THE SUPREME COURT OF INDIA

(Original and Civil Appellate Jurisdiction)

Present:- *V.D.Tulzapurkar, Ranganath Misra and V.Khalid, JJ.*

*Writ Petition Nos. 8698-99 of 1983; Civil Appeal Nos. 1495-96 of 1984 and S.L.P. (Civil) No.3482 of 1984.

26th February, 1985.

E.I.D. Parry (India) Ltd. and others

*Petitioners**

v.

State of Tamil Nadu and others

Respondents.

Industrial Disputes Act (XIV of 1947), Section 25FFA - Dispute regarding closure of a century and half old sugar factory - Closure likely to affect not only large number of workmen but also producers of sugarcane and thus likely to bring about large scale unemployment in the locality - Held the factory should be kept going with a reduced staff in the interest of all concerned - Suitable directions issued to enable the factory to be run on an economically viable basis. [Para. 5]

The Judgment of the Court was delivered by

RANGANATH MISRA, J.:- The Nellikuppam Sugar Factory, one of the factories run by E.I.D. Parry (India) Ltd., was founded in 1845 and has been manufacturing sugar, candy and other sugar based products. The crushing capacity of the sugar factory was 2200 tons of cane per day up to 1969. In February that year the Company decided to increase the said capacity to 2800 tons and that capacity was again further increased to 4000 tons a day in 1977. Disputes arose as to the labour strength in the sugar unit and two associate manufactories being a distillery and a CO2 unit - as also the cane offices (hereinafter referred to as 'FACTORY'), and by an Award dated December 23, 1977, such strength was determined at 1,700 regular workmen and 100 casual labourers. In January 1978, there was a bipartite settlement accepting the figures given in the Award and that settlement remained operative till almost the end of 1981. In December that year, the Union raised a charter of demands mainly focussed upon wages. As there were certain vacancies within the approved strength, the Union also asked for filling up the same. The management thereupon wanted a review of the strength fixed in the settlement of 1978 and negotiations were carried on for quite some time with a view to resolving the dispute the management asking for a scaling down of the strength on the ground that it was not economically viable to continue with that strength of the labour force, as fixed earlier, and the workmen insisting upon the implementation of the agreed strength. When the bipartite negotiations did not yield any useful result, the Company ultimately issued a notice on June 7, 1983, for a close down of the factory with effect from August 8, 1983, on the ground of continued loss arising out of and connnected with the excess labour strength and high rate of wages as compared to the rates payable in sugar industry under the scales fixed by the Sugar Wage Board. On July 4, 1983, the State Government of Tamil Nadu directed reference of the two disputes under Section 10 (1) (d) read with Section 12 (5) of the Industrial Disputes Act, 1947 ('Act' for

short), to the Tribunal for adjudication. On August 1, 1983, the State Government again made another reference relating to the justification of closure. On that very day an order was made by the State Government under Section 10B of the Act as amended in the State of Tamil Nadu prohibiting the closure of and strike in the factory pending adjudication of the dispute referred to the Tribunal.

2. The three questions which thus came to be referred to the Tribunal were the following:-

"1. Whether the action of the management in not filling up the existing vacancies as per the 18 (1) settlement dated 30.1.1978 and insisting on reduction of labour strength in view of the changed circumstances on the plea that the 18 (1) settlement provides for such a review, is justified, and to give appropriate directions;

2. Whether the insistence by the management on reduction of the existing labour strength as a pre-condition for discussing the charter of demands consisting of 30 items given by the workers on 16.1.81 is justified, and to give appropriate directions?; and

3. Whether the proposal to close down the manufacturing activities of the Sugar Factory of E.I.D. Parry (India) Ltd., Nellikuppam, including the Distillery and the CO2 Units and the Regional Cane Offices of the Factory functioning at the following addresses with effect from the 8th August, 1983, as mentioned in the notice of closure and 7th June, 1983 issued by the management under Section 25FFA of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) is justified, if not to give appropriate directions?"

3. The writ petitions were filed by the Company impugning the validity of Section 10B of the Act as amended in the State of Tamil Nadu as also the Government Order prohibiting the closing down of the factory. This Court by Order dated August 10, 1983, directed after hearing the parties that there would be a stay of the operation of the Government Order prohibiting closure subject to certain directions. Those directions authorised the factory to continue to operate with a reduced staff/labour force of 952 workmen and so far as the excess strength of 950 was concerned, the closure was permitted to take effect from midnight of 8/9th August, 1983 on the basis of "last come, first go". This Court also directed that the wages of the workmen who would continue in employment would not stand reduced to the level of the Sugar Board's Awards as amended from time to time and accepted by other sugar factories in the State. The Court directed the Tribunal to determine within a period not exceeding three months the strength of the workmen required to operate the factory taking into consideration all relevant factors including strength of workmen in neighbouring sugar factories with similar capacity operating in the State of Tamil Nadu.

4. The Tribunal heard parties and by its Award dated December 22, 1983, came to hold:

"The proposal to close down the manufacturing activities of the Sugar Factory of E.I.D. Parry (India) Ltd., Nellikuppam, including the Distillery and the CO2 units and the 4 Regional Cane Offices of the Factory with effect from 8th August, 1983, as mentioned in the notice of closure dated 7th June, 1983, issued by the Management under Section 25FFA of the Industrial Disputes Act, 1947, is justified."

It answered the direction of this Court by fixing the strength of workmen, including staff, at 925 and held that with that number the factory and the connected units could operate. Therefore, the Tribunal found:

"I am constrained to hold that there is no need to close the sugar factory and other units in the interests of the workmen and large number of cane growers who have raised sugarcane cultivation which is said to be ripe for crushing."

The Tribunal answered the other questions

in favour of the management while examining the issue relating to justifiability of closure. Thereupon the Award has been challenged in this Court by the Union of the workmen as also the staff Union in CA. 1495/84 so far as the Tribunal came to hold that the decision to close down the factory was justified and the reduction of the labour strength and in answering the other questions against them and C.A. 1496/84 has been filed by the management challenging the conclusion that the factory should operate with a labour strength of 925. SLP (Civil) No.3482/84 has been filed by the Union challenging the Award so far as it relates to reduction in the strength of the labour. Both the writ petitions as also both the appeals and the Special Leave Petition were clubbed together for hearing and a joint hearing has been given.

5. In course of hearing we were impressed by the fact that the factory was almost a century and a half old and appeared to be the most ancient as also the premier industry of the area. In view of the fact that the factory required a sizeable quantity of sugarcane for its business, people in the locality had been growing sugarcane and the Tribunal had found that a lot of sugarcane was standing in the fields. Closure of the factory was not only going to affect adversely the workmen but also the producers of sugarcane and was, therefore, likely to bring about unemployment to a sizeable population in the locality. Though the Tribunal came to hold that the closure notice was valid and justified, it also recorded a finding pursuant to the direction of this Court dated August 10, 1983, that with a viable unit of 925 workers, including staff, the factory could run. We found that if the factory was not closing down and was to operate, apart from providing a ready market for the sugarcane growers, provision for employment of at least 925 people would be made. In course of hearing we had, therefore, suggested to learned Counsel for the parties that every effort should be made to keep the factory going and scope for employing as many of the displaced workmen as possible should be explored. With a view to providing adequate opportunity for the said purpose the hearing of the matter was adjourned on more than one occasion. We were satisfied that learned Counsel appearing for the parties appreciated our approach to the matter and took considerable pains to evolve an acceptable formula which would alleviate the hardship of workmen to the maximum extent possible and ultimately left the matter to us for final disposal. Keeping in view the submissions and facts placed after exploring the possibilities of settlement, we direct disposal of all the aforesaid cases on terms indicated below.

6. The Award of the Special Tribunal, Madras, dated December 22, 1983, in Industrial Dispute Case No.1/83, is hereby confirmed. All the writ petitions, appeals and special leave petition are dismissed subject to further directions as detailed below which shall be implemented without in any way affecting the confirmation of the Award as directed above:

(a) The Company shall within 15 days from the date of this order and at any rate not later than March 15, 1985, take into employment 384 workmen on its labour rolls and the above 384 workmen shall be appointed in categories in which vacancies have already arisen (including vacancies against which 64 persons belonging to the labour category have been appointed on temporary basis) and the categories in which vacancies will arise in the future years. The aforesaid number of persons to be given employment shall include 76 employees (64 workmen and 12 members of the staff) already appointed on temporary basis during the first half of 1984;

(b) The company shall within 15 days from now, after filling in the vacancies out of 183 posts so as to make up the strength of 183 as fixed by the Tribunal, recruit 30 more persons on the staff rolls against categories in which vacancies are anticipated.

Out of the above workmen (labour and staff), those who cannot be appointed against vacancies in categories in accordance with the strength fixed as per

the Award shall be borne on the rolls of an additional workmen pool to be set up by the management;

(c) Workmen shall be appointed as stated above on the basis of last go, first come in the categories in which retirements are to take place and if requisite number of persons to be fitted into such categories are not available from amongst the excess workmen, appointments shall be made in the lower/other categories in which workmen are available provided that the above procedure shall not apply to the 76 employees (64 labour and 12 staff) already appointed by the Company on temporary basis during the first half of 1984 and who are to be confirmed in employment now;

(d) Vacancies arising in different categories in accordance with the strength determined by the Special Industrial Tribunal as a result of retirements or for any other reason shall be filled in from amongst workmen borne on the additional workmen pool except in the case of the posts which may require statutory or specified qualifications for which persons with such a qualification are not available in the additional workmen pool. Such recruitment in the excepted cases would, however, be over and above the number in the additional workmen pool;

(e) Any vacancy that may arise in the additional workmen pool shall not be filled up and be abolished and the strength of the additional workmen pool shall progressively be reduced until all such workmen are absorbed in the regular vacancies arising in terms of the Award or cease to be in service of the Company for any reason; the additional workmen pool shall in this process come to an end and cease to exist;

(f) Workmen borne on the additional workmen pool shall be allocated such jobs as are available from time to time at any location in Nellikuppam and this may include jobs of multiple skills or jobs of intermittent nature to ensure mobility of utilisation;

(g) There shall be no reduction in the wages of workmen who have been continued in employment in terms of the order dated August 10, 1983, of this Court but the operation of paragraph 3 of that order will cease to have effect on and from January 1, 1984, and their emoluments will be in accordance with the operative settlements as if paragraph 3 of the order had never been there.

