

**The Union Territory of Pondicherry, Represented by the Chief Secretary to Government of Pondicherry and ors. Vs. Mahe Beach Trading Company, by Its Partners B. Kutti Hassan Haji and ors.**

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**Court :** Chennai

**Decided On :** Apr-22-1975

**Reported in :** (1976)2MLJ297

**Appellant :** The Union Territory of Pondicherry, Represented by the Chief Secretary to Government of Pondicherry

**Respondent :** Mahe Beach Trading Company, by Its Partners B. Kutti Hassan Haji and ors.

**Judgement :**

K. Veeraswami, C.J.

1. The erstwhile French Establishments in India known as Pondicherry, Karaikkal, Mahe and Yanam, which by the Constitution (14th Amendment) Act, 1962, constitute the Pondicherry Union Territory, were divided by the French Government into 17 communes approximating to municipalities or local self government we are familiar with. A French Decree dated 12th March, 1880 governed and regulated the municipal body of each commune. It provided for the setting up of the municipal body consisting of a Mayor and elected Municipal Council, their powers including powers of taxation for municipal purposes, budgets

and procedure. With the de facto transfer under an agreement dated 21st October, 1954 of these French territories to the Indian Government, the Government of India, in exercise of powers conferred by Section 4 of the Foreign Jurisdiction Act, 1947, made on 1st November, 1954 the French Establishment (Application of Laws) Order, 1954 and The French Establishments (Administration) Order, 1954. On 28th May, 1956, there was a Treaty of Cession of these French establishments between the President of India and the President of the French Republic and on 16th August, 1962 their de jure merger with India was carried out through Instruments of Ratification exchanged between the Indian Prime Minister and the French Ambassador, whereby France ceded to India, in full sovereignty the Territory of French Establishments aforesaid. Then followed the Constitution (14th Amendment) Act, 1962 on 28th December, 1962, which came into force from 16th August, 1962. On 16th August, 1962, the Pondicherry Administration Ordinance, 1962 was made, which was replaced on 5th December, 1962 by the Pondicherry (Administration) Act, 1962. By Section 4 of this Act, all laws in force immediately before the appointed day in the former French Establishments should continue to be in force in Pondicherry Union territory until amended or repealed by a competent Legislature, or other competent authority, and by Section 7, all taxes, duties, cesses and fees which, immediately before the appointed day, were being lawfully levied in the former French establishments should continue to be levied in Pondicherry Union territory and to be applied for the same purposes, until other provision was made by a competent Legislature or other competent authority. We are not concerned with the other provisions of the Act except that 'law' has been defined therein to include a decree, so that the decree dated 12th March, 1880 continued to have force. On 10th May, 1963, the Government of Union Territories Act, 1963 was enacted by Parliament in exercise of powers under Article 239-A(1) providing for a local Legislature and Council of Ministers, their powers, procedure and other matters. On 7th August, 1969 the Municipal Council of Mahe decided to levy a Municipal tax of 5 paise on each litre of petrol and diesel oils sold at the petrol pump situated at Puzhitala, Mahe. The Mayor, based on that decision of the Municipal Council, and considering the Decree dated 12th March, 1880, issued an 'Arrete' with effect from 13th January, 1970 for levy of a municipal tax of 5 paise as above said and for collection of the tax by the Receveur Municipal, or the Agent

appointed by him. On a representation by the Mahe Beach Trading Co., which is the respondent in W.A. No. 240 of 1972, the Municipal Council by another Resolution dated 15th May, 1970 decided to reduce the rate from 5 paise to 2 paise on each litre of petrol and of diesel oil with effect from 24th February, 1970 and an Arrete to that effect was later issued on 16th October, 1970, by the Mayor of Mahe, who is one of the appellants in that appeal. On a petition under Article 226 of the Constitution by the respondent in that appeal, Ramaprasada Rao, J., in *Mahe Beach Trading Co. v. Union of Territory of Pondicherry* : (1972)2MLJ213 , held that the tax was on sale of goods, that levy of sales tax was in excess of the Municipality's power of taxation, that the tax also violated Section 7 of the Pondicherry (Administration) Act, 1962, and that finally, the Pondicherry Legislature itself having enacted a General Sales Tax Act applicable to the Union Territory, the Municipal Council in any case, possessed no power to levy a parallel sales tax for municipal purposes. The learned Judge followed his own view and invalidated the levy of 50 paise per bag of sugar by the Villianur Municipality in Pondicherry. From both these orders arise W.A. Nos. 240 and 383 of 1972, which were filed by the Union Territory of Pondicherry and the Mayor of the related Municipality. Since then, the Administrator of Pondicherry promulgated the Pondicherry Municipal Decrees (Levy and Validation of Taxes, Duties, Cesses and Fees) Ordinance, 1973, which provided for levy assessment and collection of taxes, duties cesses and fees for the purpose of the Municipal decree dated 12th March, 1880 and for the validation of tax. s, duties, cesses and fees levied thereunder. This Ordinance came into force on 18th January, 1973, which was replaced by the Pondicherry Municipal Decree (Levy and Validation of Taxes, Duties, Cesses and Fees) Act, 1973. This Act became law on 21st March, 1973, when it received the assent of the President and was published in the Pondicherry Gazette. The Act was given retrospective operation from 18th January, 1973, the date of the Ordinance. The respondents in the appeals have filed two petitions under Article 226 of the Constitution questioning the validity of the Ordinance as well as the Act. There are two other like petitions for the same purpose, in one of which the Toddy Tree Tax and Mahamai Tax on outgoing vehicles imposed by Kottucherry Commune are impugned as invalid. Since the appeals and the writ petitions raise common questions, they have been heard together.

