the whole case. It seems to me that, under Rule 11 of the High Court Rules, read with Clause 26 of the Letters Patent, a Division Bench cannot refer the entire case to a third Judge without expressing its opinion on all the points and that the Judge to whom the case is referred cannot enter into those points on which the Judges constituting the Division Bench have not differed. Rule 11 itself requires that the Judges composing the Division Bench have to state the point on which they differ and it is in this light that I read the Order of the Division Bench in the present case. Although the point has not been specifically stated in the order of reference, it is sufficiently indicated by the words 'as our reasoning and conclusions differ'. Their reasoning and conclusions differ only on the point which they have considered in their differing opinions, but on no other point. The point on which they have differed is whether the validating Act makes the three notifications specified in the Schedule thereto effective in regard to the imposition of the tax and the arts done by the Board in pursuance thereof. I shall, therefore,

express my opinion on that question only.

52. It is well settled that within its competence a legislature has the power to make a retroactive law and thereby effectuate the doing of a thing as it desires that it should have been done. It is equally well established that subject to any limitation imposed by the Constitution, a competent legislature has the power to make a law imposing a tax retrospectively. The legislative power conferred on the legislature includes the subsidiary or auxiliary power to validate laws, which have been found to be invalid. If Courts strike down a law as being invalid for one infirmity or another, the appropriate legislature is competent to cure that infirmity and make the law effective, retrospectively by making a validating law. See 1964-1 SCR 897: (AIR 1963 SC 1667): (1962) 1 SCR 633: (AIR 1961 SC 1486): (1962) 2 SCR 1; (AIR 1961 SC 1534); 1940 FCR 110: (AIR 1941 FC 16) and 1958 SCR 1422: (AIR 1958 SC 468). Thus, the legislature was competent to make a new law imposing coal cess at the rate of 9 pies per ton, or at any other rate and for such period or periods retrospectively as it thought fit. This could be done by enacting a provision independent of any other law. That would have rendered unnecessary to amend the then existing law which, for a certain lacuna, could not produce the desired effect. But that is not what has been done in the present case.

As I read it, Section 3 of the Validating Act empowers the Board to issue the three notifications by introducing a fiction that the enactment, under which they were issued (C.P. Local Self-Government Act, 1920), stood amended at all material times. The Validating Act does not contain an independent charging section imposing coal tax at four pies, seven pies and nine pies retrospectively with effect from the dates on which the notifications were issued by the Board. To put it differently, Section 3 of the Validating Act is not an independent charging section; it does not by itself impose any tax. All that it endeavours to do is to retrospectively amend the law which existed at the relevant time, by introducing a fiction: 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications'. It merely empowers the Board with retrospective effect to issue those notifications which it had actually issued under that law, that is, the C. P. Local Self-Government Act, 1920, and the Rules thereunder.

53. It has, therefore, to be seen whether the coal cess, which was actually imposed at the enhanced rates, and which is challenged, can be sustained on the law then in force, when read along with the amendment introduced by the Validating Act. As just now said the Validating Act merely confers the power on the local Board to issue notifications and notices under the Act. It does not do anything beyond that. On a perusal of Section 51 of the C. P. Local Self-Government Act, 1920; the notifications issued by the Board under Section 51 and the relevant Rules; and the decision of the Supreme Court in the second Amalgamated Coal Fields, AIR 1954 SC 1013 it becomes quite clear that the Act of 1920, nor any provision thereof was invalid either for want of legislative competence or for any other defect.

Section 51 was valid and operative. There being no invalidity in the Act or Section 51 thereof, there was no question of validating it. So also the notifications dated 22nd December 1943; 29 July 1946 and 19th July 1947 were not invalid for lack of authority for their issuance, the power being admittedly there in the Act and the Rules framed thereunder. But they were held by the Supreme Court to be ineffective and unenforceable for want of sanction of the local Government. It was this lacuna which rendered them nugatory. Therefore, to nullify the defect of the Supreme Court decision and to resurrect the notifications and the acts of the Board in pursuance of them, the only thing which was required to be done was to retrospectively dispense with the sanction of the local Government. But this is not what the validating Act does. The result is that in spite of the Validating Act, the imposition of coal cess by issuance of a notification, could not be effective until and unless the local Government sanctioned it as required under Section 51 (2) of the Act. In other words, the Validating Act is futile (See AIR 1962 Madh Pra 342)

54. I shall now advert to the cases relied on by the learned Advocate-General. In 1940 FCR 110: (AIR 1941 FC 16); indeed, the laws existing at the time when the remissions were granted (Agra Tenancy Act 1926 and the Oudh Rent Act 1886) were not retrospectively amended so as to confer authority under that Act for giving any remission in rent, but validation was effectuated independently under Section 2 of the U. P. Regularise of Remission Act of 1938, on its own authority. Likewise, in 1944-6 FCR 61: (AIR 1944 FC 1) the sentences passed by Special

Criminal Courts under an ordinance, which was ultra vires, were themselves validated independently under Section 3 of the Special Criminal Courts (Repeal) Ordinance 19 of 1943. So also in 1962-1 SCR 633: (AIR 1961 SC 1486), under Section 2 of the Khandwa Municipality (Validation of Tax) Act, 1941, the tax on trade of ginning and pressing cotton by means of steam or mechanical process within the limits of the Khandwa Municipality, which was imposed by notification dated 21st November 1922 was to be deemed to have been legally imposed from the date of its imposition.