In order to facilitate future recruitment on the Sugar Wage Board pattern of wages, in respect of future recruits all the existing workmen shall be placed in the Sugar Wage Board pattern of wages (Pay, Dearness Allowance and other allowances) with effect from March 1, 1985. The Company is directed to treat the excess amount over and above the Sugar Wage Board Pattern of wages as applicable to other workmen in other sugar factories in Tamil Nadu as 'personal allowance' admissible to such workmen and this 'personal allowance' shall continue to be paid to the workmen until their retirement , cession or superannuation from service for any reason.

"Personal allowance" shall be treated as regular pay for the purposes of all other service benefits as existing and shall include increments and allowances admissible under operative settlement;

(h) The 384 workmen on labour rolls and the 30 workmen on staff rolls in excess of the strength determined by the Award shall be offered employment within 15 days from the date of this order and their wages shall also be as per the provision made in the clauses above with effect from the date of their joining service;

(i) The Company shall be entitled to make future fresh employment (employment not covered by this order) at Sugar Wage Board pattern of pay and allowances as may be applicable from time to time to workmen in sugar industry in the State of Tamil Nadu;

(j) If and when the Company requires employment of casual labour, preference shall be given, as far as practicable, to the persons who were borne on the

casual labour rolls of the Company up to August, 1983.

(k) The Company shall create a fund within three months hence by contributing a sum of rupees five lakhs to form the nucleus for the purpose of providing opportunities to the displaced workmen (being the residue after 384 workmen and 30 staff are taken into employment) for their rehabilitation. The Labour Commissioner of Tamil Nadu, the District Magistrate of South Arcot, the General Manager of the Factory and a representative of the Union of the workmen and another of the staff union with the Labour Commissioner as the Chairman shall be the members of the Committee to explore schemes of rehabilitation and shall work out the details of the schemes. In the event of necessity to have directions in the matter of implementation of the schemes, parties shall be entitled to approach the High Court of Madras. The contribution by the Company shall be treated as an interest free loan to the Rehabilitation Fund.

7. All parties shall bear their respective costs.

8. Before we part with the matter, we record our appreciation of the co-operation shown by Counsel for all the parties in the matter of keeping the Factory going.

V.K. ..... *Order accordingly.*

THE SUPREME COURT OF INDIA

(Original Jurisdiction)

Present:- *P.N. Bhagwati, Amarendra Nath Sen and Ranganath Misra, JJ.*

*Writ Petitions (Civil) Nos. 6756, 8483; 4309 and 7179 of 1982.

17th October, 1984.

Smt. J.S.Rukmani, etc. *Petitioners**

v.

Government of Tamil Nadu and others *Respondents.*

(A) States Reorganisation Act (XXXVII of 1956), Section 86 and Fifth Schedule - Liability for pension created by a successor State subsequent to appointed date - If covered by Section 86.

It is obvious on a plain grammatical construction of Section 86 of the States Reorganisation Act that the liability of an existing State in respect of pension which passes to or is apportionable between the successor State or States in accordance with the provisions of the Fifth Schedule is a liability in respect of pension under an existing law. The liability may be *in praesenti* or it may be a liability to arise in future, but it must be a liability under an existing provision of law and it is that liability which is to pass to or be apportionable between the successor State or States in accordance with the provisions contained in the Fifth Schedule. Section 86 could not possibly be intended to refer to a liability which may subsequently be created by a provision of law which may be enacted in future by any particular State. The words of the section are "the liability of the existing States." It must therefore be a liability of an existing State and not a liability of a successor State which may come into being as a result of a future legislation passed by that State. It is therefore clear beyond doubt that Section 86 and Paragraphs 1 and 3 of the States Reorganisation Act Fifth Schedule do not cover a case where a liability for pension is

created by a successor State subsequent to the appointed date, namely, 1st October, 1956. *[Para. 8]*

(B) New Family Pension Rules (1964), T.N. Government Notification G.O.MS/63 (Finance) dated 18.3.1982 - Restrictive limitation imposed by - Constitutional validity - If violative of Article 14 of the Constitution.

The object of the Notification dated 26.5.1979 extending benefit of family pension to the members of the family of Government Servants who retired prior to 1.1.1964 does not warrant any distinction to be made between the widows of one class of Government servants and the widows of another class merely on the basis of the place where the Government servant last served at the time of superannuation, although in both cases the Government Servant served the same State, namely, the former State of Madras and superannuated before the reorganisation of the States. Hence, the restrictive limitation imposed by the Government Order dated 18.3.1982 confining the benefit of family pension to the members of the family of only those Goverment Servants who last served at a place falling within the territories of the successor State of Tamil Nadu must be held violative of Article 14 of the Constitution and hence unconstitutional and void. *[Para. 9]*

The Judgment of the Court was delivered by

BHAGWATI, J.:- These writ petitions raise a common question of law relating to the liability of the State of Tamil Nadu for payment of family pension to widows of employees who were in the service of the former State of Madras and who retired from service before reorganisation of States under the States Reorganisation Act, 1956. The facts giving rise to these writ petitions are almost identical and it will, therefore, be enough if we state the facts of only one writ petition, namely, Writ Petition No.4309 of 1982.

2. This writ petition came to be initiated as a result of a letter addressed to this Court by the petitioner complaining that though she was the widow of an employee of the former State of Madras, who retired before the reorganisation of the States, under the States Reorganisation Act, 1956, she was not being given the benefit of family pension which was granted by the State of Tamil Nadu under a Notification dated 26th May, 1979. The letter of the petitioner was treated as a writ petition and notice was issued to the State of Tamil Nadu and since it appeared that the State of Tamil Nadu was disputing its liability to pay family pension to the petitioner on the ground that the deceased husband of the petitioner was serving in Cannanore at the time of his retirement and that Cannanore having become part of the State of Kerala as a result of the provisions of the States Reorganisation Act, 1956, it was the State of Kerala which was liable to pay family pension, if at all, to the petitioner, the Court also joined the State of Kerala as a respondent to the writ petition and issued notice to the State of Kerala. It was common ground between the parties that the husband of the petitioner was in the employment of the former State of Madras and was serving as Deputy Inspector of Schools until 19th August, 1954 when he retired from service on superannuation. The place where he served last as Deputy Inspector of Schools was Cannanore and after his retirement, he settled down in his ancestral house in Village Kunniseri in Palghat District which was originally part of the former State of Madras but which on the reorganisation of the States came to belong to the State of Kerala. The husband of the petitioner was, for the sake of convenience, drawing his pension from the nearer Sub-treasury in Palghat until his death which occurred in July, 1963.

3. It appears that the State of Tamil Nadu introduced New Family Pension Rules, 1964 granting benefit of pension to the family of a Government servant on his death but this benefit was confined only to the members of the family of those Government servants who retired from and after 1st April, 1964. The question of extending this benefit to the

members of the family of Government servants who retired prior to 1st April, 1964 was considered by the Third Tamil Nadu Pay Commission and in its report it recommended "extension of the family pension benefits to the families of the Government servants who retired prior to 1st April, 1964". Pursuant to this recommendation made by the "Third Tamil Nadu Pay Commission, the State of Tamil Nadu issued the Notification dated 26th May, 1979 extending the benefit of family pension to the members of the family of Government servants who retired prior to 1st April, 1964. Paragraph 7 of this Notification is material and we may therefore reproduce it *in extenso:*

"7. Employees not covered by the New Family Pension Rules, 1964, fall under the following three categories:-

(i) those who are still in service.

(ii) those who have retired and are alive, and

(iii) those who have died.

(a) Considering the hardship to the families of employees not covered by the New Family Pension Rules, 1964, the Government direct that the family of an employee belonging to any of these three categories and having completed at least a year's service be sanctioned, on death of the employee, family pension at a flat rate of Rs.100/- per month. Families of employees who have already died will be sanctioned family pension at this flat rate of Rs.100/- per month with effect from the 1st April, 1979.

(b) A person in receipt of family pension under the old Rules shall have the option to retain it, if it is found to be more advantageous than what would be available under (a) above. In this case, such family pension and the Dearness Allowance thereon immediately before the coming into force of these orders shall be taken together and the sum total of these amounts shall henceforth constitute the family pension."

4. The contention of the petitioner based on this paragraph of the Notification dated 26th May, 1979 was that she was entitled to family pension at the rate of Rs.100/- per month with effect from 1st April, 1979 since her husband was an employee of the former State of Madras and had retired prior to 1st April, 1964 and subsequently died. The petitioner made an application to the Secretary to the Government of Tamil Nadu on 5th July, 1981 for grant of family pension at the rate of Rs.100/- per month under Paragraph 7 of the Notification dated 26th May, 1979 and on this application, the Government of Tamil Nadu intimated to the petitioner through a letter dated 22nd November, 1981 addressed by the Joint Director of Schools Education that the family pension of Rs.100/- per month was sanctioned to the petitioner with effect from 1st April, 1979. The petitioner was accordingly paid family pension at the rate of Rs.100/- per month for a period of about 6 months. Surprisingly, on 20th April, 1982, the Under Secretary to the Government of Tamil Nadu addressed a letter to the petitioner stating that because the petitioner's husband last served in Cannanore at the time of his retirement and Cannanore does not now form part of the present State of Tamil Nadu the petitioner was not entitled to the grant of family pension under the clarification issued by the Government of Tamil Nadu in its G.O.MS/ 63 (Finance) dated 18th March, 1982. This Notification sought to clarify that if the place of retirement of an employee or the place where he was last serving at the time of his death while in service, did not form part of the present State of Tamil Nadu, the widow of such employee would not be entitled to the benefit of family pension under the Notification dated 26th May, 1979 and it was on the basis of this clarification that the family pension which was being paid by the State of Tamil Nadu to the petitioner was discontinued by the letter dated 20th April, 1982. The petitioner being obviously a woman without any means, it was not possible for her to get relief by filing a regular writ petition and she therefore sought to invoke the jurisdiction

of this Court by addressing a letter complaining of discrimination against her and praying that family pension at the rate of Rs.100/- per month should be directed to be paid to her by the State of Tamil Nadu under the Notification dated 26th May, 1979.