2. Though we agree with the view of Ramaprasada Rao, J., that the Municipal decree of 1880 did not authorise the Municipalities to levy sales tax, on the view we are inclined to take on the validity of the Validation Act, it is not necessary to examine whether the Municipal decree of 1880 gave the municipalities in the erstwhile French Settlement power to levy sales tax, and for that reason we do not give our reasons separately for agreeing with Ramaprasada Rao, J., on that point. On the other two points decided by the learned Judge, we are unable to agree with him. Merely because the Pondicherry Legislature enacted the General Sales Tax Act to raise sales tax for purposes of the Government of Pondicherry, it did not follow that it could not simultaneously authorise the municipalities to raise sales tax for their own purposes. By enacting the Pondicherry General Sales Tax Act the power of the Pondicherry Legislature was by no means exhausted so as to say that in view of it, it could no longer authorise the municipalities to levy sales tax for purposes of the local Government, The Pondicherry Legislature could have collected by means of the Pondicherry General Sales Tax Act a surcharge on General Sales Tax and made over the same to the municipalities for their purposes. Instead the same Legislature without following that procedure, could directly authorise the Municipalities to levy sales tax to meet their needs. In either case, the necessary power was available to the State Legislature. As to the impact of Section 7 of the Pondicherry (Administration) Act, 1962, the matter is dealt with infra in the context of the Validating Act. Before proceeding further, we may observe that if the Validating Act is held to be valid, the appeals will succeed and the writ petitions fail.

3. The attack on the validity of the Pondicherry Municipal Decree (Levy and Validation of Taxes, Duties, Cesses and Fees) Act, 1973 is levelled on three main grounds-

(1) Excessive delegation of legislative power;

(2) The Act is arbitrary and offends Article 14, and inasmuch as it makes no procedural safeguards as to levy, assessment, collection, appeals, limitation and the like it violates Article 19(1)(g); and

(3) Violation of Section 7 of the Pondicherry (Administration) Act, 1962.

Two other points taken for the petitioners are-

(1) The Pondicherry Legislature being a subordinate legislature, it has no power to enact retrospective legislation; and

(2) in any case, the Pondicherry legislature has no power to amend the pre-Constitution laws.

We shall deal with these grounds seriatim.

4. Before we deal with the first ground, we may set out the relevant provisions of the Validating Act which are identical with the Ordinance. Mention has already been made of the object of the Act and the Presidential assent thereto. Section 2 defines 'Government' in terms of the Administrator of the Union Territory of Pondicherry appointed by the President under Article 239 of the Constitution, 'Municipal Commune' as a commune mentioned in Article 1 of the Municipal decree, 'Municipal council' as the body constituted to manage the municipal affairs in a municipal commune, and 'Municipal decree' as the Decree of French Government dated 12th March, 1880, as amended from time to time. Sections 3 and 4 are as under:

3. Any tax, duty, cess or fee which the Legislature of the Union Territory of Pondicherry has power to levy, may subject to any general or special order which the Government may make in this behalf, also be levied, assessed and collected for the purposes of the Municipal decree in accordance with the provisions contained in or made under the Municipal decree and notwithstanding the provisions of Section 7 of the Pondicherry (Administration) Act, 1962, or of any provision of any Act passed by the Legislature of the Union Territory of Pondicherry, the Municipal decree shall have, and shall be deemed to have had on and from the 16th day of August, 1962, effect accordingly.

4. Notwithstanding any judgment, decree or order of any Court, all taxes, duties cesses and fees (being taxes, duties cesses and fees which the Legislature of the Union Territory of Pondicherry has power to levy) levied, assessed or collected or purporting to have been levied, assessed or collected under the Municipal decree

before the commencement of this Act shall be deemed to have been validly levied assessed or collected in accordance with law as if the provisions of Section 3 have been in force at all material times when any such tax, duty, cess or fee was levied, assessed or collected; and accordingly-

(a) all acts, proceedings or things done or taken by the municipal councils or by any other authority, officer, or person in connection with the levy, assessment or collection of any such tax, duty, cess or fee shall, for all purposes, be deemed to be, and to have always been done or taken in accordance with law;

(b) no suit or other proceeding shall be maintained or continued in any Court against the municipal councils or any other authority, officer or person whatsoever for the refund of any tax, duty, cess or fee so collected; and

(c) no Court shall enforce any decree or order directing the refund of any tax, duty, cess or fee so collected:

Provided that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act had not been passed.

Section 5 repeals the Ordinance and makes the usual savings.

5. When an imposition and collection of tax are found by a Court to be invalid for want of authority therefor, it is set right by the Legislature if it minds to do so, not by invalidating Court's decisions right away which it cannot do, but by enacting provisions by which first the competence or authority it was lacking is supplied with retrospective effect, and next by declaring, on the basis of the retrospective law, that the tax imposed and collected should be deemed to have been validly levied and collected. Accordingly, consequential subsidiary provisions are made giving insulation to all acts, proceedings and things done as validly done, inhibiting suits and Court's jurisdiction in respect of refund claims. The Validating Act under consideration takes this stereotype pattern of such legislation. Section 3 is capable of dissection into five parts:

(1) A municipal commune may levy, assess and collect tax, duty, cess or fee which the Pondicherry Legislature has power to levy. This is subject to any general or special order which the Pondicherry Government may make in that behalf;

(2) The word 'also' in the phrase 'also be levied' in Section 3 suggests that the power of the Pondicherry legislature to raise revenue for purposes of the Government is left intact:

(3) The levy, assessment and collection of the impost by a municipal commune shall be for purposes of the Municipal Decree;

(4) Such levy, assessment and collection shall be in accordance with the ; provisions contained in or made under the Municipal decree; and

(5) The Municipal decree shall have and shall be deemed to have had effect from 15th August, 1952 and this shall be so irrespective of Section 7 of the Pondicherry (Administration) Act, 1962, or any provision of any Act passed by the Pondicherry Legislature.

6. On the basis of these premises, Section 4 validates levy, assessment and collection of any tax etc., made under the Municipal Decree before the amending Act came into force, to wit, any levy, assessment or collection from 16th August, 1962, which was anterior to the Government of Union Territories Act, 1963.

7. Mr. Venugopal, for the petitioner contends with ability and skill, that Section 3 is a case of total abdication of the Pondicherry Legislature of its legislative power to tax by setting up the municipal communes as parallel legislatures and transferring to them the whole of the taxing power, or the entire gamut of its taxing power. The learned Additional Solicitor-General has, of course, ably and even more strenuously countered him, thus both counsel citing and relying on a plethora of decided cases in support of one or the other view.

