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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24 February 2026
Pronounced on: 29 May 2026

\+ W.P.(C) 1765/2016 & CM APPL. 7559/2016

AVIVA LIFE INSURANCE COMPANY INDIA LTD. .....Petitioner

Through: Mr. Abhishek Awasthi and Ms. Amisha Ray, Advs.

versus

UNION OF INDIA & ANR .....Respondents

Through: Ms. Arti Bansal CGSC with Ms. Shruti Goel, Adv. for UOI

\+ W.P.(C) 2150/2016 & CM APPL. 9205/2016

INDIAN SUGAR MILLS ASSOCIATION & ANR .....Petitioners

Through: Mr. Sridhar Potaraju, Sr. Adv. with Ms. Shiwani Tushir, Ms. Niharika Singh, Ms. Chamundeswari Pemmasani and Ms. Arlene Noronha, Advs.

versus

UNION OF INDIA .....Respondent

Through: Ms. Arti Bansal CGSC with Ms. Shruti Goel, Adv. for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

% **JUDGMENT**
29.05.2026

C. HARI SHANKAR, J.

A. The *lis*

1. The Payment of Bonus (Amendment) Act, 2015[1], which amended the Payment of Bonus Act, 1965[2], received Presidential assent on 31 December 2015 and was published in the Official Gazette of India on 1 January 2016. Section 1(2) of the impugned Amendment Act brought it into force on 1 April 2014. In other words, the impugned Amendment Act was made effective retrospectively.

2. To the extent the impugned Amendment Act has been made retrospectively applicable, the petitioners have, by these writ petitions, sought to challenge it.

3. At the outset, it merits mention that the additional liability which would fall on the petitioners, as a consequence of the retrospective application of the impugned Amendment Act, is only for one year, i.e. 2014-2015, as the amendments were made applicable with effect from 1 April 2014, and the impugned Amendment Act was published in the Gazette on 1 January 2016.

4. The petitioners are principally aggrieved by Sections 2 and 3 of the impugned Amendment Act, to the extent that they have been made retrospectively applicable with effect from 1 April 2014. Sections 2 and 3 of the impugned Amendment Act read thus:

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[1] "the impugned Amendment Act" hereinafter

[2] "PBA" hereinafter

"**2. Amendment of Section 2**.— In Section 2 of the Payment of Bonus Act, 1965 (21 of 1965) (hereinafter referred to as the principal Act), in clause (13), for the words "ten thousand rupees", the words "twenty-one thousand rupees" shall be substituted.

3. Amendment of Section 12.— In Section 12 of the principal Act,—

(i) for the words "three thousand and five hundred rupees" at both the places where they occur, the words "seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher" shall respectively be substituted;

(ii) the following Explanation shall be inserted at the end, namely—

Explanation.— For the purposes of this section, the expression "scheduled employment" shall have the same meaning as assigned to it in clause (g) of Section 2 of the Minimum Wages Act, 1948."

Resultantly, Section 2(13) and 12 of the PBA read, before and after amendment, thus:

Provision	**Before Amendment**	**After Amendment**
Section 2(13)	"employee" means any person (other than an apprentice) employed on a salary or wage not exceeding ten thousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied;	"employee" means any person (other than an apprentice) employed on a salary or wage not exceeding twenty-one thousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied;

Section 12	**Calculation of bonus with respect to certain employees**. – Where the salary or wage of an employee exceeds three thousand and five hundred rupees per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were three thousand and five hundred rupees per mensem.	**Calculation of bonus with respect to certain employees**. – Where the salary or wage of an employee exceeds seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem. *Explanation*. – For the purposes of this section, the expression "scheduled employment" shall have the same meaning as assigned to it in clause (*g*) of Section 2 of the Minimum Wages Act, 1948 (11 of 1948).

5. The consequence of the impugned amendments may thus be set out:

(i) Section 8[3] of the PBA deals with eligibility for bonus. It stipulates that every employee, who has worked in the

[3] **8. Eligibility for bonus**.—Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

establishment for not less than 30 days in that year, is entitled to bonus.

(ii) The definition of "employee" has been amended by the impugned Amendment Act. The maximum salary which could be drawn, for being eligible to be regarded as an "employee" for the purposes of the PBA, was enhanced from ₹ 10,000 per month to ₹ 21,000 per month. Quite obviously, the number of persons, employed by the establishment, who fall within the coverage of the expression "employee", has increased manifold.

(iii) Section 12 sets out the manner in which bonus is to be calculated.

(iv) Prior to the impugned Amendment, the maximum bonus payable was to be computed on the basis of a monthly salary or wage of ₹ 3500. In other words, an employee who earned more than ₹ 3500 per month would be entitled to bonus as if she, or he, was drawing a salary of ₹ 3500 per month. The amount of bonus payable was, therefore, frozen at the bonus which would be payable to an employee who earned ₹ 3500 per month.

(v) After the impugned Amendment, the salary ceiling of ₹ 3500 per month has been raised to ₹ 7000 per month or the statutorily fixed minimum wages per month, whichever is higher. After Amendment, therefore, the maximum bonus payable was frozen at the bonus which would be payable to an employee drawing a salary of ₹ 7000 per month or the statutorily fixed minimum wages, whichever was higher.

It is obvious that, by virtue of the impugned amendments, the financial liability, towards the bonus payable to their employees, on all establishments, which fell within the purview of the PBA, has increased – as the petitioners would urge, substantially.

6. The petitioners in these writ petitions do not, quite fairly, dispute the authority of the legislature to increase the bonus payable to employees under the PBA. Their grievance is with respect to the retrospective application of the amendment incorporated by the impugned Amendment Act, which has been made applicable with effect from 1 April 2014. The result is that, though bonus had already been paid by the petitioners, to their employees, in terms of the pre-amended PBA, additional bonus had, by the impugned Amendment Act and the retrospective application of its provisions, become payable for the period 2014-2015, as a result of a greater number of employees falling within the coverage of the PBA and the bonus payable under the PBA itself being frozen at a level higher than that at which it was frozen under Section 12 of the pre-amended PBA.

7. The retrospective application of the impugned Amendment Act with effect from 1 April 2014 is, according to the petitioners, unconstitutional.

