IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 4056-4064 OF 1999

IN THE MATTER OF :

Mineral Area Development Authority ….APPELLANT

Versus

M/s Steel Authority of India & Others …RESPONDENTS

VOLUME-II (L) - ADDITIONAL WRITTEN SUBMISSIONS

INDEX

SL. NO.	Case Number	Case Name	Page no.
1.	**INDEX**		**1**
2.	C.A. NO.4056-4064/1999	MADA VS. SAIL & ORS. **[Affidavit on Prospective Overruling on behalf of the Respondent (SAIL)] (Settled by Attorney General for India) (Filed by Mr. Sunil K. Jain, AOR)**	**2-14**
3.	W.P. (Civil) No.512/2018	M/s Sanghi Infrastructure M.P. Ltd. Vs. UOI & Anr. **(NOTE OF SUBMISSIONS ON "PROSPECTIVE OVERRULING" ON BEHALF OF THE SOLICITOR GENERAL OF INDIA)**	**15-180**
4.	C.A. No. 1883/2006 **(On behalf of Eastern Zone Mining Association)**	State of Orissa Vs. National Aluminum Co. Ltd. & Ors. **(BRIEF SUBMISSIONS ON PROSPECTIVE APPLICABILITY OF THE JUDGMENT PARTY: RESPONDENT NO. 2 I.E. EASTERN ZONE MINING ASSOCIATION) (Filed by RITIKA GAMBHIR KOHLI, AOR)**	**181-188**

6364#Affidavit

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INDEX

Sl.	Particulars	Pages
1.	Affidavit on behalf of the Respondent (SAIL)	**1 _ 11**

FILED BY:

PLACE : NEW DELHI
DATED: 30/07/2024

[SUNIL K. JAIN]
Advocate for the Respondent (SAIL)

6364#Affidavit

IN THE SUPREME COURT OF INDIA
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IN THE MATTER OF :

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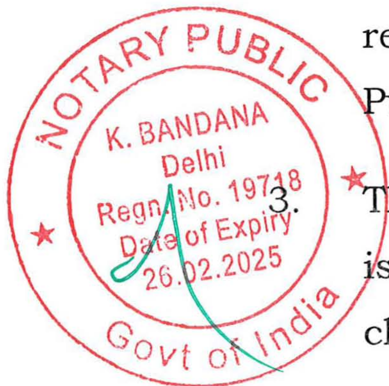
AFFIDAVIT

I, Naveen Kala, aged about 56 years, S/o Shri MM Kala, Working as General Manager, Corporate Raw Materials Group posted at Steel Authority of India Limited having its registered office at Ispat Bhawan, Lodhi Road, New Delhi-110003 do hereby solemnly affirm and state as under:

1. That I am the General Manager of the Respondent Company and, as such I am fully conversant with the facts and circumstances of the case and am competent to swear this affidavit.

2. That the present affidavit is filed on behalf of the respondent - Steel Authority of India which is a Public Sector Undertaking.



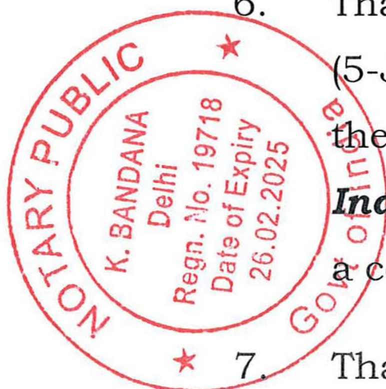
3. That in the instant case the impugned Judgment is of Hon'ble Patna High Court and the Act under challenge is Bihar Coal Mining Area Development

Authority (Amendment) Act, 1992 (Bihar Act 24 of 1992) (Sec.89)

4. That apart from the instant case the respondent is also party in the connected Civil Appeal Nos. 4710-4721 of 1999, Civil Appeal No. 1180 of 2007, Civil Appeal No. 1883 of 2006 wherein the relevant Acts viz., The Orissa Rural Infrastructure & Socio-Economic Development Act, 2004, M.P. Gramin Avsanrachna Tatha Sadak Vikas Adhinyam, 2005, Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 are under challenged respectively.

5. That, the Constitution Bench (7-Judges Bench) of this Hon'ble Court has vide **Judgment dated 25.10.1989** in the case of ***India Cement Ltd. &Ors v State of Tamil Nadu &Ors – (1990) 1 SCC 12*** held that *"royalty is in the nature of tax"* and *"the State does not have any power to levy tax on minerals"*.

6. That, subsequently, another Constitution Bench (5-Judge Bench)vide **Judgment 15.01.2004** in the case of ***State of West Bengal v Kesoram Industries Ltd. – (2004) 10 SCC 201*** has taken a contrary view holding that *"royalty in not a tax"*.



7. That, various judgments were passed subsequently by this Hon'ble Court following its

Judgment in the case of ***India Cement (supra)*** which have attained finality:

(i) ***Orissa Cement Ltd. v State of Orissa – 1991 Supp (1) SCC 430***

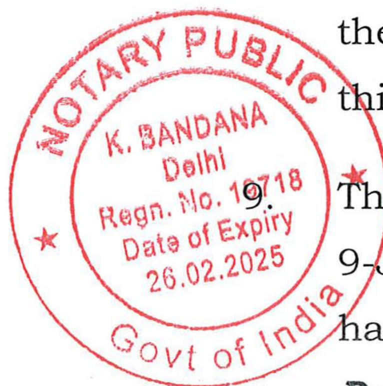
(ii) ***Federation of Mining Associations of Rajasthan v State of Rajasthan – 1992 Supp (2) SCC 239***

(iii) ***State of MP v Mahalaxmi Fabrics Mills Ltd. – 1995 Supp (1) SCC 642***

(iv) ***Saurashtra Cement & Chemical Industries Ltd. v UOI – (2001) 1 SCC 91***

(v) ***State of Orissa &Ors v Mahanadi Coalfields Ltd. – 1995 Supp(2) SCC 686***

8. That, taking note of two conflicting decisions of the Constitution Benches of this Hon'ble Court, the larger bench [3-Judge Bench] vide **Order dated 30.11.2011** in the case of ***Mineral Area Development Authority & Ors v SAIL &Ors – (2011) 4 SCC 450*** has referred the issue before the Hon'ble Nine Judges Constitution Bench of this Hon'ble Court.



9. That, it is only **on 24.07.2024** that the Hon'ble 9-Judge Constitution Bench of this Hon'ble Court has resolved issue in the case of ***Mineral Area Development Authority (supra)***by over-ruling the 7-Judge Constitution Bench decision in the case of ***India Cement (supra)*** and others

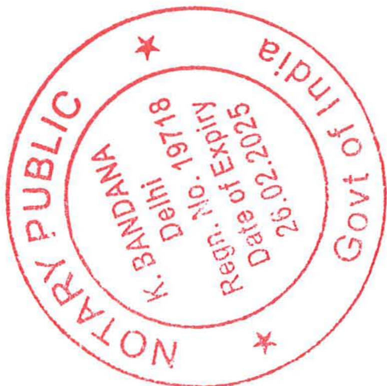
judgments viz., ***Orissa Cement (supra), Federation of Mining Association of Rajasthan (supra), Mahalaxmi Fabric Mills (supra), Saurashtra Cement (supra), Mahanadi Coalfields (supra)*** and ***P. Kannadasan (supra)*** by holding *inter alia*as under: -

(i) Royalty is not a tax;

(ii) The legislative power to tax mineral rights vests with the State Legislature enumerated in Entry 50 of List II and Parliament does not have legislative competence to tax minerals rights under Entry 54 of List I;

(iii) MMDR Act as it stands has not imposed any limitations as envisaged in Entry 50 of List II;

(iv) The State Legislatures have legislative competence under Article 246 read with Entry 49 of List II to tax lands which comprise of mines and quarries. Mineral bearing land falls within the description of "lands" under Entry 49 of List II;

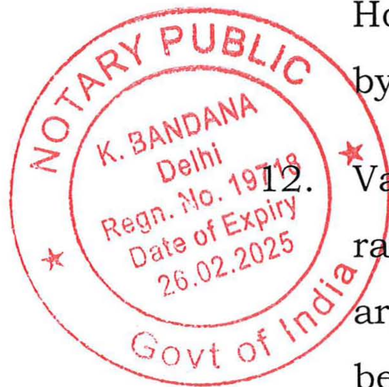


(v) Entries 49 and 50 of List II deal with distinct subject matters and operate in different fields. Mineral value or mineral

produce can be used as a measure to impose a tax on lands under Entry 49 of List II;

10. That, law is well settled, unless the judgment is specifically declared “prospective in operation” it will apply “retrospectively”.

11. The well-settled principles of prospectivity are fairness and certainty. In the case of ***India Cement Ltd (supra)*** this Hon'ble Court observed that the State of Tamil Nadu shall not be liable for any refund of cess already paid or collected. As such this Hon'ble Court in ***India Cement*** has taken care of this undue burden. In the instant case as far as present respondent is concerned it will have a huge liability of Rs.3000 Crore if this Hon'ble Court does not take care of the situation by following a similar approach.



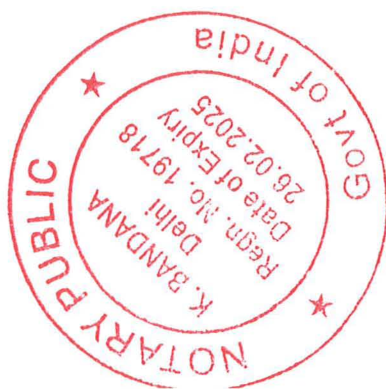
12. Validity of levy of cess based on royalty was raised again in ***Orissa Cement Ltd.*(supra).** An argument was advanced in the said case on behalf of the States that declaration of levy as invalid need not automatically result in a direction for refund of amounts collected earlier. Relying upon the earlier judgments of this Court in Golak Nath (supra) and India Cement (supra), this Court declared the levy of cess as unconstitutional. However, this Court refused to

give any direction for refund of any amounts collected till the date on which the levy in question has been declared unconstitutional. This Court observed that relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice.

13. In ***"Retroactivity and the Common Law"*** by *Ben Juratowitch* it was observed that the value of certainty, in particular the ability to rely on the law, and a conception of negative liberty, have been established as rationales for a general presumption against retroactivity. Giving fair warning of legal consequences supports the fulfilment of the values of certainty and liberty and requires mention for that reason.

Related to the concept of fair warning is the idea of the law's role in guiding conduct. Fuller was a notable adherent to this idea and expressed his objection to retroactive laws thus;

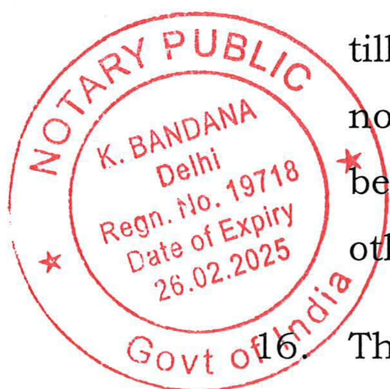
> "Law has to do with the governance of human conduct by rules. To speak of governing or directing conduct today by rules that will be enacted tomorrow is to talk in blank prose."



On the same theme, fuller referred to 'the brutal absurdity of commanding a man today to do something yesterday'.

14. Further In *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co* Lord Mustill stated that 'the basis of the rule' requiring the courts to presume against a retroactive effect 'is no more than simple fairness, which ought to be the basis of every legal rule'. To change the legal character of a person's acts or omissions after the event will often be unfair.

15. That it is submitted Appellant (SAIL)/Respondent has challenged the Bihar, Orissa, Madhya Pradesh and Chhattisgarh Act. Bihar and Orissa Act were struck down by the Hon'ble High Court and as such demand notices issued by Bihar Government were also quashed while in Orissa till date no demand has been raised. But since now the validity is upheld the total liability may be huge and go upto 2,750 crores. The validity of other two Act was upheld.

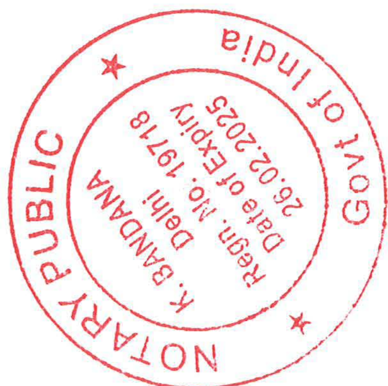


16. That, in view of aforesaid discussion and the facts and circumstances of the cases pertaining to the respondent herein clearly demands that the Judgment dated 25.07.2024 be made applicable prospectively i.e. be make effective for the transactions made on and after 24.07.2024.

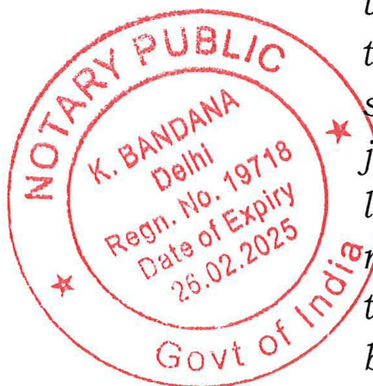
Applying retrospectively the said decision will amounts to reviving huge demand [approx. Rs. 3,000 crores] (including Orissa, Bihar now Jharkhand, Chhattisgarh and Madhya Pradesh) against the respondent – a Public Sector Undertaking which will have direct affect on its business operations and, presently, the respondent is also not in a position to make such a huge deposit in the absence of availability of liquid cash.

17. That, with regard to prospective ruling, this Hon'ble Court, has laid down in the case of ***Ashok Kumar Gupta & Anr v State of UP – (1997) 5 SCC 201*** as under: -

> *"54. It is settled principles right from **Golak Nath**ratio that prospective overruling is a part of the principles of constitutional canon of interpretation. Though **Golak Nath**ratio of unamendability of fundamental rights under Article 368 of the Constitution of India was overruled in **Kesavananda Bharati case** the doctrine of prospective overruling was upheld and followed in several decision. This Court negatived the contention in **Golak Nath case** that prospective overruling amounts to judicial legislation. Explaining the Blastonian theory of law i.e. Judge discovers law and does not make law, the efficacy of prospective overruling at p. 808 placitum D to H, this Court by a bench of eleven Judges held that the doctrine of prospective*



overruling is a modern doctrine and is suitable for a fast moving society. It does not do away with the doctrine of stare decisis but confines it otopast transactions. While in strict theory, it may be said that the doctrine involves the making of law, what a court really does is to declare the law but refuses to give retrospectivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that the court finds law and that it does make the law. If find the law but restricts its operation to the future. It enables the courts to bring about a smooth transition by correcting the errors without disturbing the impact of those errors on past transactions. By implication of this doctrine, the past may be preserved and the future is proteted. The Constitution does not expressly or by necessary implications speak against the doctrine of prospective overruling. Articles 32(4) and 142 are designed with words of width to enable this Court to declare the law and to give such direction or passs such orders as are necessary to do complete justice. The law declared by this Court is the law of the land. So there is no acceptable reason as to why the Court in dealing with the law in supersession of the law declared by it earlier could not restrict the operation of law, as declared, to the future and save the transaction, whether statutory or otherwise, that were effected on the basis of the earlier law. ...."



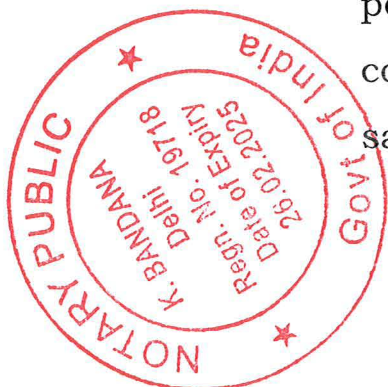
18. That, same view has further been reiterated by this Hon'ble Court in the case of ***State of***

Manipur & Ors v Surajkumar Okram & Ors – 2022 SCC Online SC 130 by laying down that in declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transaction under earlier decisions superseded or statutes held unconstitutional.

19. That it is further submitted that all throughout the judgment of India Cement Ltd. and Ors. vs. State of Tamil Nadu and Ors, (1990) 1 SCC 12 was in force and the same was followed for a considerable period of time now. It was overruled only on 25.07.2024 by this Hon'ble Court as such the judgment of India Cement Ltd. may be overruled prospectively by applying the principle of prospective overruling.

20. That the respondent craves leave of this Hon'ble Court to submit the compilation of relevant judgments during the course of hearing.

21. That the liability which had fallen upon the respondent could not have been a contingent liability, the law always being on the side of the respondent. The respondent presently is at no position to recover the tax or cess from the consumer if the respondent is made to pay the same.



22. That in view of the aforesaid facts and circumstances it is evident that this Hon'ble Court, qua the cases relating to tax on mineral, has applied the rulings prospectively in the past also in the interest of justice so as to avoid any confusion and hardship. As such for larger interest of all it is most respectfully prayed that the Judgment dated 25.07.2024 may also made applicable prospectively.

23. The present affidavit is filed bona fide and for the ends of justice

IDENTIFIED

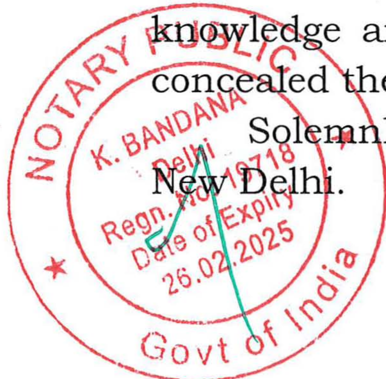
नवीन काला / NAVEEN KALA
महाप्रबंधक (सी.आर.एम.जी.) / General Manager (CRMG)
स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड
STEEL AUTHORITY OF INDIA LIMITED
इस्पात भवन, लोदी रोड, नई दिल्ली - 110003
Ispat Bhawan, Lodi Road, New Delhi-110003

DEPONENT

VERIFICATION:

I, the abovenamed deponent, do hereby verify that the contents of para-1 to Para-23 of above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Solemnly affirmed on the 30th day of July, 2024, New Delhi.



30 JUL 2024

नवीन काला / NAVEEN KALA
महाप्रबंधक (सी.आर.एम.जी.) / General Manager (CRMG)
स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड
STEEL AUTHORITY OF INDIA LIMITED
इस्पात भवन, लोदी रोड, नई दिल्ली - 110003
Ispat Bhawan, Lodi Road, New Delhi-110003

DEPONENT

ATTESTED
NOTARY PUBLIC DELHI
Govt. of India
Mob.: 9654768498

FILED BY:

PLACE : NEW DELHI
DATED: 30/07/2024

[SUNIL K. JAIN]
Advocate for the Respondent (SAIL)

SUNIL K JAIN <delhivakil@gmail.com>

Service of Affidavit in Civil Appeal No. 4056-4064/1999 titled as M.A.D.A. Vs M/S Steel Authority of India & Ors.

1 message

SUNIL K JAIN <delhivakil@gmail.com> 30 July 2024 at 13:34
To: Sansriti Pathak <sansriti.pathak@gmail.com>, gopalprasadadv@yahoo.co.in, tulika4146@gmail.com
Cc: Rajat Mittal <rajat.law@gmail.com>, "kartikseth@chambersofkartikseth.com" <kartikseth@chambersofkartikseth.com>, rsasiprabhu@gmail.com, "abhishek.vikas@gmail.com" <abhishek.vikas@gmail.com>, anandcvarma@gmail.com, DR Vivek Sharma AOR Supreme Court New Delhi <drviveksharma.law@gmail.com>, mail@aglaw.in, trilegal.aor@trilegal.com

Madam/Sir(s),

Please find attached herewith the copy of the Affidavit on behalf of the Respondent (Steel Authority of India Ltd.).

Thanking you
Yours faithfully

SUNIL K. JAIN
ADVOCATE

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Sagar Apartments, 6, Tilak Marg,
New Delhi-110001
Mobile: +91-9810004041
Office: +91-11-23382962

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 512 of 2018

IN THE MATTER OF:

M/S. SANGHI INFRASTRUCTURE M.P LTD. .... Petitioner

VERSUS

UNION OF INDIA & ANR. .... Respondents

INDEX

S.No.	Particulars	Page Nos.
1.	Note of Submissions on Prospective Overruling on behalf of the Solicitor General of India.	1-12
	APPENDIX – A **Extracts of judgments rendered by the Supreme Court of India**	
1.	***Golak Nath v. State of Punjab***, AIR 1967 SC 1643	13-19
2.	***Narayanibai v. State of Maharashtra***, (1969) 3 SCC 468	19-20
3.	***Waman Rao v. Union of India***, (1981) 2 SCC 362	20-21
4.	***Atam Prakash v. State of Haryana***, (1986) 2 SCC 249	21
5.	***Synthetics and Chemicals Ltd. v. State of U.P.***, (1990) 1 SCC 109	22
6.	***Union of India v. Mohd. Ramzan Khan***, (1991) 1 SCC 588	22-23
7.	***Orissa Cement Ltd. v. State of Orissa***, 1991 Supp (1) SCC 430	23-26
8.	***ECIL v. B. Karunakar***, (1993) 4 SCC 727	26-32

9.	***Govt. of A.P. v. Bala Musalaiah,*** (1995) 1 SCC 184	32-33
10.	***R.K. Sabharwal v. State of Punjab***, (1995) 2 SCC 745	33
11.	***State of Karnataka v. Gowri Narayana Ambiga***, 1995 Supp (2) SCC 560	33-34
12.	***M.L. Jaggi v. Mahanagar Telephones Nigam Ltd***., (1996) 3 SCC 119	34-35
13.	***CCE v. Louis Shoppe*, ** (1996) 3 SCC 445	35
14.	***K. Dayanandalal v. State of Kerala*,** (1996) 9 SCC 728	35-37
15.	***Radhey Shyam Singh v. Union of India***, (1997) 1 SCC 60	37-38
16.	***Ashok Kumar Gupta v. State of U.P.*,** (1997) 5 SCC 201	38-44
17.	***Mafatlal Industries Ltd. v. Union of India*,** (1997) 5 SCC 536	45
18.	***Baburam v. C.C. Jacob*,** (1999) 3 SCC 362	45-46
19.	***State of H.P. v. Nurpur (P) Bus Operators' Union*,** (1999) 9 SCC 559	46-47
20.	***Belsund Sugar Co. Ltd. v. State of Bihar***, (1999) 9 SCC 620	47-48
21.	***Indra Sawhney (2) v. Union of India*,** (2000) 1 SCC 168	48-50
22.	***Raymond Ltd. v. M.P. Electricity Board*,** (2001) 1 SCC 534	50-51
23.	***Somaiya Organics (India) Ltd. v. State of U.P.*,** (2001) 5 SCC 519	51-59
24.	***Ganga Ram Moolchandani v. State of Rajasthan*,** (2001) 6 SCC 89	59-61
25.	***SAIL v. National Union Waterfront Workers*,** (2001) 7 SCC 1	61
26.	***Harsh Dhingra v. State of Haryana*,** (2001) 9 SCC 550	62-63

27.	***V. Purushotham Rao v. Union of India*****,** (2001) 10 SCC 305	63-64
28.	***State of Bihar v. S.A. Hassan*****,** (2002) 3 SCC 566	64
29.	***Hansraj & Sons v. State of J&K***, (2002) 6 SCC 227	65
30.	***Harshendra Choubisa v. State of Rajasthan*****,** (2002) 6 SCC 393	65-66
31.	***Kailash Chand Sharma v. State of Rajasthan*****,** (2002) 6 SCC 562	66-71
32.	***Sarwan Kumar v. Madan Lal Aggarwal***, (2003) 4 SCC 147	71-75
33.	***M.A. Murthy v. State of Karnataka***, (2003) 7 SCC 517	76-77
34.	***SBP & Co. v. Patel Engg. Ltd*****.,** (2005) 8 SCC 618	78
35.	***ESI Corpn. v. Jardine Henderson Staff Assn***., (2006) 6 SCC 581	78-79
36.	***State of U. P. v. Sugal & Damani***, (2007) 8 VST 469	79-81
37.	***CIT v. Saurashtra Kutch Stock Exchange Ltd*****.,** (2008) 14 SCC 171	81-83
38.	***Girdhar Kumar Dadhich v. State of Rajasthan*****,** (2009) 2 SCC 706	83-84
39.	***Rajasthan SRTC v. Bal Mukund Bairwa (2)*****,** (2009) 4 SCC 299	84-85
40.	***International Airport Authority of India v. International Air Cargo Workers' Union*****,** (2009) 13 SCC 374	85-86
41.	***A.P. Tourism Development Corpn. Ltd. v. Pampa Hotels Ltd*****.,** (2010) 5 SCC 425	86-88
42.	***Amrik Singh Lyallpuri v. Union of India*****,** (2011) 6 SCC 535	89
43.	***CCE v. Associated Cement Companies Ltd.*****,** (2011) 11 SCC 420	89-90
44.	***CCE v. Rama Vision Ltd.*****,** (2011) 11 SCC 423	89-90