8. Though the law regarding permissible limits of delegation of legislative power to subordinate authorities has been stated in some of the decided cases, as for instance, the Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills Ltd. Delhi : [1968]3SCR251 , inasmuch as the tests have been variously

propounded in different decisions and by different learned Judges even in the same case, it has still to be found how the law on that matter has been settled. The authorities, however, are uniform, that having regard to the modern complexities of fast changing political, economic and social values, needs and advancement, it is impossible for Legislatures with sovereign legislative power to give effect by themselves and on their own, to their legislative intention, and, therefore, in the nature of things delegation for subordinate legislation has been and is inevitable. The practice of the principle, ever widening as it is, is in evidence even in countries where there is supposed or claimed to be complete separation of powers of State. Skeleton legislation expressing but merely the legislative policy, sometimes with or without standards for its execution, and even vital details of working and effectuating the express legislative policy, being left to subordinate legislation, is getting into vogue more and more in modern times. Necessity of the situation, therefore, has to be borne in mind in resolving a problem on alleged excessive delegation. One other fact on which there is unanimity in decided cases, is, the time-honoured legislative practice in India and in major parts of the world, of the legislatures necessarily entrusting municipal bodies or local self government as they are so called, set up on more or less elective principles, with powers to raise revenue to meet the needs of municipal administration. This has been recognised by the Government of India Act, 1935 and as a matter of fact by also the several Constitutional Acts preceding it.

9. Entry 5 of the State List in the VII Schedule to the Constitution is, 'Local Government that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self Government or village administration.' When on this topic a State legislature enacts to set up local self-Government for a town, city or area, and makes provision for its constitution and powers, necessarily, such powers have to include the power to raise revenue as may be required to carry out its duties and obligations and as a civic or local body, conventionally concerned with roads, water, drainage, health and sanitation within municipal limits. There is nothing to prevent the State Legislature itself to raise the needful revenue and make the same over to the municipal bodies. But this device has been seldom resorted to. The Legislative power on the subject of local-self

Government in Entry 5 should, therefore, be taken to inherently include, in the set up of the local Government the right to make over some of the powers of taxation which the State Legislature itself has. This is also justified by the fact that the functions of the local self-Government are but identifiable with and derived from those of the State Government itself. For convenience and more effective control and effectuation and representation, what may be regarded as local functions peculiar to civic matters are entrusted to, and carried out through local self-Government. In our opinion, therefore, delegation of taxing powers to municipal bodies is within the ambit of those powers, and if necessary of Entry 5 as well provided the State Legislature itself has those taxation powers. Competency of the Pondicherry Legislature to delegate to the Municipal communes its taxing powers cannot, therefore, be questioned. That Legislature, under the Government of Union Territories Act, 1963, by Section 18(1) may make laws for the whole or any part of the Union territory with respect to any of the matters enumerated in the State List or in the Concurrent List in the VII Schedule.

10. But, the question is, whether the Pondicherry Legislature was competent to make unselective and omnibus delegation to the municipal commune of the power to raise any tax, duty, cess or fee whatsoever. Ususally, property tax, profession tax, water tax and the like, are allowed to be levied and collected by municipalities for their purposes. But, some of the Municipalities' Acts as in Bombay, Delhi, Calcutta, after enumerating these usual taxes, also mentioned 'any other tax which the State Legislature has power to impose.' In some cases of municipalities as in Delhi, taxes, which the municipalities can raise are classified as compulsory and optional. In *Western India Theatres Ltd. v. Municipal Corporation, Poona* : AIR 1959 SC586 , a general provision that the Bombay Municipality may impose 'any other tax' for the nature and object of which the approval of the Governor in Council was obtained was held to be valid because the tax was imposed for the purpose of the municipality. In dealing with and rejecting, an argument that Section 59(1)(xi) of the Bombay District Municipalities Act, 1901 which authorised the Municipality to raise any other tax as aforesaid was unconstitutional in that the Legislature had completely abdicated its functions and had delegated essential legislative power to the Municipality to determine the nature of the tax to be imposed on the rate-payers, and that the power thus delegated to the Municipality

was unguided, uncanalised and vagrant because there was nothing in the Act to prevent the Municipality from imposing any tax it liked, even say, income-tax, and that such omnibus delegation could not, on the authorities be supported as constitutional, the Supreme Court observed:

In the first place, the power of the municipality cannot exceed the power of the provincial legislature itself and the municipality cannot impose any tax, e.g. income-tax which the provincial legislature could not itself impose. In the next place, Section 59 authorises the municipality to impose the taxes therein mentioned for the purposes of this Act. The obligations and functions cast upon the municipalities are set forth in Chapter VII of the Act, Taxes therefore, can be levied by the municipality only for implementing those purposes and for no other purpose.... Finally, the provincial legislature had' certainly not abdicated in favour of the municipality for the taxing power of the municipality was quite definitely made subject to the approval of the, Governor in Council.... In our opinion, the impugned section did lay down a principle and fix a standard which the municipalities had to follow in imposing a tax and the legislature cannot, in the circuit stances, be said to have abdicated itself and, therefore, the delegation of power to impose any other tax cannot be struck down as being in excess of the permissible limits of delegation of legislative functions.

The test is, therefore, one of competence of the legislature to delegate, and the delegation is not unconstitutional because the Legislature itself did not select, but gave the option to the Municipality to decide to levy any other tax. If competence to delegate the power for any taxes-is granted, it makes no difference to its constitutionality that selection of taxes to be imposed, is left to the municipality, provided the legislature in making the delegation expressed its legislative policy, principle and standard. The policy indicated in Section 59(1)(xi) of the Bombay District Municipalities Act, was that the Municipality could raise any other tax than those enumerated in the earlier part of the section and the principle was that the municipality could raise any tax for the purposes of the municipality, and the standard and control the Legislature laid down was that the municipality could do so, with the previous approval of the Governor in Council.