The C. P. and Berar Municipalities Act, 1922 was not amended by that Act of 1941. In (1962) Supp (2) SCR 380: (AIR 1962 SC 945) Sections 3 and 4 of the Orissa Municipal Election Validation Ordinance (I of 1959) directly and on its own authority validated the electoral rolls of the Cuttack Municipality, without amending the Act under which they were prepared and published. In (1962) Supp (3) SCR 875: AIR 1962 SC 1517 their Lordships up held Section 29B of the Bombay and Saurashtra Agricultural Produce Markets (Gujarat Amendment and Validating Provisions) Ordinance No. 1 of 1961. Sub-section (1) of which validated 'any action taken or anything done by a market committee or any other authority' after the establishment of a market therein as aforesaid but before the commencement of the Ordinance which but for the provisions of that clause would have been invalid.

Sub-section (2) similarly validated fees levied and collected on agricultural produce bought and sold in a market area before the commencement of the Ordinance by a market committee at the rates specified in its bye laws. And, Sub-section (3) validated all licenses issued to operate in a market area or any part thereof and fees charged therefor before the commencement of the Ordinance by a market committee. Their Lordships found that those provisions had been made in the Validating Act to cure the defects which had earlier been discovered by the Supreme Court. What is worthy of note is that the validating Ordinance did not amend Section 11 or Rules 66 and 67. Mr. Justice Wanchoo, speaking for the Court, observed that it was unnecessary to amend retrospectively the sections and the Rules 'for the provisions as they stand certainly validate the defects pointed out in the earlier judgment of this Court.'

55. It will thus be seen that in all these decisions of the Supreme Court, to which reference has been made, the desired effect was brought about by the provisions of the validating enactments independently and on their own authority, without amending the invalid or defective law under which action had been taken and without making validation dependent upon such amendment.

56. That is not the position which obtains in the present case. Here, the validation of things done, which could not be given legal effect to by reason of a condition having not been fulfilled, was effectuated by amending the C.P. Local Self-Government Act, 1920, and making the validation dependent upon such amendment. This is not to say that validation cannot be effectuated by that process. It certainly can be but then it will have to be seen whether the amendment made in the validating Act effectively produces the desired result. The case of AIR 1962 SC 1517 (*supra*) affords an instance where some actions were validated by a direct and independent legislation without amending and relevant Act which had earlier been found to be defective in those regards, while the Act was amended prospectively in regard to some other provisions.

In that case, Section 5-AA was amended by deleting the provisions under which a market could be established only if so required by the State Government. What the legislature did was, on the one hand, if amended Section 5-AA prospectively so that a new market could be established and the condition of its being so required by the State Government was dispensed with, on the other hand, the earlier establishment of the markets was validated by a separate and independent provision contained in Section 29-B (1) The latter effect could also be produced by amending Section 5 AA retrospectively. But. if the legislature chose to validate its actions by a separate and independent provision, it was free and competent to do so. This is what Mr. Justice Wanchoo, delivering the judgment of the Court, said:

'As for the establishment of market committees, an amendment has been made in Section 5-AA of the Act deleting the provision by which a market could be established only if so required by the State Government. This amendment is prospective. It could have been made retrospective also and in that case Sub-section (1) of Section 29-B may not have been necessary. The legislature,

however, adopted the method of amending Section 5-AA prospectively and making a separate provision for validating the establishment of markets in Sub-section (1) of Section 29-B. We see no reason why it should be held that the validation made by Sub-section (1) is not sufficient because the legislature has adopted one method rather than the other for carrying out its purpose.'

Their Lordships, therefore, rejected the contention that the provisions of the validating Ordinance were insufficient to validate the defects, which were noticed in the earlier judgment of the Supreme Court, inasmuch as the relevant provisions of the Act and the Rules had not been retrospectively amended.