5. The State of Tamil Nadu as also the State of Kerala appeared in answer to the notice issued by the Court and each tried to throw the responsibility for payment of the family pension on the other, without disputing that the amount of family pension was payable to the petitioner but only raising the question as to who should be made liable to pay the same. Since the hearing of this writ petition as also the other three writ petitions filed by widows similarly circumstanced were likely to take some time in reaching hearing, the Court made an interim order directing each of the States of Tamil Nadu and Kerala to pay a sum of Rs.50/- per month to the petitioner as also to the widows who had moved the other three writ petitions in order to enable them to survive. On these facts, the question which falls for consideration is as to which State is liable to pay the amount of family pension to the petitioner, the State of Tamil Nadu or the State of Kerala.

6. Now one position is clear namely that the petitioners cannot claim any family pension under the Kerala Pension Rules since the Kerala Pension Rules admitted on their terms apply• only in cases of Government servants who retired from and after 1st April, 1964 while the husband of the petitioner retired in August, 1954 and the respective husbands of the petitioners in the other three writ petitions also retired before 31st August, 1964. Moreover, the husband of the petitioner was at no time an employee of the State of Kerala which comes into being on 1st October, 1956 under the States Reorganisation Act, 1956 since he retired from service long before that date and obviously therefore the petitioner could not claim any family pension from the State of Kerala under the Kerala Family Pension Rules. The same position obtained also in regard to the respective husbands of the petitioners in the other three writ petitions. The only question which therefore calls for consideration is as to whether the petitioners in these four writ petitions are entitled to claim family pension under the Notification dated 26th May, 1979 and if so, whether they are entitled to claim each family pension from the State of Tamil Nadu or from the State of Kerala. The learned Additional Solicitor General appearing on behalf of the State of Tamil Nadu placed strong reliance on Section 86 of the States Reorganisation Act, 1956 read with Fifth Schedule of that Act. Section 86 reads as follows:

> *"Section 86 : Pensions:-* The liability of the existing States in respect of pensions shall pass to, or apportioned between, the successor States in accordance with the provisions contained in the Fifth Schedule."

7. The Fifth Schedule consists of 5 paragraphs but we are concerned only with paragraphs 1 and 3 which are in the following terms:

> "1. Subject to the adjustments mentioned in paragraph 3, the successor State or each of the successor States shall, in respect of pensions granted before the appointed day by an existing State, pay the pensions drawn in its treasuries.
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> ... .
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> 3. In any case where there are two or more successor States, there shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March, 1957 and in respect of each subsequent financial year, the total payments made in all the successor States in respect of the pensions referred to in paragraphs 1 and 2. That total representing the liability of the existing State in respect of pensions shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reim-

bursed the excess amount by the successor State or States paying less."

8. It is obvious on a plain grammatical construction of Section 86 that the liability of an existing State in respect of pension which passes to or is apportionable between the successor State or States in accordance with the provisions of the Fifth Schedule is a liability in respect of pension under an existing law. The liability may be *in praesenti* or it may be a liability to arise in future, but it must be a liability under an existing provision of law and it is that liability which is to pass to or be apportionable between the successor State or States in accordance with the provisions contained in the Fifth Schedule. Section 86 could not possibly be intended to refer to a liability which may subsequently be created by a provision of law which may be enacted in future by any particular State. The words of the Section are "the liability of the existing States". It must therefore be a liability of an existing State and not a liability of a successor State which may come into being as a result of a future legislation passed by that State. If the construction canvassed on behalf of the State of Tamil Nadu were accepted, it would lead to a startling result, namely, that a successor State by enacting legislation creating a liability for pension would be able to pass on that liability to the other successor States which could never have been intended by the legislature. This view which we are taking is reinforced by Paragraphs 1 and 3 of the Fifth Schedule. Paragraph 1 on its plain terms refers to "pension granted before the appointed date by an existing State." It applies only in respect of a pension which is granted before 1st October, 1956 being the appointed date under the States Reorganisation Act, 1956 and it has no reference whatsoever to any pension granted subsequent to that date. Moreover Paragraph 3 also makes it clear that it is only the liability of an existing State in respect of pension which is required to be apportioned between the successor States in the population ratio. It is therefore clear beyond doubt that Section 86 and Paragraphs 1 and 3 of the Fifth Schedule do not cover a case where a liability for pension is created by a successor State subsequent to the appointed date, namely, 1st October, 1956. The reliance placed by the learned Additional Solicitor General on behalf of the State of Tamil Nadu on Section 86 read with Paragraphs 1 and 3 of the Fifth Schedule is therefore misconceived and the argument based upon it must be rejected.

9. If Section 86 read with Paragraphs 1 and 3 of the Fifth Schedule has no applicability, the question before us resolves into a very narrow one, namely, whether the liability for family pension created by the State of Tamil Nadu under the Notification dated 26th May, 1979 is limited only to cases of those Government servants who were last employed at a place which falls within the territorial limits of the State of Tamil Nadu. The argument of the petitioners was that their respective husbands were in the service of the former State of Madras and they retired as such Government servants at a time when the State of Madras was in existence and if the State of Tamil Nadu which is the successor State to the State of Madras has issued a Notification dated 26th May, 1979 granting the benefit of family pension to the widows of Government servants who retired prior to 1st April, 1964, the petitioners must be held to be entitled to the benefit of such family pension, since they satisfied all the conditions requisite for the applicability of grant of family pension under the Notification dated 26th May, 1979. Now it was not the contention of the State of Tamil Nadu that Government servants who were in the employment of the State of Madras and who retired before the State of Tamil Nadu came into being as a result of the States Reorganisation Act, 1956 were not entitled to the benefit of family pension under the Notification dated 26th May, 1979. The State of Tamil Nadu conceded that the widows of such Government servants were entitled to grant of family pension under the Notification dated 26th May, 1979 provided such Government servants were at the date

of superannuation serving at a place which on the reorganisation of the States fell within the territories forming part of the State of Tamil Nadu. Only ground on which the State of Tamil Nadu sought to exclude the petitioners from the benefit of the family pension was that their respective husbands served at the time of their superannuation at places which as a result of the States Reorganisation Act, 1956 were no more in the State of Tamil Nadu but became parts of other successor States. We do not think any such limitation can be read in the Notification dated 26th May, 1979. It is true that by reason of the subsequent Government Order dated 18th March, 1982 issued by the State of Tamil Nadu clarifying the Notification dated 26th May, 1979, the petitioners would be excluded from the benefit of the family pension since the places where their respective husbands were serving at the time of superannuation became part of States other than the State of Tamil Nadu. But the learned Counsel appearing on behalf of the petitioners challenged the constitutional validity of the Government Order dated 18th March, 1982 and contended that the place where a Government servant was serving at the time of superannuation has not rational nexus with the object of granting family pension under the Notification dated 26th May, 1979 and that the Government Order dated 18th March, 1982 is therefore discriminatory and void. This contention is, in our opinion, well founded and must be accepted. The object of granting family pension under the Notification dated 26th May, 1979 is obviously to alleviate the economic distress of widows and other members of the family of Government servants who retired after faithfully serving the State of Madras as also the successor State of Tamil Nadu and who subsequently died leaving widows and other members of the family. Now admittedly the widow of a Government servant who was in employment of the former State of Madras and who retired before the reorganisation of the States would be entitled to family pension under the Notification dated 26th May, 1979 if the place where her husband was serving at the time of superannuation was situate in the territories of the successor State of Tamil Nadu. If that be so, then it is difficult to see how the widow of a Government servant who served the former State of Madras in the same manner and who retired before the reorganisation of the States should not be entitled to family pension under the Notification dated 26th May, 1979 merely because place where her husband was serving at the date of superannuation subsequently came to form part of the territories of a State other than the State of Tamil Nadu as a result of the reorganisation of the States. The object of the Notification dated 26th May, 1979 does not warrant any such distinction to be made between the widows of one class of Government servants and the widows of another class merely on the basis of the place where the Government servant last served at the time of superannuation, although in both cases the Government servant served the same State, namely, the former State of Madras and superannuated before the reorganisation of the States. We are therefore of the view that the restrictive limitation imposed by the Government Order dated 18th March, 1982 confining the benefit of family pension to the members of the family of only those Government servants who last served at a place falling within the territories of the successor State of Tamil Nadu must be held to be violative of Article 14 of the Constitution and hence unconstitutional and void.

10. We must accordingly hold that the State of Tamil Nadu is liable to pay to the petitioners in these four writ petitions as also to the widows of other Government servants falling within Paragraph 7 of the Notification dated 26th May, 1979 family pension at the rate of Rs.100/- per month with effect from 1st April, 1979. We would therefore issue a writ directing the State of Tamil Nadu to pay to the petitioners in all these writ petitions arrears of family pension calculated at the rate of Rs.100/- per month from 1st April, 1979 after deducting the amount, if any, already paid by the States of Tamil Nadu and Kerala

to the petitioners in terms of the interim orders made by us. The State of Kerala will not be entitled to claim refund of any payment made to the petitioners nor reimbursement in respect of such payments from the State of Tamil Nadu. The arrears of family pension shall be paid by the State of Tamil Nadu to the petitioners within four months from today and the State of Tamil Nadu will continue to pay to the petitioners family pension at Rs.100/- per month on or before 10th day of each succeeding month in terms of the Notification dated 26th May, 1979. We may make it clear that the State of Kerala will not be liable in future to make any payment to the petitioners since the future liability for payment of family pension rests on the State of Tamil Nadu. The State of Tamil Nadu will pay to the petitioners costs quantified at a consolidated figure of Rs.2,000/- in all the writ petitions.