11. The Bombay Municipal Boroughs Act, 1925, authorised by Section 73(xiv) the Municipal Borough to levy any other tax (not being a toll on motor vehicles and trailers, save as provided by Section 14 of the Bombay Motor Vehicles Tax Act, 1935) which under the Government of India Act, 1935, the Provincial Legislature has power to impose in the Province. The Borough municipalities situate within the Province of Bombay could levy any tax other than the one mentioned in the exception referred to, which could be levied by the Provincial Legislature itself in the Province. In *Cantonment Board, Poona v. Western India Theatres Ltd.* : AIR1954 Bom261 , the validity of this section was upheld, and in doing so, the Court observed:

In *Delhi Laws Act, In re* : [1951]2SCR747 ..there was unanimity upon the point that where the Legislature had laid down a policy or in other words where in the first instance the Legislature had legislated itself upon the subject matter of the statute, it was permissible to allow others, may be a provincial Government, may be an outside body, to undertake subordinate legislation within the powers conferred, and no legislation could be impugned on the ground that this had been permitted.... It was thus observed in *Schechter v. United States* (1935) 295 U.S. 495, - 'so long as a policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply'.

After quoting the words of Justice Cardozo in *Panama Refining Co. v. Ryan* (1934) 293 U.S. 388, that the discretion left to the subordinate legislative authority must not be unconfined and vagrant, but it must be canalised within even banks which kept it from overflowing, the Bombay High Court further stated-

It appears to us that applying this test there is nothing in Section 59(1)(xi) which renders that section ultra vires of the Governor in Council because of legislative power having been delegated. The Governor in Council in this case was legislating upon the subject of local Self-Government. It was deemed desirable that municipalities should be constituted within the province, and if municipalities are to be constituted within the province, it was necessary to allot to them sources of

taxation. The sources of taxation mentioned in Clauses (i) to (x) of Section 59(1), therefore, were in the first instance allotted to them. Then it was considered necessary apparently either because those sources may be insufficient or because sometimes the municipalities might prefer to levy another tax in lieu of taxes mentioned in Clauses (i) to (x) that they should have power to levy other taxes also. The question then arose what other taxes the municipalities can be empowered to impose. Section 59(1)(xi) provides that they had to obtain the previous approval of the Governor in Council to the nature and object of the tax. It cannot possibly be said, therefore, in this case that the Legislature had not itself legislated at all on the subject-matter. As I have already mentioned, the subject of the legislation was the constitution of municipalities. If the municipalities were constituted, then they had to be allotted certain sources of revenue. A policy was consequently laid down to a very large extent.

In *Hirabhai Ashabhai Patil v. State of Bombay* A.I.R. 1955 Bom. 125, water tax levied by measurement through meter was impugned. Section 169 gave discretion to the Commissioner to charge for water supplied by measurement, at such rate as shall, from time to time, be prescribed by the Standing Committee in that behalf. The validity of the section was canvassed on the ground of competency. The Bombay High Court, while rejecting the contention, referred to Entry 5 of the State List in the Constitution and observed:

Now, there can be no doubt that the power of taxation conferred upon the Bombay Municipality is for the purpose of local self-government.

and held that therefore, the State Legislature was competent to confer upon the local authority the power to tax. It was further pointed out that if the State Legislature was competent to confer upon the local authority the power to tax, its competency could not be affected because the power, that had been conferred was an unlimited power, and that the fact that no limitation had been imposed may lead to the legislation being challenged on some other ground, but it could not be challenged on the ground of competence.

12. *The Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills, Delhi* : [1968]3SCR251 , contains elaborate consideration of the question of

excessive delegation, and review of the earlier decisions of the Supreme Court on the subject. The learned Chief Justice for himself and Shelat, J., summed up the result-

A review of these authorities therefore leads to the conclusion that so far as this Court is concerned, the principle is well established that essential legislative function consists of the determination Of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the Legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.

Hidayatullah, J., as he then Was, who spoke for himself and Ramaswami, J., was of opinion that the proper test to apply was not the existence of safeguards but whether the legislative will to impose the tax was adequately expressed so as to bind those who have to pay the tax. This, he pointed out, required an examination of the policy and provisions of the Act with a view to determining whether the legislative will was fully expressed to invest the Municipal Committee with the power to levy the tats subject, of course, to a proper procedure being evolved. The learned Judge declined to accept the principle that the Legislature must itself impose the tax by laying down the rate of the tax, the persons to be taxed, the manner of the levy and collection, and held:

The doctrine that Parliament cannot delegate its powers, therefore, just be understood in a limited way. It only means that the Legislature must not efface

itself but must give the legislative sanction to the imposition of the tax and must keep the control in its own hands.... Once it is established that the Legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. If the delegate acts contrary to the wishes of the Legislature, the Legislature can undo what the delegate has done. Even the Courts, as we shall show presently may be asked to intervene when the delegate exceeds its powers and functions.... Even in America the doctrine is much watered down especially when it is a question of investing municipalities with power of such taxation. Parliament when it confers such powers, cannot be said to abdicate or efface itself unless it can be said that it has lost its control over the action of the delegate.

Shah and Vaidialingam, JJ., expressed the view:

The increasing complexity of modern administration, the difficulty of passing complicated measures through the method of parliamentary debate and discussions, and the number of details and technical matters which must of necessity be provided for in statutes, have led to an increase in the practice of entrusting power to executive or other agencies to make subsidiary or ancillary legislation. By entrusting that power to another body, the Parliament does not delegate its essential legislative functions. But the authority to entrust subsidiary or ancillary power is not unrestricted. The power cannot be conferred upon a delegate without setting out some principle, policy, or standard which is to guide the delegate in discharging its delegated functions. If the Parliament lays down by legislative act adequate guidance, whatever form it takes, and the delegate is required to conform to that guidance, entrustment of authority to the delegate to make subordinate legislation will be upheld. The power of delegating legislative authority cannot, however, be extended to investment of authority in another body in respect of matters relating to principle or policy of legislation, to the amendment of Parliamentary Act so as to affect the substance thereof or to investment in the executive power when no guidance or standard is laid down in that behalf or to authorise the executive to encroach upon the judicial power of the State.... The power of the State to legislate in matters of taxation within the allotted field is

plenary, but in entrusting that power to a local authority the Legislature cannot confer unguided authority.