45.	***Ramesh Kumar Soni v. State of M.P.*, **(2013) 14 SCC 696	90-93
46.	***Bangalore City Coop. Housing Society Ltd. v. State of Karnataka*,** (2012) 3 SCC 727	93-94
47.	***Chandrashekaraiah v. Janekere C. Krishna*,** (2013) 3 SCC 117	94-95
48.	***Punjab Urban Planning & Development Authority v. Amar Singh***, 2014 SCC OnLine SC 1872	95-97
49.	***Manmohan Sharma v. State of Rajasthan***, (2014) 5 SCC 782	97-102
50.	***K. Madhava Reddy v. State of A.P.*,** (2014) 6 SCC 537	102-108
51.	***Sepal Hotel (P) Ltd. v. State of Punjab***, (2014) 7 SCC 269	108-109
52.	***B.A. Linga Reddy v. Karnataka State Transport Authority***, (2015) 4 SCC 515	109-111
53.	***Union of India v. I.P. Awasthi*,** (2015) 17 SCC 340	111-112
54.	***Suresh Chand Gautam v. State of U.P.*,** (2016) 11 SCC 113	112-114
55.	***Uddar Gagan Properties Ltd. v. Sant Singh*,** (2016) 11 SCC 378	115-118
56.	***State of Rajasthan v. Nemi Chand Mahela*,** (2019) 14 SCC 179	118-119
57.	***Asha John Divianathan v. Vikram Malhotra***, (2021) 19 SCC 629	119-120
58.	***State of Manipur v. Surjakumar Okram*,** 2022 SCC OnLine SC 130	120-124
59.	***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.***, (2022) 10 SCC 1	124-129
60.	***Jarnail Singh v. Lachhmi Narain Gupta***, (2022) 10 SCC 595	129-139
61.	***Manoj Parihar v. State of J&K*,** (2022) 14 SCC 72	139-141
62.	***CBI v. R.R. Kishore*,** 2023 SCC OnLine SC 1146	142-152

63.	***Union of India v. Ganpati Dealcom (P) Ltd.*****,** (2023) 3 SCC 315	152
	APPENDIX – B **Extracts of relevant American precedents**	
1.	***Great Northern Railway Co. v. Sunburst Oil & Refining Co.*** [287 US 358 (1932)]	153-154
2.	***Victor Linkletter v. Victor G. Walker***, [381 US 618 (1965)]	154-155
3.	***Sylvester Johnson & Stanley Cassidy v. State of New Jersey*** [384 US 719 (1966)]	155-159
4.	***Chevron Oil Company v. Gaines Ted Hudson***, [404 US 97 (1971)]	159-161

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 512 of 2018

IN THE MATTER OF:

M/S. SANGHI INFRASTRUCTURE M.P LTD. .... Petitioner

VERSUS

UNION OF INDIA & ANR. .... Respondents

NOTE OF SUBMISSIONS ON "PROSPECTIVE OVERRULING"

ON BEHALF OF THE SOLICITOR GENERAL OF INDIA

1. By its order dated 25.07.2024 passed in Civil Appeal No(s). 4056-4064 and connected matters, this Hon'ble Court was pleased to place the matters for further consideration on 31.07.2024 to examine the question of whether the judgment of this Hon'ble Court in ***Mineral Area Development Authority v. M/s. Steel Authority of India and Ors.*, 2024 INSC 554** should be given prospective effect as its impact under MMDR Act and State laws will be felt throughout the country, as minerals affect several sectors.
2. By this note, it is respectfully submitted that this Hon'ble Court may be pleased to declare that the judgment in *MADA* **shall apply prospectively from the date of the judgment, i.e., 25.07.2024, with reference to the various State levies which were the subject matter of the petitions before this Hon'ble Court.**
3. The impact of the judgment of the 9-Judge Bench of this Hon'ble Court is substantial and far reaching. This impact will be felt in the market for every mineral and by extension in every one of the core sectors of the economy. Virtually every industry critical to the infrastructure sector (power, steel, cement, aluminium etc.) is heavily dependent on the minerals whose pricing regime will be governed by the judgment in MADA (supra). The effect of the judgment is to

significantly raise the price of an essential input/raw material and therefore substantially raise the price in the hands of the final consumers served by these core industries, namely, the average citizen.

4. The impact of the judgment is illustrated through the example of coal. In India, 55% of the total commercial energy production is coal reliant, and 68% of this coal production is currently used in the generation of electricity. Power, needless to say, is not only an essential input across every other industrial sector but also meets the daily energy requirements of domestic and rural consumers. An increase in the price of coal on account of state levies would have a cascading effect on the price of every commodity or service which uses power as an input, which is virtually *every* commodity or service.

5. The inflationary impact across the nation will be significant, which requires this Hon'ble Court's intervention by making the judgment prospective. The power bills of consumers across the nation would also see significant increases to account for the past state levies on the core raw material of coal, if imposed and collected by the States.

6. This analysis would apply with equal force to other major minerals such as iron ore (essential for the production of steel) and bauxite (essential for the production of aluminium). These serve as the primary input/raw material for almost all manufacturing activity. The substantial increase in their price would have a knock-on effect across sectors, if applied retrospective by the States and collected.

7. The financial impact of the judgment of this Hon'ble Court – in the first instance – is on the companies undertaking mining operations, which will be different for each State. A preliminary estimate of the potential financial impact of the judgment due to past State levies which may become due (in the form of additional state levies of taxes, interest and penalties) on **only** the Public Sector Units engaged in mining, and in production activities dependent on minerals (like electricity production), is to the tune of **Rs. 70,000 crore**.

8. The demands that may potentially be raised by States on some of these PSUs are estimated to be in excess of their net worth and would pose an existential threat to these companies remaining going concerns. This will not be in national interest.

9. The judgment in *MADA* (*supra*) while laying down the law has overruled the judgment of a 7-judge Bench of this Hon'ble Court in *India Cement Ltd. v. State of Tamil Nadu* (1990) 1 SCC 12 and the line of decisions (at least 6 subsequent judgments of this Hon'ble Court, specified at paragraph 342 i., Pg. 199 of the *MADA* judgment) following the law laid down in *India Cement*. Numerous judgments of different Hon'ble High Courts have also followed it. The judgment in *India Cements* (supra) has held the field for nearly 35 years. Since *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201 was delivered by a bench of five Hon'ble Judges as opposed to *India Cements* (supra.) which was delivered by seven Hon'ble Judges, *Kesoram* (supra.) could not and did not overrule *India Cements* (supra.). Therefore, *India Cements* (supra.) held the field till the date of the judgment in *MADA*.

10. In directing that its judgment was to have prospective effect, the Constitution Bench in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services* (2012)9 SCC 552 accorded due weight to the position that the judgment in *Bhatia International v. Bulk Trading SA* (2002) 4 SCC 105 (which was being overruled by the Constitution Bench) "*has been followed by all High Courts as well as by this Court on numerous occasions*" for a decade.

11. Demands for tax under various state legislations that were stayed in terms of the law laid down in *India Cements* (*supra*) and the line of decisions of this Hon'ble Court and various High Courts following the judgement of the 7-judge Bench of this Hon'ble Court can be revived in terms of the law laid down in MADA (*supra*). The affected parties have factored in only the state levies valid and applicable at the relevant point of time and have accordingly passed on only these levies to the end consumers. If states were to raise fresh demands based upon the judgment in *MADA*, it is ultimately the end consumer who will bear the burden.

12. There is yet another angle on this aspect. After the 2015 amendments to the statutory regime under the MMDRA, mineral concessions have been awarded by

way of auctions, in which the biddable element is the percentage of the value of the mineral dispatched which the bidder is willing to share with the state government.

13. Entities participating in the auctions would (correctly) have submitted their financial bids with reference to the legal position under *India Cements* (*supra*) (which at the time of the first auction had already held the field for 25 years) and based upon the levies in force at the time. If prospective effect is not given to the judgment in *MADA* (*supra*), it would fundamentally rewrite retrospectively the commercial bargain underpinning these auctions, and cause substantial and undue prejudice to *bona fide* bidders/lessees who submitted the highest bids and secured the mining leases. Any retrospective change in the financials of the tender conditions and the contract of lease based thereupon will inevitably result in multiple litigations regarding past dues.

14. The doctrine of prospective overruling is well established in Indian Constitutional Law and has been judicially crafted specifically to do complete justice in cases such as the present one. Although the foundations of the doctrine are inspired by American jurisprudence, it has, through numerous decisions of this Hon'ble Court, developed a distinctive indigenous flavour under the Indian Constitutional Scheme. A detailed discussion of the doctrine and a delineation of its parameters was first laid down authoritatively in ***Golak Nath v. State of Punjab***, AIR 1967 SC 1643:

> ***"45.*** *There are two doctrines familiar to American Jurisprudence, one is described as Blackstonian theory* ***and the other as "prospective over-ruling" which may have some relevance to the present enquiry****. Blackstone in his Commentaries, 69 (15th Edn., 1809) stated the common law rule that the duty of the Court was "not to pronounce a new rule but to maintain and expound the old one". It means the Judge does not make law but only discovers or finds the true law. The law has always been the same. If a subsequent decision changes the earlier one, the latter decision does not make law but only discovers the correct principle of law. The result of this view is that it is necessarily retrospective in operation. But Jurists, George F. Canfield, Robert Hill Freeman, John Henry Wigmore and Cardozo have expounded the doctrine of "prospective over-ruling" and suggested it as "a useful judicial tool". In the words of Canfield the said expression means:*

"... a Court should recognize a duty to announce a new and better rule for future transactions whenever the court has reached the conviction that on old rule (as established by the precedents) is unsound even though feeling compelled by stare decisis to apply the old and condemned rule to the instance case and to transactions which had already taken place".

Cardozo, before he became a Judge of the Supreme Court of the United States of America, when he was the Chief Justice of New York State addressing the Bar Association said thus:

"The rule (the Blackstonian rule) that we are asked to apply is out of tune with the life about us. It has been made discordant by the forces that generate a living law. We apply it to this case because the repeal might work hardship to those who have trusted to its existence. We give notice however that any one trusting to it hereafter will do at his peril."

The Supreme Court of the United States of America in the year 1932, after Cardozo became an Associate Justice of that Court in Great Northern Railway v. Sunburst Oil & Ref. Co. [(1932) 287 US 358, 366 : 77 LEd 360] , applied the said doctrine to the facts of that case. In that case the Montana Court had adhered to its previous construction of the statute in question but had announced that that interpretation would not be followed in the future. It was contended before the Supreme Court of the United States of America that a decision of a court overruling earlier decision and not giving its ruling retroactive operation violated the due process clause of the 14th Amendment. Rejecting that plea, Cardozo said:

"This is not a case where a Court in overruling an earlier decision has come to the new ruling of retroactive dealing and thereby has made invalid what was followed in the doing. Even that may often be done though litigants not infrequently have argued to the contrary.... This is a case where a Court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal. We think that the Federal Constitution has no voice upon the subject. A state in defining the elements of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may be so that the decision of the highest courts, though later overruled, was law nonetheless for intermediate transactions.... On the other hand, it may hold to the ancient dogma that the law declared by its Courts had a platonic or ideal existence before the act of declaration, in which event, the discredited declaration will be viewed as if it had never been and to reconsider declaration as law from the beginning......The choice for any state may be determined by the juristic philosophy of the Judges of her Courts, their considerations of law, its origin and nature."

The opinion of Cardozo tried to harmonize the doctrine of prospective over-ruling with that of stare decisis.

46. *In 1940, Hughes, C.J., in Chicot County Drainage District v. Baxter State Bank [(1940) 308 US 371] stated thus:*

"The law prior to the determination of unconstitutionality is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration."

In Graffin v. Illionis [(1956) 351 US 12, 20] the Supreme Court of America reaffirmed the doctrine laid down in Sunburst case. There, a statute required defendants to submit bills of exceptions as a pre-requisite to an appeal from a conviction; the Act was held unconstitutional in that it provided no means whereby indigent defendants could secure a copy of the record for this purpose. Frankfurter, J., in that context observed:

"... in arriving at a new principle, the judicial process is not important to define its scope and limits. Adjudication is not a mechanical exercise nor does it compel 'either/or' determination".

In Wolf v. Colorado [338 US 25 : 193 LEd 872] a majority of the Supreme Court held that in a prosecution in a State Court for a state crime, the 14th Amendment did not forbid the admission of evidence obtained by an unreasonable search and seizure. But in Mapp v. Ohio [(367 US 643 : 6 LEd (2nd Edn.) 1081)] the Supreme Court reversed that decision and held that all evidence obtained by searches and seizure in violation of the 4th Amendment of the Federal Constitution was, by virtue of the due process clause of the 14th Amendment guaranteeing the right to privacy free from unreasonable State intrusion inadmissible in a State Court. In Linkletter v. Walker [(1965) 381 US 618] the question arose whether the exclusion of the rule enunciated in Mappv. Ohio did not apply to State Court's convictions which had become final before the date of that judgment. Mr Justice Clarke, speaking for the majority observed:

"We believe that the existence of the Wolf doctrine prior to Mapp is 'an operative' fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.

****"*

"Mapp had as its prima purpose the enforcement of the Fourth Amendment through the inclusion of the exclusionary rule within its rights....

We cannot say that this purpose would be advanced by making the rule retrospective. The misconduct of the police prior to Mapp has already occurred and will not be corrected by releasing the prisoners involved.... On the other hand, the States relied on Wolf and followed its command. Final judgments of conviction were entered prior to Mapp. Again and again the Court refused to reconsider Wolf and gave its implicit approval to hundreds of cases in their application of its rule. In rejecting the Wolf doctrine as to the exclusionary rule the purpose was to deter the lawless action of the police and to effectively enforce the Fourth Amendment. That purpose will not at this late date be served by the wholesale release of the guilty victims".

"Finally, there are interests in the administration of justice and the integrity of the judicial process to consider. To make the rule of Mapp retrospective would tax the administration of justice to the utmost. Hearings would have to be held on the excludability of evidence long since destroyed, misplaced or deteriorated. If it is excluded, the witness available at the time of the original trial will not be available or if located their memory will be dimmed. To thus legitimate such an extraordinary procedural weapon that has no bearing on guilt would seriously disrupt the administration of justice."

This case has reaffirmed the doctrine of prospective overruling and has taken a pragmatic approach in refusing to give it retroactivity. In short, in America the doctrine of prospective overruling is now accepted in all branches of law, including constitutional law. But the carving of the limits of retrospectivity of the new rule is left to courts to be done, having regard to the requirements of justice. Even in England the Blackstonian theory was criticized by Bentham and Austin. In Austin's Jurisprudence. 4th Edn., at p. 65, the learned author says:

"What hindered Blackstone was 'the childish fiction' employed by our Judges, that judiciary or common law is not made by them, but is a miraculous something made, by nobody, existing, I suppose, from eternity, and merely declared from time to time by the Judges."

47. *Though English Courts in the past accepted the Blackstonian theory and though the House of Lords strictly adhered to the doctrine of 'precedent' in the earlier years, both the doctrines were practically given up by the "Practice Statement (Judicial Precedent)" issued by the House of Lords, recorded in (1966) 1 WLR 1234. Lord Gardiner L.C., speaking for the House of Lords made the following observations;*

"Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

The announcement is not intended to affect the use of precedent elsewhere than in this House."

It will be seen from this passage that the House of Lords hereafter in appropriate cases may depart from its previous decision when it appears right to do so and in so departing will bear in mind the danger of giving effect to the said decision retroactivity. We consider that what the House of Lords means by this statement is that in differing from the precedents it will do so only

<u>without interfering with the transactions that had taken place on the basis of earlier decisions. This decision, to a large extent, modifies the Blackstonian theory and accepts, though not expressly but by necessary implication the doctrine of "prospective overruling.</u>"

48. *Let us now consider some of the objections to this doctrine. The objections are : (1) the doctrine involved legislation by courts; (2) it would not encourage parties to prefer appeals as they would not get any benefit therefrom; (3) the declaration for the future would only be obiter; (4) it is not a desirable change; and (5) the doctrine of retroactivity serves as a break on courts which otherwise might be tempted to be so fascile in overruling. But in our view, these objections are not insurmountable. If a court can overrule its earlier decision — there cannot be any dispute now that the court can do so — there cannot be any valid reason why it should not restrict its ruling to the future and not to the past. Even if the party filing an appeal may not be benefited by it, in similar appeals which he may file after the change in the law he will have the benefit. The decision cannot be obiter for what the court in effect does is, to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be perpetuated. An illuminating article on the subject is found in Pennsylvania Law Review.*

49. *It is a modern doctrine suitable for a fast moving society. It does not do away with the doctrine of stare decisis, but confines it to past transactions. It is true that in one sense the court only declares the law, either customary or statutory or personal law. While in strict theory it may be said that the doctrine involves making of law, what the court really does is to declare the law but refuses to give retroactivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a court finds law and that it does make law<u>. It finds law but restricts its operation to the future. It enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It is left to the discretion of the court to prescribe the limits of the retroactivity and thereby it enables it to</u>* ***<u>mould the relief to meet the ends of justice</u>****<u>.</u>*

50. *<u>In India there is no statutory prohibition against the court refusing to give retroactivity to the law declared by it.</u> Indeed, the doctrine of res judicata precludes any scope for retroactivity in respect of a subject-matter that has been finally decided between the parties. Further, Indian Courts by interpretation reject retroactivity to statutory provisions though couched in general terms on the ground that they affect vested rights. The present case only attempts a further extension of the said rule against retroactivity.*

51. <u>Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Indeed, Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this</u>

Court to formulate legal doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. *Under Article 32, for the enforcement of the fundamental rights the Supreme Court has the power to issue suitable directions or orders or writs. Article 141 says that the law declared by the Supreme Court shall be binding on all courts; and Article 142 enables it in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice. The expression "declared" is wider than the words "found or made". To declare is to announce opinion. Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law.* ***The law declared by the Supreme Court is the law of the land. If so, we do not see any acceptable reason why it, in declaring the law in supersession of the law declared by it earlier, could not restrict the operation of the law as declared to future and save the transactions, whether statutory or otherwise that were effected on the basis of the earlier law. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.***

52. *As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning.* ***We would lay down the following propositions : (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.***

53. *We have arrived at two conclusions, namely, (1) the Parliament has no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights; and (2) this is a fit case to invoke and apply the doctrine of prospective overruling. What then is the effect of our conclusion on the instant case? Having regard to the history of the amendments, their impact on the social and economic affairs of our country and the chaotic situation that may be brought about by the sudden withdrawal at this stage of the amendments from the Constitution, we think that considerable judicial restraint is called for. We, therefore, declare that our decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964, or other amendments made to the Constitution taking away or abridging the*

fundamental rights. We further declare that in future the Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights. In this case we do not propose to express our opinion on the question of the scope of the amendability of the provisions of the Constitution other than the fundamental rights, as it does not arise for consideration before us. Nor are we called upon to express our opinion on the question regarding the scope of the amendability of Part III of the Constitution otherwise than by taking away or abridging the fundamental rights. We will not also indicate our view one way or other whether any of the Acts questioned can be sustained under the provisions of the Constitution without the aid of Articles 31-A, 31-B and the 9th Schedule.

The aforesaid discussion leads to the following results:

(1) The power of the Parliament to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 thereof which only deals with procedure. Amendment is a legislative process.

(2) Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void.

(3) The Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, 1955, and the Constitution (Seventeenth Amendment) Act, 1964, abridge the scope of the fundamental rights. But, on the basis of earlier decisions of this Court, they were valid.

(4) On the application of the doctrine of 'prospective overruling', as explained by us earlier, our decision will have only prospective operation and, therefore, the said amendments will continue to be valid.

(5) We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.

(6) As the Constitution (Seventeenth Amendment) Act holds the field, the validity of the two impugned Acts, namely, The Punjab Security of Land Tenures Act 10 of 1953, and the Mysore Land Reforms Act 10 of 1962, as amended by Act 14 of 1965, cannot be questioned on the ground that they offend Articles 13, 14 or 31 of the Constitution." ***[Emphasis supplied]***

15. **APPENDIX-A** to the present note sets out, exhaustively, the body of law on the doctrine of prospective overruling. **APPENDIX-B** contains extracts from relevant American precedents.

16. In a converse situation to the present case, where operational levies are declared by a judgment of this Hon'ble Court to be unlawful, the decision has ordinarily been given prospective effect so as to avoid unsettling past transactions. For

instance, the 7-Judge Bench in *India Cements* (Para 36), even while declaring the state legislation to be *ultra vires*, gave its judgment prospective effect by restraining the state from enforcing the levy "any further" and clarified that the state would not be liable for any refund of cess already paid or collected. In so directing, this Hon'ble Court noted (para 35) that various amounts had been collected by the states on the basis that the law laid down in *HRS Murthy v. Collector of Chittor* (1964) 6 SCR 666 (overruled in *India Cement*) was the correct position.

17. Similarly, in *Synthetics and Chemicals v. State of UP* (1990) 1 SCC 109, a 7-Judge bench of this Hon'ble Court overruled a previous decision of this Hon'ble Court and struck down the validity of the impugned impost (vend fee on industrial alcohol) prospectively from the date of the judgment of the 7-Judge Bench. The judgment was however given prospective effect, this Hon'ble Court noting (para 89) that the levies had been imposed by virtue of the previous decision of the SC and parties had "*adjusted their rights and their position on that basis*". Accordingly, the imposts were declared to be prospectively illegal but realisations already made were not affected.

18. In *<u>Somaiya Organics (India) Ltd. v. State of U.P.</u>* (2001) 5 SCC 519, a Constitution Bench of this Hon'ble Court analysed in detail the effect of the prospective overruling of the previous case by the 7-Judge judgment of this Hon'ble Court in *Synthetics and Chemicals* (*supra*) and reiterated that while the state was not required to refund any amounts received by it towards demands of vend fee for the period prior to the date of the 7-Judge bench decision, it could not collect any further vend fee for the period prior to this date.

19. The consistent approach across these decisions is that, particularly in tax matters, the Court has not ordinarily disturbed past/concluded transactions, either by directing refund of levies collected from assesses (where a tax is struck down) or by permitting the belated collection by the State of levies that have been upheld by the judgment of the Court but whose collection was stayed pending the decision. Considerations of legal certainty and the objective of avoiding visiting additional liability on past commercial transactions would weigh heavily in favour

of giving a judgment prospective effect, particularly when it overrules a previous decision of this Hon'ble Court.