V.K. ..... *Order accordingly.*

THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

Present:- *A.P.Sen, A.Varadarajan and V.Balakrishna Eradi, JJ.*

*Civil Appeal No. 11417 of 1983.

27th February, 1985.

K.Ramanathan *Appellant**

v.

State of Tamil Nadu and another *Respondents.*

Essential Commodities Act (X of 1955), Sections 3, 5 - Government of India Ministry of Agriculture (Department of Food) Order, G.S.R. 800, dated 9.6.1978 - Tamil Nadu Paddy (Restriction on Movement) Order (1982), Clause 3 (1A) - Constitutional validity - If ultra vires *as being in excess of the delegated powers of State Government to promulgate - "Regulating" in Section 3 (2) (d) - Meaning of - If includes 'prohibiting'.*

The source of power to promulgate the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 is sub-section (1) of Section 3 of the Act and sub-section (2) merely provides illustration of the general powers conferred by sub-section (1). Sub-section (2) of Section 3 commences with the words 'Without prejudice to the generality of the powers conferred by sub-section (1)'. It is manifest that sub-section (2) of Section 3 of the Act confers no fresh powers but is merely illustrative of the general powers conferred by sub-section (1) of section 3 without exhausting the subject in relation to which such powers can be exercised. Hence the assumption that Clause 3 (1A) of the Order was promulgated under powers derived under Section 3 (2) (d) and that therefore the State Government acting under that provision could only "regulate" and not "prohibit" as it did in promulgating Clause 3 (1A) of the Order, is wholly misconceived. Thus, Clause 3 (1A) of the order was not *ultra vires* as being in excess of the delegated powers of the State Government.

[Paras. 11, 13]

Sujan Singh v. The State of Haryana, A.I.R. 1968 Punj. 363; *State of U.P. v. Suraj Bhan*, A.I.R. 1972 All. 401 and *Bijoy Kumar v. State of Orissa*, A.I.R. 1976 Ori. 138, held not good law.

Further the word 'regulation' cannot have any rigid or inflexible meaning as to exclude 'prohibition'. The word 'regulate' is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is no reason to give a restricted meaning to the word 'regulating' in Clause (d) of sub-section (2) of Section 3 so as not to take in 'prohibiting'. *[Paras.18, 24]*

Cases referred to:-

Sujan Singh v. The State of Haryana, A.I.R. 1968 Punj. 363; *State of U.P. v.*

Suraj Bhan, A.I.R. 1972 All. 401; *Bijoy Kumar v. State of Orissa*, A.I.R. 1976 Ori. 138; *Nanalal Navalnathji Yogi v. Collector of Bulsar*, A.I.R. 1981 Guj. 87; *Santosh Kumar Jain v. The State*, 1951 S.C.J. 291 : (1951) S.C.R. 303 : 64 L.W. 513 : A.I.R. 1951 S.C. 201; *Emperor v. Sibnath Banerjee*, (1945) 2 M.L.J. 325 : 72 I.A. 241 : A.I.R. 1945 P.C. 156; *Atulya Kumar v. Director of Procurement and Supply*, A.I.R. 1953 Cal. 548; *Tarakdas Mukherjee v. The State of West Bengal*, (1978) 2 Cal.L.J. 383; *Lila Biswas v. The State of West Bengal*, (1979) 83 Cal.W.N. 539; *Narendra Kumar v. Union of India*, 1960 S.C.J. 214 : (1960) 2 S.C.R. 375 : A.I.R. 1960 S.C. 430; *State of Mysore v. H.Sanjeeviah*, (1967) 2 S.C.J. 313 : (1967) 2 S.C.R. 361 : A.I.R. 1967 S.C. 1189; *Slattery v. Naylor*, (1888) 13 A.C. 446; *Municipal Corporation of the City of Toronto v. Virgo*, (1896) A.C. 88; *State of Tamil Nadu v. M/s. Hind Stone*, (1981) 2 S.C.C. 205 : (1981) 2 S.C.R. 742 : A.I.R. 1981 S.C. 711; *G.K.Krishnan v. The State of Tamil Nadu*, (1975) 2 S.C.R. 715 : (1975) Tax. L.R. 1361 : (1975) 1 S.C.C. 375 : A.I.R. 1975 S.C. 583; *Commonwealth of Australia v. Bank of New South Wales*, (1949) 2 All.E.R. 755; *Krishan Lal Praveer Kumar v. The State of Rajasthan*, (1981) 4 S.C.C. 550 : (1981) S.C.C. (Cri.) 863 : A.I.R. 1982 S.C. 29; *Suraj Mal Kailash Chand v. Union of India*, (1981) 4 S.C.C. 554 : (1981) S.C.C. (Cri.) 866 : (1982) 1 S.C.J. 129 : A.I.R. 1982 S.C. 130; *Bishamber Dayal Chandra Mohan v. The State of U.P.*, (1982) 1 S.C.R. 1137 : (1982) 1 S.C.C. 39 : (1982) S.C.C. (Cri.) 53 : A.I.R. 1982 S.C. 33.

The Judgment of the Court was delivered by

SEN, J.:- This appeal by special leave directed against the judgment and order of the Madras High Court dated September 14, 1983 raises a question of some complexity. The question is as to whether Clause 3 (1A) of the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 issued by the State Government under Section 3 of the Essential Commodities Act, 1955 read with the Government of India, Ministry of Agriculture (Department of Food) Order, G.S.R. 800 dated June 9, 1978, with the prior concurrence of the Government of India, was *ultra vires* the State Government being in excess of its delegated powers. That depends on whether the delegation of a specific power under Clause (d) of sub-section (2) of Section 3 of the Act by the aforesaid Notification issued by the Central Government under Section 5 to regulate the storage transport, distribution, disposal, acquisition, use or consumption of an essential commodity, in relation to foodstuffs, carries with it the general powers of the Central Government under sub-section (1) of Section 3 of the Act to regulate or prohibit the production, supply and distribution of essential commodities and trade and commerce therein. There is a conflict of opinion on this question between different High Courts. Hence we thought it fit to grant special leave and heard the appeal on merits. After hearing the parties, we dismissed the appeal by an order dated December 5, 1983 for reasons to follow. The reasons therefor are set out below.

2. Briefly stated, the facts are these. In the State of Tamil Nadu, there has been a system of imposing levy on purchase of paddy by traders in vogue since the year 1970. This was imposed by Clause 3 (5) (i) of the Tamil Nadu Paddy and Rice (Licensing, Regulation and Disposal of Stock) Order, 1968 issued by the State Government under Section 3 of the Act with the prior concurrence of the Government of India. Clause 3 (5) (i) empowered the State Government to impose and collect up to 50% of the stocks by way of levy on purchases of paddy by traders on payment of price specified from time to time. The said Order was replaced by the Tamil Nadu Paddy and Rice (Regulation of Trade) Order, 1974 issued under Section 3 of the Act with the prior concurrence of the Government of India. Clause 5 (1) of this Order empowers the State Government to impose and collect levy up to 50% of the purchase of paddy and rice by the dealers other than retail dealers and they are paid prices notified by the Government. This clause was subsequently

amended in 1976. The power to impose and collect levy on the purchase of paddy and rice was exercised by the State Government under Section 3 of the Act with a view to procure the stock for distribution of rice to about 118 lakhs family card-holders throughout the State through nearly 17,800 fair price shops. A review of the food situation in the latter half of 1980 and the beginning of 1981 revealed that the stock of paddy and rice with the Government was not adequate to meet the requirements under the public distribution system. The State Government in the Food & Co-operation Department accordingly, decided to enforce the levy on traders by G.O.Ms.No.33 dated January 1, 1981 and to collect 40% levy on the purchases of paddy and rice by dealers even though it had the power to impose levy up to 50% at prices fixed by it from time to time. Thereafter, the Government in the Food & Co-operation Department by G.O.Ms.No.765 dated October 1, 1981 increased the levy from 40% to 50% from Kuruvai season 1981.

3. There was a failure of monsoon in the State in the years 1981-82 and the offtake of rice in the fair price shops had increased from 34,000 tonnes in April to 85,000 tonnes in December, 1982. Due to failure of south-west monsoon in the year 1982 and consequent poor rainfall, the storage level in the Mettur reservoir fell. As a result of this there was a steep fall in kuruvai cultivation of paddy. In Thanjavur District alone, the acreage of paddy cultivation was reduced from 4.25 lakh acres to 2.97 lakh acres. Added to this, the north-east monsoon in the State also failed causing a serious fall in the production of paddy. In the circumstances, the State Government in the Food & Co-operation Department had no other alternative but to introduce a monopoly procurement scheme of paddy with a view to procure the maximum stock of paddy by banning the purchases by traders.

4. In exercise of the powers conferred under Section 3 of the Essential Commodities Act, 1955 read with the Government of India, Ministry of Agriculture (Department of Food) Order, G.S.R. 800 dated June 9, 1978, with the prior concurrence of the Government of India, the State Government promulgated the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 on October 22, 1982. Clause 3 (1) of the Order provides:

> "No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the State by road, rail or otherwise except under and in accordance with the conditions of a permit issued by an authorized officer."

On January 22, 1983, the State Government in the Food & Co-operation Department issued G.O.Ms.No.42 for purchase of the entire marketable surplus of paddy in Thanjavur District by the Government through the Tamil Nadu Civil Supplies Corporation as an agent of the Government. On February 22, 1982, the State Government in the Food & Co-operation Department issued another G.O.Ms.No.84 extending the provision made with regard to Thanjavur District of Chidambaram and Kattumannarkoil taluks in South Arcot District and Musiri, Kulithalai, Lalgudi and Tiruchirapalli taluks in Tiruchirapalli District.