8. At this juncture, it is necessary to note an important fact. Section 19(b)[4] of the PBA specified the time limit within which bonus was to be paid to employees in an establishment. In normal cases, the outer limit within which bonus was payable was eight months from the close of the accounting year. The accounting year, for the year 2014-2015, ended on 31 March 2015. The period of eight months, envisaged in Section 19(b) would, therefore, have ended on 30 November 2015. One of the contentions which was advanced before us, principally by learned Counsel for the petitioners was that, as the impugned Amendment Act was Gazetted only on 1 January 2016, it was impossible to comply with the amended provisions, as the time for compliance had already expired on 30 November 2015. The Court noticed, however, that this submission was not strictly correct as the proviso to Section 19 empowers the appropriate Government authority to, on an application being made to it, and for sufficient reasons, by order, extend the period of eight months to such further period as it thought fit, not, however, in any case, to exceed two years. In view of the plea of impossibility urged by Mr. Awasthi, we queried of Ms. Arti Bansal, learned CGSC appearing for the respondents, as to whether the respondents were agreeable, in exercise of the discretion vested by the proviso to Section 19 of the PBA, to extend the time for compliance, by the petitioners, with the amended provisions of the

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[4] **19. Time-limit for payment of bonus**.— All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer—

(*a*) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(*b*) in any other case, within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

PBA, as the provisions themselves had remained under challenge before this Court, and this Court had, by order dated 29 February 2016, stayed the operation of the impugned Amendment Act.

9. Ms. Bansal responded, on instructions, on 24 February 2026, that the respondents were agreeable to grant of eight months' extension under the proviso to Section 19 of the PBA in order to enable the petitioners to discharge the additional liability which would fall on them for the year 2014-2015 as a consequence of the impugned amendments.

10. On this suggestion being made, learned Counsel for the petitioners in these writ petitions parted ways.

11. Mr. Awasthi, on instructions, was agreeable to disgorge the additional liability which would devolve on his client, i.e. Aviva Life Insurance Co.[5], within a period of eight months, provided no additional liability to interest would be fastened on it.

12. Mr. Potaraju, learned Senior Counsel for the petitioners in WP (C) 2150/2016, i.e., the Indian Sugar Mills Association, however, expressed his unwillingness to agree to the suggestion, and was, therefore, heard at length on the merits of the writ petition. Ms. Bansal has been heard by way of response.

13. We have, nonetheless, considered the submissions of Mr. Awasthi as well as Mr. Potaraju.

[5] "Aviva" hereinafter

B. Rival Contentions

I. <u>Submissions of Mr. Awasthi and Mr. Potaraju</u>

14. Between them, Mr. Awasthi and Mr. Potaraju submit as under:

(i) By making the amendments retrospective, Section 1(2) of the impugned Amendment Act rendered the petitioners liable to pay huge amounts of bonus to employees who, during the year 2014-2015, were not entitled to bonus under the pre-amended PBA. The petitioners had, during the year, paid bonus to all entitled employees as per the provisions of the PBA as they then stood. While it was within the legislative province of the respondents to bring a larger number of employees within the PBA fold, and also increase the bonus payable under the PBA, these changes could not be effected retrospectively so as to necessitate an entire reworking of the bonus payable by the petitioners during earlier years. New obligations were, as a result, fastened on the petitioners in respect of past transactions. Such retrospectivity was *ex facie* unconstitutional.

(ii) By making its provisions applicable retrospectively with effect from 1 April 2014, the provisions of the impugned Amendment Act were rendered arbitrary, unreasonable and harsh. As a consequence of the retrospective application of the impugned Amendment Act, approximately 3100 employees, who were not earlier within the ambit of the PBA (in the case of

Aviva), now came within its fold, and the additional liability on the petitioner, as a result, for the year 2014-2015, was to the tune of ₹ 80 lakhs, for which the petitioner had not made any provision in its books of account. The allocatable surplus would also have to be adjusted. This would additionally require the resulting fiscal deficit to be added to the petitioners' liabilities, which would decrease its profits for the year 2014-2015 and also vary the prices of its goods in the commodity market.

(iii) Compliance with the provisions of the PBA, as amended by the impugned Amendment Act, for the period 2014-2015, would require the petitioners to undo the process of payment of bonus for the past period. Having discharged all statutory liabilities, including their liabilities under the PBA, the petitioners had closed their accounts for the year 2014-2015, filed the accounts before the relevant statutory authorities, including the income tax authorities and paid all their statutory dues. These accounts would be rendered redundant if the provisions of the PBA, as amended by the impugned Amendment Act were to be applied retrospectively.

(iv) A statute could not be made applicable retrospectively so as to take away vested rights. The finances of a Company, after it had discharged all its statutory duties and liabilities, were its property, which was constitutionally protected under Article 300A, and could not be taken away by imposing a liability retrospectively, without compensation. Once a company had declared its bonus for an earlier year, a vested right accrued, to the Company, to utilise the net profit which remained with it after discharge of liability. The impugned Amendment Act, by being made retrospectively applicable, altered this net profit retrospectively, resulting in violation of the vested rights not only of the Company but also of its shareholders. Reliance was also placed, in this context, on Sections 2(1)[6], 4[7] and 6[8] of the PBA. In this context, Mr. Potaraju pressed into service paras 11, 13, 20 and 39 of ***Madan Mohan Pathak v. Union of India***[9], paras 23, 24 and 33 of ***Chairman, Railway Board v. C.R. Rangadhamaiah***[10] and para 45 to 48 of ***Punjab State Coop.***

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[6] (1) "accounting year" means—

(*i*) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

(*ii*) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;

(*iii*) in any other case—

(*a*) the year commencing on the 1st day of April; or

(*b*) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced:

Provided that an option once exercised by the employer under paragraph (*b*) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit;

[7] **4. Computation of gross profits**.—The gross profits derived by an employer from an establishment in respect of any accounting year shall—

(*a*) in the case of a banking company, be calculated in the manner specified in the First Schedule;

(*b*) in any other case, be calculated in the manner specified in the Second Schedule.

[8] **6. Sums deductible from gross profits**.—The following sums shall be deducted from the gross profits as prior charges, namely:—

(*a*) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income Tax Act or in accordance with the provisions of the Agricultural Income Tax Law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation;

(*b*) any amount by way of development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act;

(*c*) subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year;

(*d*) such further sums as are specified in respect of the employer in the Third Schedule

[9] **(1978) 2 SCC 50**

[10] **(1997) 6 SCC 623**

Agricultural Development Bank Ltd v. Coop. Societies[11] and ***Bernard Francis Joseph Vaz v. State of Karnataka***[12]**.**

(v) Before introducing the impugned amendments and making them applicable retrospectively, the respondents did not take all stakeholders, including the petitioners or their representatives, in confidence.