20. The approach consistently adopted in the above referenced decisions is respectfully commended for acceptance in the present case. The Constitution Bench in *Somaiya Organics* (*supra*) (para 27) has noted that the power to mould the relief to meet the justice of the case had been expressly conferred on the SC under Article 142 of the Constitution of India. **<u>Accordingly, and in exercise of its power to do complete justice under Article 142, this Hon'ble Court may be pleased to direct that where the operation of the state laws in issue was either partially or fully interdicted by judicial orders, with the result that nil or partial recovery of tax liability has been made during the pendency of the present reference, no further demands shall be made under these laws for the past period, i.e., for any date prior to 25.07.2024.</u>**

APPENDIX-A

1. In ***Golak Nath v. State of Punjab***, AIR 1967 SC 1643, it was held as follows:

> ***"45.*** *There are two doctrines familiar to American Jurisprudence, one is described as Blackstonian theory* ***and the other as "prospective over-ruling" which may have some relevance to the present enquiry****. Blackstone in his Commentaries, 69 (15th Edn., 1809) stated the common law rule that the duty of the Court was "not to pronounce a new rule but to maintain and expound the old one". It means the Judge does not make law but only discovers or finds the true law. The law has always been the same. If a subsequent decision changes the earlier one, the latter decision does not make law but only discovers the correct principle of law. The result of this view is that it is necessarily retrospective in operation. But Jurists, George F. Canfield, Robert Hill Freeman, John Henry Wigmore and Cardozo have expounded the doctrine of "prospective over-ruling" and suggested it as "a useful judicial tool". In the words of Canfield the said expression means:*
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> *"… a Court should recognize a duty to announce a new and better rule for future transactions whenever the court has reached the conviction that on old rule (as established by the precedents) is unsound even though feeling compelled by stare decisis to apply the old and condemned rule to the instance case and to transactions which had already taken place".*
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> *Cardozo, before he became a Judge of the Supreme Court of the United States of America, when he was the Chief Justice of New York State addressing the Bar Association said thus:*
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> *"The rule (the Blackstonian rule) that we are asked to apply is out of tune with the life about us. It has been made discordant by the forces that generate a living law. We apply it to this case because the repeal might work hardship to those who have trusted to its existence. We give notice however that any one trusting to it hereafter will do at his peril."*
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> *The Supreme Court of the United States of America in the year 1932, after Cardozo became an Associate Justice of that Court in Great Northern Railway v. Sunburst Oil & Ref. Co. [(1932) 287 US 358, 366 : 77 LEd 360] , applied the said doctrine to the facts of that case. In that case the Montana Court had adhered to its previous construction of the statute in question but had announced that that interpretation would not be followed in the future. It was contended before the Supreme Court of the United States of America that a decision of a court overruling earlier decision and not giving its ruling retroactive operation violated the due process clause of the 14th Amendment. Rejecting that plea, Cardozo said:*

"This is not a case where a Court in overruling an earlier decision has come to the new ruling of retroactive dealing and thereby has made invalid what was followed in the doing. Even that may often be done though litigants not infrequently have argued to the contrary.... This is a case where a Court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal. We think that the Federal Constitution has no voice upon the subject. A state in defining the elements of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may be so that the decision of the highest courts, though later overruled, was law nonetheless for intermediate transactions.... On the other hand, it may hold to the ancient dogma that the law declared by its Courts had a platonic or ideal existence before the act of declaration, in which event, the discredited declaration will be viewed as if it had never been and to reconsider declaration as law from the beginning......The choice for any state may be determined by the juristic philosophy of the Judges of her Courts, their considerations of law, its origin and nature."

The opinion of Cardozo tried to harmonize the doctrine of prospective over-ruling with that of stare decisis.

46. *In 1940, Hughes, C.J., in Chicot County Drainage District v. Baxter State Bank [(1940) 308 US 371] stated thus:*

"The law prior to the determination of unconstitutionality is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration."

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"... in arriving at a new principle, the judicial process is not important to define its scope and limits. Adjudication is not a mechanical exercise nor does it compel 'either/or' determination".

In Wolf v. Colorado [338 US 25 : 193 LEd 872] a majority of the Supreme Court held that in a prosecution in a State Court for a state crime, the 14th Amendment did not forbid the admission of evidence obtained by an unreasonable search and seizure. But in Mapp v. Ohio [(367 US 643 : 6 LEd (2nd Edn.) 1081)] the Supreme Court reversed that decision and held that all evidence obtained by searches and seizure in violation of the 4th Amendment of the Federal Constitution was, by virtue of the due process clause of the 14th Amendment guaranteeing the right to privacy free from unreasonable State intrusion inadmissible in a State Court.

In Linkletter v. Walker [(1965) 381 US 618] the question arose whether the exclusion of the rule enunciated in Mappv. Ohio did not apply to State Court's convictions which had become final before the date of that judgment. Mr Justice Clarke, speaking for the majority observed:

"We believe that the existence of the Wolf doctrine prior to Mapp is 'an operative' fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.

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"Mapp had as its prima purpose the enforcement of the Fourth Amendment through the inclusion of the exclusionary rule within its rights....

We cannot say that this purpose would be advanced by making the rule retrospective. The misconduct of the police prior to Mapp has already occurred and will not be corrected by releasing the prisoners involved.... On the other hand, the States relied on Wolf and followed its command. Final judgments of conviction were entered prior to Mapp. Again and again the Court refused to reconsider Wolf and gave its implicit approval to hundreds of cases in their application of its rule. In rejecting the Wolf doctrine as to the exclusionary rule the purpose was to deter the lawless action of the police and to effectively enforce the Fourth Amendment. That purpose will not at this late date be served by the wholesale release of the guilty victims".

"Finally, there are interests in the administration of justice and the integrity of the judicial process to consider. To make the rule of Mapp retrospective would tax the administration of justice to the utmost. Hearings would have to be held on the excludability of evidence long since destroyed, misplaced or deteriorated. If it is excluded, the witness available at the time of the original trial will not be available or if located their memory will be dimmed. To thus legitimate such an extraordinary procedural weapon that has no bearing on guilt would seriously disrupt the administration of justice."

This case has reaffirmed the doctrine of prospective overruling and has taken a pragmatic approach in refusing to give it retroactivity. In short, in America the doctrine of prospective overruling is now accepted in all branches of law, including constitutional law. But the carving of the limits of retrospectivity of the new rule is left to courts to be done, having regard to the requirements of justice. Even in England the Blackstonian theory was criticized by Bentham and Austin. In Austin's Jurisprudence. 4th Edn., at p. 65, the learned author says:

"What hindered Blackstone was 'the childish fiction' employed by our Judges, that judiciary or common law is not made by them, but is a miraculous something made, by nobody, existing, I suppose, from eternity, and merely declared from time to time by the Judges."

47. *Though English Courts in the past accepted the Blackstonian theory and though the House of Lords strictly adhered to the doctrine of 'precedent' in the earlier years, both the doctrines were practically given up by the "Practice Statement (Judicial Precedent)" issued by the House of Lords, recorded in (1966) 1 WLR 1234. Lord Gardiner L.C., speaking for the House of Lords made the following observations;*

"Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

The announcement is not intended to affect the use of precedent elsewhere than in this House."

It will be seen from this passage that the House of Lords hereafter in appropriate cases may depart from its previous decision when it appears right to do so and in so departing will bear in mind the danger of giving effect to the said decision retroactivity. We consider that what the House of Lords means by this statement is that in differing from the precedents it will do so only without interfering with the transactions that had taken place on the basis of earlier decisions. This decision, to a large extent, modifies the Blackstonian theory and accepts, though not expressly but by necessary implication the doctrine of "prospective overruling."

48. *Let us now consider some of the objections to this doctrine. The objections are : (1) the doctrine involved legislation by courts; (2) it would not encourage parties to prefer appeals as they would not get any benefit therefrom; (3) the declaration for the future would only be obiter; (4) it is not a desirable change; and (5) the doctrine of retroactivity serves as a break on courts which otherwise might be tempted to be so fascile in overruling. But in our view, these objections are not insurmountable. If a court can overrule its earlier decision — there cannot be any dispute now that the court can do so — there cannot be any valid reason why it should not restrict its ruling to the future and not to the past. Even if the party filing an appeal may not be benefited by it, in similar appeals which he may file after the change in the law he will have the benefit. The decision cannot be obiter for what the court in effect does is, to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be perpetuated. An illuminating article on the subject is found in Pennsylvania Law Review.*

49. *It is a modern doctrine suitable for a fast moving society. It does not do away with the doctrine of stare decisis, but confines it to past transactions. It is true that in one sense the court only declares the law, either customary or statutory or personal law. While in strict theory it may be said that the doctrine involves making of law, what the court really does is to declare the law but refuses to give retroactivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a court finds law and that it does make law. It finds law but restricts its operation to the future. It enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It is left to the discretion of the court to prescribe the limits of the retroactivity and thereby it enables it to* ***mould the relief to meet the ends of justice****.*

50. *In India there is no statutory prohibition against the court refusing to give retroactivity to the law declared by it. Indeed, the doctrine of res judicata precludes any scope for retroactivity in respect of a subject-matter that has been finally decided between the parties. Further, Indian Courts by interpretation reject retroactivity to statutory provisions though couched in general terms on the ground that they affect vested rights. The present case only attempts a further extension of the said rule against retroactivity.*

51. Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Indeed, Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. *Under Article 32, for the enforcement of the fundamental rights the Supreme Court has the power to issue suitable directions or orders or writs. Article 141 says that the law declared by the Supreme Court shall be binding on all courts; and Article 142 enables it in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice. The expression "declared" is wider than the words "found or made". To declare is to announce opinion. Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law.* ***The law declared by the Supreme Court is the law of the land. If so, we do not see any acceptable reason why it, in declaring the law in supersession of the law declared by it earlier, could not restrict the operation of the law as declared to future and save the transactions, whether statutory or otherwise that were***

effected on the basis of the earlier law. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.

52. *As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning.* ***We would lay down the following propositions : (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.***

53. *We have arrived at two conclusions, namely, (1) the Parliament has no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights; and (2) this is a fit case to invoke and apply the doctrine of prospective overruling. What then is the effect of our conclusion on the instant case? Having regard to the history of the amendments, their impact on the social and economic affairs of our country and the chaotic situation that may be brought about by the sudden withdrawal at this stage of the amendments from the Constitution, we think that considerable judicial restraint is called for. We, therefore, declare that our decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964, or other amendments made to the Constitution taking away or abridging the fundamental rights. We further declare that in future the Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights. In this case we do not propose to express our opinion on the question of the scope of the amendability of the provisions of the Constitution other than the fundamental rights, as it does not arise for consideration before us. Nor are we called upon to express our opinion on the question regarding the scope of the amendability of Part III of the Constitution otherwise than by taking away or abridging the fundamental rights. We will not also indicate our view one way or other whether any of the Acts questioned can be sustained under the provisions of the Constitution without the aid of Articles 31-A, 31-B and the 9th Schedule.*

The aforesaid discussion leads to the following results:

(1) The power of the Parliament to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article

368 thereof which only deals with procedure. Amendment is a legislative process.

(2) Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void.

(3) The Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, 1955, and the Constitution (Seventeenth Amendment) Act, 1964, abridge the scope of the fundamental rights. But, on the basis of earlier decisions of this Court, they were valid.

(4) On the application of the doctrine of 'prospective overruling', as explained by us earlier, our decision will have only prospective operation and, therefore, the said amendments will continue to be valid.

(5) We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.

(6) As the Constitution (Seventeenth Amendment) Act holds the field, the validity of the two impugned Acts, namely, The Punjab Security of Land Tenures Act 10 of 1953, and the Mysore Land Reforms Act 10 of 1962, as amended by Act 14 of 1965, cannot be questioned on the ground that they offend Articles 13, 14 or 31 of the Constitution." ***[Emphasis supplied]***

2. In ***Narayanibai v. State of Maharashtra*****,** (1969) 3 SCC 468, it was held as follows:

"9. *Mr Setalvad contended that to uphold the validity of the Acts in the Ninth Schedule, and action taken thereon after February 27, 1967, involves a basic inconsistency. Counsel submitted that an Act cannot be both valid and invalid at the same time. He submitted that with a view to avoid chaos in the body politic the wheel of time was not reversed till the date of the Constitution first Amendment, but the majority of the Court still denied to the Parliament power to incorporate in the Ninth Schedule Acts and Regulations removed from the pale of judicial scrutiny on the plea that the fundamental rights of the people were infringed thereby. If that be the true effect of the judgment said Mr Setalvad, it must logically follow from the judgment in I.C. Golak Nath case that the Seventeenth Amendment has no validity after February 27, 1967. We are unable to agree with that interpretation for more reasons than one. The first and the most obvious is that the majority of the Court expressly held that by virtue of Article 31(b) the Acts incorporated in the Ninth Schedule were not exposed to challenge on the ground that they infringed the fundamental rights of the people. The second is that even the Judges for whom Subba Rao, C.J., spoke did not accept the "doctrine of prospective overruling" in all its implications as understood by the American Courts. It merely denied to the Parliament power after*

*February 27, 1967 to amend the Constitution so as to take away any of the fundamental rights of the people, **but amendments made prior to that date and action taken under the amendments, both before and after February 27, 1967, were not to be deemed invalid, on the ground that they infringed the guarantee of fundamental rights.** That being the true effect of the judgment in I.C. Golak Nath case the petitioner cannot be permitted to challenge the validity of the action taken under the provisions of the Maharashtra Act 27 of 1961 on the ground that the action had been taken after February 27, 1967."*

[Emphasis supplied]

3. In ***Waman Rao v. Union of India*, **(1981) 2 SCC 362, it was held as follows:

*"**31.** For these reasons, we are of the view that the Amendment introduced by Section 4 of the Constitution (First Amendment) Act, 1951 does not damage or destroy the basic structure of the Constitution. The Amendment must, therefore, be upheld on its own merits.*

***32.** This makes it unnecessary to consider whether Article 31-A can be upheld by applying the rule of stare decisis. We have, however, heard long and studied arguments on that question also, in deference to which we must consider the alternate submission as to whether the doctrine of stare decisis can save Article 31-A, if it is otherwise violative of the basic structure of the Constitution. In Sankari Prasad v. Union of India[1951 SCC 966 : 1952 SCR 89, 95 : AIR 1951 SC 458] the validity of the 1st Amendment which introduced Articles 31-A and 31-B was assailed on six grounds, the fifth being that Article 13(2) takes in not only ordinary laws but constitutional amendments also. This argument was rejected and the 1st Amendment was upheld. In Sajjan Singh v. State of Rajasthan [(1965) 1 SCR 933 : AIR 1965 SC 845] the court refused to reconsider the decision in Sankari Prasad [1951 SCC 966 : 1952 SCR 89, 95 : AIR 1951 SC 458] with the result that the validity of the 1st Amendment remained unshaken. In Golak Nath [I.C. Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] it was held by a majority of 6:5 that the power to amend the Constitution was not located in Article 368. The inevitable result of this holding should have been the striking down of all constitutional amendments since, according to the view of the majority, Parliament had no power to amend the Constitution in pursuance of Article 368. **But the court resorted to the doctrine of prospective overruling and held that the constitutional amendments which were already made would be left undisturbed and that its decision will govern the future amendments only. As a result, the 1st Amendment by which Articles 31-A and 31-B were introduced remained inviolate.** It is trite knowledge that Golak Nath [I.C. Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC*

1643] was overruled in Kesavananda Bharati [(1973) 4 SCC 225 : 1973 Supp SCC 1] in which it was held unanimously that the power to amend the Constitution was to be found in Article 368 of the Constitution. The petitioners produced before us a copy of the Civil Miscellaneous Petition which was filed in Kesavananda Bharati [(1973) 4 SCC 225 : 1973 Supp SCC 1] by which the reliefs originally asked for were modified. It appears therefrom that what was challenged in that case was the 24th, 25th and the 29th Amendments to the Constitution. The validity of the 1st Amendment was not questioned. Khanna, J., however, held while dealing with the validity of the unamended Article 31-C that the validity of Article 31-A was upheld in Sankari Prasad [1951 SCC 966 : 1952 SCR 89, 95 : AIR 1951 SC 458] , that its validity could not be any longer questioned because of the principle of stare decisis and that the ground on which the validity of Article 31-A was sustained will be available equally for sustaining the validity of the first part of Article 31-C (p. 744) (SCC p. 812, para 1518)."

[Emphasis supplied]

4. In ***Atam Prakash v. State of Haryana*****,** (1986) 2 SCC 249, it was held:

***"13.** We are thus unable to find any justification for the classification contained in Section 15 of the Punjab Pre-emption Act of the kinsfolk entitled to pre-emption. The right of pre-emption based on consanguinity is a relic of the feudal past. It is totally inconsistent with the constitutional scheme. It is inconsistent with modern ideas. The reasons which justified its recognition quarter of a century ago, namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant. The list of kinsfolk mentioned as entitled to pre-emption is intrinsically defective and self-contradictory. There is, therefore, no reasonable classification and clauses "First", "Secondly" and "Thirdly" of Section 15(1)(a), "First", "Secondly" and "Thirdly" of Section 15 (1)(b), clauses "First", "Secondly" and "Thirdly" of Section 15(1)(c) and the whole of Section 15(2) are, therefore, declared ultra vires the Constitution.*

14. We are told that in some cases suits are pending in various courts and, where decrees have been passed, appeals are pending in appellate courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. *We are told that there are a few cases where suits have been decreed and the decrees have become final, no appeals having been filed against those decrees. The decrees will be binding inter partes and the declaration granted by us will be of no avail to the parties thereto."*

[Emphasis supplied]

5. In ***Synthetics and Chemicals Ltd. v. State of U.P.***, (1990) 1 SCC 109, it was held:

> ***"89.*** *We must, however, observe, that these imposts and levies have been imposed by virtue of the decision of this Court in Synthetics & Chemicals Ltd. case [(1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614] . The States as well as the petitioners and manufacturers have adjusted their rights and their position on that basis except in the case of State of Tamil Nadu.* ***In that view of the matter, it would be necessary to state that these provisions are declared to be illegal prospectively. In other words, the respondents States are restrained from enforcing the said levy any further but the respondents will not be liable for any refund and the tax already collected and paid will not be refunded. We prospectively declare these imposts to be illegal and invalid, but do not affect any realisations already made. The writ petitions and the appeals are disposed of accordingly.*** *The review petitions, accordingly, succeed though strictly no grounds as such have been made out but in the view we have taken, the decision in the Synthetics & Chemicals Ltd. case [(1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614] cannot be upheld. In the view we have taken also, it is not necessary to decide or to adjudicate if the levy is valid as to who would be liable, that is to say, the manufacturer or the producer or the dealer."*
>
> ***[Emphasis supplied]***

6. In ***Union of India v. Mohd. Ramzan Khan*****,** (1991) 1 SCC 588, it was held:

> ***"17.*** *There have been several decisions in different High Courts which, following the Forty-second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger bench of this Court taking this view.* ***Therefore, the conclusion to the contrary reached by any two-Judge bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.***
>
> ***18.*** *We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the*

report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

19. *On the basis of this conclusion, the appeals are dismissed and the disciplinary action in every case is set aside. There shall be no order for costs. We would clarify that this decision may not preclude the disciplinary authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment."*

[Emphasis supplied]

7. In ***Orissa Cement Ltd. v. State of Orissa*,** 1991 Supp (1) SCC 430, it was held:

"68. *We have given our earnest consideration to these contentions and we are of opinion that the ruling in India Cement [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] concludes the issue. There the court was specifically called upon to consider an argument that, even if the statutory levy should be found invalid, the court may not give directions to refund amounts already collected and the argument found favour with the bench of seven Judges. We are bound by their decision in this regard. It is difficult to accept the plea that, in giving these directions, the court overlooked the provisions of Articles 246 and 265 of the Constitution. The court was fully aware of the position that the effect of the legislation in question being found beyond the competence of the State legislature was to render it void ab initio and the collections made thereunder without the authority of law. Yet the court considered that a direction to refund all the cesses collected since 1964 would work hardship and injustice. The directions, now impugned, were given in the interests of equity and justice after due consideration and we cannot take a contrary view.*

69. *In our view, we need not enter into a discussion on the principles of prospective validation enunciated by at least some of the Judges in Golak Nath [I.G. Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] as the direction in India Cement [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] can be supported on another well settled principle applicable in the area of the writ jurisdiction of courts. We are inclined to accept the view urged on behalf of the State that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the court has, and must be held to have, a certain amount of discretion.* ***It is a well settled proposition***

<u>that it is open to the court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice.</u> *It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding. Many situations of this type arise in actual practice. For instance, there are cases where a court comes to the conclusion that the termination of the services of an employee is invalid, yet it refrains from giving him the benefit of "reinstatement" (i.e. continuity in service) or "back wages". In such cases, the direction of the court does result in a person being denied the benefits that should flow to him as a logical consequence of a declaration in his favour. It may be said that, in such a case, the court's direction does not violate any fundamental right as happens in a case like this where an "illegal" exaction is sought to be retained by the State. But even in the latter type of cases relief has not been considered automatic. One of the commonest issues that arose in the context of the situation we are concerned with is where a person affected by an illegal exaction files an application for refund under the provisions of the relevant statute or files a suit to recover the taxes as paid under a mistake of law. In such a case, the court can grant relief only to the extent permissible under the relevant rules of limitation. Even if he files an application for refund or a suit for recovery of the taxes paid for several years, the relief will be limited only to the period in regard to which the application or suit is not barred by limitation. If even this instance is sought to be distinguished as a case where the court's hands are tied by limitations inherent in the form or forum in which the relief is sought, let us consider the very case where a petitioner seeks relief against an illegal exaction in a writ petition filed under Article 226. In this situation, the question has often arisen whether a petitioner's prayer for refund of taxes collected over an indefinite period of years should be granted once the levy is found to be illegal. To answer the question in the affirmative would result in discrimination between persons based on their choice of the forum for relief, a classification which, prima facie, is too fragile to be considered a relevant criterion for the resulting discrimination. This is one of the reasons why there has been an understandable hesitation on the part of Courts in answering the above question in the affirmative.*

…

71. *The above cases no doubt only list situations where directions for refund have been refused, or considered to be liable to be refused, on grounds of unreasonable delay or laches on the part of the petitioners in approaching the court in the interests of justice and equity. The importance of these cases, however, lies not in the grounds on which refund has been held declinable but because they lay down unequivocally that the grant of refund is not an automatic consequence of a declaration of illegality.* ***<u>Once the principle that the court has a discretion to grant or decline refund is recognised, the ground on</u>***

which such discretion should be exercised is a matter of consideration for the court having regard to all the circumstances of the case. *It is possible that a direction for refund may be opposed by the State on grounds other than laches or limitation. To give an instance, in recent years, the question has often arisen whether a refund could be refused on the ground that the person who seeks the refund has already passed on the burden of the "illegal" tax to others and that to grant a refund to him would result in his "unjust enrichment". Some decisions have suggested a solution of neither granting a refund nor permitting the State to retain the illegal exaction. This issue has been referred to a larger bench of this Court and it is not necessary for us to enter into that question here. So far as the present cases are concerned, it is sufficient to point out that all the decided cases unmistakably show that, even where the levy of taxes is found to be unconstitutional, the court is not obliged to grant an order of refund. It is entitled to refuse the prayer for good and valid reasons. Laches or undue delay or intervention of third party rights would clearly be one of those reasons. Unjust enrichment of the refundee may or may not be another. But we see no reason why the vital interests of the State, taken note of by the learned Judges in India Cement [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] should not be a relevant criterion for deciding that a refund should not be granted. We are, therefore, unable to agree with the learned counsel for the petitioners that any different criterion should be adopted and that the direction in paragraph 35 of India Cement [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] should not be followed in these cases.*

72. For the reasons discussed above, we are of opinion that, though the levy of the cess was unconstitutional, there shall be no direction to refund to the assessees of any amounts of cess collected until the date on which the levy in question has been declared unconstitutional. *This, in regard to the Bihar cases, will be the date of this judgment. In respect of Orissa, the relevant date will be December 22, 1989 on which date, the High Court, following India Cement [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] declared the levy by the State legislature unconstitutional. In respect of Madhya Pradesh, the relevant date will be the date of the judgment in Hiralal Rameshwar Prasad and connected cases (viz. M.P. No. 410 of 1983 decided on March 28, 1986) in respect of the levy under State Act 15 of 1982. Though these are the dates of the judgments of the appropriate High Courts, which may not constitute a declaration of law within the scope of Article 141 of the Constitution, it cannot be gainsaid that the State cannot, on any grounds of equity, be permitted to retain the cess collected on and after the date of the High Court's judgment.*

73. *Another point that was raised, was that in many of these cases* ***the State or the coalfield companies had given an undertaking that in***

<u>case the levy is held to be invalid by this Court, they would refund the amount collected with interest. It is submitted that the condition imposed, or undertakings given, to this effect and recorded at the time of passing interim orders in the various cases should be given implemented. The interim undertakings or directions cannot be understood in such a manner as to conflict with our final decision on the writ petitions set out above.</u> *But we agree that, to the extent refunds of amounts of cess collected after the relevant dates are permissible on the basis indicated by us, the State should refund those amounts to the assessees directly or to the coalfields from whom they were collected, with interest at the rate directed by this Court or mentioned in the undertaking from the date of the relevant judgment to the actual date of repayment. The coalfields, when they get the refunds, should pass on the same to their customers, the assessees."*