The learned Judges further observed on a review of some of the cases decided by the Supreme Court:

On a review of the cases the following; principles appear to be well settled: (i) Under the Constitution the Legislature has plenary powers within its allotted, field; (ii) Essential legislative function cannot be delegated by the Legislature, that is, there can be no abdication of legislative function or authority by complete effacement, or even partially in respect of a particular topic or matter entrusted by the Constitution to the Legislature; (iii) Power to make subsidiary or ancillary legislation may however be entrusted by the Legislature to another body of its choice, provided there is enunciation of policy, principles, or standards either expressly or by implication for the guidance of the delegate in that behalf. Entrustment of power without guidance amounts to excessive delegation of legislative authority; (iv) Mere authority to legislate on a particular topic does not confer authority to delegate its power to legislate on that topic to another body. The power conferred upon the Legislature on a topic is specifically entrusted to that body and it is a necessary intendment of the constitutional provisions which confer that power that it shall not be delegated without laying down principles, policy, standard or guidance to another body unless the Constitution expressly permits delegation; and (v) the taxing provisions are not exceptions to these rules.

Sikri, J., as he then was, who spoke for himself opined:

Apart from authority, in my view, Parliament has full power to delegate legislative authority to subordinate bodies. This power flows in my judgment, from Article 246 of the Constitution. The word 'exclusive' means exclusive of any other Legislature and not exclusive of any subordinate body. There is however, one restriction in this respect and that is also contained in Article 246. Parliament must pass a law in respect of an item or items of the relevant list. Negatively this means that Parliament cannot abdicate its functions. It seems to me that this was the position under the various Government of India Acts, and the Constitution has made no difference in this respect. I read *Hodge v. The Queen* (1883) 9 A.C. 117 and

(1885) 10 A.C. 282, as laying down that Legislatures like the Indian Legislature had full power to delegate legislative authority to subordinate bodies. In the judgment in these cases no such word as 'policy' 'standard' or 'guidance' is mentioned. It is true that in *Hodge v. The Queen* (1883) 9 A.C. 117 and (1885) 10 A.C. 282 the words 'ancillary to legislation' are mentioned but if we examine Sections 4 and 5 of the Liquor Licence Act, 1877, it would be found that the guidance is contained in those sections for defining the conditions and qualifications requisite to obtain tavern licences, for limiting the number of tavern and shop licences, and the nature of the penalty to be imposed for the infraction thereof.

In the *Municipal Corporation of Delhi v. Birla Cotton Spg. and Wvg. Mills, Delhi* (1969) 1 S.C.J. 621 : A.I.R. 1962 S.C. 1232 which we have just now referred to, it was held that Section 150 of the Delhi Municipal Corporation Act, which authorise the Municipality to levy any of the optional taxes by prescribing the maximum rates of tax to be levied fixing the class or classes of persons or description or descriptions of articles and properties to be taxed and laying down the system of assessment and exemptions, if any to be granted, was not unguided and could not be said to amount to excessive delegation. In *Corporation of Calcutta v. Liberty Cinema* : [1965]2SCR477 and *G.B. Modi v. Ahmedabad Municipality* . : [1971]3SCR942 , it was pointed out that fixing of rate of tax was not an essential Legislative function. In *Shama Rao v. Union Territory* : [1967]2SCR650 , the Pondicherry General Sales Tax Act was held to be void. It was also held that the Pondicherry General Sales Tax (Amendment) Act of 1966 did not have the effect of reviving it. The majority in that case said:

The Pondicherry General Sales Tax Act (X of 1965), which extended the Madras General Sales Tax Act I of 1959 as it stood immediately before the date on which the Pondicherry Act would be brought into force in the territory of Pondicherry by a notification issued by the Government as provided in Section 1(2) was void and still born, because the Pondicherry Legislature in enacting the Act in that manner had totally abdicated its legislative functions in the matter of sales tax legislation and surrendered it in favour of the Madras. Legislature.

It may be noticed that in that case, the Pondicherry Legislature not only adopted the Madras Act as it stood on the date when it passed the principal Act, but also enacted that if the Madras Legislature were to amend its Act prior to the date when the Pondicherry Government would issue its notification, it would be the amended Act which would apply. As a result, the Pondicherry Legislature accepted the Madras amended Act, though it was not held and could not be aware what the provisions of the Madras amended Act would be. Naturally, in the circumstances, it was held that this was a case of total surrender by the Pondicherry Legislature of its legislative powers in the matter of sales tax legislation, to the Madras Legislature.

13. We shall, now, refer to *Coll and Co. Ltd. v. Norman Eggert Kropp and Thomas Alfred Hiley* (1967) 1 A.C. 141. It was decided by the Privy Council. The validity of State Transport Facilities Act, and the State Transport Act, both of Queensland, was challenged. The Acts gave the Commissioner for Transport, power to fix and recover licences and permit fees. The two actions which eventually led to the appeals before the Privy Council were for repayment of fees levied and collected by the Commissioner under the two enactments. In upholding the validity of the two Acts, the Privy Council held that by enacting them the Queensland Legislature did not abdicate itself of its power to legislate for the peace, welfare and good Government of the State. It was pointed out that the Queensland Legislature was entitled to use any agent or any subordinate agency or any machinery that they considered appropriate for carrying out the objects and purposes that they had in mind and which they designated, and they were entitled to use the Commissioner for Transport as their instrument to fix and recover the licence and permit fees, provided they prescribed their own capacity intact and retained perfect control over him, and, that, as they could at any time repeal the legislation and withdraw such authority and discretion as they had vested in him, they had not assigned or transferred or abrogated the sovereign power to levy taxes nor did they renounce or abdicate their responsibilities in favour of a newly enacted legislative authority. In repelling an argument that the two enactments amounted to an abandonment or abdication of power in favour of a newly created legislative authority, the Privy Council referred to *Queen v. Burah* 1878 A.C. 889, to the effect that the Indian Legislature had powers expressly limited by the Act of the Imperial Parliament

which created it, and that, they are acting within the limits which circumscribed them, it was not in any sense an agent or delegate of the Imperial Parliament, but had, and it was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself, and then stated that nothing comparable with a new legislative power armed with general legislative authority had been created by the passing by the Queensland Legislature of the two Transport Acts. The circumstance that the Commissioner was endowed with certain powers of decision and measures of discretion, was not considered to support in any realistic sense the contention that the Queensland Legislature exceeded its plenary and ample powers. The Privy Council quoted the following from *Hodge v. The Queen* (1883) 9 A.C. 117.