(vi) In the case of the petitioner in WP (C) 2510/2016, it was additionally pleaded that the sugar industry was in a state of financial crisis and would be driven to the wall if the impugned amendments were to be made applicable retrospectively.

(vii) Failure to comply with the additional liability which the impugned Amendment Act imposed on the petitioners retrospectively for the year 2014-2015 also rendered them criminally liable under Section 28[13] of the PBA. It is settled, in law, that criminal liability cannot be fastened retrospectively on a citizen.

II. Submissions of Ms. Bansal

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[11] **(2022) 4 SCC 363**
[12] **(2025) 7 SCC 580**
[13] **28. Penalty**.—If any person—
(*a*) contravenes any of the provisions of this Act or any rule made thereunder; or
(*b*) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition,
he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

15. Ms. Bansal submits, by way of response, that the entire plea of divestiture of a vested right, as a consequence of retrospective application of the impugned Amendment Act, advanced by Mr. Potaraju, is misconceived. She submits that an employer does not have any vested right to continue to pay bonus at a pre-existing rate, despite increase in the cost of living and other relevant factors governing grant of bonus. No vested right, which accrued to the petitioners, she submits, has been divested. The petitioners were already paying bonus, and had paid bonus for the year 2014-2015. It was only a liability for payment of additional bonus which had been created by retrospective application of the impugned Amendment Act and, side by side, the respondents were also agreeable to extend the time for compliance with the Act, as had been stated before this Court.

16. Ms. Bansal points out that the changes which were introduced by the impugned Amendment Act were following a discussion in a tripartite meeting held on 20 October 2014 under the Chairmanship of the Labour and Employment Minister, which was also attended by representatives of employers' associations. Following this, in November 2014, an Inter-Ministerial Group[14] was constituted to look into the matter and the IMG, following a meeting with representatives of employers' associations on 3 December 2014, to discuss the proposed amendments to the PBA, found the amendments to be necessary. The issue was also discussed at the 46th Session of the Indian Labour Conference held on 20th and 21st July 2015 at New Delhi. Extensive deliberations have, therefore, preceded the enactment

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[14] "IMG" hereinafter

of the impugned Amendment Act. Among other factors which had weighed with the respondents in introducing the impugned amendments was the increase in the all India Consumer Price Index for industrial workers by 111.67%, from 120 in April 2006 to 254 in March 2015.

17. In the circumstances, Ms. Bansal submits that no case for striking down the impugned Amendment Act, even to the extent that it has been made retrospectively applicable from 1 April 2014, can be said to exist.

C. Analysis

18. We are tilling land, here, which stands ploughed by the Supreme Court on several earlier occasions, and has never been allowed to remain fallow for any length of time.

I. <u>What is bonus?</u>

19. The concept and rationale of payment of bonus, and the fact that bonus was not in the nature of a gratuitous payment, were emphasized by the Constitution Bench of the Supreme Court in ***Jalan Trading Co. v. Mill Mazdoor Sabha***[15]:

> "A synopsis of the development in the industrial law which led to the enactment of the Payment of Bonus Act, 1965, will facilitate appreciation of the questions argued at the Bar. Claims to receive bonus, it appears, were made by industrial employees for the first

[15] **AIR 1967 SC 691**

time in India in the towns of Bombay and Ahmedabad after the commencement of the First World War, when, as a result of inflationary trends, there arose considerable disparity between the living wage and the contractual remuneration earned by workmen in the textile industry. The employers paid to the workmen increase in wages, initially called "war bonus" and later called "special allowance". A Committee appointed by the Government of Bombay in 1922 to consider, inter alia, "the nature and basis" of these bonus payments, reported that the workmen had a just claim against the employers to receive bonus, but the claim was not "customary, legal or equitable". During the Second World War the employers in the textile industry granted cash bonus equivalent to a fraction of actual wages (not including dearness allowance) but even this was a voluntary payment made with a view to keep labour contented.

In the dispute for payment of bonus for the years 1948 and 1949 in the textile industry in Bombay, the Industrial Court expressed the view that, since labour as well as capital employed in the industry contribute to the profits of the industry, 'both are entitled to claim a legitimate return out of the profits of an establishment, and evolved a formula for charging certain prior liabilities on the gross profits of the accounting year, and awarding a percentage of the balance as bonus to the workmen. In adjudicating upon the claim for bonus, the Industrial Court excluded establishments which had suffered loss in the year under consideration from the liability to pay bonus. In appeals against the award relating to the year 1949, the Labour Appellate Tribunal broadly approved of the method for computing bonus as a fraction of surplus profit.

According to the formula, which came to be known as the "Full Bench Formula", surplus available for distribution had to be determined by debiting the following prior charges against gross profits :

(1) Provision for depreciation; (2) Reserve for rehabilitation; (3) Return of 6 per cent. on the paid-up capital; (4) Return on the working capital at a lower rate than the return on paid-up capital;

and from the balance called "available surplus" the workmen were to be awarded a reasonable share by way of bonus for the year.

This court considered the applicability of this formula to claims for bonus in certain decisions : ***Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union***[16], ***Baroda Borough Municipality v. Its***

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[16] **AIR 1955 SC 170**

Workmen[17], ***Sree Meenakshi Mills Ltd. v. Their Workmen***[18] and ***State of Mysore v. Workers of Kolar Gold Mines***[19]. The court did not commit itself to acceptance of the formula in its entirety, but ruled that *bonus is not a gratuitous payment made by the employer to his workmen, nor a deferred wage, and that where wages fall short of the living standard and the industry makes profit, part of which is due to the contribution of labour, a claim for bonus may legitimately be made by the workmen. …*

The formula, it is clear, was not based on any strict theory of legal rights or obligations : *it was intended to make an equitable division of distributable profits* after making reasonable allocations for prior charges.

It may be broadly stated that bonus, which was originally a voluntary payment out of profits to workmen to keep them contented, acquired the character, under the Bonus Formula, of right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the Payment of Bonus Act, liability to pay bonus has become a statutory obligation imposed upon employers covered by the Act.

The scheme of the Act, broadly stated, is four-dimensional:

(1) to impose statutory liability upon an employer of every establishment covered by the Act to pay bonus to employees in the establishment;

(2) to define the principle of payment of bonus according to the prescribed Formula;

(3) to provide for payment of minimum and maximum bonus and lining the payment of bonus with the scheme of "set-off and set-on"; and

(4) to provide machinery for enforcement of the liability for payment of bonus."