<u>[Emphasis supplied]</u>

8. In ***<u>ECIL v. B. Karunakar</u>*****,** (1993) 4 SCC 727, it was held:

"33. *Questions (vi) and (vii) may be considered together. As has been discussed earlier, although the furnishing of the enquiry officer's report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself against the charges, before the Forty-second Amendment of the Constitution, the stage at which the said opportunity became available to the employee had stood deferred till the second notice requiring him to show cause against the penalty, was issued to him. The right to prove his innocence to the disciplinary authority was to be exercised by the employee along with his right to show cause as to why no penalty or lesser penalty should be awarded. The proposition of law that the two rights were independent of each other and in fact belonged to two different stages in the inquiry came into sharp focus only after the Forty-second Amendment of the Constitution which abolished the second stage of the inquiry, viz., the inquiry into the nature of punishment. As pointed out earlier, it was mooted but not decided in E. Bashyan case [(1988) 2 SCC 196 : 1988 SCC (L&S) 531 : (1988) 7 ATC 285 : (1988) 3 SCR 209] by the two learned Judges of this Court who referred the question to the larger Bench. It has also been pointed out that in K.C. Asthana case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] no such question was either raised or decided. It was for the first time in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] that the question squarely fell for decision before this Court. Hence till November 20, 1990, i.e., the day on which Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was decided, the position of law on the subject was not settled by this Court. It is for the first time in Mohd. Ramzan Khan case[(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] that this Court laid down the law.* ***<u>That decision made the law laid down</u>***

there prospective in operation, i.e., applicable to the orders of punishment passed after November 20, 1990. The law laid down was not applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. *The said proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the enquiry officer's report to the employee. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee.*

34. *However, it cannot be gainsaid that while Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] made the law laid down there prospective in operation, while disposing of the cases which were before the Court, the Court through inadvertence gave relief to the employees concerned in those cases by allowing their appeals and setting aside the disciplinary proceedings. The relief granted was obviously per incuriam. The said relief has, therefore, to be confined only to the employees concerned in those appeals. The law which is expressly made prospective in operation there, cannot be applied retrospectively on account of the said error. It is now well settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. In this connection, we may refer to some well-known decisions on the point.*

35. In Golak Nath v. State of Punjab [(1967) 2 SCR 762 : AIR 1967 SC 1643] dealing with the question as to whether the decision in that case should be given prospective or retrospective operation, the Court took into consideration the fact that between 1950 and 1967, as many as twenty amendments were made in the Constitution and the legislatures of various States had made laws bringing about an agrarian revolution in the country. *These amendments and legislations were made on the basis of the correctness of the decisions in Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar [1951 SCC 966 : 1952 SCR 89 : AIR 1951 SC 458] and Sajjan Singh v. State of Rajasthan [(1965) 1 SCR 933 : AIR 1965 SC 845] viz., that the Parliament had the power to amend the fundamental rights and that Acts in regard to estates were outside the judicial scrutiny on the ground they infringed the said rights. The Court then stated that as the highest Court in the land, it must evolve some reasonable principle to meet the said extraordinary situation. The Court pointed out that there was an essential distinction between the Constitution and the statutes. The Courts are expected to and they should interpret the terms of the Constitution without doing violence to the language to suit the expanding needs of the society. In this process and in a real sense, they make laws. Though it is not admitted, such role of this Court is effective*

and cannot be ignored. Even in the realm of ordinary statutes, the subtle working of the process is apparent though the approach is more conservative and inhibitive. To meet the then extraordinary situation that may be caused by the said decision, the Court felt that it must evolve some doctrine which had roots in reason and precedents so that the past may be preserved and the future protected. The Court then referred to two doctrines familiar to American Jurisprudence, viz., Blackstonian view that the Court was not to pronounce a new rule but to maintain and expound the old one and, therefore, the Judge did not make law but only discovered or found the true law. That view would necessarily make the law laid down by the Courts retrospective in operation. The Court, therefore, preferred the opinion of Justice Cardozo which tried to harmonise the doctrine of prospective over-ruling with that of stare decisis expressed in Great Northern Railway Co. v. Sunburst Oil & Refining Co. [287 US 358 : 77 L Ed 360 (1932)] The Court also referred to the decisions subsequent to Sunburst [287 US 358 : 77 L Ed 360 (1932)] and to the "Practice Statement (Judicial Precedent)" issued by the House of Lords recorded in (1966) 1 WLR 1234 and pointed out that the modern doctrine as opposed to the Blackstonian theory was suitable for a fast moving society. It was a pragmatic solution reconciling the two doctrines. The Court found law but restricted its operation to the future thus enabling it to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. **It was left to the discretion of the Court to prescribe the limits of the retroactivity. Thereby, it enabled the Court to mould the reliefs to meet the ends of justice. The Court then pointed out that there was no statutory prohibition against the Court refusing to give retroactivity to the law declared by it.** The doctrine of res judicata precluded any scope for retroactivity in respect of a subject-matter that had been finally decided between the parties**. The Court pointed out that the courts in this land also, by interpretation, reject retroactivity of statutory provisions though couched in general terms on the ground that they affect vested rights. The Court then referred to Articles 141 and 142 to point out that they are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice.** The only limitation therein is reason, restraint and injustice. These Articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such direction or pass such order as is necessary to do complete justice. The Court then held that in the circumstances to deny the power to the Supreme Court to declare the operation of law prospectively on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective a powerful instrument of justice placed in the hands of the highest judiciary of this land. **The Court then observing that it was for the first time called upon to apply the doctrine of prospective overruling evolved in a different country under different circumstances, stated that it would like to move**

warily in the beginning. Proceeding further, the Court laid down the following propositions:

"(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

The Court then declared that the said decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964 or other amendments made to the Constitution taking away or abridging the fundamental rights. The Court also declared that in future Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights.

36. Accepting the lead given in the above decision, this Court has since extended the doctrine to the interpretation of ordinary statutes as well.

37. *In Waman Rao v. Union of India [(1981) 2 SCC 362 : (1981) 2 SCR 1] the question involved was of the validity of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and again the device of prospective overruling was resorted to.*

38. *In Atam Prakash v. State of Haryana [(1986) 2 SCC 249] the question was of the validity of the Punjab Pre-emption Act, 1913. The Court while holding that the relevant provisions of the Act were ultra vires the Constitution, gave a direction that the suits and appeals which were pending in various courts will be disposed of in accordance with the declaration made in the said decision. Where, however, the decrees had become final they were directed to be binding inter partes and it was held that the declaration granted by the Court with regard to the invalidity of the provisions of the Act would be of no avail to the parties to such decrees.*

39. *In Orissa Cement Ltd. v. State of Orissa [1991 Supp (1) SCC 430] the question involved was about the validity of the royalty and related charges for mining leases. Although the Court held that the levy was invalid since its inception, the Court held that a finding regarding the invalidity of the levy need not automatically result in a direction for a refund of all collections thereof made earlier. The Court held that the declaration regarding the invalidity of a provision of the Act enabling levy*

and the determination of the relief to be granted were two different things and, in the latter sphere, the Court had and it must be held to have, a certain amount of discretion. It is open to the Court to grant moulded or restricted relief in a manner most appropriate to the situation before it and in such a way as to advance the interest of justice. It is not always possible in all situations to give a logical and complete effect to a finding. On this view, the Court refused to give a direction to refund to the assessees any of the amounts of cess collected until the date of the decision since such refund would work hardship and injustice to the State.

40. We may also in this connection refer to Victor Linkletter v. Victor G. Walker [381 US 618 : 14 L Ed 2d 601 (1965)] where it was held that a ruling which is purely prospective does not apply even to the parties before the court. ***The Court held that in appropriate cases a court may in the interest of justice make its ruling prospective and this applies in the constitutional area where the exigencies of the situation require such an application.***

41. *The direction with regard to the prospective operation of the law laid down in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was followed by various Benches of this Court, viz., S.P. Viswanathan (I) v. Union of India [1991 Supp (2) SCC 269 : 1992 SCC (L&S) 155 : (1991) 17 ATC 941] , Union of India v. A.K. Chatterjee [(1993) 2 SCC 191 : 1993 SCC (L&S) 500 : (1993) 24 ATC 111] and Managing Director, Food Corporation of India v. Narendra Kumar Jain [(1993) 2 SCC 400 : 1993 SCC (L&S) 462 : (1993) 24 ATC 163] .*

...

43. *However, it has to be noticed that although it is in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] that this Court for the first time accepted and laid down the law that the delinquent employee is entitled to the copy of the report before the disciplinary authority takes its decision on the charges levelled against him, Gujarat High Court in a decision rendered on July 18, 1985 in Union of India v. N.N. Prajapati [(1985) 2 GLR 1406] and a Full Bench of the Central Administrative Tribunal in its decision rendered on November 6, 1987 in Premnath K. Sharma v. Union of India [(1988) 6 ATC 904 : (1988) 3 SLJ (CAT) 449] had taken a similar view on the subject. It also appears that some High Courts and some Benches of the Central Administrative Tribunal have given retrospective effect to the law laid down in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] notwithstanding the fact that the said decision itself had expressly made the law prospective in operation. The fact, however, remains that although the judgments in N.N. Prajapati case [(1985) 2 GLR 1406] and Premnath K. Sharma case [(1988) 6 ATC 904 : (1988) 3*

SLJ (CAT) 449] as well as some of the decisions of the High Courts and of the Benches of the Central Administrative Tribunal were either taking a similar view prior to the decision in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] or giving retrospective effect to the said view and those decisions were not specifically challenged, the other decisions taking the same view were under challenge before this Court both before Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was decided and thereafter. In fact, as stated in the beginning, the reference to this Bench was made in one such case as late as on the August 5, 1991 [(1992) 1 SCC 709 : 1992 SCC (L&S) 361 : (1992) 19 ATC 652 : JT (1992) 3 SC 605] and the matters before us have raised the same question of law. It has, therefore, to be accepted that at least till this Court took the view in question in Mohd. Ramzan Khan case[(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants/petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the same view. We have pointed out that there was no contradiction between the view taken in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] and the view taken by this Court in the earlier cases and the reliance placed on K.C. Asthana case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] to contend that a contrary view was taken there was not well-merited. It will, therefore, have to be held that notwithstanding the decision of the Gujarat High Court in N.N. Prajapati case[(1985) 2 GLR 1406] and of the Central Administrative Tribunal in Premnath K. Sharma case [(1988) 6 ATC 904 : (1988) 3 SLJ (CAT) 449] and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] . This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K.

Vashisht case [1993 Supp (1) SCC 431 : 1993 SCC (L&S) 153 : (1993) 23 ATC 444 (II)] ."

[Emphasis supplied]

9. In ***Govt. of A.P. v. Bala Musalaiah*****,** (1995) 1 SCC 184, it was held:

"8. *According to us, the principle and policy behind the reservation would be adequately met and would receive constitutional approval, if, while retrenching the employees, the roster followed while making appointments is adhered to. To elucidate, if the roster is operated backwards (which we shall call recycled) and if the employee to be retrenched as per normal principle be on a non-reserved point, a reserved category candidate would not be retrenched, even if as per general rule of "last in, first out" he would have been required to be retrenched. To state it differently, a reserved category candidate would be retrenched only when on the recycled path the reserved point is reached. This mode of following roster would adequately protect the reserved category candidates inasmuch as their percentage in the service or cadre would remain as it came to be when appointments were made. To explain further, if in the cadre or service reserved category candidates were holding, say seven posts and seven persons are required to be retrenched, the reserved category employees would not be retrenched even when they be the last seven as per the seniority list, which would have otherwise happened on following the normal principle. Instead of the seven reserved category candidates being retrenched as per the normal principle, the reserved category candidate on the recycled roster point alone would be retrenched, because of which the percentage of representation of such candidates in the service, as it got reflected in appointments made following the roster, would remain unaffected.*

9. *May we mention that the reservation in appointment, to effectuate which roster is prepared, makes an incumbent of the reserved category senior to the general category incumbent, as, though lower in merit the former gets appointed earlier as per the roster point. This in itself protects to some extent the interest of the listed category candidates, as under the normal rule, the retrenchment starts from the juniormost employee and it travels back step by step.*

10. We, therefore, hold that the GO as framed is not sustainable. It would, however, be open to State Government to recast the GO in the light of what has been stated by us, if deemed necessary by it. ***As, however, the GO has been in operation for about three decades by now, we do not propose to upset the retrenchments which have***

already taken place pursuant to what has been provided in the GO. The GO would, therefore, become non-operative from today."

[Emphasis supplied]

10. In ***R.K. Sabharwal v. State of Punjab***, (1995) 2 SCC 745, it was held:

> ***"10.*** *We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.*
>
> ***11.*** *We, therefore, find considerable force in the second point raised by the learned counsel for the petitioners.* ***We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively."***
>
> ***[Emphasis supplied]***

11. In ***State of Karnataka v. Gowri Narayana Ambiga,*** 1995 Supp (2) SCC 560, it was held:

> ***"9.*** *We see no infirmity in the reasoning and the conclusions reached by the High Court. It is no doubt correct that reservation of posts in Civil Services is permissible under Article 16(4) of the Constitution of India for Scheduled Castes, Scheduled Tribes and Backward Tribes to the extent and in the manner laid down in the nine-Judge Bench judgment of this*

Court in Indra Sawhney v. Union of India [1992 Supp (3) SCC 217] . But the Special Rules in this case neither provide for any reservation nor any other affirmative action permissible under Article 16(4) of the Constitution of India.

10. *Having agreed with the reasoning and conclusions reached by the High Court on the first ground, it is not necessary for us to go into the second ground of attack dealt with by the High Court.*

11. *As mentioned above, this Court while granting special leave stayed the operation of the impugned judgment of the High Court. Since we are upholding the High Court judgment it would be necessary for us to protect the rights of Scheduled Caste, Scheduled Tribe and Backward Tribe (sic Class) candidates who have been appointed/regularised during the pendency of these appeals.* ***Keeping in view the facts and circumstances of this case, we direct that the High Court judgment, as upheld by this Court, shall be operative prospectively from the date of this judgment."***

[Emphasis supplied]

12. In ***M.L. Jaggi v. Mahanagar Telephones Nigam Ltd.***, **(1996) 3 SCC 119,** it was held:

"8. *It is, thus, settled law that reasons are required to be recorded when it affects the public interest. It is seen that under Section 7-B, the award is conclusive when the citizen complains that he was not correctly put to bill for the calls he had made and disputed the demand for payment. The statutory remedy opened to him is one provided under Section 7-B of the Act. By necessary implication, when the arbitrator decides the dispute under Section 7-B, he is enjoined to give reasons in support of his decision since it is final and cannot be questioned in a court of law. The only obvious remedy available to the aggrieved person against the award is judicial review under Article 226 of the Constitution. If the reasons are not given, it would be difficult for the High Court to adjudge as to under what circumstances the arbitrator came to his conclusion that the amount demanded by the Department is correct or the amount disputed by the citizen is unjustified. The reasons would indicate as to how the mind of the arbitrator was applied to the dispute and how he arrived at the decision. The High Court, though does not act in exercising judicial review as a court of appeal but within narrow limits of judicial review it would consider the correctness and legality of the award. No doubt, as rightly pointed out by Mr V.R. Reddy, Additional Solicitor General, the questions are technical matters. But nonetheless, the reasons in support of his conclusion should be given. In this case,*

arbitrator has not given reasons. The award of the arbitrator is set aside and the matter is remitted to the arbitrator to make an award and give reasons in support thereof.

9. Since we have decided this question for the first time, it must be treated that any decision made prior to this day by any arbitrator under Section 7-B of the Act is not liable to be reopened. In other words, the order is prospective in its operation."

[Emphasis supplied]

13. In ***CCE v. Louis Shoppe*,** (1996) 3 SCC 445, it was held:

***"2.** The question is whether wooden furniture by itself can be treated as 'handicrafts' within the meaning of Notification No. 76 of 1986 dated 10-2-1986? It must be said straightaway that furniture as such does not qualify as handicrafts. It may be characterised as 'handicrafts' if the following tests are satisfied:*

"(1) It must be predominantly made by hand. It does not matter if some machinery is also used in the process.

(2) It must be graced with visual appeal in the nature of ornamentation or inlay work or some similar work lending it an element of artistic improvement. Such ornamentation must be of a substantial nature and not a mere pretence."

***3.** Whenever the above question arises, the authorities shall examine the matter from the above standpoint and pass orders accordingly.*

4. The above principles shall apply to all pending matters and to all matters arising hereinafter. This direction we are making because it appears that the view taken by the Tribunal in the order under appeal — which is clearly not in accordance with the tests/principles laid down by us herein — appears to have been followed by the Tribunal since 1989 at least. The cases concerned herein shall not be reopened in view of the above principles."

[Emphasis supplied]

14. In ***K. Dayanandalal v. State of Kerala*,** (1996) 9 SCC 728, it was held:

***"10.** Shri Poti has next submitted that even if the State and Subordinate Services Rules were held to be applicable to the members of the Kerala Police Subordinate Service, the said Rules have no application in the matter of promotion of Constables as Head Constables in view of the*

rules issued under order dated 17-5-1963. The submission is that the said Rules are rules made under Section 69 of the Act. This contention of Shri Poti cannot be accepted for the reason that Section 69 of the Act requires that the rules should be notified in the Gazette and it has not been shown that the order dated 17-5-1963 was published in the Gazette. Shri Poti has invited our attention to certain circulars making amendments in the rules issued under order dated 17-5-1963 which were published in the "Kerala Police Gazette". The submission is that the publication of these circulars in the Kerala Police Gazette indicates that the rules issued under order dated 17-5-1963 were in the nature of statutory rules made under Section 69 of the Act. We are unable to accept this contention. The Kerala Police Gazette is a publication of the Office of Inspector General of Police issued for departmental use only. It contains various circulars and standing orders issued by the State Government as well as the circulars issued by the Inspector General of Police and other useful information for the members of the police force. The said Kerala Police Gazette cannot be equated with the State Gazette published under the authority of the State Government. The requirement in Section 69 of the Act regarding the rules being notified in the Gazette postulates publication of the rules in the Kerala State Gazette, and publication in the Kerala Police Gazette (which too is not established) would not be a substitute for the requirement of Section 69 regarding publication in the State Gazette. In our opinion, therefore, the rules issued under order dated 17-5-1963 cannot be held to be rules made under Section 69 of the Act and the order dated 17-5-1963 must be treated as an executive order only. Since the provisions contained in Rule 10(ii) of the Rules contained in the said order are in conflict with the provisions mentioned in Rules 28(b)(10) and 28(bb) of the State and Subordinate Services Rules, the said provisions in Rule 10(ii) could not be applied and promotion of Constables as Head Constables could be made only in accordance with Rules 28(b)(10) and 28(bb) of the State and Subordinate Services Rules. We, therefore, do not find any infirmity in the impugned judgments of the High Court and the appeals are liable to be dismissed.

***11.** In the judgment of the Division Bench of the High Court dated 9-4-1987 in Writ Appeal No. 591 of 1984 it has been indicated that the declaration given and the decision rendered therein regarding the effect of the order dated 17-5-1963 would not affect any promotions made to the post of Head Constables prior to 20-7-1982, when the writ petition was filed. The date of the filing of the writ petition, i.e., 20-7-1982, was chosen as the cut-off date and promotions made prior to that date on the basis of Rule 10(ii) of the Rules issued under order dated 17-5-1963 have not been disturbed. <u>Having regard to the fact that promotions were being made in accordance with the direction contained in Rule 10(ii) of the Rules issued under order dated 17-5-1963 and the legal position with</u>*

regard to the validity of the said direction was not clear till the decision of the learned Single Judge in OP No. 5298 of 1982, ***we are of the opinion that promotions of Constables as Head Constables made prior to the date of the decision of the learned Single Judge in OP No. 5298 of 1982, i.e., 5-12-1984, on the basis of the direction contained in Rule 10(ii) of the Rules issued under order dated 17-5-1963, should remain undisturbed. It is, therefore, directed that the promotion of Constables as Head Constables made prior to 5-12-1984 on the basis of Rule 10(ii) of the Rules issued under order dated 17-5-1963 shall not be affected.*** *But, at the same time, it is made clear that this protection that has been given in respect of such promotions would not operate to the prejudice of the Constables who were otherwise entitled to be so promoted under Rules 28(b)(10) and 28(bb) of the State and Subordinate Services Rules. Such Constables should be given promotion due to them in accordance with the said Rules. It is further directed that the Constables who were given promotions as Head Constables on the basis of Rule 10(ii) of the Rules issued under order dated 17-5-1963 would not be entitled to claim seniority in the cadre of Head Constables over Constables who were entitled to such promotion as Head Constables on the basis of Rules 28(b)(10) and 28(bb) of the State and Subordinate Services Rules."*

[Emphasis supplied]

15. In ***Radhey Shyam Singh v. Union of India***, (1997) 1 SCC 60, it was held:

"9. *In the case of Minor P. Rajendran v. State of Madras [(1968) 2 SCR 786 : AIR 1968 SC 1012] this Court had struck down the districtwise distribution of seats for the medical admission as providing for unitwise allocation was held to be violative of Articles 14 and 16 of the Constitution on the ground that it might result in candidates of inferior calibre being selected in one district and those of superior calibre not being selected in another district. Similarly in the case of Minor A. Peeriakaruppan v. State of T.N. [(1971) 1 SCC 38 : (1971) 2 SCR 430] unitwise allocation of seats was also held to be void and was struck down as discriminatory. Again in the case of Nidamarti Maheshkumar v. State of Maharashtra [(1986) 2 SCC 534] regionwise scheme adopted by the State Government was held to be void and struck down by this Court by holding that it would result in denial of equal opportunity and was thus violative of Article 14 of the Constitution. The ratio of these decisions of this Court is fully attracted to the facts of the present case in which the process of selection on the zonal basis will also result in denial of equal opportunity and would be violative of Article 14 and we hold accordingly.*

__10.__ The argument advanced by the learned counsel for the respondents that this process of zonewise selection has been in vogue since 1975 and has stood the test of time cannot be accepted for the simple reason that it was never challenged by anybody and was not subjected to judicial scrutiny at all. If on judicial scrutiny it cannot stand the test of reasonableness and constitutionality it cannot be allowed to continue and has to be struck down__. But we make it clear that this judgment will have prospective application and whatever selections and appointments have so far been made in accordance with the impugned process of selection shall not be disturbed on the basis of this judgment.__ But in future no such selection shall be made on the zonal basis. If the Government is keen to make zonewise selection after allocating some posts for each zone, it may make such scheme or rules or adopt such process of selection which may not clash with the provisions contained in Articles 14 and 16 of the Constitution of India having regard to the guidelines laid down by this Court from time to time in various pronouncements. In the facts and circumstances of the case we make no order as to costs. The appeals and writ petitions are allowed as indicated above."

[Emphasis supplied]

16. In ***Ashok Kumar Gupta v. State of U.P.***, (1997) 5 SCC 201, it was held:

__"46. The next questions are whether the prospective overruling of Rangachari case [(1962) 2 SCR 586 : AIR 1962 SC 36] to be operative after five years from the date of Mandal case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] amounts to judicial legislation. Is it void ab initio under Article 13(2) of the Constitution?__ Whether it is violative of the fundamental rights of the appellant/petitioners and whether the exercise of the power by this Court under Articles 32(4) and 142 of the Constitution is inconsistent with and derogatory to the fundamental rights of the appellants/petitioners and, if so, what would be the consequence? It is settled constitutional principle that to make the right to equality to the disadvantaged Dalits and Tribes meaningful, practical contents of results would be secured only when principles of distributive justice and protective discrimination are applied, as a facet of right to equality enshrined under Article 14 of the Constitution. Otherwise, right to equality will be a teasing illusion. Right to promotion is a method of recruitment from one cadre to another higher cadre or class or category or grade of posts or classes of posts or offices, as the case may be. Reservation in promotion has been evolved as a facet of equality where the appropriate Government is of the opinion that the Dalits and Tribes are not adequately represented in the class or classes of posts in diverse cadres, grade, category of posts or classes of posts. The

discrimination, therefore, by operation of protective discrimination and distributive justice is inherent in the principle of reservation and equality too by way of promotion but the same was evolved as a part of social and economic justice assured in the Preamble and Articles 38, 46, 14, 16(1), 16(4) and 16(4-A) of the Constitution. The right to equality, dignity of person and equality of status and of opportunity are fundamental rights to bring the Dalits and the Tribes into the mainstream of the national life. It would, therefore, be imperative to evolve such principle to adjust the competing rights, balancing the claims, rights and interest of the deprived and disadvantaged Dalits and Tribes on the one hand and the general section of the society on the other.