57. The dictum in Mohammadbhai's case, AIR 1962 SC 1617 (*supra*) cannot be called in aid by the respondents here. That case would certainly have been the authority to support the validating Act, if it had Imposed the coal cess or tax by a separate and independent provision without amending the provisions of the enactment under which the notifications were issued and without making the validation dependent upon such amendment, and, in that case, it could not be legitimately argued that such validation was insufficient or ineffective because the law was not amended. In the present case, the competent legislature did not, by a legislation, independently of the provisions of the Act of 1920, impose coal tax at four pies, seven pies or nine pies with retrospective effect from 22 December 1943, 29 July 1946 or 19th July 1947 respectively. Such a law did not depend upon, nor necessitated amendment of the C. p. Local Self-Government Act, 1920. Independently of that enactment and without amending it, the desired result could be brought about. But, that is not what the legislature has done. The Validating Act, instead of enacting an independent charging section, imposing tax and prescribing rates from the dates from which they were to be charged, attempted to make the three notifications effective by amending the Ad, of 1920 and conferring power on the Board to issue them as if the Board had no such power before the amendment.

58. Having seen that the Validating Act does not under its own sanction and on its own authority impose coal cess at the rates mentioned in the three notifications slated above, what is now to be seen is whether the amendment introduced by the

Validating Act produces the desired result The amendment introduced is in these words:

'As if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications.'

In its full construction, Section 3 must be read thus:

'Notwithstanding anything contained in any judgment cesses imposed, by the Board in pursuance of the notifications. . . shall, for all purposes, be deemed to be and to have always been validly imposed. ... as they could have been imposed (understood) if the enactment, under which they were so issued, stood amended at all material times so as to empower the Board to issue the said notifications. . . .'

It is plain enough that the only thing which the amendment did was to empower the Board to issue the said notifications. The fictional amendment is limited to investing the Board with the power to issue the notifications But, it was not the power to issue notifications, which was lacking. The Board had already had that power under Section 51 and the relevant Rules. This is common ground The Supreme Court had struck down the imposition of tax at the increased rates for the sole reason that sanction of the Local Government had not been obtained. This requirement, without which the notifications were held ineffective in law, could be dispensed with, retrospectively, by the Validating Act. That was !he only thing which was to be cured. But the amendment introduced by the validating Act did not do it. The amendment, therefore, brought about no change in the situation: it remained the same as it obtained when the Supreme Court decid ed the second amalgamated coalfields. AIR 1964 SC 1013. The Validating Act introduced an amendment which was not required. It did not by the amendment, dispense with the requirement which came in the way to make the notifications effective It is one thing to invest a body with the power to issue a notification, but it is different to remove the hurdle which renders it nugatory. The Validating Ad omits to remove the hurdle.

59. The result of the above discussion is that, in the first place, the Validating Act did not contain a provision under the sanction and on the authority of which

independently of the provisions of the C.P. Local Self-Government Act, 1920, cess at the rates of four pies, seven pies and nine pies was imposed, nor was the requirement contained in Section 51 (2) of the C P Local Self-Government Act, 1920. dispensed with as regards the three notifications issued by the Board on 22nd December 1943, 29th July 1946 and 19th July 1947. Either of these measures would have made the said notifications effective, and. effective from the dates on which they were issued But the Validating Act does not do either. On this analysis, the Validating Act was to borrow the expression from Jatindra Nath's case. 1949 FCR 595: (AIR 1949 FC 175) 'a useless attempt to cover a lost ground and does not cure the defect'.

60. Some stress was laid by the learned Advocate General on the non obstante expression with which Section 3 of the Validating Act opens. In my opinion, it cannot be read in isolation but has got to be read along with the clause 'as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications,' which clause is part of the same sentence, and which clause lays down the basis on which the imposition, assessment and collection are to be deemed valid. If the clause 'as if the enactment. notifications' had not been there, the effect of Section 3 of the Validating Act would have been different. I have already stated how Section 3 of the Validating Act reads in its full construction.

61. Shri Sen further contended that the amendment introduced by the Validating Ordinance and the Validating Act cannot be given effect to inasmuch as the C. P. Local Self-Government Act, 1920, had already been repealed by the Local Government Act, 1948, In AIR 1949 FC 175 (Supra). Mr. Justice Mahajan said:

'Act V (5) of 1949 enacted an amendment in the original Act of 1947 which had died a natural death on 16th March 1948. Unless that Act was revived, no amendment made in it could be of any effect. The only apt manner of reviving the expired Act was by enacting a fresh statute or by enacting a statute expressly saying that Act is herewith revived,'

And. Mr. Justice Mukherjee observed thus:

'It is certainly competent to the Legislature in exercise of its plenary powers to revive or re-enact a legislation which has already expired by lapse of time The legislature is also competent to legislate with retrospective effect: but neither of these things seems to have been done in the present case. The Legislature proceeds on the footing that the old Act was alive at the date when the now Act was passed, and the new Act merely purports to amend one of the provisions of the old Act. There is not in existence and from the fact that the Legislature purports to amend an Act, it could not be held as a matter of construction that the intention of the Legislature was to renew a dead Act or to make a new enactment on the same terms as the old with retrospective effect '