It was argued at the Bar that a Legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact and can, whenever it pleases destroy the agency it has created and set up another, or take the matter directly into its own hands. How far it seeks the aid of subordinate agencies and how long it shall continue them, are matters for each Legislature, and not for Courts of law, to decide.

It went on to say-

The Legislature were entitled to use any agent or any subordinate agency or any machinery that they considered appropriate for carrying out the objects and purposes that they had in mind and which they designated. They were entitled to use the Commissioner for Transport as their instrument to fix and recover the licence and permit fees. They were not abrogating their power to levy taxes and were not transferring that power to the Commissioner. What they created by the passing of the Transport Acts could not reasonably be described as a new legislative power or a separate legislative body armed with general legislative authority.... Nor did the Queensland Legislature create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence.... In no sense did the Queensland Legislature assign or transfer or abrogate their powers or renounce or abdicate their responsibilities. They did not give away or relinquish their taxing powers. All that was done was done under and

by reason of their authority. It was by virtue of their will that licence and permit fees become payable. Nor was there any alteration of the Legislature.

The ratio of the Privy Council judgment is very significant and telling. It seems that it is unnecessary to refer to the other cases which have been cited before us on either side in respect of the first ground of the petitioners.

14. To sum up the legal position as to abdication of legislative powers or excessive delegation; abdication means total surrender or transfer by the Legislature of its legislative functions to another body to legislate on a particular subject-matter, within its legislative competence. Such surrender or abdication is illustrated by *Shamarao v. Union Territory* : [1967]2SCR650 . What is legislative function will depend upon the particular subject-matter of legislation. There is no abdication, surrender of legislative function or excessive delegation, so long as the Legislature has expressed its will on a particular subject-matter indicated its policy and left the effectuation of the policy to subordinate or subsidiary and ancillary legislation, provided the Legislature retained the control in its hands with reference to it, so that it can act as a check or a standard and prevent or undo the mischief by subordinate legislation, when it chooses to, or thinks fit. Those principles apply as well to delegation of the power of taxation. The power to delegate is inherent in the power of the Legislature to legislate on any subject-matter within its competence. In additions we I are of opinion that when legislating on the subject 'in Entry 5 of the State List, it is competent for the Legislature to delegate for municipal purposes and subject to the procedure indicated any or all of its taxing powers.' Applying these tests, we are of opinion that the first ground of the petitioners should fail because the Pondicherry Legislature in enacting Sections 3 and 4 in the Validation Act, had the legislative competence to authorise the municipal communes to raise, for the purpose of the communes, and of the taxes to be levied, assessed and collected in accordance with the provisions of the Municipal Decree of 1880. The amending Act clearly expressed the legislative policy to make an enabling law with retrospective effect to impose any tax, so that it could also validate under its cover as it were, the tax which the communes had actually imposed, assessed and collected under the municipal decree before the commencement of the Amending Act, on the erroneous assumption that the

Municipal Decree itself had conferred authority to levy and collect the related tax. Section 3 made it clear that this delegation of taxing power was subject to any general or special order which the Government might make in this behalf. As we mentioned earlier, by the word 'also' in Section 3, the Pondicherry Legislature indicated that while it retained its own power of taxation under the State List, it also enabled the municipal communes to levy, assess and collect any tax, duty, cess or fee within the competence of the Legislature. The Legislature did not leave the matter there. It also by Section 3 laid down the principle that any tax, duty, cess or fee which the communes could levy, assess and collect, should only be for purposes of the municipal decree which means that such levy, assessment and collection of any tax should be for purposes of the related municipal commune. Section 3 went still further and forged the procedural check or control by making it clear that such levy, assessment and collection of any tax should also be in accordance with the provisions contained in, or made under the Municipal Decree. The these words, in accordance with the provisions' related to the procedure of levy, assessment and collection is clear from Raichur Municipality v. B.A. Parasanna : [1968]1SCR87 . The Court there observed that the expression Imposed in accordance with the provisions of the Act in Section 97(1) of the Mysore Municipalities Act, 1964 meant 'imposed in accordance with the procedure provided under the Act.' We therefore, think that Hamdard Dawakhana v. Union of India : 1960 CriLJ671 , Vasanlal Mangashai v. State of Bombay : 1978 CriLJ1281 , Corporation of Calcutta v. Liberty Cinema : [1965]2SCR477 , Messrs Devidas v. State of Punjab : [1967]3SCR557 , Shama Rao v. Union Territory : [1967]2SCR650 . The Second Gift Tax Officer, Mangalore v. D.H. Hararath (1971) 1 S.C.J. 1 : A.I.R. 1970 S.C. 999 and Firm L. Hazarimal v. Income-tax Officer, Ambala , to which our attention was drawn by Mr. Venugopal do not help to uphold the first ground.

15. The second ground complains that the Municipal Decree of 1880 does not have a reasonable procedure with reference to levy, assessment and collection peculiar to the particular taxes which the Municipalities were authorised to levy, assess and collect, and that, therefore, the amending Act violated Article 19(1)(g) of the Constitution. It is further said that the amending Act gives the municipal communes arbitrary power to pick and choose any tax or impost as they like, fix