47. *The Constitution, unlike other Acts, is intended to provide an enduring paramount law and a basic design of the structure and power of the State and rights and duties of the citizens to serve the society through a long lapse of ages. It is not only designed to meet the needs of the day when it is enacted but also the needs of the altering conditions of the future. It contains a framework of mechanism for resolution of constitutional disputes. It also embeds its ideals of establishing an egalitarian social order to accord socio-economic and political justice to all sections of the society assuring dignity of person and to integrate a united social order assuring every citizen fundamental rights assured in Part III and the directives in Part IV of the Constitution. In the interpretation of the Constitution, words of width are both a framework of concepts and means to achieve the goals in the Preamble. Concepts may keep changing to expand and elongate the rights. Constitutional issues are not solved by mere appeal to the meaning of the words without an acceptance of the line of their growth. The intention of the Constitution is, rather, to outline principles than to engrave details. In State of Karnataka v. Appa Balu Ingale [1995 Supp (4) SCC 469 : 1994 SCC (Cri) 1762] (SCC at pp. 485, para 34) a two-Judge Bench of this Court, to which one of us, K. Ramaswamy, J. was a member, while interpreting Articles 17 and 15(2) and the Civil Rights Protection Act, held that:*

"Judiciary acts as a bastion of the freedom and of the rights of the people. Jawaharlal Nehru, the architect of Modern India as early as in 1944 stated that the spirit of the age is in favour of equality though the practice denies it almost everywhere, yet the spirit of the age triumphs. The Judge must be attune with the spirit of his/her times. Power of judicial review, a constituent power has, therefore, been conferred upon the judiciary which constitutes one of the most important and potent weapons to protect the citizens against violation of social, legal or constitutional rights. The Judges are participants in the living stream of national life, steering the law between the dangers of rigidity on the one hand and formlessness on the other hand in the seamless web of life. The great tides and currents which engulf the rest of the men do not turn

aside in their course and pass the Judges idly by. Law should subserve social purpose. Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future and to decide objectively disengaging himself/herself from every personal influence or predilections. Therefore, the Judges should adopt purposive interpretation of the dynamic concepts of the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time. The Judge must also bear in mind that social legislation is not a document for fastidious dialects but a means of ordering the life of the people. To construe law one must enter into its spirit; its setting and history. Law should be capable of expanding freedoms of the people and the legal order can, weighed with utmost equal care, be made to provide the underpinning of the highly inequitable social order. The power of judicial review must, therefore, be exercised with insight into social values to supplement the changing social needs. The existing social inequalities or imbalances are to be removed and social order readjusted through rule of law, lest the force of violent cult gain ugly triumph. Judges are summoned to the duty of shaping the progress of the law to consolidate society and grant access to the Dalits and Tribes to public means or places dedicated to public use or places of amenities open to public etc. The law which is the resultant product is not found but made. Public policy of law, as determined by new conditions, would enable the courts to recast the changing conceptions of social values of yesteryears yielding place to the changed conditions and environment to the common good. The courts are to search for light from among the social elements of every kind that are the living forces behind the factors they deal with. By judicial review, the glorious contents and the trite realisation in the constitutional words of width must be made vocal and audible giving them continuity of life, expression and force when they might otherwise be forgotten or ignored in the heat of the moment or under sway of passions or emotions remain aroused, that the rational faculties get befogged and the people are addicted to take immediate for eternal, the transitory for the permanent and the ephemeral for the timeless. It is in such surging situation the presence and consciousness and the restraining external force by judicial review ensures stability and progress of the society. Judiciary does not forsake the ideals enshrined in the Constitution, but makes them meaningful and makes the people realise and enjoy the rights."

48. The Judges, therefore, should respond to the human situations to meet the felt necessities of the time and social needs; make meaningful the right to life and give effect to the Constitution and the will of the legislature. This Court as the vehicle of transforming the nation's life should respond to the nation's needs, interpret the law

with pragmatism to further public welfare to make the constitutional animations a reality and interpret the Constitution broadly and liberally enabling the citizens to enjoy the rights.

...

54. It is settled principle right from Golak Nath [(1967) 2 SCR 762 : AIR 1967 SC 1643] ratio that prospective overruling is a part of the principles of constitutional canon of interpretation. Though Golak Nath [(1967) 2 SCR 762 : AIR 1967 SC 1643] ratio of unamendability of fundamental rights under Article 368 of the Constitution was overruled in Kesavananda Bharati case [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 : 1973 Supp SCR 1] the doctrine of prospective overruling was upheld and followed in several decisions. This Court negatived the contention in Golak Nath case [(1967) 2 SCR 762 : AIR 1967 SC 1643] that prospective overruling amounts to judicial legislation. Explaining the Blackstonian theory of law, i.e., Judge discovers law and does not make law, and the efficacy of prospective overruling at p. 808 placitum D to H, this Court by a Bench of eleven Judges had held that the doctrine of prospective overruling is a modern doctrine and is suitable for a fast-moving society. It does not do away with the doctrine of stare decisis but confines it to past transactions. While in strict theory, it may be said that the doctrine involves the making of law, what a court really does is to declare the law but refuses to give retrospectivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a court finds law and that it does make the law. It finds the law but restricts its operation to the future. It enables the courts to bring about a smooth transition by correcting the errors without disturbing the impact of those errors on past transactions. By implication of this doctrine, the past may be preserved and the future protected. The Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Articles 32(4) and 142 are designed with words of width to enable this Court to declare the law and to give such direction or pass such orders as are necessary to do complete justice. Declaration of law under Article 141 is wider than words found or made. The law declared by this Court is the law of the land. So, there is no acceptable reason as to why the Court in dealing with the law in supersession of the law declared by it earlier could not restrict the operation of law, as declared, to the future and save the transactions, whether statutory or otherwise, that were effected on the basis of the earlier law. This Court is, therefore, not impotent to adjust the competing rights of parties by prospective overruling of the previous decision in Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] ratio. The decision in Mandal case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] postponing the operation for five years from the date of the judgment is an instance of, and an extension to the principle of prospective overruling following the principle evolved in Golak Nath case [(1967) 2 SCR 762 : AIR 1967 SC

1643] . In Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] a Constitution Bench of this Court, while overruling (sic affirming) Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] had held that the benefit of decisions would be given only to the parties to the cases pending before the authorities from the date of the judgment but not to the actions already taken by the date of that judgment. In that behalf in separate but partly dissenting judgment to a limited extent, on the issue of the need to give benefit to the party that approaches the Court in that case, one of us, K. Ramaswamy, J., had held that as a matter of constitutional law retrospective operation of an overruling decision is neither required nor prohibited by the Constitution; it is a matter of judicial attitude depending on the facts and circumstances in each case; the nature and purpose the particular overruling decision seeks to serve are required to be taken into consideration. The Court would look into the justifiable reliance on the overruled case by the administration. All the factors, viz., ability to effectuate the new rule adopted in the overruling case, without doing injustice and whether the likelihood of its operation substantially burdens the administration or retards the purpose, are to be taken into account, while overruling the earlier decision or laying down a new principle. Equally, no distinction could be made between claims involving constitutional rights, statutory right or common law right. ***The Court is required to adjust the competing rights taking into consideration the prior history of the rule in question, its purpose and effect and to find out whether retrospective operation will accelerate or retard its operation. Therefore, evolving of the appropriate rule to give effect to the decision of the Court overruling its previous precedent, is one of judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law operated prior to the date of the judgment overruling the previous law.***

55. *The question, therefore, is whether such a decision is void when it offends the fundamental rights under Article 13(2) of the Constitution. The doctrine of voidity was dealt with in Administrative Law by Wade (7th Edn.) at p. 342, and it is stated that "the truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances". The terms "void ab initio" or "nullity" or "voidable" are descriptive of the status of the legislation or subordinate legislation alleged to be ultra vires for patent or for latent defects before its validity has been pronounced by a court of competent jurisdiction. [[**Ed.**: The text as appearing on p. 342 of Wade: Administrative Law, 7th Edn. reads:"The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and*

Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly, saying that'it leads to confusion to use such terms as 'voidable', 'voidable ab initio', 'void' or 'a nullity' as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction.' "] It would, therefore, be of necessity to consider in each case, the effect of the declaration granted by the court before labelling it as void, nullity or voidable, as the case may be.

***56.** It is seen that Article 13(2) envisages a situation where the State action, be it legislative or executive, violates the fundamental rights in Part III of the Constitution; such law is declared as void but when the previous overruled decision and the new rule laid down by the Court as a stare decisis operates prospectively from a given date, namely, either the date of the judgment or extended date. Judgment or order is not a legislative Act which is void under Article 13(2) but a judicial tool by which the effect of the judgment was given. Therefore, the judgment of this Court in Mandal case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] declaring that Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] ratio did not correctly interpret Articles 16(1) and 16(4) of the Constitution is a declaratory law under Article 141 of the Constitution. It is true that Article 13(1) deals with pre-constitutional law and if it is inconsistent with fundamental rights, it becomes void from 26-1-1950, the date on which the Constitution of India came into force and if a post-constitutional law governed by Article 13(2) violates fundamental rights, it becomes void from its inception. Either case deals with statute law and not the law declared by this Court under Article 141 and directions/orders under Article 142.*

***57.** The question then is whether such a declaration is inconsistent with the Constitution or in derogation of the fundamental rights. As held earlier, both the disadvantaged and advantaged sections of the society have equal competing fundamental rights in Part III, i.e., Chapter of Fundamental Rights. The Court in Mandal case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] had obviously recognised the need to adjust the competing rights of both sections of citizens and, therefore, it postponed the operation of that judgment for five years from that date giving an option to the executive to have the law amended appropriately.*

...

***<u>60. It would be seen that there is no limitation under Article 142(1) on the exercise of the power by this Court. The necessity to exercise the power is to do "complete justice in the cause or matter".</u>** The inconsistency with statute law made by Parliament arises when this*

Court exercises power under Article 142(2) for the matters enumerated therein. Inconsistency in express statutory provisions of substantive law would mean and be understood as some express prohibition contained in any substantive statutory law. ***The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise.***

61. *Admittedly, the Constitution has entrusted this salutary duty to this Court with power to remove injustice or to do complete justice in any cause or matter before this Court. The Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] ratio was in operation for well over three decades under which reservation in promotions were given to several persons in several services, grades or cadres of the Union of India or the respective State Governments****. This Court, with a view to see that there would not be any hiatus in the operation of that law and, as held earlier, to bring about smooth transition of the operation of law of reservation in promotions, by a judicial creativity extended the principle of prospective overruling applied in Golak Nath case[(1967) 2 SCR 762 : AIR 1967 SC 1643] in the case of statutory law and of the judicial precedent in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] and further elongated the principle postponing the operation of the judgment in Mandal case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] for five years from the date of the judgment. This judicial creativity is not anathema to constitutional principle but an accepted doctrine as an extended facet of stare decisis. It would not be labelled as proviso to Article 16(4) as contended for****."*

[Emphasis supplied]

17. In ***Mafatlal Industries Ltd. v. Union of India*,** (1997) 5 SCC 536, it was held:

> ***"108.*** *The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.*
>
> ***109.*** *We take note of the fact that writ petitions/writ appeals/suits claiming refund of excise duties/customs duties may be pending as on today. They are liable to fail on the ground of maintainability by virtue of the law declared herein. Since the law is being declared and clarified by us now, we make the following directions: In cases where writ petitions, writ appeals (by whatever appellation they are called) or suits (at whatever stage they may be, as on today) are pending as on today, and provided they have not already taken proceedings for refund under the Act, it shall be open to the petitioners/appellants/plaintiffs to file applications for refund under Section 11-B within sixty days from today. If the applications are so filed by them, they shall not be rejected on the ground of limitation and shall be dealt with according to law.* ***We make it clear that this direction applies only to petitioners/appellants/plaintiffs in pending writ petitions/writ appeals/suits (pending as on today), as explained hereinabove, and not to any others.*** *The applications so filed under Section 11-B shall be disposed of under Section 11-B, as interpreted herein, and in accordance with law. It is obvious that if any of such petitioners/appellants/plaintiffs have already taken proceedings for refund under the Act and having failed therein — either partly or wholly — have resorted to writ petition or suit, they shall not be entitled to the benefit of this direction.*
>
> ***110.*** *The individual cases may now be listed before a Division Bench for being disposed of in the light of this judgment."*
>
> ***[Emphasis supplied]***

18. In ***Baburam v. C.C. Jacob*,** (1999) 3 SCC 362, it was held:

> ***"2.*** *Since the law in regard to the above-stated position was nebulous, a Constitution Bench of this Court in the case of R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] settled the said issue holding that such reservation is in relation to the number of posts comprising in the cadre and not in relation to vacancies. The judgment of the Constitution Bench was delivered on 10-*

2-1995. This Court in the said judgment after taking into consideration the fact that the law was not clear till that date, observed thus: (SCC p. 753, para 11)

"We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively."

The question that arises for our consideration in this case is: was it open to the Tribunal to apply the law laid down in R.K. Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] to the facts of the case in hand?

...

***5. The prospective declaration of law is a devise innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest.** Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] we are of the opinion that the Tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in OAs Nos. 186 of 1994 and 961 of 1995."*

[Emphasis supplied]

19. In ***State of H.P. v. Nurpur (P) Bus Operators' Union*,** (1999) 9 SCC 559, it was held:

"Civil Appeals Nos. 6477 and 6480 of 1995

10.** The High Court, in the judgment aforementioned, held that the levy and realisation of tax on the basis which had been held to be invalid by it "for the period between 1-4-1991 and 30-9-1992 shall not stand invalidated .... We propose to direct that the declaration made by us today shall be applicable prospectively and with effect from 1-10-1992 alone".* ***Some operators challenge the correctness of this. They are right, for the doctrine of prospective overruling cannot be utilised by

> ***<u>the High Court. Once the High Court came to the conclusion, rightly, that the provisions concerned were invalid, it was obliged to so declare and, consequently, the collections made thereunder stood invalidated.</u>***
>
> ***11.*** *These civil appeals are, therefore, allowed and the direction of the High Court insofar as it relates to prospective overruling is set aside. The judgment and order of the High Court shall also operate for the period between 1-4-1991 and 30-9-1992."*

20. In ***<u>Belsund Sugar Co. Ltd. v. State of Bihar</u>***, (1999) 9 SCC 620, it was held:

> ***"111.*** *As a result of our conclusion on the findings of the aforesaid two contentions, the appeals and other writ petition in the sugar group matters will be required to be allowed and the impugned judgment of the High Court in all these matters will have to be set aside. However, the further question that survives is as to what relief can be given to the appellants and the writ petitioners in this sugar group of matters. It is obvious that during the pendency of these proceedings no interim relief was given to the appellants and the writ petitioners. Therefore, they must have paid the market fee on the transaction concerned all these years. In the common course of events, they would have passed on the burden of market fee on the purchasers and the ultimate consumers of sugar and molasses produced by the sugar factories by utilising sugarcane as raw material.*
>
> ***112.*** *Shri Shanti Bhushan, learned Senior Counsel for the appellants in this connection submitted that accepting the principle of unjust enrichment we may reserve liberty to the appellants to show before the authorities whether they have in fact passed on the burden of the impugned market fee at the relevant time and if they could show to the satisfaction of the authorities that in fact they have not passed on the burden then they may be treated to be entitled to get refund of all the appropriate amounts of market fee not passed on. In our view it is not possible to accept this contention as years have rolled by since the impugned market fees have been levied by the different Market Committees in the State of Bihar. In the normal course of events, no prudent businessman/manufacturer would ever bear the burden of such compulsory fee or tax to be paid from his own pocket. Even otherwise reserving such liberty would create unnecessary complication and may give rise to a spate of avoidable litigations in the hierarchy of proceedings****<u>. Under these circumstances, keeping in view the peculiar facts and circumstances of these cases, we deem it fit to direct in exercise our powers under Article 142 of the Constitution of India that the present decision will have only a</u>***

<u>prospective effect. Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced therefrom by utilising this purchased sugarcane by these factories will not be subjected to the levy of market fee under Section 27 of the Market Act by the Market Committees concerned. All past transactions up to the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees.</u>

113. *However, one rider has to be added to this direction. If any of the Market Committees has been restrained from recovering market fee from the writ petitioners in the High Court or if any of the writ petitioners in the High Court has, as an appellant before this Court, obtained stay of the payment of market fee, then for the period during which such stay has operated and consequently market fee was not paid on the transactions covered by such stay orders, there will remain no occasion for the Market Committee concerned to recover such market fee from the sugar mill concerned after the date of this judgment even for such past transactions. In other words, market fees paid in the past shall not be refunded. Similarly market fees not collected in the past also shall not be collected hereafter. The impugned judgments of the High Court in this group of sugar matters will stand set aside as aforesaid. The writ petition directly filed before this Court also will be required to be allowed in the aforesaid terms."*

<u>[Emphasis supplied]</u>

21. In ***<u>Indra Sawhney (2) v. Union of India</u>*****,** (2000) 1 SCC 168, it was held:

"82. *It will be seen that this Court has stated, as long back as in 1992 that it is imperative to exclude the creamy layer in the backward classes from the benefits of reservation. The Kerala Government has been already found to have deliberately violated the directions of this Court in that judgment and held guilty of contempt of court. The question of imposing sentence and, if so, on whom was pending when the impugned legislation was passed in 1995 by the State of Kerala. The legislation unfortunately served dual purposes — one to ward off temporarily any sentence being passed in the contempt proceedings and the other for deliberately putting off the exclusion of the creamy layer till this Court could deal with the validity of the Act. Now that the provisions of Sections 3, 4 and 6 of the Act have been struck down, it is no longer permissible to allow the State of Kerala to continue to violate the*

mandate of this Court nor can this Court allow the State to help the creamy layer to reap the benefits of its non-exclusion. Is it not necessary to see that the benefits trickle down at least now to the non-creamy layer of the backward classes in that State at least from today?

83. *We, therefore propose to adopt the principle of prospective overruling and we think it appropriate to put the recommendations in the Report dated 4-8-1997 of the High-Level Committee presided over by Justice K.J. Joseph (with the addition of the communities and sub-castes mentioned in the affidavit of the Chief Secretary dated 16-1-1998) into immediate operation from today prospectively, as stated below.* ***We apply the principle of prospective overruling, as done in Ashoka Kumar Thakur [(1995) 5 SCC 403 : 1995 SCC (L&S) 1248 : (1995) 31 ATC 159] keeping the suo motu contempt case pending.***

84. *We therefore, direct as follows:*

(1) We direct that the exclusion of the creamy layer as stated in that Report shall be applicable from today, to all cases where appointment orders have not been issued to the members of the backward classes and for all future selections in public service as stated in the Report. (The five communities referred to in the affidavit of the Chief Secretary dated 16-1-1998 shall also be treated as backward subject to the guidelines and norms fixed by the Committee.) It will be obligatory to implement the Report, as so modified, in the government departments of Kerala/organisations/institutions/public sector undertakings/government-owned companies/cooperative societies/autonomous bodies, as stated in the Report, wherever the principles of reservation embodied in Article 16(4) or Rules 14 to 17 of Part II of the Kerala State and Subordinate Services Rules, 1958 are applicable. It shall be necessary for the candidates belonging to the backward classes to file the certificates as envisaged in the Report and satisfy the employer that he or she does not belong to the creamy layer. The income limits and property-holdings as mentioned in the Schedule to the said Report will be applicable from today. The exclusion of certain occupations/communities etc. shall however be as specified in the Report. Any violation of this direction will make the appointment or selection made on or after this day, unconstitutional.

It is made clear that any infraction of this direction will be treated seriously and this Court will also not hesitate to take further fresh action for contempt of court, if need be.

(2) We are of the view that it will be appropriate to allow the State of Kerala one more chance to conform to the rule of law.

We, therefore, permit the State of Kerala to make such provision as it may deem fit for exclusion of the creamy layer among the backward

classes in the State of Kerala, in accordance with law and in a manner consistent with the Constitution, the basic structure of the Constitution, Articles 14 and 16 and the judgments in Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and Ashoka Kumar Thakur [(1995) 5 SCC 403 : 1995 SCC (L&S) 1248 : (1995) 31 ATC 159] and in accordance with the principles laid down in the judgment now rendered by us.

(3) Once such provision is made and published in accordance with law, it shall come into force and the recommendations of the Justice K.J. Joseph Committee as accepted by this Court shall cease to apply. But as long as the State of Kerala does not bring about any such alternative provisions to exclude the creamy layer, the recommendation of the Justice K.J. Joseph Committee shall operate from today subject to any further directions which this Court might give in that behalf. Any fresh alternative provision that may be made by the State of Kerala, it is needless to say, will be subject to such further decision of this Court, in case the validity thereof is questioned.

(4) In the event of alternative provisions being made by the State of Kerala either by executive order or by legislative measures or by way of rules, no court shall entertain any challenge thereto, and all proceedings in relation thereto shall have to be taken out only in this Court."

22. In ***Raymond Ltd. v. M.P. Electricity Board*****,** (2001) 1 SCC 534, it was held:

***"23.** So far as the challenge made to the judgment of the Full Bench of the High Court, in confining its operation and applicability only for future period is concerned, Shri G.L. Sanghi, learned counsel, followed by the others have strongly contended that the High Court as such cannot apply the principle of prospective overruling. Reliance in this regard has been placed upon the decision reported in State of H.P. v. Nurpur Private Bus Operators' Union [(1999) 9 SCC 559] to which one of us (B.N. Kirpal, J.) was a party. Passing reference has been made to the decision in Golak Nath v. State of Punjab [AIR 1967 SC 1643] and the observation contained therein that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution and that it can be applied by the Supreme Court of India. The decision in Golak Nath case [AIR 1967 SC 1643] as such was subsequently overruled by the decision reported in Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225 : AIR 1973 SC 1461] though not specifically on this point. Reliance has also been placed upon the decision reported in K.S. Venkataraman & Co. (P) Ltd. v. State of Madras [AIR 1966 SC 1089] even to contend that if the High Court had no such power, this Court while hearing an appeal from such judgment of the High Court, equally cannot exercise such powers. This submission of the learned counsel overlooks the vital fact in that case that not only was the High Court found to exercise under Section 66 of the Income Tax Act, 1922 a special advisory*

*jurisdiction the scope of which stood limited by the section conferring such jurisdiction but even the appeal to the Supreme Court having been made only under Section 66-A(2) of the said Act was noticed to hold that the jurisdiction of this Court also does not get enlarged and that the Supreme Court can also only do what the High Court could do. Apart from the fact that the writ jurisdiction conferred upon High Courts under Article 226 of the Constitution does not carry any restriction in the quality and content of such powers, this Court could always have recourse to the said doctrine or principle or even dehors the necessity to fall back upon the said principle pass such orders under powers which are inherent in its being the highest court in the country whose dictates, declaration and mandate run throughout the country and bind all courts and every authority or persons therein and having regard to Articles 141 and 142 of the Constitution of India. The appellate powers under Article 136 of the Constitution itself would also be sufficient to pass any such orders**. This Court has been from time to time exercising such powers whenever found to be necessary in balancing the rights of parties and in the interests of justice** (vide: Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] , Managing Director, ECIL, Hyderabad v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] and India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12 : AIR 1990 SC 85]). The decision reported in Nurpur Private Bus Operators' Union [(1999) 9 SCC 559] at any rate is no authority for any contra position to deny such powers to this Court.*

***24. The peculiar facts and circumstances of these cases and the interests of justice, in our view, necessitate the application of the law declared therein only prospectively.** The Electricity Board is a public authority of the State engaged in the generation and supply of electrical energy at concessional rates to different classes and categories of consumers in the State. The construction placed by us is likely to have a serious and adverse impact upon the finances and the economic viability of the scheme underlying the tariff and minimum guarantee charges already determined. It is impossible for the Board, at this point of time to make up or change the pattern of tariff retrospectively to retrieve itself in this regard for the past period. The construction and execution of various developmental schemes and works are likely to suffer thereby a serious setback also. Keeping in view all these aspects we will be justified in declaring that the law declared in these cases shall be for future application only and not for the earlier period."*

[Emphasis supplied]

23. In ***Somaiya Organics (India) Ltd. v. State of U.P.*,** (2001) 5 SCC 519, it was held:

"22. When this Court decided in Golak Nath case [AIR 1967 SC 1643 : (1967) 2 SCR 762] that the power of amendment under Article 368 of the Constitution did not allow Parliament to abridge the fundamental rights in Part III of the Constitution, it made the decision operative with prospective effect. ***This was done in recognition of the fact that between the coming into force of the Constitution on 26-1-1950 and the date of the judgment, Parliament had in fact exercised the power of amendment in a way which, according to the decision in Golak Nath [AIR 1967 SC 1643 : (1967) 2 SCR 762] was void. If retrospectivity were to be given to the decision, "it would introduce chaos and unsettled conditions in our country". On the other hand it also recognised that such possibility of chaos might be preferable to the alternative of a totalitarian rule. The Court, therefore, sought to evolve "some reasonable principle to meet this extraordinary situation". The reasonable principle which was evolved was the doctrine of prospective overruling.***

23. Although the doctrine of "prospective overruling" was drawn from American jurisprudence, it has/had, of necessity, to develop indigenous characteristics. The parameters of the power as far as this country is concerned were sought to be laid down in Golak Nath [AIR 1967 SC 1643 : (1967) 2 SCR 762] itself when it was said: (SCR p. 814 B-D)

"As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

The parameters have not been adhered to in practice.