5. On May 11, 1983, the State Government in the Food & Co-operation Department issued G.O.Ms.No.293 introducing sub-clause (1A) to Clause 3 of the Order. The newly inserted Clause (1A) is as follows:

> "No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the places notified under Clause 3 of the Tamil Nadu Paddy & Rice (Restriction of Rates) Order, 1974 by road/ rail or otherwise."

Thereafter, on June 20, 1983, the State Government in the Food & Co-operation Department by G.O.Ms.No.413 made

a further amendment to the newly introduced sub-clause (1A) of Clause 3. The amended Clause (1A) of Clause 3 is as follows:

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the Thanjavur District, Chidambaram and Kattumannarkoil Taluks in South Arcot District and Musiri, Kulithalai, Lalgudi and Tiruchirapalli Taluks in Tiruchirapalli District."

6. These various orders were issued by the State Government in exercise of the powers conferred by Section 3 of the Act read with the Government of India, Ministry of Agriculture (Department of Food) Order, G.S.R. 800 dated June 9, 1978 which is set out below:

"MINISTRY OF AGRICULTURE
AND IRRIGATION
(DEPARTMENT OF FOOD)

ORDER
New Delhi, the 9th June, 1978.

G.S.R. 800 -- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in supersession of the Order of the Government of India in the late Ministry of Agriculture (Department of Food) No. G.S.R. 316 (E) dated the 20th June, 1972, the Central Government hereby directs that the powers conferred on it by sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in Clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions -

(1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf;

(2) that before making an order relating to any matter specified in the said Clauses (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulations or transport of any foodstuffs, under the said Clause (d), the State Government shall also obtain the prior concurrence of the Central Government; and

(3) that in making an order relating to any of the matters specified in the said Clause (i) the State Government shall authorize only an officer of Government.

Sd/- K.Balakrishnan,
Dy. Secretary to the Govt. of India
(No.3 (Genl)(1)/78-D & R (I)-59."

7. The appellant and various other agriculturists of Thanjavur District and the aforesaid traditionally rice growing areas of South Arcot and Thiruchirapalli Districts challenge the constitutional validity of Clause 3 (1A) of the Order placing a complete ban on the transport, movement or otherwise carrying of paddy outside Thanjavur District and the aforementioned taluks of South Arcot and Thiruchirapalli Districts by petitions under Article 226 of the Constitution in the High Court. There were as many as 300 writ petitions in the High Court which were disposed of by the judgment under appeal. The validity of Clause 3 (1A) of the Order was assailed on three main grounds: (1) Clause 3 (1A) was wholly arbitrary and irrational and thus violative of Article 14 of the Constitution. (2) Clause 3 (1A) was in excess of the delegated powers conferred on the State Government under Section 3 of the Act by the aforesaid G.S.R. 800 dated June 9, 1978 issued by the Central Government under Section 5 of the Act. And (3) The total ban on movement of paddy from out of Thanjavur District and the aforesaid taluks of South Arcot and Thiruchirapalli Districts by Clause 3 (1A) of the Order was an unreasonable restriction on the freedom of trade and commerce guaranteed under Article 19 (1) (g) and also infringes the freedom of inter-State trade, commerce and intercourse under Article 301 of the Constitu-

tion. The High Court repelled all these contentions.

8. Shri P.Govindan Nair, learned Counsel appearing for the appellant argued the case with much learning and resource. Learned Counsel with his usual fairness did not advance some of the contentions raised before the High Court as they were apparently misconceived. He has confined his submissions to only two grounds, namely: (1) Clause 3(1A) of the impugned Order issued by the State Government under Section 3 of the Act read with G.S.R. 800 dated June 9, 1978 issued by the Central Government under Section 5 of the Act with the prior concurrence of the Government of India placing a ban on the transport, movement or otherwise carrying of paddy from out of Thanjavur District, the two taluks of South Arcot District and the four taluks of Thiruchirapalli District, was *ultra vires* the State Government being in excess of the delegated powers. It is urged that the delegation of a specific power under Clause (d) of sub-section (2) of Section 3 of the Act by the aforesaid Notification issued by the Central Government under Section 5 of the Act to regulate the storage, transport, distribution, disposal etc. of an essential commodity, in relation to foodstuffs, does not carry with it the general power of the Central Government under sub-section (1) of Section 3 to regulate or prohibit the production, supply and distribution thereof and trade and commerce therein. And (2) The word 'regulating' in Clause (d) of sub-section (2) of Section 3 of the Act does not take in 'prohibiting' for the words 'regulating' and 'prohibiting' denote two distinct and separate attributes of power and they are mutually exclusive. Otherwise according to learned Counsel, there was no point in the Legislature using both the words 'regulating' and 'prohibiting' in sub-section (1) of Section 3 of the Act and the words 'regulating' and 'prohibiting' differently in various Clauses of sub-section (2) thereof. It is urged that there cannot be a total prohibition on transport, movement or otherwise carrying of paddy out of the areas in question under Clause (d) of sub-section (2) of Section 3 but only regulation of such activities in the course of trade and commerce by grant of licences or permits. The learned Counsel is fortified in his submissions by the decisions of the Punjab, Allahabad and Orissa High Courts in *Sujan Singh* v. *State of Haryana*, A.I.R. 1968 Punj. 363, *State of U.P.* v. *Suraj Bhan*, A.I.R. 1972 All. 401 and *Bijoy Kumar* v. *State of Orissa*, A.I.R. 1976 Ori. 138 and he questions the correctness of the decision of the Gujarat High Court in *Nanalal Navalnathji Yogi* v. *Collector of Bulsar*, A.I.R. 1981 Guj. 87 taking a view to the contrary. We are afraid, we are unable to accept any of the contentions advanced by him.

9. In order to appreciate the contentions advanced, it would be convenient to set out the relevant statutory provisions. Sub-section (1) of Section 3 of the Act is in these terms:

> "3(1). *Powers to control production, supply, distribution etc. of essential commodities* - If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, (or for securing any essential commodity for the Defence of India or the efficient conduct of military operations) it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

Sub-section (2) of Section 3 of the Act, insofar as material, lays down:

> "3.(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide -
>
> (a) to (c) .....
>
> (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity."

Section 5 of the Act provides:

"5. *Delegation of Powers:-* The Central Government may, by notified order, direct that (the power to make orders or issue notifications under Section 3) shall in relation to such matters, and subject to such conditions, if any, as may be specified in the direction, be exercisable also by--

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government.

as may be specified in the direction."

10. The infirmity in the argument lies in the erroneous assumption that the source of power or authority to promulgate the impugned Order was derived by the State Government under Clause (d) of sub-section (2) of Section 3 of the Act by virtue of the delegation of powers by the Central Government by the Notification No.G.S.R. 800 dated June 9, 1978 under Section 5 of the Act. The source of power to promulgate an order of this description is derived from sub-section (1) of Section 3 of the Act. According to its plain language, the aforesaid Notification No.G.S.R. 800 provides that in exercise of the powers conferred by Section 5 of the Act, and in supersession of the earlier order of the Government of India in the Ministry of Agriculture, Department of Food, No. G.S.R.316 dated June 20, 1972, the Central Government directs that 'the powers conferred on it by sub-section (1) of Section 3 of the Act' to make orders to provide for matters specified in Clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) thereof shall, in relation to foodstuffs, 'be exercisable also by a State Government subject to the conditions set out therein'. There must be some meaningful effect given to the words 'the Central Government hereby directs that the powers conferred on it by sub-section (1) of Section 3 of the Act to make orders etc..... shall be exercisable also by a State Government subject to the conditions set out therein. On a plain construction, the first part of the aforesaid Notification in specific terms provides for the delegation by the Central Government under Section 5 of the Act of the powers conferred on it by sub-section (1) of Section 3 of the Act. That power is general in its terms and authorises *inter alia* the promulgation of any order providing for regulating or prohibiting the production, supply and distribution of, and trade and commerce in, any essential commodity, insofar as it is necessary or expedient so to do for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices. The second part of the notification directs that the power to make 'orders thereunder' *i.e.*, the power under sub-section (1) of Section 3 of the Act shall be exercisable also by a State Government, in relation to foodstuffs, with respect to 'such matters' viz., for the matters specified in Clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) thereof and subject to 'such conditions' set out therein. The aforesaid Notification No. G.S.R. 800 dated June 9, 1978 issued by the Central Government was strictly in conformity with Section 5 of the Act. Of the three conditions, the one that is material for our purpose is condition 2. It provides that before making an order under Clause (d) of sub-section (2) of Section 3 of the Act in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulations or transport of any foodstuffs, the State Government shall also obtain the prior concurrence of the Central Government. It is manifest on a plain reading that the aforesaid Notification No. G.S.R.800 dated June 9, 1978 was strictly in conformity with the requirements of Section 5 of the Act.

11. Learned Counsel for the appellant however strenuously contends that the delegation of powers by the Central Government under Section 5 of the Act must necessarily be in relation to 'such matters' and subject to 'such conditions' as may be specified in the Notification. The whole attempt on the part of the learned Counsel is to confine the scope

that in view of the provision contained in Section 31 of the Act, the employees of the company working in the establishment at Madras are entitled to overtime wages at double the rate of ordinary wages for work done in excess of 39 hours per week and not at 1-1/2 times the rate of ordinary wages as is being done by the company.

5. Another Claim Petition No. 306/71 was moved for identical relief by some other employees of the company.

6. Similarly three employees of the State Bank of India filed three separate Claim Petitions Nos. 19, 20 and 21 of 1964 before the Central Government Labour Court, Madras praying for identical relief on almost identical grounds. In other words, they claim overtime wages at double the rate of ordinary wages as prescribed in Section 31 of the Act.