62. The learned Advocate General emphasises that since the Validating Act would have achieved the desired purpose had the clause 'as if notifications" been omitted. or the words 'without previous sanction of the local Government' had been added after the word 'notifications' in the aforesaid amending clause, this Court should read Section 3 of the Validating Act in that form so as to make it effective I have given a very anxious thought to it but I am unable to persuade myself to accept it In the present case, the question is not of the vires or constitutionality of the Validating Act; the question precisely is whether the Validating Act has succeeded in producing the desired effect, or in other words, whether the Validating Act has made effective the notifications which were held by the Supreme Court as without legal effect. If it is held that it has not, it is not the same thing as to say that the Validating Act is unconstitutional or ultra vires. A legislation may be intra vires and constitutional yet, it may not achieve the purpose for which it was enacted.

Doubtless, it is not given to the Court, through the process of interpretation, to add words which are not there in an enactment or to subtract from it words which are there. That amounts to legislation in the garb of interpretation. The making of law is a matter for the legislature and not for the Courts and the Courts do not base the construction of a statute on their view of what the legislature ought to have done. It is not competent to any Court to imply a provision, which is not in the statute, for remedying an omission. In *Gladstone v. Bower*. 1960-3 All ER 353, Delvin, L. J., says;

'The Court will always allow the intention of a statute to override the defects of wording but the Court's ability to do so is limited by the recognised canons of interpretation. . . . We cannot legislate for casus omissus. I may be sure in this case that I know exactly what Parliament would do if it perceived a gap. But, if the rule were to be relaxed, sooner or later the Court would be saying what Parliament meant and might get it wrong and thus usurp the law making function. It is a matter of keeping within the recognised canons and they do not permit the Court to supply words if the only (and I emphasise only) ground for their admission is to give legislative efficacy to a statute.'

In *Piare Dusadh*, AIR 1944 FC 1 (supra) it was laid down thus:

'The question has however to be determined by a consideration of the words actually used and not by speculation as to why other words had not been used.'

In 1940 FCR 110: (AIR 1941 PC 16) (supra) with reference to a statute affecting vested rights, it was observed:

'Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability. It is a well established principle that such statutes must be construed strictly and not given a liberal interpretation.'

In *Nalinakhya Bysack v. Shyam Sunder Halder*, 1963 SCR 533: (AIR 1953 SC 148) the Supreme Court laid down as follows:

'It must always be borne in mind, as said by Lord Halsbury in *Commr. for Special Purposes of Income-tax v. Pemsel* 1891 AC 531, that it is not competent to any Court to proceed upon the assumption that the Legislature has made a mistake. The Court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature the Court cannot, as pointed out in *Crawford v. Spooner*, 6 Moo PC 1 (PC) fill the Legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is casus omissus, it is, as said by Lord Russell of Killowen in *Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Co. Ltd.*, AIR 1933 PC 63, for others than the Courts to remedy

the defect.'

In *Shri Ram Narain v. State of Bombay*, AIR 1959 SC 459, it was held:

'If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intention of the legislature. The intention of the legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed Intention of the Legislature.'

In *Firm Hansraj Nathuram v. Firm Lalji Raja and Sons*, AIR 1063 SC 1180. their Lordships have laid down that a section of an Act has to be interpreted as it is and the Court cannot read it as if its language was different from what it actually is. It is not possible for the Court to amend the law.

63. As regards interpretation of a taxing statute, their Lordships have laid down in *Empress Mills, Nagpur v. Municipal Committee, Wardha*, AIR 1958 SC 341, that if in construing a taxing statute, there are two possible interpretations, then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him. And, in *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.*, 1961-2 SCR 189: (AIR 1901 SC 1047) their Lordships say:

'In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.'

64. The learned Advocate General stated that the Janpada Sabha would be ruined if effect is not given to the aforesaid three notifications, and, therefore, the Court should come to its rescue. This approach does not appeal to me, as the remedy lies elsewhere. The desired effect could be, and can be, brought about (right now and without the least possible delay) by a fresh legislation.

65. My opinion is that the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964, (Act No. 18 of 1964), does not Rive legal effect to the imposition of cesses at the rate of four pies, seven pies or nine pies per ton under the Notifications issued by the Independent Mining Local Board on 22 December 1943 29 July 1946 and 19 July 1947, respectively, nor to anything done in pursuance of those Notifications.

FINAL ORDER

66. In view of the opinion recorded by Shiv Dayal, J. on 29th April 1966 who heard this petition on a difference of opinion arising between us, this application is allowed and Section 3 of the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964, is declared to be invalid and the opponents are restrained from giving effect to that section in any manner whatsoever. The petitioners shall set costs of this application. Counsel's fee is fixed at Rs. 200. The outstanding amount of the security deposit shall be refunded to the petitioners.