any rate of tax without any legislative guidance, and even to impose the entire financial burden of municipal administration on one section of tax-payers, and that this was in violation of Article 14. The substance of these contentions bears on alleged lack of control and guidance on the taxing powers of the communes in the light of the Validating Act. But we find that there is adequate control, both external and internal, over the exercise of these taxing powers. The Decree of 1880 shows that the municipal council in a commune is an elected body. The Governor of the erstwhile establishments was under the decree, given the power of dissolving the municipal councils or suspending the same. Similarly, the Mayors and Deputy Mayors of the Municipal Councils are also subject to similar powers of the Governor. In exercise of the taxing powers of the municipal communes as authorised by the Validating Act, tax could be raised only for purposes of the Municipality, and these purposes are elaborately set out in the Municipal Decree. The powers of the municipal councils have also been laid down in the Decree, the exercise of which are subject to the controlling powers of the Governor. Clause 46 of the Municipal Decree enjoins on the municipal councils to deliberate over the budget of the commune and in general all receipts and expenditure either ordinary or extraordinary, the mode of assessment rates and rules regarding collection of all municipal revenue, except dock dues, and the deliberations of the Municipal Council shall only be enforced after the approval of the Governor in Privy Council. Clause 48 says that the Municipal Council shall always be required to give its opinion on certain matters, including the mode of assessment, rates and rules relating to levy of municipal tolls, dock dues and high road charges. Chapter III of the Municipal Decree deals with the budgets of the communes, divides receipt as ordinary and extraordinary, and by Clause 54 the budget of each commune submitted by the Mayor and voted by the municipal council shall be finally approved by an Arrete of the Governor made in Privy Council. If the income of the commune is not sufficient to meet the compulsory expenditure which is detailed, provision shall be made under Clause 59 for an extraordinary tax introduced by an Arrete of the Governor made in Privy Council. By Clause 63, the special taxes due by the inhabitants or owners under the local rules or custom shall be distributed by deliberation of the municipal council (approved by the Governor in council. By Clause 65, any taxpayer entered in the taxpayer's list of the commune shall be

entitled to institute at his costs and risks with the authorisation of the Administrative Court, legal proceedings which are deemed by him to be incumbent upon the commune or section of commune and which the commune or section of the commune previously called upon to deliberate over the same would have refused or failed to institute. Whoever wants to institute legal proceedings against a commune or section of the commune shall be bound to address beforehand to the Governor a memorandum explaining. The submission of the memorandum to the Mayor shall suspend the barring by limitation and prevent the lapse. The Governor shall forward the memorandum to the Mayor with authorisation to convene the Municipal Council to deliberate over it. These particulars are found in Clauses 66 and 67 of the Municipal Decree. We have then Clause 79 which says that the provisions of the Decree dated 26th September, 1855 which was replaced by the Decree dated 30th December, 1912, dealing with the financial; rules of the colonies shall be applied to the municipal accounts and to the municipal 'Receveurs in so far as they are not repugnant to the decree. These financial Rules dealing with the manner of assessment and recovery of tax, procedure and appeal, refund and remissions, shall mutatis mutandis apply to the Municipalities as well as municipal Receveurs. Article 160 of these Rules provides for the method of collection of direct taxes and other taxes, and deals with the assessment book, authority competent to assess and to approve the list and the details that should be given against each entry, the peiioc<sup>1</sup> within which the tax should be paid by the taxpayer, and also the period within which any claim against the assessment is to be preferred and the date on which any claim for payment of tax lapses. The assessment books are to be laid open to public and then entrusted to the Collector for the recovery of the taxes included therein. Article 161 deals with the method of recovery of direct tax, and the next Article provides for appeals against any claim in respect of any direct tax before the Administrative tribunal. Article 163 concerns itself with the method of recovery of indirect taxes, and Article 164 deals with appeals against any claim in respect of any indirect tax before a civil Court of competent jurisdiction. Remission or reduction in claims and complaints against double or false entry in respect of any tax, are to be dealt with under Articles 173 and 174. Article 183 lays down the procedure for the recovery of tax. Article 191 deals with appeals against any wrong assessment or against

any assessment which is alleged to have been made in contravention of the resolutions made for the levy of any tax.

16. We have referred to the foregoing matters in detail to show the elaborate procedure controlling and regulating the whole matter of taxation from the stage of proposal to tax, until its collection, which serve as safeguards, not only from the standpoint of the municipal communes, but also the taxpayers. The municipal communes are not, having regard to the provisions of the Municipal Decree, free to pick and choose any tax for imposition, assessment and collection without going through the rigorous procedure, including previous assent and subsequent control of the Governor. This applies not merely to the selection of tax, but also its rate. In the circumstances, *K.T. Mcopil Nair v. State of Kerala* : [1961]3SCR77 , can have no application, which is a case where land tax was fixed on an arbitrary basis without classification and procedural control; Nor do we think that, notwithstanding the whole process of tax procedure envisaged by Municipal Decree, there is any sign of violation or likelihood of violation of either Article 19(1)(g) or Article 14. In view of the external and internal control and the elaborate procedure, we reject the second contention of the petitioners as without any substance.

17. The third ground urged against the validating Act is that it violates Section 7 of the Pondicherry (Administration) Act, 1962. We have already mentioned that this Act was enacted pursuant to the Treaty between the two Governments of India and France and the de jure merger of the French Settlements in India. The Act was made to provide for the administration of Pondicherry and for matters connected therewith. Section 3 speaks of officers and functionaries in relation to Pondicherry. Reference has already been made in this judgment to Sections 3 and 4. The rest of the section we are not concerned with for the present purposes which relate to the extension of the jurisdiction of the High Court, to the erstwhile French Settlements, Advocates, rule making power of the High Court, limitation for appeals and power to remove difficulties. Actually, the Act was enacted and it received the Presidential assent before the Constitution (14th Amendment) Act, 1962, was made, which constituted the French Settlements as the Union Territory of Pondicherry, but effect was given to the Pondicherry (Administration) Act, 1962 and the Constitution (14th Amendment) Act from 16th August, 1962.

18. The administration of the Union Territories is governed by Part VIII of the Constitution. Union Territory shall be administered by the President, and he can act through an Administrator appointed by him. But, Parliament may, by law, provide otherwise. The President, as a matter of fact, has, in exercise of the power, appointed an Administrator for the Union Territory of Pondicherry. Under Article 239-A(1) and this we have already touched upon, Parliament enacted the Government of Union Territories Act, 1963, by which it provided for a Legislative Assembly and Council of Ministers for the Union Territory of Pondicherry. Section 18 defines the extent of the legislative powers. Subject to the provisions of the Act, the Legislative Assembly may make laws for the whole or any part of the Union Territory with respect to any of the matters enumerated in the State List or the Concurrent List in the VII Schedule to the Constitution. But, this is subject to the overriding powers of Parliament under Sub-section (2) of Section 18 to make laws with respect to any matters for a Union Territory or any part thereof, which is in consonance with Article 246(4) of the Constitution by which Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List. The Union Territory of Pondicherry is not a State, and the Legislature of Pondicherry is not a Legislative Assembly as contemplated by Article 54 or 163. It was so held in *S.K. Singh v. V.V. Giri* : [1971]2SCR197 and by a Division Bench of this Court, to which both of us were parties in W.P. No. 774 of 1974. The Pondicherry Legislature is but a creature of Parliament acting under Article 239-A.