7. Though the matters were before two separate Labour Courts and were decided at different intervals, both the Labour Courts held that Section 14 of the Act does not prescribe number of working hours per day but it merely specifies maximum number of working hours that can be introduced by an employer in an establishment governed by the Act. But once the employer chooses to prescribe working hours per day or total number of working hours per week less than permissible under Section 14, the rate of overtime allowance as prescribed in Section 31 would be applicable to the workmen notwithstanding the fact that the prescribed number of working hours per day or total number of working hours per week were less than the maximum which the statute permitted. Accordingly, both the Labour Courts computed the monetary benefit of granting overtime allowance at the rate of double the ordinary wages and the difference between what was paid by the employer in each case at 1 1/2 times the ordinary wages and what became payable as per the Court's order was directed to be paid to each employee.

8. The Bank and the company filed in all five writ petitions questioning the correctness of the two common orders made by the two Labour Courts, under Article 226 of the Constitution in the High Court of Judicature at Madras. All the five writ petitions came up before a learned Single Judge of the Madras High Court who was of the opinion that there was a conflict in the matter of interpretation of Sections 14 and 31 of the Act in two decisions of the same Court being (i) *Railway Employees & Co. v. Labour Court*, (1960) 2 Lab. L.J. 215 and (ii) *K.P.V. Shaik Mohd. Rowther & Co. v. K.S. Narayanan*, (1972) 2 Lab. L.J. 385 and therefore he referred the petitions to a Division Bench. All the writ petitions were accordingly heard by a Division Bench of the same High Court.

9. The High Court took notice of the fact that the Act does not define overtime work which according to the High Court means work done beyond the normal working hours in any establishment to which the Act applies. The High Court then proceeded to observe that the proviso to Section 14 (1) only lays down that overtime wages may be paid for the work done in excess of the normal working hours. The High Court then held that once the employer prescribed daily working hours as well as the weekly total work rendered in excess of the prescribed working hours would constitute overtime work and when the statute prescribes the rate of overtime work, it is obligatory upon the employer to make payment at the statutory rate. Section 50 of the Act was called in aid to observe that if the existing rights and privileges of an employee in any establishment are more favourable to him than those created by the Act, the same were preserved. Accordingly, it was held that even if Section 14 (1) was interpreted as prescribing normal working hours and that work in excess of the normal working hours so prescribed would constitute overtime which would attract Section 31, yet once the employer prescribed hours less than the statutory permissible working hours, any work done beyond the prescribed working hours would be overtime work and the rate of overtime work should be governed by Section 31 of the Act. The High Court accordingly discharged

the rule and confirmed the orders made by both the Labour Courts. Hence these appeals by special leave.

10. It is not in dispute that the working hours in the Bank were governed by Desai Award so also the rate of overtime allowance was governed by the Desai Award till the Labour Court ruled to the contrary. Similarly, the company had prescribed its own working hours and provided for its own rate of payment for overtime work and the payment was made accordingly till the Labour Court ruled to the contrary. It is of importance to note that in both the cases the working hours were less than the maximum permissible under Section 14 of the Act. It is equally important to note that the rates of payment for overtime work in both the establishments prescribed by them were for the period of overtime work in excess of their own prescribed working hours and up to the statutory limit prescribed in Section 14 of the Act. It is admitted that where the overtime work exceeded the statutorily prescribed limit, the rate of payment for overtime work was the one statutorily prescribed in Section 31 of the Act. Therefore, the contours of controversy is on a correct interpretation of the relevant provisions of the Act, what would be the rate of overtime allowance admissible to the employees of the establishments of the employer in each case situated in Tamil Nadu State for overtime work done in excess of the prescribed number of working hours by the employer and up to the number of working hours statutorily permitted. In other words, what ought to be the rate of overtime allowance for the work done in excess of 39 hours per week in the case of the company and 36 1/2 hours per week in the case of the Bank and up to 48 hours per week in each case.

11. At the outset let us notice the relevant provisions of the Act. Section 14 provides for daily and weekly hours of work. It reads as under:

> *"14. Daily and weekly hours of work:-* (1) Subject to the provisions of this Act, no person employed in any establishment shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week:
>
> Provided that any such person may be allowed to work in such establishment for any period in excess of the limit fixed under this sub-section subject to payment of overtime wages, if the period of work, including overtime work, does not exceed ten hours in any day and in the aggregate fifty-four hours in any week."

Section 31 prescribes rate of wages for overtime work. It reads as under:-

> *"31. Wages for overtime work:-* Where any person employed in any establishment is required to work overtime, he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages.
>
> *Explanation:-* For the purpose of this section, the expression "ordinary rate of wages" shall mean such rate of wages as may be calculated in the manner prescribed."

12. The first question which must engage our attention is: Whether Section 14 upon its true interpretation prescribed daily working hours in an establishment as also total number of working hours per week for which work may be taken in any week without incurring the liability to pay higher rate of wages for overtime work. A bare perusal of Section 14 (1) would show that it prescribes a ceiling on working hours. Obviously, it cannot be interpreted to mean that the employer must provide maximum number of working hours as therein set out in the establishment governed by the Act. It is open to the employer to prescribe working hours for a day and total number of working hours for a week less than the ceiling prescribed by the statute. Section 14 puts an embargo on the employer's right to prescribe working hours beyond therein prescribed subject however, to its liability to pay higher rate of wages for the overtime work done. The proviso however, makes it very clear that the upper limit fixed by the substantive provi-

sion can be exceeded up to the ceiling fixed by the proviso and not beyond in any case. This is a prohibition in public interest for safeguarding the health which may be adversely affected by fatigue, stress and strain consequent upon continuous work daily or for total number of hours in a week. This simultaneously ensures a weekly off day even if the employer prescribes number of working hours as provided in Section 14 (1). Section 14 (1) therefore, upon its true construction permits an employer to prescribe daily working hours not exceeding 8 hours a day and total number of working hours at 48 in a week. By the proviso, the employer can take overtime work if the working hours do not exceed 10 hours in any day and 54 hours in a week. The proviso makes it abundantly clear that any work taken in excess of the working hours prescribed in the main part of sub-section (1) of Section 14 would constitute overtime work. 8 hours a day and 48 hours in a week would constitute normal working hours. Anything in excess of 8 hours a day but not exceeding 10 hours a day and 48 hours a week and not exceeding 54 hours a week will constitute overtime work. This becomes clear from the language used in the proviso when it says that the bar imposed by sub-section (1) of Section 14 may be breached to the extent provided in the proviso. The expression used is that "no such person" meaning thereby that person, who would be required to work 8 hours a day or 48 hours a week, may be allowed to work in excess of that limit subject to payment of overtime wages. 8 hours a day and 48 hours a week constitute normal time of work at ordinary wages and any work in excess of the time prescribed for work would attract the liability to pay overtime wages. Undoubtedly, the High Court is right in saying that the expression 'overtime' is not defined in the Act but when Section 14 (1) prescribes permissible hours of work both daily and weekly and makes it obligatory to pay overtime wages for work in excess of the permissible hours of work, the expression 'overtime' renders itself easy of understanding. Overtime work attracts the liability of paying overtime wages.

13. 'Over' is a prefix qualifying the expression 'time' which is well-understood. 'Over' as a prefix generally indicates excessive or excessively; beyond an agreed or desirable limit. There are more than 150 expressions to which 'over' is added as a prefix. One such expression is 'overtime'. Collins English Dictionary reprinted and updated in 1983 gives the meaning of the expression 'overtime' as (i) work at regular job done in addition to regular working hours..... (iii) time in excess of a set period ..... (v) beyond the regular or stipulated time (vi) to exceed the required time for (say a photographic exposure). Webster's Third New International Dictionary gives the meaning of the expression 'overtime' as (i) time beyond or in excess of a set limit; working time in excess of a minimum total set for a given period; in excess of a set time limit or of the regular working time. Therefore, even though the expression 'overtime' is not defined in the Act, its connotation is unambiguous. In no uncertain terms it means in the context of working hours, period in excess of the prescribed working hours.

14. The question really is not what is understood by the expression 'overtime', but what is the admissible rate of payment for overtime work. If the statute permits employment for a certain number of hours of work and mandates a higher rate of wages for work done in excess of the prescribed hours of work, obviously every employer to whom the Act applies will have to pay overtime wages at the rates prescribed in the statute. Accepting what the High Court has held that Section 14 (1) merely prescribes the ceiling on working hours and casts an obligation to pay overtime wages as made obligatory in the proviso, the question is what period of work shall be treated as overtime work so as to be able to claim overtime wages at statutory rate. Keeping out of consideration for the time being the working hours prescribed by the two appellants, take a case in which the working hours are prescribed as permitted by Section 14 (1). Functionally translated if an establishment has prescribed working hours as permitted by Section 14 (1) i.e.,

8 hours a day and 48 hours a week, the employees of such establishment would be entitled to overtime wages as directed by the proviso and at the rate prescribed in the statute. To some extent, the proviso in this case made a positive specific provision simultaneously carving out an exception to Section 14 (1). The proviso first permits work in excess of the prescribed number of hours but it is hedged in with the condition to pay overtime wages. The expression 'such person' in the proviso refers to person who is required to work for eight hours a day and forty-eight hours a week. The expression 'such establishment' in the proviso would indicate that establishment which has prescribed the working hours as set out in the main part of the section namely, 8 hours a day and 48 hours in a week. In such an establishment overtime work for such a person would only be that work which would be done in excess of either 8 hours a day or 48 hours a week. Such overtime work has to be compensated at the rate prescribed in Section 31 which provides that where any person employed in an establishment is required to work overtime, he shall be entitled in respect of such overtime work to wages at twice the ordinary rate of wages. The expression 'such overtime' can refer to one contemplated by the proviso to Section 14 (1) and no other. Reading Sections 14 and 31 together, a scheme emerges. The statute first puts an embargo on the power of the employers to prescribe normal working hours, not exceeding 8 hours per day and 48 hours per week. The proviso makes it obligatory to pay overtime wages for work in excess of the prescribed hours as set out in Section 14 (1). Such overtime work has to be compensated by payment of overtime wages. And the rate of overtime wages is prescribed in Section 31 namely, at twice the ordinary rate of wages. The employer would ordinarily prescribe wages for normal working hours. Once the wages for normal working hours per day and cumulative for the week or month are prescribed, they could be styled as ordinary rate of wages. Thus the employer will be liable to pay to the employee wages at the ordinary rate of wages for prescribed hours of work as permissible in Section 14 (1) and whenever he takes work in excess of the prescribed hours of work the rate for overtime work prescribed by Section 31 would come into play. Sections 14 and 31 provide the whole scheme of prescribing normal hours of work to be paid for at ordinary rate of wages. They permit the employer to take work in excess of the normal working hours up to the ceiling as set out in the proviso to Section 14 (1) which makes it obligatory to pay overtime wages for work in excess of the normal working hours and the rate for the same is prescribed statutorily in Section 31.