20. Bonus is, thus, not a deferred wage. It is a right of the employee. It is not gratuitous. It embodies the principle that, as a contributor, by his effort, to the profitability of an establishment, the employee is but entitled to a share therein. It has, therefore, to be

[17] **AIR 1957 SC 110**
[18] **AIR 1958 SC 153**
[19] **AIR 1958 SC 923**

expansively interpreted, and expansively applied, if the socialist framework of our constitutional democracy is to be meaningfully implemented.

21. Even earlier, ***Associated Cement Cos. v. Their Workmen***[20] enunciated the same principle:

> "20. This Court had occasion to consider the said formula in ***Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur***. The judgment in that case indicates that without committing itself to the acceptance of the formula in its entirety, this Court in general accepted as sound the view that *since labour and capital both contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit if there is a surplus* after meeting the four prior or necessary charges specified in the formula. It is relevant to add that in dealing with the concept of bonus this Court ruled that *bonus is neither a gratuitous payment made by the employer to his workmen nor can it be regarded as a deferred wage. According to this decision, where wages fall short of the living standard and the industry makes profit part of which is due to the contribution of labour, a claim for bonus can be legitimately made*."

II. <u>Retrospective imposition of fiscal liability by legislation is permissible</u>

22. Retrospective imposition of a fiscal liability, by legislation, is perfectly permissible. We need only refer to certain authorities in this regard, as the position is, by now, legally fossilized.

23. ***Prashanti Medical Services & Research Foundation v. Union of India***[21]

[20] **AIR 1959 SC 967**
[21] **(2020) 14 SCC 785**

23.1 The fact that the retrospective application of a statute results in divesting, of the assessee, of a tax benefit which would otherwise have been available, was held, in ***Prashanti Medical Services & Research Foundation*** not to constitutionally invalidate the statute. Prashanti Medical Services & Research Foundation[22], the appellant in that case, filed an application under Section 35AC of the Income Tax Act, 1961[23], claiming deduction from the appellant's total income during the previous year by grant of approval to the hospital project of PMSRF. By notification dated 7 December 2015, the Government of India announced that the National Committee for Promotion of Social and Economic Welfare[24] had approved 28 projects as "eligible projects" under Section 35AC of the IT Act for a period of three financial years. Among these was the project of PMSRF.

23.2 PMSRF claimed to have received donations from several assessees during the years 2015-2016 and 2016-2017. The assessees who had made such donations claimed deduction thereof, from the total income, under Section 35AC. The Finance Act, 2016[25], however, discontinued the benefit of deduction under Section 35AC from Assessment Year[26] 2018-2019 Year by insertion of sub-section (7) therein, and made the amendment applicable from 1 April 2017. It was submitted, *inter alia*, that a right to claim deduction under the then existing Section 35AC had accrued in favour of hospital projects which stood approved by the Committee prior to the insertion of sub-section (7) of Section 35AC, for the period of such approval, i.e. for

22 "PMSRF" hereinafter
23 "the IT Act" hereinafter
24 "the Committee" hereinafter
25 "the FA 2016" hereinafter
26 "AY" hereinafter

three years, and that divesting of the said right by the amendment was not legally permissible, as it would amount to retrospective application of the amendment in derogation of rights that stood vested *a priori*. The High Court repelled the challenge, resulting in the filing of the appeal before the Supreme Court.

23.3 Before the Supreme Court, it was contended, on behalf of PMSRF, that assessees, who had made payments to PMSRF during the 2017-2018 Financial year, ought to have been allowed to claim deduction during that year notwithstanding the insertion of sub-section (7) in Section 35 AC with effect from 1 April 2017. The constitutional validity of Section 35AC (7), insofar as it had been made applicable with effect from 1 April 2017 was also assailed, in the alternative.

23.4 Though the Supreme Court held that the amendment was officially prospective rather than retrospective, it went on to dispel the challenge to its validity on the ground of hardship by the following terse observation:

> "28. We find no merit in this submission. In a taxing statute, a plea based on equity or/and hardship is not legally sustainable. The constitutional validity of any provision and especially taxing provision cannot be struck down on such reasoning."

24. Guidance may also be drawn, on the issue of whether a tax can be struck down as imposing an unreasonable restriction on the right to acquire, hold and dispose of property, the aspect of expropriatory and confiscated the nature of the tax, and the issue of whether tax can be struck down on the ground that it was made operative retrospectively, from the following passages from the judgment of the Constitution bench of the Supreme Court in ***Assistant Commissioner of Urban Land Tax v. Buckingham and Carnatic Co Ltd***[27]:

> "10. We pass on to consider the next contention raised on behalf of the petitioners namely that the Act should be struck down as an unreasonable restriction on the right to acquire, hold and dispose of property and as such violative of Article 19(1)(*f*) of the Constitution. It was argued that the test of reasonableness would be that the tax should not be so high as to make the holding of the property or the carrying on of the activity (business or profession), which is subject to taxation, uneconomic according to accepted rates of yield. In this connection it was said that the new Act by imposing a tax on the capital value at a certain rate was not correlated to the income or rateable value and, therefore, violates the requirement of reasonableness. We are unable to accept the proposition put forward by Mr Chari. *It is not possible to put the test of reasonableness into the straight jacket of a narrow formula. The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the Legislature and not to the Courts. In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit.* It was observed by this Court in ***Rai Ramakrishna v. State of Bihar***[28]:
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> > "It is of course true that the power of taxing the people and their property is an essential attribute, of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed by the Legislature according to the exigencies of its

[27] **(1969) 2 SCC 55**
[28] **AIR 1963 SC 1667**

needs, because there can be no doubt that the State is entitled to raise revenue by taxation.

The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article 19, Courts would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts, would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory purposes. This is illustrated by the decision of this Court in the case of ***Kunnathat Thatehunni Moopil Nair v. State of Kerala***[29], where a taxing statute was struck down because it suffered from several fatal infirmities. On the other hand, we may refer to the case of ***Jagannath Baksh Singh v. State of U.P.***[30], where a challenge to the taxing statute on the ground that its provisions were unreasonable was rejected and it was observed that *unless the infirmities in the impugned statute were of such a serious nature as to justify its description as a colourable exercise of legislative power, the Court would uphold a taxing statute.*"

11. *As a general rule it may be said that so long as a tax retains its character as a tax and is not confiscatory or extortionate, the reasonableness of the tax cannot be questioned.*

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12. *The impugned Act provides for the retrospective operation of the Act.* Section 2 states that except Sections 19, 47 and 48, other sections shall be deemed to have come into force in the City of Madras on the 1st day of July, 1963, and Sections 19 and 47 shall be deemed to have come into force in the City of Madras on the 21st May, 1966. It also provides that Section 48 shall come into force on the date of the publication of the Act in the Fort St.