24. The word "prospective overruling" implies an earlier judicial decision on the same issue which was otherwise final. That is how it was understood in Golak Nath [AIR 1967 SC 1643 : (1967) 2 SCR 762] . However, this Court has used the power even when deciding on an issue for the first time. Thus in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12] when this Court held that the cess sought to be levied under Section 115 of the Madras Panchayats Act, 1958 as amended by Madras Act 18 of 1964, was unconstitutional, not only did it restrain the State of Tamil Nadu from enforcing the same any

further, it also directed that the State would not be liable for any refund of cess already paid or collected.

25. *This direction was considered in Orissa Cement Ltd. v. State of Orissa [1991 Supp (1) SCC 430] at p. 498 where it was held that: (SCC para 69)*

"The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the court has, and must be held to have, a certain amount of discretion. ***It is a well-settled proposition that it is open to the court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding."***

26. *Again in Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] it was held that non-furnishing of a copy of the enquiry report to an employee amounted to violation of the principles of natural justice and any disciplinary action taken without furnishing such report was liable to be set aside.* ***However, it was made clear that the decision would have prospective application so that no punishment already imposed would be open to challenge on this count. (See also Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] .)***

27. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case — justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do "complete justice".

28. *Given this constitutional discretion, it was perhaps unnecessary to resort to any principle of prospective overruling, a view which was expressed in Narayanibai v. State of Maharashtra [(1969) 3 SCC 468] at p. 470 and in Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299]* ***In the latter case, while dealing with the "doctrine of prospective overruling", this Court said that it was a***

method evolved by the courts to adjust competing rights of parties so as to save transactions "whether statutory or otherwise, that were effected by the earlier law". According to this Court, it was a rule "of judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law operated prior to the date of the judgment overruling the previous law".

Ultimately, it is a question of this Court's discretion and is, for this reason, relatable directly to the words of the Court granting the relief.

29. *Reading the two paras 89 and 90 together it does appear that this Court regarded the declaration of the provisions being illegal prospectively as only meaning that if the States had already collected the tax they would not be liable to pay back the same. It is the States which were protected as a result of the declaration for otherwise on the conclusion that the impugned Acts lacked legislative competence the result would have been that any tax collected would have become refundable as no State could retain the same because levy would be without the authority of law and contrary to Article 265 of the Constitution. At the same time, it was clearly stipulated that the States were restrained from enforcing the levy any further. The words used in Article 265 are "levy" and "collect". In taxing statute the words "levy" and "collect" are not synonymous terms (refer to CCE v. National Tobacco Co. of India Ltd. [(1972) 2 SCC 560] at p. 572), while "levy" would mean the assessment or charging or imposing tax, "collect" in Article 265 would mean the physical realisation of the tax which is levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same. The enforcement of levy could only mean realisation of the tax imposed or demanded. That the States were prevented from recovering the tax, if not already realised, in respect of the period prior to 25-10-1989 is further evident from para 90 of the judgment. The said para shows that as on the date of the judgment, for the period subsequent to 1-3-1986 the demand of the Central Excise Department on the alcohol manufactured was over Rs 4 crores. The Court referred to its orders dated 1-10-1986 [1986 Supp SCC 539 : 1987 SCC (Tax) 86] and 16-10-1986 whereby the State Government was permitted to collect the levy on alcohol manufactured in the Company's distilleries. With respect to the said amount of Rs 4 crores, it was observed that "it is, therefore, necessary to declare that in future no further realisation will be made in respect of this by the State Government from the petitioners". The implication clearly was that if out of Rs 4 crores the State Government had collected some levy the balance outstanding cannot be collected after 25-10-1989.*

30. *After the decision in second Synthetics case [(1990) 1 SCC 109] Shahid Hussain v. State of U.P. [WPs Nos. 7452 of 1981 and 3571 of 1982, dated 26-2-1990 (printed at p. 539, below)] came up for hearing. A Bench of three Judges presided over by Chief Justice Mukherji, who had delivered the judgment in second Synthetics case [(1990) 1 SCC 109] vide order dated 26-2-1990 disposing of the said writ petitions observed as follows:*

"In view of the judgment of this Court in Synthetics and Chemicals Ltd. v. State of U.P. [(1990) 1 SCC 109] these writ petitions are allowed prospectively and the levy is declared to be bad prospectively. Since no refund is claimed, there will be an order in terms of prayers (1) and (2) of the writ petitions viz. the recovery order issued by the Excise Inspector dated 14th September, 1981 for a sum of Rs 68,200 against the petitioners is quashed and the respondents are directed not to recover the amount of Rs 68,200 from the petitioner towards vend fee for the period from 9-4-1975 to 11-7-1978."

31. *To the same effect is another order dated 12-3-1990 again by a Bench presided over by Chief Justice Mukherji in — Yawar Ali v. State of U.P. [WP No. 8435 of 1981, dated 12-3-1990 (printed at p. 539, below)] By these two orders the State of U.P. was directed not to recover the amounts outstanding despite recovery notices having been issued on a date prior to 25-10-1989. These two orders are important inasmuch as the author of the judgment in second Synthetics case [(1990) 1 SCC 109] understood his own decision of prospective overruling to imply that if a levy in respect of the period earlier than 25-10-1989 has not been recovered by the Excise Authorities then notwithstanding a recovery order having been issued the State was not entitled to recover the amount. It can be said that in 1990 Chief Justice Mukherji, along with two companion Judges interpreted his earlier decision in a manner which clearly showed that para 89 of the judgment in second Synthetics case [(1990) 1 SCC 109] could not entitle the State to physically receive any amount in respect of the levy for the period prior to 25-10-1989 even though it could be said that the levy before that date was not invalid because of the doctrine of prospective overruling.*

<u>32. The doctrine of prospective overruling was applied in Belsund Sugar Co. Ltd. v. State of Bihar [(1999) 9 SCC 620].</u> *The question which arose for consideration there was whether market fee could be levied under the Bihar Agricultural Produce Markets Act, 1960 in respect to transactions of purchase of sugarcane, sugar and molasses by sugar mills. In view of the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 read with the Sugar (Control) Order, 1966 issued under the Essential Commodities Act, it was held that the provisions of the Sugarcane Act and the Sugarcane Order, on the one*

hand, and the Bihar Market Act on the other could not operate harmoniously and, therefore, the Sugarcane Act and the Sugarcane Order prevailed over the Market Act. It was then contended that the appellants therein should be allowed to get refund of the market fee which they had paid under the Market Act subject to their showing that they had not passed on the burden on the principle of unjust enrichment. Dealing with the above contentions, it was observed as follows: (SCC pp. 667-68, paras 112-13)

"112. Under these circumstances, keeping in view the peculiar facts and circumstances of these cases, we deem it fit to direct in exercise of our powers under Article 142 of the Constitution of India that the present decision will have only a prospective effect. Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced therefrom by utilising this purchased sugarcane by these factories will not be subjected to the levy of market fee under Section 27 of the Market Act by the Market Committees concerned. All past transactions up to the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees.

113. However, one rider has to be added to this direction. If any of the Market Committees has been restrained from recovering market fee from the writ petitioners in the High Court or if any of the writ petitioners in the High Court has, as an appellant before this Court, obtained stay of the payment of market fee, then for the period during which such stay has operated and consequently market fee was not paid on the transactions covered by such stay orders, there will remain no occasion for the Market Committee concerned to recover such market fee from the sugar mill concerned after the date of this judgment even for such past transactions. In other words, market fees paid in the past shall not be refunded. Similarly market fees not collected in the past also shall not be collected hereafter. The impugned judgments of the High Court in this group of sugar matters will stand set aside as aforesaid. The writ petition directly filed before this Court also will be required to be allowed in the aforesaid terms."

33. *The aforesaid observations make clear what was implicit in para 89 of second Synthetics case [(1990) 1 SCC 109] namely, that where payment has not actually been made to the Market Committee for a period prior to the announcement of the judgment, by reason of the assessee having obtained a stay, the Market Committee was not entitled to recover the market fee, payment of which had been stayed. It was pithily put in Belsund Sugar Co. Ltd. case [(1999) 9 SCC 620] that "in*

other words, market fees paid in the past was not to be refunded. Similarly market fees not collected in the past was not to be collected hereafter" (SCC p. 668, para 113). These observations are in consonance with the directions given in para 89 of the judgment in second Synthetics case [(1990) 1 SCC 109] and applying the said principles to the present appeals the only conclusion which can be arrived at is that this Court intended the status quo as on 25-10-1989 to be maintained as regards actual payment or levy was concerned. What had gone to the coffers of the Government with or without any strings attached, was to remain with it and what was not received could not be realised by the Government.

34. *It is, of course true that in respect of the same period i.e. prior to 25-10-1989 persons who had obtained stay orders or had otherwise not paid the levy would be better off than those who have deposited the sums with the Government and are not entitled to receive any refund. This situation, however, is unavoidable for the simple reason that Article 265 does not permit collection of tax without the authority of law. Even though levy prior to 25-10-1989 may be valid but when in fact no collection was made pursuant to the said levy, then post-judgment in second Synthetics case [(1990) 1 SCC 109] collection is not permissible. After 25-10-1989 there was no valid law in existence which permitted the collection of tax. Shri Venugopal is right in contending that after 25-10-1989 the provisions of Section 39 of the U.P. Excise Act, 1910 which provides for recovery of excise revenue would be inapplicable. The said section inter alia states that all excise revenue may be recovered from the person primarily liable to pay the same, as arrears of land revenue or in the manner provided for the recovery of public demands by any law for the time being in force. Section 3(1) defines "excise revenue" as meaning revenue derived or derivable from any duty, fee, tax etc. imposed or ordered under the provisions of the Act or of any other law for the time being in force. Section 3(3-a) defines "excise duty" and "countervailing duty" as meaning any such excise duty or countervailing duty, as may be mentioned in Entry 51 List II of the Seventh Schedule of the Constitution. There can be no excise duty under the U.P. Excise Act on industrial alcohol because that would be outside the ambit of Entry 51 List II of the Seventh Schedule. Vend fee being regarded as excise duty on industrial alcohol which is not valid as not falling under Entry 51 List II cannot be regarded as excise revenue and, therefore, at least after 25-10-1989 it would be unrecoverable, being outside the purview of Section 39 of the U.P. Excise Act, 1910. This would clearly be the position as a result of the Court having declared relevant provisions of the U.P. Act as being ultra vires insofar as it enables the imposition of excise duty on industrial alcohol.*

...

36. *It is true that the effect of a legislation without legislative competence is that it is non est. (See Behram Khurshid Pesikaka v. State of Bombay [AIR 1955 SC 123 : (1955) 1 SCR 613] at SCR pp. 652, 653, R.M.D. Chamarbaugwalla v. Union of India [AIR 1957 SC 628 : 1957 SCR 930] at p. 940, M.P.V. Sundararamier & Co. v. State of A.P. [AIR 1958 SC 468 : 1958 SCR 1422] at SCR p. 1468 and Mahendra Lal Jaini v. State of U.P. [AIR 1963 SC 1019 : 1963 Supp (1) SCR 912] at SCR pp. 937-41.)*

37. *Nevertheless a law enacted without legislative competence remains on the statute-book till a court of competent jurisdiction adjudicates thereon and declares it to be void. When the court declares it to be void it is only then that it can be said that it is non est for all purposes. In Synthetics and Chemicals case [(1990) 1 SCC 109] the invalidity of the provisions was a declaration under Article 141 of the Constitution. It was for doing complete justice that the court in exercise of its jurisdiction under Article 142 moulded the relief in such a way as to give effect to its declaration prospectively. It is not possible to accept that such an order of prospective overruling is contrary to law. An invalid law has not been held to be valid. All that has happened is that the declaration of invalidity of the legislation was directed to take effect from a future date.*

38. The principle of prospective overruling is too well enshrined in our jurisprudence for it to be disturbed. Therefore, by reason of the decision in second Synthetics case [(1990) 1 SCC 109] what has actually happened is that collection and non-collection of vend fee prior to 25-10-1989 is left untouched. *However, the Court in second Synthetics case [(1990) 1 SCC 109] did not specifically deal with the question of deposits made pursuant to interim orders of courts. The word used there was "realisation". It might have been arguable that the "deposits" were not "realisations" in the sense the word has been used in taxation statutes in general and the U.P. Excise Act, 1910 in particular. However, the interim orders passed by the High Court show that deposits were made of vend fee and the purchase tax. Although these "deposits" were to be kept in a separate account, nevertheless in the circumstances of this case, it would be mere sophistry to hold that the monies so deposited were not "realisations" for the purposes of the U.P. Excise Act.* ***Therefore, what was deposited by the appellants with the State would remain with it notwithstanding the interim orders which required the State to keep it in a separate account but, at the same time, what has not been collected by the State cannot be realised by it, even in those cases where a bank guarantee had been furnished.***

39. *Lastly, while relying on Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] Shri Dwivedi submitted that the appellants had*

realised the amount of vend fee payable by taking that figure into account while determining their sale price and, therefore, the State is entitled to recover the same as it would otherwise result in unjust enrichment to the appellants.

40. *In Mafatlal case [(1997) 5 SCC 536] the principle of unjust enrichment was invoked as refund was claimed even though the amount of excise duty paid had already been recovered. This principle resulted in the Court declining to order refund. The principle of unjust enrichment does not apply in the present case, in view of the direction given in second Synthetics case [(1990) 1 SCC 109] that no refund be given. This is in line with the principle of unjust enrichment. But that principle cannot be extended to give a right to the State to recover or realise vend fee after the statute has been struck down and it has been categorically stated that "the respondent States are restrained from enforcing the said levy any further ... ". The contention of the respondents in the teeth of the aforesaid direction cannot, therefore, be accepted. This is apart from the fact that there is no factual basis on which this Court can conclude that the appellants have in fact realised the amount of vend fee and allowing them to retain it will result in their getting enriched unjustly."*

24. In ***Ganga Ram Moolchandani v. State of Rajasthan*****,** (2001) 6 SCC 89, it was held:

"19. Last submission of Shri Rao is that in case the Rules are held to be ultra vires, the decision may be made prospective in operation as for a period of 32 years, when the Rules remained in force, innumerable appointments have been made thereunder which should not be disturbed to avoid a lot of complications. *It is now well settled that the courts can make the law laid down by it prospective in operation to prevent unsettlement of the settled positions and administrative chaos apart from meeting the ends of justice. In the well-known decision of this Court in Golak Nath v. State of Punjab [AIR 1967 SC 1643 : (1967) 2 SCR 762] the question had arisen as to whether the decision in that case should be prospective or retrospective in operation and the Court took into consideration the fact that between 1950 and 1967, as many as twenty amendments were made in the Constitution and the legislatures of various States had made laws bringing about an agrarian revolution in the country which were made on the basis of correctness of the decisions in Shankari Prasad Singh Deo v. Union of India [1951 SCC 966 : AIR 1951 SC 458 : 1952 SCR 89] and Sajjan Singh v. State of Rajasthan [AIR 1965 SC 845 : (1965) 1 SCR 933] viz. that Parliament had the powers to amend the fundamental rights and the Acts in regard to estates were outside the judicial scrutiny on the ground that they infringed upon the said rights. To meet the then extraordinary situation that may be caused by the said decision, the Court felt that it*

must evolve some doctrine which had roots in reason and precedents so that the past may be preserved and the future protected. In that case it was laid down that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution and the same can be applied only by this Court in its discretion to be moulded in accordance with the justice of the cause or matter before it.

***20.** Accepting the lead given in the above decision, this Court has since extended the doctrine to the interpretation of ordinary statutes as well. In the cases of Waman Rao v. Union of India [(1981) 2 SCC 362] , Atam Prakash v. State of Haryana [(1986) 2 SCC 249] , Orissa Cement Ltd. v. State of Orissa [1991 Supp (1) SCC 430] , Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] and Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the device of prospective overruling was resorted to even in the case of ordinary statutes. We find in the fitness of things, the law decided in this case be declared to be prospective in operation.*

***21.** The appellant in Civil Appeal No. 6469 of 1998 who was found eligible by the Committee, appeared in the interview, found fit by it and recommended for appointment to the higher judicial service but could not be appointed as the Full Court found that he was not eligible and one post for him was kept reserved by virtue of the interim order of the High Court but in view of dismissal of the writ application, the said post has been filled up by appointing one Shri Uma Kant Aggarwal, Respondent 13. We feel it would be just and proper to direct the High Court to recommend his name to the Governor for appointment to Rajasthan Higher Judicial Service against one of the existing vacancies as according to the stand taken by the High Court, posts are still vacant.*

***22.** So far as the appellant in Civil Appeal No. 2411 of 1999 is concerned, the High Court has in view of the decision of this Court in Sushma Suri v. Govt. of National Capital Territory of Delhi [(1999) 1 SCC 330 : 1999 SCC (L&S) 208] declined to grant relief in his favour. Learned counsel appearing on behalf of the appellant could not point out any error in the aforesaid judgment rendered by the High Court. Therefore, it is not possible to grant any relief to him. We may, however, observe that the High Court would process the applications of the candidates like this appellant for direct recruitment to Rajasthan Higher Judicial Service in future as this appellant has been found eligible to be considered.*

***23.** In Civil Appeal No. 722 of 1999, the only ground of attack is the strictures passed by the High Court against the appellant and imposition*

of costs. In the facts and circumstances of the case, we are of the view that it will be just and proper to expunge the remarks against the appellant from the impugned judgment and to upset the order awarding costs.

24. *In the result, Civil Appeal No. 6469 of 1998 is allowed, the impugned judgment passed by the High Court upholding the Rules is set aside and Rules 8(ii) and 15(ii) are struck down being violative of Articles 14 and 16 of the Constitution.* ***It is made clear that this judgment will not affect any appointment made prior to this date under the Rules which have been found to be invalid hereinabove.*** *The High Court would be well advised to take up the process of selection, already started, de novo in accordance with this judgment and will now recommend the name of the appellant Ganga Ram Moolchandani to the Governor of Rajasthan for making appointment to Rajasthan Higher Judicial Service against one of the existing vacancies. Civil Appeal No. 722 of 1999 is allowed, the strictures passed in the impugned judgment against the appellant are expunged and the order, awarding costs upon him, is set aside. Civil Appeal No. 2411 of 1999 is dismissed subject to the observations above. In the circumstances, there will be no order as to costs."*

[Emphasis supplied]

25. In ***SAIL v. National Union Waterfront Workers*****,** (2001) 7 SCC 1, it was held:

"125.The upshot of the above discussion is outlined thus:

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."