15. No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (*See Attorney General v. HRH Prince Earnest Augustus*, (1957) 1 All E.R. 49 and as a settled rule (*See Poppatlal Shah v. State of Madras*, 1953 S.C.J. 369 : (1953) 1 M.L.J. 739 : 66 L.W. 573 : (1953) S.C.R. 677 : A.I.R. 1953 S.C. 274. The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers' (Quoted with approval in *Punjab Beverages Pvt. Ltd. v. Suresh Chand*, (1978) 3 S.C.R. 370 : (1978) Lab.I.C. 693 : (1978) 2 S.C.C. 144 : (1978) 2 Lab.L.J. 1 : A.I.R. 1978 S.C. 995.

16. Applying this well-laid canon of construction, the expression 'rate of overtime wages' in Section 31 has to be understood and interpreted in the light of the provision contained in Section 14 (1) read with its proviso.

17. By reference to the statutory provisions and unhampered by precedents, it becomes clear that when normal working

are prescribed by an employer for his employees working in the establishment to which the Act applies, wages for work in excess of such prescribed hours of work will have to be paid at the rate prescribed in Section 31. The framers of the statute provided the whole scheme by first putting an embargo on the maximum number of working hours payable at ordinary rates and then permitting overtime work up to the ceiling, simultaneously making it obligatory to pay overtime wages at the rate prescribed in the very statute.

18. The next question that arises: where the employer prescribes working hours less than the maximum permissible in the statute, does he incur the obligation to pay overtime wages at the rates prescribed in the statute? If the employer were to contend that even though it has prescribed normal working hours less than those permitted by the statute, and therefore, it would not be liable to pay any overtime wages for the work taken in excess of its own prescribed rates of wages, the prescription of working hours less than the maximum permissible under the statute would be a facade because thereby the employer would enable itself to increase the working hours without incurring any liability to pay overtime wages. Ordinarily, therefore, where an employer prescribes normal working hours less than the maximum permitted by the statute and if it seeks to take work in excess of its own prescribed number of hours of work, the employer renders itself liable to pay overtime wages at any rate higher than the ordinary rate of wages. As explained earlier, prescribed working hours is the normal time of work and anything in excess of it is overtime work. It was not disputed on behalf of the employer that any work taken for a period in excess of the working hours prescribed by both the appellants-employers would make it obligatory for the employer to pay overtime wages and necessarily that must be higher than the ordinary rate of wages prescribed for normal working hours. This is not in dispute. Both the appellants-employers have prescribed rate of overtime wages at 1-1/2 times the ordinary wages for the period in excess of the prescribed working hours and up to the maximum permissible under the Act. Both concede that beyond the maximum number of working hours permitted by Section 14 (1), there is no option with the employer but to pay overtime wages at the rate prescribed in Section 31. It is not a case as was sought to be canvassed in *Indian Oxygen Ltd. v. Their Workmen*, (1969) 2 S.C.J. 235 : (1969) 1 S.C.R. 550 : A.I.R. 1969 S.C. 306, where the employer contended that even though it had prescribed total working hours per week at 39 hours and as the establishment was governed by the Bihar Shops and Establishments Act, which permits maximum number of hours of work at 48 hours per week and provides for double the rate of ordinary wages for the work done beyond 48 hours per week, it was not liable to pay any overtime wages at a rate higher than ordinary wages for the excess work taken beyond 39 hours per week and up to the ceiling of 48 hours per week. This Court negatived this submission and held that once the employer fixed hours of work less than the maximum prescribed in the statute, the provisions both as to maximum hours as well as rate of overtime allowance beyond the maximum hours prescribed by the statute has no relevance and cannot be relied upon. But as the employer has prescribed total working hours at 39 hours per week, any work taken in excess of the prescribed hours of work would be overtime work and that if as contended by the employer, that it was entitled to take any such overtime work at ordinary rate of wages, it would be paying no extra compensation at all for the work done beyond the prescribed hours of work and the company would be in that case indirectly increasing the hours of work and consequently alter its conditions of work. This extreme argument was rejected and the Court upheld the award of the Tribunal that for the period in excess of the prescribed working hours and up to the ceiling of 48 hours the employer would be liable to pay overtime wages at the rate of 1-1/2 times the ordinary wages and dearness allowance payable to them. Let it be noted that the Court did not interfere with the award by saying that once over

time work is taken irrespective of maximum fixed in the statute the statutory rate would be attracted. Undoubtedly, therefore, this decision supports the submission that where the employer prescribed working hours per day or total number of hours of work per week less than the maximum permissible under the statute, any work taken in excess of the prescribed hours of work would be overtime work and the employer would be liable to pay some compensation but not necessarily the statutory compensation which would be attracted only when the employer takes work in excess of the maximum hours of work prescribed by the statute.

19. Learned Counsel for the respondent contended that the trend of decisions is in favour of holding that the rate of payment for overtime work prescribed by the statute would be admissible even where the employer prescribed total number of working hours less than the maximum permissible under the statute. Reliance was placed on *A.K. Basu v. I.C.I. (India) Pvt. Ltd.*, (1975) 1 Lab.L.J. 239, wherein a Division Bench of the Calcutta High Court after referring to the provisions of the West Bengal Shops and Establishments Act, 1963 held that once the employer prescribed total number of working hours at 36 per week and the statute permitted total number of working hours at 48 hours a week, according to the dictionary meaning, the employee has worked overtime. Once he was called upon to work beyond 36 hours, the rate of overtime payment would be as prescribed in the statute. In reaching this conclusion, reliance was placed on the decision of the *Indian Oxygen Ltd.*, (1969) 2 S.C.J. 235 : A.I.R. 1969 S.C. 306. We have already explained the ratio of the decision of this Court in the case of Indian Oxygen Ltd., and it does not bear out the observations of the High Court. Reliance was also placed on *Carew & Co. Ltd. v. Sailaja Kanti Chatterjee*, (1972) 2 Lab.L.J. 359 : (1973) Lab. I.C. 515. A learned Single Judge of the Calcutta High Court has taken the same view after distinguishing the decision in the case of Indian Oxygen Ltd. The reasons which appealed to the learned Judge to distinguish the ratio of the decision in the case of the Indian Oxygen Ltd. failed to impress us. In fact, the decision in that case clearly rules that the statutory rate of overtime wages has relation only to the maximum number of hours of work permissible under the statute and any work in excess thereof.

20. Reverting to the facts of both the cases, it is undoubtedly true that Section 14 (1) does not prescribe normal hours of work but merely puts an embargo on the employer's right to prescribe daily and weekly hours of work beyond permissible under the statute. But where the statute itself prescribes such permissible hours of work and also makes it obligatory to pay overtime wages and prescribes rates, it can only mean work in excess of the maximum hours of work permissible under the statute which alone would attract the rate of payment for overtime work. 'Such overtime work' in Section 31 would and could only mean overtime as understood in the proviso to Section 14 (1) which has reference to maximum hours of work permitted by Section 14 (1). This is how the statute has to be read as a whole.

21. We must not be understood to say that where the statute prescribes maximum number of daily and weekly hours of work and the employer prescribes less than the permissible hours of work, taken in excess of such prescribed number of hours will not be overtime work or that the employer would not be liable to pay wages for such work at a rate higher than the ordinary wages. An attempt to so contend was made before this Court in *Indian Oxygen Ltd. v. Their Workmen*, (1969) 2 S.C.J. 235 : A.I.R. 1969 S.C. 306. That contention was repelled and this Court held (at pp. 311-312):

> "If the company were asked to pay at the rate equivalent to the ordinary rate of wages for work done beyond 39 hours but not exceeding 48 hours a week, it would be paying no extra compensation at all for the work done beyond the agreed hours of work. The company would in that case be indirectly increasing the hours of work and ...

quently altering its conditions of service."

The only question in such a situation would be as to what ought to be the rate of wages payable. Such a rate must be the subject matter of agreement between the parties or an award by Industrial adjudication. Any work taken for a period in excess of the maximum permissible under the statute would undisputedly attract the statutory rate of overtime wages.

22. Both the employers have prescribed the rate of overtime wages at 1-1/2 times the ordinary wages for overtime work in excess of its prescribed hours of work and up to the maximum permissible under Section 14 (1). Therefore, they cannot be accused of indirectly extending their working hours. Both employers conceded that for work for a period in excess of the maximum permissible hours of work under the statute must be paid for and is being paid for at the rate prescribed in the statute. In our opinion, therefore, the High Court was in error in directing the employers to pay for overtime work in excess of the prescribed hours of work and up to the maximum permissible under Section 14 (1) at double the ordinary wages by invoking Section 31. For these reasons, both these sets of appeals will have to be allowed and the common judgment of the High Court governing all the five writ petitions as well as the common orders of both the Labour Courts will have to be quashed and set aside and the applications made by the employees under Section 33-C (2) of the I.D. Act will have to be dismissed.