[29] **AIR 1961 SC 552**
[30] **AIR 1962 SC 1563**

George *Gazette*. Section 6 enacts that the market-values of the urban lands shall be estimated to be the price which in the opinion of the Assistant Commissioner or the Tribunal such urban land would have fetched or fetch if sold in the open market on the date of the commencement of the Act, that is, from 1st July, 1967. The urban land tax is, therefore, payable from 1st July, 1963. It is contended on behalf of the petitioners that the retrospective operation of the law from 1st July, 1963, would make it unreasonable. We are unable to accept the argument of the petitioners as correct. *It is not right to say as a general proposition that the imposition of tax with retrospective effect per se renders the law unconstitutional. In applying the test of reasonableness to a taxing statute it is of course a relevant consideration that the tax is being enforced with retrospective effect but that is not conclusive in itself. Taking into account the legislative history of the present Act we are of opinion that there is no unreasonableness in respect of the retrospective operation of the new Act.* It should be noticed that the Madras Act of 1963, came into force on 1st July, 1963 and provided for the levy of urban land tax at the same rate as that provided under the new Act. The enactment was struck down as invalid by the judgment of the Madras High Court which was pronounced on the 25th March, 1966. The Legislature by giving retrospective effect to Madras Act 12 of 1966, that the urban land must be taxed on the date on which the 1963 Act came into force the new Act cured the defect from which the earlier Act was suffering. In ***Rai Ramkrishna*** the question at issue was whether the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (17 of 1961), was violative of Article 19(5) and (6) of the Constitution for the reason that it was made retrospective with effect from 1st April, 1950. It appears that the Bihar Finance Act, 1950, levied a tax on passengers and goods carried by public service motor vehicles in Bihar. In an appeal arising out of a suit filed by the passengers and owners of goods in a representative capacity, the Supreme Court pronounced on the 12th December, 1960, a judgment declaring Part III of the said Act unconstitutional. Thereafter an Ordinance, namely, Bihar Ordinance No. 2 of 1961, was issued, on the 1st of August, 1961, by the State of Bihar. By this Ordinance, the material provisions of the earlier Act of 1950, which had been struck down by this Court were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. Subsequently, the provisions of the said Ordinance were incorporated in the Act, namely, the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, which was duly passed by the Bihar Legislature and received the assent of the President on 23rd September, 1961. As a result of the retrospective operation of this Act, its material provisions were deemed to have come into force on April 1, 1950, that is to say, the date on which the earlier Act of 1950, had come into force. The appellants challenged the validity of this Act of 1961. Having failed in their writ petition before the High Court, the appellants came to this Court and *the argument was that the retrospective operation prescribed by Section 1(3) and by a part of Section 23(b) of the Act so completely altered the character of the tax proposed to be retrospectively recovered that it introduced a serious infirmity in the legislative competence of the Bihar Legislature itself. The argument was rejected by this Court and it was held that having regard to the relevant facts of the case the restrictions imposed by the said retrospective operation was reasonable in the public interest under Article 19(5) and (6) and also reasonable under Article 304(b) of the Constitution*. In our opinion the ratio of this decision applies to the present case where the material facts are of a similar character."

(Emphasis supplied)

25. *Narottamdas v. State of Madhya Pradesh*[31]

25.1 ***Narottamdas***, also by a Constitution Bench of the Supreme Court, is of considerable relevance. Under challenge before the Supreme Court, in that case, were the provisions of the Madhya Pradesh Minimum Wages Fixation Act, 1962[32] . The minimum wages payable to workmen engaged in purchase and sale of *bidi* in the state of Madhya Pradesh was fixed by the State in accordance with the provisions of the Minimum Wages Act, 1948. These rates were revised in 1956 by the Madhya Pradesh government, by notification, followed by a further notification of 30 December 1958, fixing new rates of minimum wages. The notification of 30 December 1958 was

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[31] **AIR 1964 SC 1667**
[32] "the MP Act" hereinafter

made effective from 1 January 1959. The Madhya Pradesh High Court, however, struck down the notification dated 30 December 1958. To meet this situation, the Madhya Pradesh Legislature enacted the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961, Section 31-A of which provided that the rates of minimum wages fixed or revised under the notification of 30 December 1958 would be deemed to have been validly fixed and revised and to come into force on the date mentioned in the notification, notwithstanding any judicial decision to the contrary. Section 31-A was struck down by the High Court of Madhya Pradesh by judgement dated 2 May 1962. On 21 June 1962, Madhya Pradesh Ordinance 4 of 1962 was passed, retrospectively fixing rates of minimum wages. This Ordinance was replaced by the MP Act. The validity of the MP Act was challenged by Narottamdas before the High Court of Madhya Pradesh. The challenge was dismissed by the High Court, against which Narottamdas appealed to the Supreme Court.

25.2 Three grounds of challenge were raised before the Supreme Court, of which only the second and third concern us. The second ground of challenge was that, by giving retrospective effect to the rates of minimum wages fixed by it, the MP Act placed unreasonable restrictions on Narottamdas' fundamental rights under Articles 19(1)(f)[33] and (g) of the Constitution. The third ground of challenge was that, by making the provisions of the Minimum Wages Act

[33] **19. Protection of certain rights regarding freedom of speech, etc.**—(1) All citizens shall have the right—

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(*f*) to acquire, hold and dispose of property; and

(*g*) to practise any profession, or to carry on any occupation, trade or business.

applicable to the wages now fixed, the legislation contravened Article 20(1) of the Constitution.