19. In the light of the foregoing position, the contention of Mr. Venugopal is that Sections 3 and 4 of the Validating Act are repugnant to, or derogate from Section 7 of the Pondicherry (Administration) Act, 1962. which was made by Parliament, and Section 21 of the Government of Union Territories Act, 1963. He refers us to *Amraoti Municipality v. Ramachandra* : [1964]53ITR444(SC) and says the expression 'lawfully levied' in Section 7 of the 1962 Act, means validly and actually levied. In that case, dealing with the expression 'may continue to be levied', in Article 277, it was pointed out that it only meant that the tax was one which was lawfully levied by the local authority for the purpose of the local area, the identity of the body that collected the tax, the area for whose benefit the tax was to be utilised, and the purposes for which the utilisation was to take place continued to

be the same, and the rate of tax was not enhanced, nor its incidence in any manner altered so that it continued to be the same tax. It was pointed out that the word 'levied' meant 'was actually levied'. It is, therefore argued that since the tax authorised by the Validating Act does not come under Section 7 which prohibits a new levy, Section 4 afforded no power, and that since the Pondicherry (Administration) Act was an organic law made under Article 239-A, like the Government of Union Territories Act, 1963, the Validating Act made by the Pondicherry Legislature cannot override Section 7 of the 1962 Act, and Sections 18(2) and 21 of the 1963 Act. The Validating Act, according to the petitioners not only violates Section 7 but is repugnant to Section 21. Section 3 of the Validating Act, it is said, inasmuch, as it says 'notwithstanding the provisions of Section 7 of the Pondicherry (Administration) Act', the section is not valid.

20. As held in *Vajensingji Joravarsingji v. Secretary of State for India in Council* (1924) 51 I.A. 357 : 1924 47 M.L.J. 574 : I.L.R. 1924 P.C. 216, when a territory is acquired by a Sovereign State for the first time, that is an act of State, irrespective of how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all these cases, the Privy Council pointed out, the result is the same.

The Privy Council went on:

Any inhabitant of the territory can make good in the Municipal Courts established by the new Sovereign only such rights as that Sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that, certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce those stipulations, in the Municipal Courts. The right to enforce remains only with the high contracting parties.

That applies to the erstwhile French establishments which by cession by Treaty, an act of State, became merged with India. It is in that background we have to view Sections 4 and 7 of the Pondicherry (Administration) Act, 1962. So the position of Article 372 and 277 of the Constitution is different. Under Article 277,

the existing taxes for purposes of the State, Municipality, district or a local area, which was being lawfully levied by them, may continue to be levied until provision to the contrary is made by Parliament by law.' But, Section 7 which continues its existing taxes would 'apply until other provision is made by a competent Legislature or other competent authority'. It may be seen that there is nothing in Section 7 which comes into conflict with Sections 3 and 4 of the Validating Act. While Section 7 enables continuance of taxes lawfully levied immediately before merger, it does not prevent the Pondicherry legislature which is a competent legislature, to enact Section 3 and validate under its cover, the tax which had been actually collected before or after 16th August, 1962. Violation of Section 7 of the Pondicherry (Administration) Act, or its repugnancy to Section 18(2) and Section 21 of the Government of Union Territories Act, 1963, would arise only if the Validating Act contained any interdict contrary to the provisions of those sections in the Parliamentary enactments. That is not the case. In our opinion, the Validating Act was within the competence of the Pondicherry legislature, and on the principle of *United Provinces v. Atiqa Begam* retroactive legislation, as the amending Act is within its power, and is valid. Like Section 292 of the Government of India Act, 1935, Section 7 of the Pondicherry (Administration) Act does not stand in the way of the Pondicherry legislature enacting retrospective legislation. This is in accord with *Mt. Jadap Bahuji v. Municipal Committee, Khandwa* (1962) 2 S.C.J. 518 : A.I.R. 1961 S.C. 1486, where it was observed following *United Provinces v. Atiqa Begam* that the burden of proving that the Indian legislatures are subject to a strange and unusual prohibition against retrospective legislation lay upon those who asserted it. The third ground of the petitioners also fails.

21. It is next contended on their behalf that the Pondicherry legislature being a subordinate legislative body, cannot validly enact retrospective legislation. We are unable to agree. In *Queen v. Burah* (1878) 3 A.C. 889 the Privy Council held:

The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature,

as those of Parliament itself.

This principle is clearly applicable to the powers of the Pondicherry Legislature. Its legislative powers are plenary within their ambit, except to the extent that they are limited by either the Pondicherry (Administration) Act, or the Government of; Union Territories Act, 1963. Within the ambit of each of the legislative subject-matter, the Pondicherry legislature is supreme and its powers are plenary, which means that it is within its competence to make retrospective legislation. Within the sphere of legislative power, the power is exclusive on the related subject of legislation and it is supreme within the ambit of the competence. The Parliamentary control in this respect makes no difference to the principle that when the Pondicherry legislature acts within its limits, its powers are plenary. We cannot therefore, accept the contention that the Validating Act, in its retrospective operation, is invalid.

22. The last contention of the petitioners is that the Pondicherry legislature has no power to amend the pre-Constitution laws, namely, the Decree of 1880. This argument has only to be stated to be rejected. In *A.H. Abdul Shukoor and Co. v. State of Madras* : [1964]8SCR217 , it was held that the State Legislature was free to enact laws which would have retrospective operation. The Supreme Court observed:

Its competence to make a law for a certain past period, depends on its present legislative power and not on what it possessed at the period when its enactment is to have operation.

That is a sufficient answer to the petitioner's contention.

23. The appeals are accordingly allowed and the writ petitions are dismissed. No costs.