[Emphasis supplied]

26. In ***Harsh Dhingra v. State of Haryana*****,** (2001) 9 SCC 550, it was held:

> ***"5.*** *The question for consideration now is in what manner discrimination between the allottees subsequent to 31-10-1989 can be avoided. In relation to classification made by the High Court, the grievances are made before us that the same does not take note of cases of (i) bona fide purchasers, who did not have sufficient funds with them to start the construction and who have acquired these plots without any profit motive; (ii) allottees to whom possession was not handed over in time for them to commence construction who stand on the same footing as those in respect of whom exception is made, who have made construction on the plots in question; (iii) members of armed forces and Indian Administrative Officers who are also involved in an operation like "Blue Star", their allotments could not be cancelled and the matters will have to be examined in the light of the same principles as had been done with reference to those who were in the armed forces and fighting for the defence of the country; (iv) certain other classes who are still disabled, either on account of serious ill health or such as blindness. These instances are taken by way of sample by us to indicate that the classification made by the High Court in respect of whom exception is made will have to be reclassified or sub-classified or further classifications will have to be made. That would be carving out too many exceptions involving a very lengthy and treacherous exercise to be sucked in a quagmire from which to extricate oneself will be well-nigh impossible.*
>
> ***6.*** *Further, when the decision of the High Court in S.R. Dass case [1988 PLJ 123 : (1988) 1 Punj LR 430] had held the field for nearly a decade and the Government, HUDA and the parties to whom the allotments have been made have acted upon and adjusted their affairs in terms of the said decision, to disturb that state of affairs on the basis that now certain other rigorous principles are declared to be applied in Anil Sabharwal case [(1997) 2 Punj LR 7] would be setting the rules of the game after the game is over, by which several parties have altered their position to their disadvantage.* ***Therefore, we think that in the larger public interest and to avoid the discrimination which this Court had noticed in the order dated 5-12-1997 [(1998) 8 SCC 373] the decision of the High Court in Anil Sabharwal case [(1997) 2 Punj LR 7] should be made effective from a prospective date and in this case from the date on which interim order had been passed on 23-4-1996. Therefore, it would be appropriate to fix that date as the date from which the judgment of the High Court would become effective. If this course is adopted, various anomalies pointed out in respect of different parties referred to above and other instances which we have not adverted to will be ironed out and the creases smoothened so that discrimination is avoided.***

<u>7. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest.</u> *Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty-bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation. These principles are enunciated by this Court in Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433] and Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299]*

8. *These appeals, therefore, stand allowed to the extent indicated above and declaring that the judgment of the High Court in Anil Sabharwal v. State of Haryana [(1997) 2 Punj LR 7] shall be effective from 23-4-1996. In the event in any of the cases any allotment has been cancelled, the same shall be brought in conformity with the order made by us whether those allottees are parties in these proceedings or not. The declaration made by us will have a general application. It is also made clear that allotment orders made prior to 23-4-1996 can be cancelled if they are not made in conformity with the decision in S.R. Dass v. State of Haryana [1988 PLJ 123 : (1988) 1 Punj LR 430] after following due procedure."*

<u>[Emphasis supplied]</u>

27. In ***<u>V. Purushotham Rao v. Union of India</u>*,** (2001) 10 SCC 305, it was held:

"27. *The next question which arises for consideration is whether the judgment of this Court in Harsh Dhingra v. State of Haryana [(2001) 9 SCC 550] and principles evolved therein can be applied to the case in hand, so as to protect the allotments already made under the discretionary quota. The aforesaid case no doubt was a case of allotment of land by the Chief Minister of a State in the State of Haryana. The High Court of Punjab and Haryana by its order dated 20-1-1988 disposed of the case of S.R. Dass v. State of Haryana [1988 Punj LJ 123] under which it formulated certain principles on which the discretionary allotments could be made with certain conditions. The so-called discretionary allotments made by the Government and HUDA, pursuant to the earlier judgment of the Punjab and Haryana High Court were sought to be assailed as being contrary to certain stricter principles,*

which were evolved in the case of Anil Sabharwal [H.U.D.A. v. Anil Sabharwal, (1998) 8 SCC 373] which stood disposed of on 5-12-1997. ***This Court in the appeal in question held that the stricter scrutiny required to be made as per the guidelines evolved in Anil Sabharwal case [H.U.D.A. v. Anil Sabharwal, (1998) 8 SCC 373] must be made applicable to the period subsequent to the judgment viz. 5-12-1997 and allotments made between 1988 and 1997 in accordance with the principles and guidelines indicated in S.R. Dass case [1988 Punj LJ 123] were protected by applying the principle of prospective application, so far as the judgment in Anil Sabharwal case [H.U.D.A. v. Anil Sabharwal, (1998) 8 SCC 373] .*** *We fail to understand how the aforesaid principle can apply to the case in hand where the allotments made prior to the judgment of this Court in Centre for Public Interest Litigation [1995 Supp (3) SCC 382] are the subject-matter of scrutiny and had been made indiscriminately, as there had been no guiding principle for making such allotments. Consequently, the principles evolved in Harsh Dhingra v. State of Haryana [(2001) 9 SCC 550 (Haryana Land Allotment case)] , will have no application at all to the present appeals. The said contention, therefore, must fail.*

28. *In view of our conclusions on the nine issues, as mentioned above, these appeals fail and are dismissed. There, however, will be no order as to costs."*

[Emphasis supplied]

28. In ***State of Bihar v. S.A. Hassan*****,** (2002) 3 SCC 566, it was held:

"13. *We are, therefore, of the opinion that the respondents are not entitled to claim the benefit of the period of their service while they were under the employment of the erstwhile management for the purpose of calculation of their pension and pensionary benefits.* ***Consequently, we hold that the findings of the High Court are not sustainable in law. Accordingly, appeals are allowed by setting aside the impugned judgment. The judgment rendered by us will come into effect prospectively i.e. apply to the cases of employees who retire on superannuation after the date of this judgment.*** *The State Government shall not be entitled to claim refund of any pension or pensionary benefits already granted to any employee and also to the respondents. We are giving this direction especially for the reason that the State Government allowed a number of judgments adverse to it to become final and there was consequent uncertainty in legal position."*

[Emphasis supplied]

29. In ***Hansraj & Sons v. State of J&K***, (2002) 6 SCC 227, it was held:

> ***"26.*** *From the discussions in the foregoing paragraphs, the position that emerges is that Notification No. SRO 348 in which the additional toll tax was levied was clearly beyond the purview of Section 3 of the Act. Further, the finding of the High Court that in the context of facts and circumstances of the case, processing of the dry fruits like almonds, walnuts and walnut kernels did not come within the expression "manufacture" cannot be said to be erroneous. The judgment of the High Court upholding the levy of additional toll tax in the case is also unsustainable.*
>
> ***27.*** *Accordingly, the appeals are allowed. The judgment of the High Court under challenge is set aside.* ***It is made clear that this judgment will have only prospective operation and any amount collected as toll/additional toll tax under the impugned notification need not be refunded. Parties to bear their respective costs."***
>
> ***[Emphasis supplied]***

30. **In *Harshendra Choubisa v. State of Rajasthan*,** (2002) 6 SCC 393, it was held:

> ***"13.*** *We now come to the question of relief. We are of the view that for the reasons set out in the judgment delivered by us today in Kailash Chand Sharma case the judgment of the High Court has to be given prospective effect so that its impact may not fall on the appointments already made prior to the date of judgment. That is also the view taken in Deepak Kumar Suthar case [Arising out of SLPs (C) Nos. 10981, 14564, 10990, 20299 of 2001 and 17740 of 2001] which has been followed in the impugned orders of the High Court. However, in Writ Petition (C) No. 6256 of 1999, the High Court did not make it clear that the judgment will operate prospectively, though in the other impugned order the High Court gave effect to the judgment without touching the appointments made before 21-10-1999. We are of the view that the date of application of the judgment should be from 27-7-2000 which was the date on which Writ Petition No. 5 of 2000 was allowed by the learned Single Judge holding that the notification in regard to bonus marks for the purpose of selection of Gram Sewaks was invalid. The other important fact which should be taken into account in moulding the relief is that at the instance of three persons who applied for the posts advertised by the Zila Parishads of Barmer and Bikaner, it is not proper to set aside the entire selection, especially when none of the appointed candidates were made parties before the High Court.* ***We are, therefore, inclined to confine the relief only to the parties who moved the High Court for relief under Article 226, subject, however, to the application of the***

judgment prospectively from 27-7-2000. *Accordingly, we direct as follows:*

1. The claims of the three writ petitioners who are respondents herein should be considered afresh in the light of this judgment vis-à-vis the candidates appointed on or after 27-7-2000 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 27-7-2000.

2. The appointments of Gram Sewaks made up to 26-7-2000 need not be reopened and reconsidered in the light of the law laid down in the judgment."

[Emphasis supplied]

31. In ***Kailash Chand Sharma v. State of Rajasthan*****,** (2002) 6 SCC 562, it was held:

"35. *We have now come to the close of the discussion on the constitutional issue arising in the case. Now, we shall proceed to consider the question of relief. We have to recapitulate at this juncture, how the High Court in the two impugned judgments before us, addressed itself to the question of relief.*

36. *There are two judgments under appeal in this batch of cases. The first is the judgment of the Full Bench dated 18-11-1999 in Kailash Chand case. The second is the judgment of the Division Bench dated 13-4-2002 in a batch of appeals filed by the State against the decision of the learned Single Judge disposing of the writ petitions.*

37. *In Kailash Chand case the earlier Full Bench judgment in Deepak Kumar case [(1999) 2 Raj LR 692 (FB)] rendered a month earlier, the operative part of which has been extracted at para 3 (supra) of this judgment, was implicitly followed. No separate directions or observations are found in the Full Bench judgment in Kailash Chand case which is under appeal now. However, it has been made clear by the Full Bench that the cases before it were being disposed of "in the same terms" as those contained in the earlier Full Bench decision. The writ petitions were "ordered accordingly". Therefore, the operative part of the judgment in Deepak Kumar case [(1999) 2 Raj LR 692 (FB)] applies "mutatis mutandis" to the cases disposed of by the Full Bench by its judgment dated 18-11-1999. According to those directions, the appointment made earlier to the judgment shall not be affected and the judgment should have prospective application in that sense. The second point to be noticed is that the Full Bench (in Deepak Kumar case[(1999)*

2 Raj LR 692 (FB)]) made it clear that no relief can be granted to the petitioners as they will not stand to gain even if the bonus marks are omitted. No separate finding on this aspect has been recorded by the Full Bench in the impugned order.

***38.** Coming to the second batch of cases, the learned Judges of the Division Bench while reiterating the directions given by the Full Bench in Deepak Kumar case [(1999) 2 Raj LR 692 (FB)] however, dismissed the appeals, though the directions given by the learned Single Judge are somewhat at variance with those granted in Deepak Kumar case [(1999) 2 Raj LR 692 (FB)] . The learned Single Judge quashed the merit list prepared or in existence after 21-10-1999 (the date of judgment in Deepak Kumar case [(1999) 2 Raj LR 692 (FB)]) and directed fresh merit lists to be prepared ignoring the provision for award of bonus marks to the district and rural residents and to regulate appointments based on that fresh list, if necessary, after giving show-cause notice to the appointees. The affected appointees (who were not parties before the High Court) have filed the SLPs in view of the consequential action taken by the authorities concerned.*

***39. <u>Whether the judgment should be given prospective application so as not to affect the appointments made prior to the date of the judgment i.e. 18-11-1999 is one question that has been debated before us in the background of the direction given by the High Court. Counsel appearing for the original writ petitioners who succeeded in principle before the High Court contended that there is no warrant to invoke the theory of prospective overruling to validate unconstitutional appointments especially when such appointments were made during the pendency of the writ petitions and some of the appointments were made after the matter was referred to the Full Bench.</u>** At any rate, it is contended that the appointment orders issued after the first Full Bench judgment which was rendered on 21-10-1999 should not be validated. On the other hand, it is contended by the learned counsel appearing for the successful candidates who have been either appointed or yet to receive appointment orders that there is every justification for the prospective application of the judgment. While so contending, the learned counsel finds fault with the direction of the High Court insofar as it impliedly restrains further appointments subsequent to the date of the judgment. In this connection, it is pointed out that the selections were finalized long prior to the judgment — either of the first Full Bench or of the second Full Bench —and if there was delay in issuing appointment orders either on account of the stay order or administrative delays, the candidates selected should not be placed at a disadvantageous position when compared to the candidates appointed earlier. In other words, these parties contend that the creation of a cut-off date with reference to the appointments already made and yet to be*

made is unjustified and it would have been in the fitness of things if all the selected candidates are excluded from the rigour of the judgment as a one-time measure instead of creating two classes amongst them.

40. Arguments were addressed before us on the contours and limitations of the doctrine of prospective overruling applied in our country for the first time in Golak Nath v. State of Punjab [AIR 1967 SC 1643 : (1967) 2 SCR 762] in the context of invalidity of certain constitutional amendments and extended gradually to the laws found unconstitutional or even to the interpretation of ordinary statutes. ***The sum and substance of this innovative principle is that when the Court finds or lays down the correct law in the process of which the prevalent understanding of the law undergoes a change, the Court, on considerations of justice and fair deal, restricts the operation of the new-found law to the future so that its impact does not fall on the past transactions. The doctrine recognises the discretion of the Court to prescribe the limits of retroactivity of the law declared by it. It is a great harmonizing principle equipping the Court with the power to mould the relief to meet the ends of justice. Justification for invoking the doctrine was also found in Articles 141 and 142 which as pointed out in Golak Nath case [AIR 1967 SC 1643 : (1967) 2 SCR 762] are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice.*** *In the aftermath of Golak Nath case [AIR 1967 SC 1643 : (1967) 2 SCR 762] we find quite an illuminating and analytical discussion of the doctrine by Sawant, J. in Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The learned Judge prefaced the discussion with the following enunciation : (SCC p. 760, para 34)*

"It is now well settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice."

41. Law reports are replete with cases where past actions and transactions including appointments and promotions, though made contrary to the law authoritatively laid down by the Court were allowed to remain either on the principle of prospective overruling or in exercise of the inherent power of the Court under Article 142*. The learned Senior Counsel Mr P.P. Rao reminds us that this power is only available to the Supreme Court by virtue of Article 142 and it is not open to the High Court to neutralize the effect of unconstitutional law by having resort to the principle of prospective overruling or analogous principle. The argument of the learned counsel, though not without force, need not detain us for the simple reason that as this Court is now seized of the matter, can grant or mould the relief, without in any way*

being fettered by the limitations which the High Court may have had. ***We are of the view that there is sufficient justification for the prospective application of the law declared in the instant cases for more than one reason and if so, the declaration of the High Court to that extent need not be disturbed.***

42. *For nearly one decade the selections made by applying bonus marks to the residents of the districts concerned and the rural areas therein were upheld by the High Court of Rajasthan. The first decision is the case of Baljeet Kaur [1992 Raj WLR 83] decided in the year 1991 followed by Arvind Kumar Gochar case decided in 1994. By the time the selection process was initiated and completed, these decisions were holding the field. However, when the writ petitions filed by Kailash Chand and others came up for hearing before a learned Single Judge, the correctness of the view taken in those two decisions was doubted and he directed the matters to be placed before the learned Chief Justice for constituting a Full Bench. By the time this order was passed on 19-7-1999, we are informed that the select lists of candidates were published in many districts. On account of the stay granted for a period of three months and for other valid reasons, further lists were not published****. It should be noted that in a case where the law on the subject was in a state of flux, the principle of prospective overruling was invoked by this Court. The decision in Managing Director, ECIL v. B. Karunakar [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] is illustrative of this viewpoint.*** *In the present case, the legality of the selection process with the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates in view of the judicial precedents. A cloud was cast on the said decisions only after the selection process was completed and the results were declared or about to be declared. It is, therefore, a fit case to apply the judgment of the Full Bench rendered subsequent to the selection prospectively. One more aspect which is to be taken into account is that in almost all the writ petitions the candidates appointed, not to speak of the candidates selected, were not made parties before the High Court. Maybe, the laborious and long-drawn exercise of serving notices on each and every party likely to be affected need not have been gone through. At least, a general notice by newspaper publication could have been sought for or in the alternative, at least a few of the last candidates selected/appointed could have been put on notice; but, that was not done in almost all the cases. That is the added reason why the judgment treading a new path should not as far as possible result in detriment to the candidates already appointed. We are not so much on the question whether the writ petitioners were legally bound to implead all the candidates selected/appointed during the pendency of the petitions having regard to the fact that they were challenging the notification or the policy decision of general application; but, we are*

taking this fact into consideration to lean towards the view of the High Court that its judgment ought to be applied prospectively, even if the non-impleadment is not a fatal flaw.

43. ***Prospectivity to what extent is the next question. Counsel argues that when once it is accepted in principle that past actions should not be unsettled, there is no rationale in prescribing a cut-off date with reference to the date of judgment, so as to save the appointments already made and to bar the appointments to be made.*** *It is contended that the entire selection process and the consequential appointments should be out of the clutches of the judgment rendered on 18-11-1999 and it would be more rational and logical to apply it to further selections. The fortuitous circumstance of not being in a position of securing appointment orders for a variety of administrative reasons should not stand in the way of candidates appointed or to be appointed after the date of judgment; otherwise, it would result in injustice and hardship to the selected candidates without any tangible benefit to the petitioners who moved the High Court for relief. It is pointed out that in some districts like Chittorgarh, the Lok Sabha election programme came in the way of formal appointment orders being issued. It is further pointed out that in any case, if the judgment is to be prospectively applied — as it ought to be — the application of judgment should be from the date of its pronouncement i.e. 18-11-1999 but not from 21-10-1999 which is the date of decision in Deepak Kumar case [(1999) 2 Raj LR 692 (FB)] pertaining to a different selection held five years earlier.*

44. *The above argument was countered by the learned counsel appearing for the original writ petitioners contending that after the judgment of the High Court in Deepak Kumar case [(1999) 2 Raj LR 692 (FB)] (21-10-1999 is the date of judgment) in which similar provision in another circular was struck down, there was neither legal nor moral justification for making further appointments, though the impugned judgment in Kailash Chand, was rendered on 18-11-1999. In the first SLP filed by Kailash Chand, the Senior Counsel Mr Krishnamani raised a subsidiary contention that the High Court was wrong in proceeding on the assumption that his client and other similarly situated petitioners would not have got selected even if the bonus marks were ignored. In the SLP, the said petitioner furnished the particulars relating to marks secured by him and some other selected candidates. Quite rightly, the learned counsel contended that the High Court apparently could not have looked into the particulars of marks in each and every case and it would have been in the fitness of things if it were left to the authorities concerned to go into the factual details.*

45. *One more point which needs mention. Some of the learned counsel argued that the unsuccessful applicant should not be allowed to challenge the selection process to the extent it goes against their interest, after having participated in the selection and waited for the result. It is contended that the discretionary relief under Article 226 should not be granted to such persons. Reliance has been placed on the decision of this Court in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] and other cases in support of this argument. On the other hand, it is contended that in a case of challenge to unconstitutional discrimination, the doctrine of acquiescence, estoppel and the like does not apply and the writ petitioners cannot be expected to know the constitutional implications of the impugned circular well before the selections. We are not inclined to go into this question for the reason that such a plea was not raised nor was any argument advanced before the High Court.*

46. ***Having due regard to the rival contentions adverted to above and keeping in view the factual scenario and the need to balance the competing claims in the light of acceptance of prospective overruling in principle, we consider it just and proper to confine the relief only to the petitioners who moved the High Court and to make appointments made on or after 18-11-1999 in any of the districts subject to the claims of the petitioners****. Accordingly, we direct:*

…

47. ***Before parting, we must say that we have moulded the relief as above on a consideration of special facts and circumstances of this case acting within the framework of powers vested in this Court under Article 142 of the Constitution. Insofar as the relief has been granted or modified in the manner aforesaid, this judgment may not be treated as a binding precedent in any case that may arise in future.”***

[Emphasis supplied]

32. In ***Sarwan Kumar v. Madan Lal Aggarwal***, (2003) 4 SCC 147, it was held:

“14. *Invocation of the doctrine of prospective overruling relying upon Bharmappa Nemanna Kawale case [(1996) 8 SCC 243] by the High Court is misplaced. In Bharmappa Nemanna Kawale case [(1996) 8 SCC 243] the civil court passed the decree for eviction against the tenant holding that he was not a tenant which decree became final. When the plea of jural relationship of landlord and tenant was negatived by the executing court the landlord filed a writ petition in the High Court in which the High Court directed the executing court to go into that*

question. On these facts this Court overturning the decision of the High Court held: (SCC p. 244, para 5)

"5. Shri Bhasme, the learned counsel for the respondents, contended that in view of the specific language employed in Section 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) the only competent authority that has to go into the question is the revenue authority under the Act and the civil court has no jurisdiction to go into the question whether the appellant is a tenant or not. Therefore, the High Court was right in directing the executing court to go into the question. It is rather unfortunate that the respondent has allowed the decree holding that he is not a tenant to become final. Having allowed it to become final, it is not open to him to contend that he is still a tenant under the Act and therefore the decree is a nullity. Under those circumstances, the executing court was right in refusing to entertain the objection for executing the decree. The High Court was not justified, in the circumstances, in directing the executing court to consider the objection."

This Court neither considered the doctrine of prospective overruling nor did it go into the question of executability of a decree passed by a court having no jurisdiction. This Court overruled the view taken by the High Court because the tenant let the earlier civil court decree to the effect that he was not a tenant become final. The decree passed by the civil court under the circumstances was perfectly valid. Question of jural relationship of landlord and tenant could not be gone into by the executing court afresh. It was a short judgment and no other point was considered by this Court in the said judgment.

***15.** For the first time this Court in Golak Nath v. State of Punjab [AIR 1967 SC 1643] accepted the doctrine of "prospective overruling". It was held: (AIR p. 1669, para 51)*

"51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its

applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. This Court while deciding Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous.

16. *This Court in Sushil Kumar Mehta v. Gobind Ram Bohra [(1990) 1 SCC 193] after referring to and exhaustively dealing with and following various judgments of this Court held that a decree passed by a civil court in a rent matter, the jurisdiction of which was barred by the Haryana Urban (Control of Rent and Eviction) Act, 1973, having been passed by a court lacking inherent jurisdiction to entertain the suit for ejectment was a nullity and the judgment-debtors successfully could object to the execution of the said decree being a nullity.*

17. *The facts of the said case were almost identical to the facts of the present case. The facts which led to the decision in that case were: the landlord filed a suit in the Court of Senior Sub-Judge for ejectment and recovery of arrears of rent and damages for use and occupation of a shop at Gurgaon, let out to the tenant. An ex parte decree was passed. Issue regarding jurisdiction of the civil court was framed and the same was decided against the tenant. Application under Order 9 Rule 13 to set aside the ex parte decree was dismissed. It was confirmed on appeal. Revision was dismissed by the High Court. When the landlord filed the application for execution of the decree to obtain possession, the tenant objected under Section 47 CPC contending that the decree of the civil court was a nullity as the premises in question were governed by the Rent Act. The Controller under the Act was the only competent forum for claims of ejectment on fulfilment of the conditions enumerated in the Rent Act. That the civil court was divested of jurisdiction to take cognizance and pass a decree for ejectment of the tenant. The objection was overruled by the executing court and further, the revision filed by the*

tenant was dismissed by the High Court. Simultaneously, he also filed a writ petition under Article 227 which was also dismissed. Against the dismissal of the writ petition under Article 227 the appeal was filed in this Court. It may be mentioned that an issue regarding the jurisdiction of the civil court to try a suit for ejectment was framed and decided in favour of the landlord in the civil suit. The tenant had also been divested of the possession in execution of the decree passed by the civil court. This Court after exhaustively referring to the number of previous judgments of this Court held that to a building let out and governed under the Rent Act the only competent authority to pass the decree for ejectment was the Rent Controller constituted under the Rent Act and the civil court lacked the inherent jurisdiction to take cognizance of the cause and pass a decree of ejectment therein. It was further held that objection to the execution of the decree being a nullity having been passed by a court lacking inherent jurisdiction could be raised in execution proceedings and the finding recorded in decree that the civil court had the jurisdiction would not operate as res judicata. It was held: (SCC p. 205, para 26)

"26. Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject-matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party."

(emphasis supplied)

In para 27, it was further observed: (SCC p. 206)

"27. In the light of this position in law the question for determination is whether the impugned decree of the civil court can be assailed by the appellant in execution. It is already held that it is the Controller under the Act that has exclusive jurisdiction to order ejectment of a tenant from a building in the urban area leased out by the landlord. Thereby the civil court inherently lacks jurisdiction to entertain the suit and pass a decree of ejectment. Therefore, though the decree was passed and the jurisdiction of the court was gone into in Issues Nos. 4 and 5 at the ex parte trial, the decree thereunder is a nullity, and does not bind the appellant. Therefore, it does not operate as a res judicata. The courts below have committed grave error of law in holding that the decree in the

suit operated as res judicata and the appellant cannot raise the same point once again at the execution.”

(emphasis supplied)

18. *Appeal was allowed. Since the possession had already been taken in execution of the decree the Court ordered restoration of the possession to the tenant and thus observed: (SCC p. 207, para 28)*

“This Court would relieve the party from injustice in exercise of power under Article 136 of the Constitution when this Court noticed grave miscarriage of justice. It is always open to the appellant to take aid of Section 144 CPC for restitution. Therefore, merely because the decree has been executed, on the facts when we find that decree is a nullity, we cannot decline to exercise our power under Article 136 to set at nought illegal orders under a decree of nullity. The appeal is accordingly allowed. But in the circumstances parties are directed to bear their own costs.”

19. *This decision was later on followed by this Court in Urban Improvement Trust v. Gokul Narain [(1996) 4 SCC 178] . We need not refer to the earlier decisions of this Court taking the same view which have been referred to and find mention in Sushil Kumar Mehta case [(1990) 1 SCC 193] .*

...