25.3 The Supreme Court addressed these two grounds of challenge, thus:

> "8. Nor is it possible to accept the argument that the Act is an unreasonable restriction on the appellant's fundamental rights under Article 19(1)(*f*) and (*g*) of the Constitution. *Restriction there undoubtedly is, but we are not satisfied that the restriction is unreasonable. Section 3 of the Act makes the new rates of wages effective from January 1, 1959. Section 4 makes the various provisions of the Central Act 11 of 1948 available for revision and enforcement of the rates as specified in Section 3. The consequence is that if an employer does not pay the rates as specified, an application may be made under Section 20 of the Act 11 of 1948 to enforce such payment. He will be liable also to prosecution and penalties under Section 22 of the Act. What according to the learned counsel makes the Act unreasonable is that such application can be made and such prosecution and penalties can be imposed even in respect of the past period — from 1st January, 1959 upto the date of the Act. How is it possible for the employer, it is urged, to pay such arrears which might amount in many cases to considerable sums of money when the accounts for the past years had been closed, profits had been distributed and the available surplus had either been spent or invested in other ways.*
>
> 9. We have no hesitation in agreeing to the proposition that the retrospective operation of legislation *is a relevant circumstance* in deciding its reasonableness. *It is, however, clearly established by a long series of decisions of this Court that this is not necessarily a decisive test*. We may mention in this connection the decision of this Court in ***Rai Ram Krishna v. State of Bihar***. There the Court had to consider the question whether the retrospective operation of the Bihar Taxation of Passengers and Goods (carried by Public Service Motor Vehicles) Act, 1961 put such an unreasonable restriction on the fundamental rights guaranteed under Article 19(1)(f) and (g) of the Constitution as to make the Act invalid to the extent of its retrospective operation. The Bihar Finance Act, 1950 (Bihar Act 17 of 1950) had imposed a tax on passengers and goods carried by public service motor

vehicles in Bihar. In an appeal arising out of a suit filed by the passengers and owners of goods, this Court struck down Part III of the said Act as unconstitutional. This judgment was pronounced on the 12th December, 1960. Then an Ordinance viz. Bihar Ordinance 11 of 1961 was issued on August 1, 1961. *By this Ordinance the material provisions of the earlier Act of 1950 were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. Subsequently, the provisions of this Ordinance were incorporated in the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. Section 23 of the Act provided that any amount paid, collected or recovered or purported to have been paid, collected or recovered as tax or penalty under the provisions of Part III of the Bihar Finance Act, 1950 or rules made thereunder during the period beginning with the first day of April, 1950 and ending on the thirty-first day of July, 1961, shall be deemed to have been validly levied, paid, collected or recovered under the provisions of this Act. It was urged that this retrospective operation for such a long period like 10 years itself made the provisions unconstitutional*. In repelling this contention, Gajendragadkar, J., (as he then was) speaking for the Court observed thus:

> "If a statute passed by the legislature is challenged in proceedings before a court and the challenge is ultimately sustained and the statute is struck down, it is not unlikely that the judicial proceedings may occupy a fairly long period and the legislature may well decide to await the final decision in said proceedings before it uses its legislative power to cure the alleged infirmity in the earlier Act. In such a case, if after the final judicial verdict is pronounced in the matter the legislature passes a validating Act, it may well cover a long period taken by the judicial proceedings in court and yet *it would be inappropriate to hold that because the retrospective operation covers a long period, therefore, the restriction imposed by it is unreasonable*."

10. These observations which were made in respect of a validating Act apply fully to a legislation as in the Act now under consideration.

11. *It is not also possible to accept the picture presented by Mr Setalvad of the employers' financial difficulties in making payment for the past period as a fair representation of the true facts*. For practically the entire period from 1st April, 1959 to the date of the present Act the employers had before them the provisions of what purported to be a good law requiring them to pay at these very

rates. As good businessmen they are expected to have made provisions for payments on those very rates, even though they intended to challenge the validity of the previous Act and ultimately succeeded in that attempt. We are not prepared to believe that such provisions are not generally made. *The hardship which according to Mr Setalvad, the employers would have to face in making the payments for the past periods is, in our judgment, more imaginary than real.*

12. But, urges the learned counsel, Section 3 of the Act while giving to the rates of wages fixed by the Act retrospective effect from 1st January, 1959 has also made wages at these new rates payable on January 1, 1959 for the past period. The result of this, according to the learned counsel, is that as soon as an application is made under Section 20 of Act 11 of 1948 the employer would be liable not only to pay the arrears of wages but also compensation as provided in sub-section 3 of Section 20. Sub-section 3 of Section 20 of Act 11 of 1948 provides inter alia that the minimum wages authority may direct:

> "In the case of a claim arising out of payment of less than minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times, the amount of such excess."

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14. If the legal position were as urged by the learned counsel, that Section 3 made the new rates of wages for the past period payable on January 1, 1959 or the apprehension that the employer might be made to pay heavy compensation may well be true. Another consequence of that legal position would be that the employer would also be liable to prosecution under Section 22 of the Act for his omission to pay on January 1, 1959 the rates which were fixed first by the Ordinance and then by the impugned Act. *We are satisfied however that Section 3 of the impugned Act does not make the new rates of wages payable on 1st January, 1959.* The words used are … "and it is hereby enacted that the said minimum rates of wages shall be payable by the employer in the said scheduled employments and be enforceable against him with effect from 1st January, 1959, as if the provisions herein contained have been in force at all material times". By these words, it is urged on behalf of the appellant, the legislature not only made the minimum wages effective from 1st January, 1959 but also made

them payable on that date for the past period. In other words, the sentence is sought to be read as saying "the said minimum rates of wages shall be payable by the employer in the said scheduled employments with effect from 1st January, 1959 and shall be enforceable against him with effect from 1st January, 1959". If that had been the intention of the legislature the appropriate words to use would have been "the said *minimum* rates of wages shall be payable by the employer in the said scheduled employments and enforceable against him with effect from 1st January, 1959". No purpose would be served by the word "be" before the word "enforceable" if the phrase "with effect from the 1st January 1959" was intended to apply both to "payable" and to "enforceable". The very fact that the legislature took care to say "be enforceable" in the latter part of the sentence shows clearly that while it was intended that the new rates would be enforceable against the employer with effect from 1st January, 1959 no date was being prescribed by Section 3 as regards the date on which it became payable.