23. Accordingly, all the appeals in both the batches succeed and are allowed and the judgment of the High Court from which these appeals arise is quashed and set aside as also the applications made by various employees under Section 33-C of the I.D. Act are dismissed.

24. While granting leave this Court directed that the appellants irrespective of the decision in these appeals will have to pay costs to the respondents in one set only. In accordance with this direction, the appellants shall pay costs to the respondents in one set only.

V.K. ..... *Appeals allowed.*

SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

Present:- *V.D.Tulzapurkar and V.Khalid, JJ.*

*C.A.No. 1517 of 1971.

8th February, 1985.

Peria Nachi Muthu Gounder and others *Appellants**

v.

Raju Thevar (died) and others *Respondents.*

Limitation Act (XXXVI of 1963), Article 134-B - A person executing deed of settlement endowing properties to a temple and constituting herself as trustee - Subsequent revocation of settlement and alienation of properties - Deemed resignation of trusteeship - If can be inferred - Suit challenging alienation after death of executrix - Limitation - Starting point.

One M, who was absolute owner of certain properties executed a deed of settlement dated 17th May, 1925, whereby she endowed the suit properties to a temple in the village, the deity therein being her family deity. She constituted herself as the first trustee for her life. Five years later, she purported to cancel and revoke the trust by getting the deed of cancellation registered. Thereafter certain mortgages were executed by her in respect of the properties and later on the properties were by her to the father of the appellants. She died on 7th October, 1960. The respondents claiming to be the trustees of the endowment, filed a suit on 22.8.1982 claiming possession of the properties challenging the alienations that were made in favour of the appellants' father. The lower appellate Court and the

High Court found that the deed of settlement was valid and genuine and that it effected a legal endowment in favour of the deity, the original settlor having divested herself of the ownership completely. The suit was regarded as one falling under Article 134-B of the Limitation Act and since the suit had been filed within 12 years from the death of M, it was held to be within time.

On appeal to Supreme Court, held that both the cancellation deed as well as the alienations were ineffective and wrongful and that it cannot therefore be said that by indulging the these acts she had resigned her position as a trustee of the endowment. The fact tnat M had left the village for a few years, that certain expenses of the temple were contributed by devotees or members of the public and that some persons were performing the puja by themselves are insufficient to warrant the inference that there was a deemed resignation on the part of the executrix. Hence in the present case limitation commenced only on the death of M, and the respondents' suit was within time under Article 134-B of the Limitation Act. *[Paras. 5, 6]*

Where a trustee wrongfully alienates some trust property and for that matter even if the entire trust property is alienated, he does not cease to be a trustee. By wrongfully executing a Deed of cancellation, the settlor cannot effectively revoke the settlement and if such settlor happens to be the trustee, he shall continue to be the trustee of the settlement. *[Para. 5]*

Case referred to:-

Srinivas v. Ramaswami, (1967) 1 S.C.J. 645 : (1967) 1 An.W.R. (S.C.) 141 : (1967) 1 M.L.J. (S.C.) 141 : (1966) 3 S.C.R. 120 : A.I.R. 1966 S.C. 859.

The Court delivered the following

JUDGMENT:- The only question that arises for consideration in this Appeal is whether the respondents-plaintiffs' suit was barred by limitation under Article 134-B of the Limitation Act.

2. One Muthammai, who was the abolute owner of the suit properties executed a deed of settlement dated 17th May, 1925 (Ex.A.3) whereby she endowed the suit properties to a temple in the village, the deity therein being her family deity. She constituted herself as the first Trustee for her life and after that, her husband and mother were to be the trustees and after their demise, respondent's heirs were to be the trustees. Five years later, i.e. on 21st January, 1930, she purported to cancel and revoke the trust (settlement), by getting the Deed of Cancellation registered. Thereafter certain mortgages were executed by her in respect of the properties and later on the properties were sold by her to the father of the appellants Nos.1 and 2. She died on 7th October, 1960. The plaintiffs, claiming to be trustees of the endowment, filed a suit on 22.8.1962, claiming possession of the properties challenging the alienations that were made in favour of the appellants' father. The appellants raised a plea of adverse possession and the suit being barred under Article 144 of the Limitation Act. On merits the Trial Court came to the conclusion that the deed of settlement itself was not a genuine deed, but even if it were, the suit which had been filed on 22nd August, 1962 was barred under Article 144. When the matter was taken in appeal, the Appellate Court took the view that the deed of settlement was valid and genuine and in fact it effected a legal endowment in favour of the deity, the original settlor having divested herself of the ownership completely. In other words, the deed of cancellation was ineffective in law. The suit was regarded as one falling under Article 134-B of the Limitation Act and since the suit had been filed within 12 years from the death of the settlor, Muthammal, it was held to be within time, and the plaintiffs' suit was decreed. The appellants appealed to the High Court and in Second Appeal, the High Court confirmed the first Appellate Court's decree. That is how the appellants have come up in appeal to this Court.

3. Though initially the parties were at variance on the question as to whether it was Article 144 or Article 134-B of the

Limitation Act,1908 that was applicable to the suit, in the High Court at the stage of the second appeal it was common ground that the suit was governed by Article 134-B. Before us also counsel for both the parties agreed that the suit would be governed by the Article 134-B but a question raised was as to when did the period of 12 years under that Article commence? Whether it commenced from the date of the death of the settlor or her deemed resignation as a trustee?

4. Counsel for the appellants conceded before us that if the period for the suit is regarded as commencing from the death of Muthammal which occurred on 7.10.1960 the suit would obviously be within time but he contended that there was a resignation on the part of Muthammal as a Trustee and such resignation, if not overt and express, must be deemed to have taken place by reason of the fact that she herself had executed and registered the Deed of Cancellation (Ex.B-1) on 21.1.1930 and thereafter she had alienated the properties in favour of the appellants' father and she even left the village for quite a few years. And since the suit which was filed in the year 1962 was filed long after the expiry of 12 years from such deemed resignation it was barred. In this behalf Counsel relied upon a decision of this Court in *Srinivas v. Ramaswami*, (1967) 1 S.C.J. 645 : (1967) 1 An.W.R. (S.C.) 141 : (1967) 1 M.L.J. (S.C.) 141 : (1966) 3 S.C.R. 120 : A.I.R. 1966 S.C. 859, where a view has been taken that deemed resignation or deemed removal of the prior manager could be the commencement or the starting point of limitation. On the other hand Counsel for the respondents-plaintiffs urged that there was no plea of limitation specifically raised on the basis that there was any deemed resignation on the part of Muthammal and, therefore, parties did not lead any evidence focusing their attention on this aspect of the matter and even if there be some evidence vaguely or generally led by the parties on this aspect the same should be ignored, for in the absence of a plea being raised in that behalf such evidence has to be ignored and would be of no avail. Alternatively Counsel for the respondents-plaintiffs contended that even otherwise by the mere execution of a Deed of Cancellation and indulgence in alienations of properties by Muthammal in favour of the appellants' father no deemed resignation should be implied for a wrongful cancellation deed and a wrongful alienation cannot affect her character as a trustee of the properties under the Deed of Settlement which was complete and under which she had divested herself of the ownership of the properties irretrievably, therefore the starting point of limitation for the suit must be held to be the date on which Muthammal died.

5. It cannot be disputed that where a trustee wrongfully alienates some trust property, and for that matter even if the entire trust property is alienated he does not cease to be a trustee. On parity of reasoning it stands to reason that by wrongfully executing a Deed of Cancellation the settlor cannot effectively revoke the settlement and if such settlor happens to be the trustee he shall continue to be the trustee of the settlement. In the instant case there is a clear finding recorded by the first appellate Court and the High Court that a Deed of Settlement dated 17th May, 1925 was valid and complete in all respects whereunder Muthammal had divested herself of the properties which she had endowed to the temple and both the cancellation Deed as well as the alienations were ineffective and wrongful and therefore, it could not be said that by indulging in these acts she had resigned her position as a trustee of the endowment. One more aspect was relied upon by the Counsel for the appellants that Muthammal had left the village for quite a few years and that there was evidence to show that the Puja of the deity in the temple was done by some other person and even some devotees had contributed to the expenses of the temple. The fact that the Muthammal had left the village for few years is neither here nor there. And the other two aspects, in our view, are really equivocal and would not be conclusive of the matter on the point of Muthammal having resigned inasmuch as the temple which was a village temple

was already in existence to which only properties had been endowed by Muthammal and the temple was a public religious institution to which the endowment had been made by Muthammal and as such the fact that certain expenses of the temple were contributed by devotees or members of the public would hardly be indicative of the fact that Muthammal had resigned from the position as a trustee qua the endowed property in question. Similar would be the position with regard to the fact that some persons were performing the Puja which would not be unnatural in the case of a public religious institution. It is true, as has been observed by this Court in *Srinivas's case*, (1967) 1 S.C.J. 645 : A.I.R. 1966 S.C. 859, that there could conceivably be a deemed resignation or a deemed removal but for that purpose some additional facts would be required to be proved. In our view the aforesaid facts on which reliance has been placed by Counsel for the appellants by themselves are insufficient to warrant the inference that there was a deemed resignation on her part.

6. Having regard to the above discussion we are clearly of the view that in the instant case limitation will have to be regarded as having commenced on the date of the death of Muthammal and the respondents-plaintiffs' suit would be within time.

7. As a last attempt Counsel for the appellants made a faint request that if the materials were insufficient an opportunity should be given to the appellants to lead evidence on that aspect of the matter and the matter should be remanded back to the Trial Court. We do not think that at this distance of time we could consider this request favourably especially when there was no specific plea raised by the appellants in the written statement based on this aspect of the matter.

8. In the result we confirm the decision of the first appellate Court and the High Court. The appeal is dismissed. No cos

B.S. ..... *Appeal dismi*