15. *An examination of Section 4 of the Act further makes it clear beyond any reasonable doubt that it was the intention of the legislature that new rates became payable only on 21st June, 1962*, the date of the publication of the Ordinance which was latter replaced by the Act. Section 4 makes applicable to the minimum rates of wages as fixed by Section 3, the provisions of Section 4-A and Section 5 of the Minimum Wages Act (Act 11 of 1948), that is, the provisions as regards the revision in future of the rates fixed by the impugned Act, and of Sections 12 to 30-A. Among the sections thus included is therefore Section 20 which prescribes the procedure for claims arising out of payment of less than the minimum rates of wages. The first proviso to sub-section 2 of Section 20 prescribes a period of limitation within which an application on such claims has to be made. The period prescribed is one year from the date on which the minimum wages became payable. It was thus necessary for the legislature when giving retrospective effect to the rates fixed by Section 3 of the impugned Act to indicate the date on which the new rates would become payable. This indication is clearly given by the proviso to Section 4. The proviso (which has already been set out) is in these words:

> "Provided that with respect to claims arising out of payment of minimum rates of wages specified in Section 3 pertaining to a period prior to the publication of the Madhya Pradesh Minimum Wages Fixation Ordinance 1962 (4 of 1962) in the Gazette, the period of one year

> referred to in the first proviso to sub-section (2) of Section 20 of the said Act shall be counted with effect from 21st June, 1962, the date of publication of the said Ordinance in the Gazette."
>
> *****
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> 17. *It is clear that the duty to pay at these rates arose only on and from 21st June, 1962 and no liability to pay compensation under Section 20(3) or to prosecution under Section 22 of the Minimum Wages Act, 1948 would arise if payment was made on 21st June, 1962.*
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> *****
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> 19. *The last ground urged in support of the appeal viz. that the impugned Act contravenes Article 20(1) of the Constitution, is based on the assumption that the new rates of wages became payable on 1st January, 1959 even as regards the past. If that assumption were correct it would no doubt be also correct to say that the combined effect of Sections 3 and 4 of the impugned Act was to make the employer liable to conviction for offences for violation of a law which was not in force at the time of the commission of the act charged. We have already held however that on a proper construction of Sections 3 and 4, the new rates of wages for the past period became payable not on 1st January, 1959 but on 21st June, 1962. The attack on the validity of the sections on the ground of Article 20(1) of the Constitution therefore fails.*"
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> (Emphasis supplied)

25.4 This decision answers several of the grounds advanced by learned Counsel for the petitioners, inasmuch as it holds that (i) the imposition of a fiscal levy retrospectively, by legislation, is not if so unconstitutional, (ii) financial difficulties or hardship which an individual may face, as a result of such levies, would also not invalidate the levies themselves and (iii) even if the liability is created by such retrospective levies relates to a past period, so long as the citizen is entitled to discharge the liabilities later, Article 20(1) of the

Constitution is not violated. Additionally, this judgment is important as it applies, while examining the constitutional validity of a legislation which imposes a retrospective fiscal levy in a labour statute, the law which has been applied with respect to retrospective taxation measures.

26. That retrospective fastening of liability to pay bonus is not *per se* discriminatory or constitutionally infirm also stands settled by the judgement of the Constitution Bench in ***Jalan Trading***:

> "*Whether the scheme for payment of minimum bonus is the best in the circumstances, or a more equitable method could have been devised so as to avoid in certain cases undue hardship, is irrelevant to the enquiry in hand. If the classification is not patently arbitrary, the court will not rule it discriminatory merely because it involves hardship or inequality of burden.* With a view to secure a particular object, a scheme may be selected by the legislature, wisdom whereof may be open to debate; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under article 14. Invalidity of legislation is not established by merely finding faults with the scheme adopted by the legislature to achieve the purpose it has in view. Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. Plea of invalidity of section 10 on the ground that it infringes article 14 of the Constitution must therefore fail."
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> (Emphasis supplied)

III. <u>Impugned Amendment Act is not confiscatory or expropriatory</u>

27. A fiscal statute, even if it satisfies all other constitutional indicia may, nonetheless, be liable to be eviscerated if it is confiscatory or expropriatory in nature. The interests of industry cannot be consigned to a back seat, and any imposition of fiscal liability which imposes a constitutionally unbearable burden on the industry would be legally infirm.

28. In ***R.C. Tobacco v. Union of India***[34], the law was enunciated thus:

> "21. A law cannot be held to be unreasonable merely because it operates retrospectively. Indeed even judicial decisions are in a sense retrospective. When a statute is interpreted by a court, the interpretation is, by fiction of law, deemed to be part of the statute from the date of its enactment. The unreasonability must lie in some other additional factors. *The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be so unreasonable as to violate constitutional norms*:
>
> > "Where for instance, it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purposes." (See ***Rai Ramkrishna v. State of Bihar***)
>
> The question to be answered therefore is whether Section 154, which is in terms retrospective, is ex facie discriminatory, or so unreasonable or confiscatory that it violates Articles 14 and 19 of the Constitution.
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> 22. *The factors which are generally considered relevant in answering this question are: (i) the context in which retrospectivity*

[34] **(2005) 7 SCC 725**

was contemplated, (ii) the period of such retrospectivity, and (iii) the degree of any unforeseen or unforeseeable financial burden imposed for the past period. [***Empire Industries Ltd. v. Union of India***[35]; ***Ujagar Prints (II) v. Union of India***[36]]"

29. A fiscal statute can be questioned on the ground that it is confiscatory or expropriatory, but not that it is harsh or excessive. As held in ***Hari Krishna Bhargav v. Union of India***[37]:

> "A taxing statute may accordingly be open to challenge on the ground that it is expropriatory, or that the statute prescribes no procedure or machinery for assessing tax, but it is not open to challenge merely on the ground that the tax is harsh or excessive."

30. There is, therefore, a line between harshness and expropriatory nature of a fiscal levy. The law does not appear to have developed any clear criteria on the basis of which the situs of that line may be ascertained, and Article 19(1)(f) of the Constitution appears to have been treated as a guiding principle. In ***Rai Ramakrishna***, the Supreme Court held:

> "In other words, it may be open to a party affected by the provisions of the Act to contend that the retrospective operation of the Act so completely alters the character of the tax imposed by it as to take it outside the limits of the entry which gives the Legislature competence to enact the law ; or, it may be open to it to contend in the alternative that the restrictions imposed by the Act are so unreasonable that they should be struck down on the ground that they contravene his fundamental rights guaranteed under Article 19(1)(f) and (g)."

[35] **(1985) 3 SCC 314**
[36] **(1989) 3 SCC 488**
[37] **AIR 1966 SC 619**

The three criteria stipulated in para 22 of ***R.C. Tobacco***, to our mind, set out the definitive indicia on the basis of which it can be decided whether a fiscal levy is confiscatory or expropriatory. *Inter alia*, in arriving at the decision, the Court would keep in mind the extent of the burden which the levy creates, the purpose of the levy, the extent to which the levy is retrospectively applied and the period for which the retrospectivity extends.

31. Thus viewed, it cannot be said that the retrospective application of the amendments to the PBA, as carried out by the impugned Amendment Act, are confiscatory or expropriatory in nature. The legislation is eminently welfare-based, and intended to ensure an equitable distribution of the profits of the establishment between the industry and work force. Prior to the enactment of the impugned Amendment Act, extensive deliberations have taken place, and it is only after taking into account all relevant considerations, including the increase in cost of living and other such factors, that the enactment was put in place. The fact that Aviva is agreeable to shoulder the burden, *sans* interest, provided it is given time to do so, is by itself a pointer to the fact that the imposition is not excessive or expropriatory. Neither learned Counsel has, in fact, seriously referred to any material which would indicate that a constitutionally unwholesome burden has resulted, as a consequence of the retrospective application of the impugned Amendment Act, has resulted.

32. The submission that the sugar industry is in a financially precarious position is, needless to say, irrelevant to the controversy. Payment of bonus under the Act is based on the profits earned, and resultant surplus, and the individual hardship faced by a particular industry cannot be made the basis to invalidate the impugned Amendment Act. Besides, these are exigencies for which any industry is expected to make allowances, and we can certainly not accept a submission that the sugar industry is so financially woebegone that it cannot shoulder the liability. Operational hardships, such as the need to revisit its accounts, and other such considerations, are also totally irrelevant to the constitutionality of the impugned Amendment Act.

33. Indeed, if such submissions were to be accepted, there could never be any retrospective fiscal levy at all.

IV. Plea based on Article 300-A

34. Among Mr. Potaraju's more impassioned submissions was the plea that the retrospective application of the provisions of the impugned Amendment Act unconstitutionally deprive the petitioners of their property, in violation of Article 300-A of the Constitution of India.

35. ***Jalan Trading*** answers this plea. Significantly, ***Jalan Trading*** was rendered prior to the repeal of Article 31 of the Constitution by the 44th Amendment, when the right to property was a fundamental right. Even then, the Supreme Court did not countenance the plea that the legislation under challenge before it resulted in unconstitutional deprivation of the right to property:

> "We need say nothing at this date about the plea that section 10 by imposing unreasonable restrictions infringes the fundamental freedom under article 19(1)(g) of the Constitution, for, by the declaration of emergency by the President under article 352, the protection of article 19 against any legislative measure or executive order, which is otherwise competent, stands suspended. The plea that section 10 infringes the fundamental freedom under article 31(1) of the Constitution also has no force. Clause (1) of article 31 guarantees the right against deprivation of property otherwise than by authority of law. Compelling an employer to pay sums of money to his employees which he has not contractually rendered himself liable to pay may amount to deprivation of property, but the protection against depriving a person of his property under clause (1) of article 31 is available only if the deprivation is not by authority of law. Validity of the law authorising deprivation of property may be challenged on three grounds : (1) incompetence of the authority which has enacted the law; (ii) infringement by the law of the fundamental rights guaranteed by Chapter III of the Constitution, and (iii) violation by the law of any express provisions of the Constitution. Authority of Parliament to legislate in respect of bonus is not denied and the provision for payment of bonus is not open to attack on the ground of infringement of fundamental rights other than those declared by article 14 and article 19(1)(g) of the Constitution. Our attention has not been invited to any prohibition imposed by the Constitution which renders a statute relating to payment of bonus invalid. We are therefore of the view that section 10 of the Bonus Act is not open to attack on the ground that it infringes article 31(1)."

36. Article 300-A does not confer any absolute right to property. The right to property is no longer a fundamental right. Even as a plain constitutional right, which does not enjoy Part III status, the right to property may be divested by authority of law. The right, therefore, would stand unconstitutionally divested only if the divestiture is otherwise than by authority of law, or if the law which divests the right is unconstitutional.

37. The decisions in ***Madan Mohan Pathak***, ***C.R. Rangadhamaiah***[38], ***Punjab State Coop. Agricultural Development Bank*** and ***Bernard Francis Joseph Vaz*** can be of no avail to Mr. Potaraju. They, in fact, hold that the retiral benefits *of the employee* constitute enforceable rights, and cannot be retrospectively divested. The submission of Mr. Potaraju that, by juxtaposition, the surplus that remains with the employer, after discharge of statutory liabilities, constitutes its property, akin the proprietorial rights which vest in employees in their retiral entitlements, is, with respect, jurisprudentially infirm. The submission conflates rights with liabilities. The right of the employee, to retiral benefits, counterbalances *the liability* of the employer to disburse the benefits.

38. There is no known legal principle which holds that the surplus with an employer after payment of statutory liabilities is sacred and inviolable. No doubt, it constitutes the property of the employer, as would any and every part of the employer's assets, but, like all other property, it can be divested by authority of law.

39. Again, if the submission of Mr. Potaraju were to be taken to its logical conclusion, there could never be any retrospective fiscal levy.

40. Inasmuch as we have already held Section 1(2) of the impugned Amendment Act, which grants retrospective application to the provisions of the impugned Amendment Act to be constitutionally

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[38] **(1997) 6 SCC 623**

valid, the challenge based on Article 300-A has also to necessarily fail.

V. The Sequitur

41. Applying these principles, we are unable to satisfy ourselves that Section 1(2) of the impugned Amendment Act, by rendering the amended provisions retrospectively applicable from 1 April 2014, is unconstitutional. The power to introduce a fiscal levy retrospectively is not in doubt. The measure that the impugned Amendment Act puts in place is clearly beneficial to the working class and, therefore, serves an eminent public purpose. The facts brought to our notice by Ms. Bansal make it clear that extensive deliberations proceeded the impugned Amendment Act, in which the employers' representatives were also involved. The retrospectivity of the amendment extends merely for a period of one year, i.e., for the period 2014-2015. No criminal liability would fasten on the petitioners even in the event of the default in disgorging the additional bonus which has become payable, as Section 19(b) of the PBA entitles them to seek extension of time to pay the said liability, and Ms. Bansal has, on instructions, conveyed the agreement of the respondents that the liability may be disgorged within a period of eight months. Article 20(1) is not, therefore, violated.

Conclusion

42. We are not, therefore, satisfied that there is any unconstitutionality in the impugned Amendment Act, or in Section 1(2) thereof, whereby it has been made effective from 1 April 2014.

43. However, the time for making payments of bonus to the eligible employees in terms of the impugned Amendment Act, for the year 2014-2015, shall stand extended by a period of eight months from the date of pronouncement of this judgment.

44. Failure to make payment as aforesaid would entail interest on the said amount, @ 8% per annum till the date of actual payment.

45. The writ petitions stand disposed of in the above terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MAY 29, 2026