21. *For the reasons stated above, the appeal is accepted. The order passed by the High Court as well as the executing court regarding the executability of the decree passed by the civil court are set aside. It is held that the jurisdiction of the civil court to pass the decree for ejectment was barred. A decree passed by a court having no jurisdiction over the subject-matter would be a nullity and the judgment-debtor can object to the execution of such a decree being a nullity and non est. Its invalidity can be set up whenever it is sought to be enforced including the stage of execution of the decree or any other collateral proceedings. We are conscious of the fact that it would work a great hardship on the respondent decree-holder who would not be able to reap the benefit of the decree passed in his favour having won at all the stages but the vagaries of law cannot be helped. Accordingly, appeal is accepted. Orders of the High Court and the executing court are set aside. It is held that the decree obtained by the decree-holder cannot be executed being a nullity and non est. The parties are directed to bear their own costs.”*

33. In ***M.A. Murthy v. State of Karnataka***, (2003) 7 SCC 517, it was held:

***"7.** A writ appeal was filed before the Division Bench. The view of the learned Single Judge was affirmed by the Division Bench. A review application was filed inter alia taking the stand that the view in Ashok Kumar Sharma case No. I [1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857 : (1993) 24 ATC 798] has been later on overruled in Ashok Kumar Sharma v. Chander Shekher [(1997) 4 SCC 18 : 1997 SCC (L&S) 913] (described hereinafter as Ashok Kumar Sharma case No. II). Therefore, a review of the judgment of the Division Bench was necessary. The High Court by the impugned judgment held that though, admittedly, on 18-7-1995 i.e. on the date of advertisement Respondent 4 was not qualified to make an application, yet a few dates and facts are relevant. He had appeared for MBA examination in April 1995 and the results were declared on 4-9-1995. The written examination was held on 1-10-1995 and viva voce was conducted on 25-11-1995. At least by the time the written examination and the viva voce tests were held, he had acquired the requisite qualification. The judgment in Ashok Kumar Sharma case No. I [1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857 : (1993) 24 ATC 798] was delivered on 18-12-1992 and the decision in the review petition in the said case was rendered on 10-3-1997. The appointment of Respondent 4 was made when the earlier decision of Ashok Kumar Sharma case No. I [1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857 : (1993) 24 ATC 798] held the field. It was, therefore, held that on the date of selection, the first judgment held the field; and, therefore, by applying the logic of that decision the selection of Respondent 4 cannot be questioned.*

8.** The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. **<u>The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath v. State of Punjab[AIR 1967 SC 1643] . In Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299]</u>

and Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433] .) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case No. II[(1997) 4 SCC 18 : 1997 SCC (L&S) 913]. *All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.*

9. *That brings us to the ticklish question as to how the reliefs can be moulded. It is not in dispute that subsequently, the appellant has also been appointed on 9-11-2002. Though it was permissible for this case to set aside the appointments of Respondent 4 and Respondent 5, on the peculiar facts of this case, we consider it to be not called for and the rights of parties instead could be adjusted by working out equities, in the interests of substantial justice by adopting a different course. The appellant shall rank senior to Respondent 4 by treating his appointment to be with effect from the date of selection of Respondent 4. This shall be only for the purpose of fixing the seniority and continuity of service only and not for entitlement to any salary or other financial benefits. As Respondent 5 was only in the waiting list, and it is stated that he has been subsequently appointed, he will also rank below the appellant and Respondent 4. The appeals are accordingly allowed. There shall be no order as to costs."*

[Emphasis supplied]

34. In ***SBP & Co. v. Patel Engg. Ltd.,*** (2005) 8 SCC 618, it was held:

"142. *On the basis of the above findings, my conclusions are as under:*

(xii) All appointments of Arbitral Tribunals so far made without issuing notice to the parties affected are held legal and valid. Henceforth, however, every appointment will be made after issuing notice to such

*person or persons. **<u>In other words, this judgment will have prospective operation and it will not affect past appointments or concluded proceedings.</u>**"*

<u>[Emphasis supplied]</u>

35. In ***<u>ESI Corpn. v. Jardine Henderson Staff Assn</u>***., (2006) 6 SCC 581, it was held:

*"**62.** This Court under Article 142 of the Constitution of India is empowered to pass such orders as would do complete justice between the parties. This Court is also empowered to mould the relief in such a manner so that it is not only just but also equitable even while declaring the law as observed in para 25 of ONGC Ltd. v. Sendhabhai Vastram Patel [(2005) 6 SCC 454] and Raj Kumar v. Union of India [(2006) 1 SCC 737 : 2006 SCC (L&S) 216]. **<u>It is also permissible in law to prospectively overrule a judgment as has been done recently in SBP & Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618] If the appellant is now allowed to recover from the erstwhile covered employees, it would severely affect industrial relations. Reversal of the impugned order would lead to prosecution, penalty and also interest against the respondents without any fault of the respondents. The decision of this Court in ITDC Employees' Union [(2006) 4 SCC 257] is clearly distinguishable as unlike in the present case, in that case, the High Court did not give any positive direction. The decision of the High Court was not reversed by this Court.</u>***

***63.** The High Court under Article 226 and this Court under Article 136 read with Article 142 of the Constitution of India have the power to mould the relief in the facts of the case.*

***64.** Likewise, the judgment cited by the learned counsel for the appellant Corporation is in a different context altogether and the ratio of the said cases are not applicable to the present case.*

***65.** This apart the maxim of equity which is founded upon justice and good sense was applied as well as other maxim: lex non cogit ad impossibilia (i.e. the law does not compel a man to do what he cannot possibly perform). The applicability of the aforesaid maxim has been approved by this Court in Raj Kumar Dey v. Tarapada Dey [(1987) 4 SCC 398] and Gursharan Singh v. New Delhi Municipal Committee[(1996) 2 SCC 459] .*

***66.** The ESI Act was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. Under the scheme*

of the Act, function of the ESI Corporation is to derive insurance fund from the contribution from employers and workmen. The employer is entitled to recover the workmen's share from the wages of the workmen concerned. It was argued by the respondent that the employer is providing better medical facilities to the workmen and, therefore, the object and purpose of the Act has been fully satisfied. It is pertinent to notice that none of the employees of the unions have complained about medical services provided by the employers since the object is otherwise fulfilled. No further direction, in our opinion, is required to be passed.

67. *The act of court can prejudice no party, either the ESI or the respondent companies. We, therefore, relieve the respondents from making any contributions for the period in question and direct them to make the contribution as directed by the Division Bench of the High Court. It is stated that some of the respondents have already filed exemption applications and that the appellant Corporation has also granted them necessary relief. We also permit the other respondents who have not filed any exemption application may now file the same and if such application for exemption is filed, it is for the authorities to consider the same on merits and in accordance with law.*

68. *For the foregoing reasons, we dismiss all the appeals filed by the appellant Corporation in the peculiar facts and circumstances of the cases.* ***The High Court while upholding the notification has held that the same would apply from the date of the judgment. The said observation is justified in view of the facts and circumstances and the legal submissions made and considered in paragraphs supra.*** *No costs."*

[Emphasis supplied]

36. In ***State of U. P. v. Sugal & Damani***, (2007) 8 VST 469, it was held:

"4. *The decision in H. Anraj's case (1986) 1 SCC 414*, was specifically overruled prospectively by a Constitution Bench of this court in the case of Sunrise Associates v. Government of NCT of Delhi reported in (2006) 5 Scale 1 ; (2006) 5 JT SC 168**, with effect from the date of the judgment. It was held that the distinction sought to be drawn in H. Anraj's case (1986) 1 SCC 414*, between the chance to win and the right to participate in the draw was unwarranted. That there was no sale of "goods" within the meaning of Sales Tax Acts of the different States but at the highest, a transfer of an actionable claim. That lottery tickets are not "goods" and as per the provisions of the Sales Tax Act, tax is to be levied on the sale of "goods" only.*

** See (1986) 61 STC 165 (SC). ** See (2006) 145 STC 576 (SC);(2006) 3 VST 151;(2006) 6 RC 488.*

5. Explaining the principle of prospective overruling, a Constitution Bench of this court in the case of Somaiya Organics (India) Ltd. v. State of U. P. reported in (2001) 5 SCC 519*, observed in para 41 as follows :

".. . It is declared that the vend fee realised by the States is not to be refunded to the appellants and, at the same time, the State cannot collect any vend fee for the period prior to October 25, 1989 or thereafter notwithstanding that notices of demand may have been issued or recovery proceeding initiated. . ."

[Emphasis supplied]

***6.** Concurring with the view expressed in para 41, honourable Justice Ruma Pal explained the effect of prospective overruling in para 46 in the following terms :*

*"The argument of the appellant proceeds on a misunderstanding of the effect of prospective overruling. As has been elaborately stated in my learned brother's judgment, by prospective overruling the court does not grant the relief claimed even after holding in the claimant's favour. In this case, the court held that the statutory provision imposing vend fee was invalid. Strictly speaking, this would have entitled the appellant to a refund from the respondents of all amounts collected by way of vend fee. But because, as stated in the Synthetics decision (1990) 1 SCC 109** itself, over a period of time imposts and levies had been imposed by virtue of the earlier decision and that the States as well as the petitioners and manufacturers had adjusted their rights and their positions on that basis, this relief was denied. The court did not, by denying the relief, authorise or validate what had been declared to be illegal or void nor did it imbue the Legislature with competence up to the date of the judgment."*

to mean that neither the State will be liable to refund the tax, already collected nor collect any further tax for the period prior to the date of the judgment.

7. Mr. Soli Sorabjee, the learned Senior Counsel appearing for the respondent fairly concedes that respondents would not claim any refund of the tax, already paid but they would not be liable to pay any further tax."

[Emphasis supplied]

37. In ***CIT v. Saurashtra Kutch Stock Exchange Ltd*.**, (2008) 14 SCC 171, it was held:

> ***"35.*** *In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.*
>
> ***36.*** *Salmond in his well known work states:*
>
> *"[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime." (emphasis supplied)*
>
> ***37.*** *It is no doubt true that after a historic decision in Golak Nath v. State of Punjab [AIR 1967 SC 1643 : (1967) 2 SCR 762] this Court has accepted the doctrine of "prospective overruling". It is based on the philosophy:*
>
> *"The past cannot always be erased by a new judicial declaration."*
>
> *It may, however, be stated that this is an exception to the general rule of the doctrine of precedent.*
>
> ***38.*** *Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality.*
>
> ***39.*** *In S. Nagaraj v. State of Karnataka [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448] , Sahai, J. stated: (SCC p. 618, para 18)*
>
> *"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in administrative law as in public law. Even the law bends before justice. Entire concept of writ*

jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. In administrative law, the scope is still wider. Technicalities apart if the court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order."

***40.** In the present case, according to the assessee, the Tribunal decided the matter on 27-10-2000. Hiralal Bhagwati [(2000) 246 ITR 188 (Guj)] was decided few months prior to that decision, but it was not brought to the attention of the Tribunal. In our opinion, in the circumstances, the Tribunal has not committed any error of law or of jurisdiction in exercising power under sub-section (2) of Section 254 of the Act and in rectifying "mistake apparent from the record". Since no error was committed by the Tribunal in rectifying the mistake, the High Court was not wrong in confirming the said order. Both the orders, therefore, in our opinion, are strictly in consonance with law and no interference is called for.*

***41.** For the foregoing reasons, in our view, no case has been made out to interfere with the order passed by the Income Tax Appellate Tribunal, Ahmedabad and confirmed by the High Court of Gujarat. The appeal deserves to be dismissed and is accordingly dismissed. On the facts and in the circumstances of the case, however, the parties are ordered to bear their own costs.*

***42.** Before parting, we may state that we have not stated anything on the merits of the matter. As indicated earlier, the assessee has not approached this Court. Only the Revenue has challenged the order passed under Section 254(2) of the Act. The Tribunal, in view of the order of rectification, has directed the Registry to fix the matter for rehearing and as such, the appeal will be heard on merits. We, therefore, clarify that we may not be understood to have expressed any opinion one way or the other so far as exemption from payment of tax claimed by the assessee is concerned. As and when the Tribunal will hear the matter, it will decide on its own merit without being influenced by any observations made by it in the impugned order or in the order of the High Court or in this judgment."*

38. In ***Girdhar Kumar Dadhich v. State of Rajasthan*****,** (2009) 2 SCC 706, it was held:

> ***"13.*** *The select list was prepared in the year 1998. In our opinion it would be difficult to issue any direction for appointment of the appellants herein at this stage. Select list was prepared keeping in view the rules as they existed.* ***The said rules might have been declared ultra vires but as indicated hereinbefore this Court in exercise of its jurisdiction under Article 142 of the Constitution of India though it fit to give a prospective effect thereto.*** *It did so inter alia for the purpose of protecting the services of those teachers who had already been appointed and had been in service for a few years. Out of ten posts, eight teachers were appointed on or before 18-11-1999 which was the cut-off date.*
>
> ***[Emphasis supplied]***
>
> ***14.*** *Indisputably the merit list was modified in terms of the dicta laid down by this Court in Kailash Chand Sharma [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] . The question as to whether the fresh appointees who are, having regard to the said modification, required to be appointed on the premise that they are placed higher in the select list than the appellants or not, in our opinion, cannot be gone into by us for the first time since such a contention had never been raised before the High Court. The entire records of the matter, furthermore, are not before us.*
>
> ***15.*** *It is stated that two appointments were made in the year 2003—one against OBC quota and another against general quota. It is not possible for us to go into the question as to whether the entire quota for appointment in the category of OBC was filled up in the year 1998-1999 itself and thus appointment made against the vacant post from the said quota is illegal or not. The respondents concerned are not parties before us. We have not been informed as to whether any other person has been left out from the original merit list*
>
> **...**
>
> ***17.*** *In State of Rajasthan v. Jagdish Chopra [(2007) 8 SCC 161 : (2007) 2 SCC (L&S) 837] this Court held: (SCC pp. 164-65, paras 9 and 11)*
>
> *"9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of*

any rule, ordinary period of validity of select list should be one year. In State of Bihar v. Amrendra Kumar Mishra [(2006) 12 SCC 561 : (2007) 2 SCC (L&S) 132] this Court opined: (SCC p. 564, para 9)

'9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel.'

It was further held: (Amrendra Kumar case [(2006) 12 SCC 561 : (2007) 2 SCC (L&S) 132] , SCC p. 565, para 13)

'13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.'

*****

11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] and Asha Kaul v. State of J&K [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] .)"

39. In ***Rajasthan SRTC v. Bal Mukund Bairwa (2)***, (2009) 4 SCC 299, it was held:

*"**50.** We may also observe that the application of the doctrine of prospective overruling in Krishna Kant [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] may not be correct because either a court has the requisite jurisdiction or it does not have. It is a well-settled principle of law that the court cannot confer jurisdiction where there is none and neither can the parties confer jurisdiction upon a court by consent. If a court decides a matter without jurisdiction as has rightly been pointed out in Zakir Hussain [(2005) 7 SCC 447 : 2005 SCC (L&S) 945] in view of the seven-Judge Bench decision of this Court in A.R. Antulay [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] , the same would be a nullity and thus, the doctrine of prospective overruling shall not apply in such cases. Even otherwise, the doctrine of prospective overruling has a limited application. It ordinarily applies where a statute is declared ultra vires and not in a case where the decree or order is passed by a court/tribunal in respect whereof it had no jurisdiction. (See Golak Nath v. State of Punjab [AIR 1967 SC 1643] .)*

***51.** In M.A. Murthy v. State of Karnataka [(2003) 7 SCC 517 : 2003 SCC (L&S) 1076] this Court held: (SCC p. 521, para 8)*

"8. ... It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective

overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling."

(See also Ashok Kumar Sonkar v. Union of India [(2007) 4 SCC 54 : (2007) 2 SCC (L&S) 19] .)

***52.** As has been pointed by Justice Cardozo, in his famous compilation of lectures The Nature of the Judicial Process, that in the vast majority of cases, a judgment would be retrospective. It is only where the hardship is too great that retrospective operation is withheld. A declaration of law when made shall ordinarily apply to the facts of the case involved.*

***53.** We, therefore, answer the question of law referred before us and the matters be placed before the Division Bench for consideration of the facts of each case."*

40. In ***International Airport Authority of India v. International Air Cargo Workers' Union*, (2009) 13 SCC 374, it was held:

***"57.** In the light of our findings on the two questions the order of the Division Bench cannot be sustained and is liable to be set aside and the order of the learned Single Judge has to be restored.*

58.** We may however note that the last direction given by the learned Single Judge that in the event of the Central Government issuing a notification under Section 10 of the CLRA Act, all those who had worked as contract labour under the contract between IAAI and the Society should be absorbed in the same manner as was directed by this Court in Air India [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] is a direction which is bad in law, as subsequent to the said decision of the learned Single Judge, this Court in SAIL [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] , reversed the decision in Air India [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] . **IAAI did not challenge the said direction. SAIL [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] has also made it clear that the decision in Air India [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] is overruled prospectively and any declaration or direction issued by the industrial adjudicator or the High Court for absorption of contract labour following the judgment in Air India [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and shall not be set aside, altered or modified on the basis of the decision in SAIL [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] . Therefore, the said direction of the learned Single

Judge which has attained finality, as IAAI did not challenge the same, is not disturbed.

59. *In view of the above, the appeal is allowed in part, the order of the Division Bench is set aside and the order of the learned Single Judge is restored."*

[Emphasis supplied]

41. In ***A.P. Tourism Development Corpn. Ltd. v. Pampa Hotels Ltd.***, (2010) 5 SCC 425, it was held:

"Re: Question (ii)

21. *Let us next consider the question as to who should decide the question whether there is an existing arbitration agreement or not. Should it be decided by the Chief Justice or his designate before making an appointment under Section 11 of the Act, or by the arbitrator who is appointed under Section 11 of the Act? This question is no longer res integra.*

22. *It is held in SBP & Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618] and National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd. [(2009) 1 SCC 267] that the question whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement, is an issue which is to be decided by the Chief Justice or his designate under Section 11 of the Act before appointing an arbitrator. Therefore there can be no doubt that the issue ought to have been decided by the learned designate of the Chief Justice and could not have been left to the arbitrator.*

23. *But as noticed above, the learned designate proceeded on the basis that while acting under Section 11 of the Act, he was not acting under a judicial capacity but only under an administrative capacity and therefore he cannot decide these contentious issues. He did so by following the two decisions in Konkan Railway [(2000) 7 SCC 201] , [(2002) 2 SCC 388] which were then holding the field.*

24. *In SBP [(2005) 8 SCC 618] , a seven-Judge Bench of this Court overruled the two decisions in Konkan Railway [(2000) 7 SCC 201] , [(2002) 2 SCC 388] . The decision in SBP [(2005) 8 SCC 618] was rendered on 26-10-2005, a few weeks after the impugned decision by the designate on 16-8-2005. Having regard to the fact that several*

decisions rendered under Section 11 of the Act had followed the decisions in Konkan Railway [(2000) 7 SCC 201] , [(2002) 2 SCC 388] , this Court, when it rendered its decision in SBP [(2005) 8 SCC 618] , resorted to prospective overruling by directing as follows: (SBP case [(2005) 8 SCC 618] , SCC p. 664, para 47)

"(x) Since all were guided by the decision of this Court in Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd. [(2002) 2 SCC 388] and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or Arbitral Tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act."

(emphasis supplied)

25. *This Court in Sarwan Kumar v. Madan Lal Aggarwal [(2003) 4 SCC 147] observed: (SCC p. 157, para 15)*

"15. … The doctrine of 'prospective overruling' was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of 'prospective overruling' the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the doctrine of 'prospective overruling' is left to the discretion of the court to mould with the justice of the cause or the matter before the court." (emphasis supplied)

26. *Learned counsel for the appellants contended that the impugned order was rendered on 16-8-2005; that as on 26-10-2005 when the decision in SBP [(2005) 8 SCC 618] was rendered, the time for filing a special leave petition under Article 136 of the Constitution had not expired; that the special leave petition was filed by the appellant on 22-11-2005, which has been entertained by granting leave. The appellants therefore contend that this appeal should be considered as a continuation of the application under Section 11 of the Act or as pending matter to which the decision in SBP [(2005) 8 SCC 618] would apply, even though the designate had rendered the decision on 16-8-2005. The appellants submitted that a pending matter would refer not only to the original proceedings but also would include any appeal arising therefrom and therefore any proceeding which has not attained finality is a pending matter.*

__27.__ What the appellants contend, would have been the position if there was a statutory provision for appeal and SBP [(2005) 8 SCC 618] had directed that in view of prospective overruling of Konkan Railway [(2000) 7 SCC 201] , [(2002) 2 SCC 388] pending matters will not be affected. But sub-section (7) of Section 11 of the Act makes the decision of the Chief Justice or his designate final. There is no right of appeal against the decision under Section 11 of the Act. Further, the seven-Judge Bench in SBP [(2005) 8 SCC 618] issued the categorical direction that appointment of arbitrators made till then are to be treated as valid and all objections are to be left to be decided under Section 16 of the Act.

28. On account of the prospective overruling direction in SBP [(2005) 8 SCC 618] , any appointment of an arbitrator under Section 11 of the Act made prior to 26-10-2005 has to be treated as valid and all objections including the existence or validity of the arbitration agreement, have to be decided by the arbitrator under Section 16 of the Act. The legal position enunciated in the judgment in SBP [(2005) 8 SCC 618] will govern only the applications to be filed under Section 11 of the Act from 26-10-2005 as also the applications under Section 11(6) of the Act pending as on 26-10-2005 (where the arbitrator was not yet appointed).

[Emphasis supplied]

29. In view of this categorical direction in SBP [(2005) 8 SCC 618] , it is not possible to accept the contention of the appellant that this case should be treated as a pending application. In fact we may mention that in Maharshi Dayanand University v. Anand Coop. L/C Society Ltd. [(2007) 5 SCC 295] this Court held that if any appointment has been made before 26-10-2005, that appointment has to be treated as valid even if it is challenged before this Court.

[Emphasis supplied]

30 [Ed.: Para 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./54/2010 dated 6-5-2010.] . *In view of the above, we are not in a position to accept the contention of the appellant. But the arbitrator will have to decide the issue as to whether there is an arbitration agreement, with reference to the legal position explained by us in regard to the existence of arbitration agreement. Though such an exercise by the arbitrator will only be an academic exercise having regard to our decision in this case, such an exercise becomes inevitable in view of the peculiar position arising out of the specific direction contained in para 47(x) of the decision in SBP [(2005) 8 SCC 618] and the subsequent decision in Maharshi Dayanand University [(2007) 5 SCC 295] ."*

42. In ***Amrik Singh Lyallpuri v. Union of India*****,** (2011) 6 SCC 535, it was held:

> ***“30.*** *In view of the decision by this Court in Madras Bar Assn. [(2010) 11 SCC 1] , till a proper judicial authority is set up under the aforesaid Acts, the appeals to the Administrator under Section 347-D of the Delhi Municipal Corporation Act, 1957 and also under Section 256 of the NDMC Act shall lie to the District Judge, Delhi.* ***All pending appeals filed under the erstwhile provisions, as aforesaid, shall stand transferred to the Court of District Judge, Delhi. However, the decisions which have already been arrived at by the Administrator under the aforesaid two provisions will not be reopened in view of the principles of prospective overruling.***
>
> ***[Emphasis supplied]***
>
> ***31. The judgment of the High Court is, therefore, set aside and the appeal is allowed. There will be, however, no orders as to costs.”***
>
> ***[Emphasis supplied]***

43. In ***CCE v. Associated Cement Companies Ltd.*****,** (2011) 11 SCC 420, it was held:

> ***“5. Though the assessee is not entitled to the benefit as aforesaid, yet we cannot ignore the fact that the aforesaid amendment came into force on 1st April, 2000 when the order of the Tribunal dated 8-9-1999, in favour of the assessee was holding the field and it is being set aside today by this order. In this view, the time to make payment under Section 112(2)(b) has to commence only from today.*** *Further, having regard to the facts and circumstances of the case, it would be appropriate to set aside the penalty of Rs 50,000 imposed on the assessee by the Assistant Commissioner in the order dated 22-9-1998.*
>
> …
>
> ***7.*** *For the aforesaid reasons, we allow the review petition. The order dated 28-11-2002 [CCE v. Associated Cement Companies Ltd., (2003) 9 SCC 74] is recalled. Civil Appeal No. 2355 of 2000 is allowed. The order of the Tribunal dated 8-9-1999 is set aside and that of the Assessing Commissioner is restored subject to the aforesaid direction regarding deletion of imposition of penalty and the time for payment of interest.”*
>
> ***[Emphasis supplied]***

44. In ***CCE v. Rama Vision Ltd.*****,** (2011) 11 SCC 423, it was held:

"5. However, as provided by this Court in CCE v. Associated Cement Companies Ltd. [(2011) 11 SCC 420 : (2005) 180 ELT 3] , we also take note of the fact that the impugned judgment is dated 4-5-1999. The Validation Act came into force on 1-4-2000. We are applying it today. *The respondent is absent. He will have to be given time to make payment. We, therefore, direct that the time to make payment, as provided in sub-clause 2(b) of Section 112, will only commence from the date intimation of this order is given to the respondent by the appellant. We are also of the view that on these facts penalty cannot be imposed. Thus the imposition of penalty is set aside.*

6. *The appeal stands disposed of accordingly. There will be no order as to costs. The appellant to intimate the party forthwith."*

[Emphasis supplied]

45. In ***Ramesh Kumar Soni v. State of M.P.*****,** (2013) 14 SCC 696, it was held:

"19. *Even otherwise the Full Bench failed to notice the law declared by this Court in a series of pronouncements on the subject to which we may briefly refer at this stage. In Nani Gopal Mitra v. State of Bihar [AIR 1970 SC 1636 : 1970 Cri LJ 1396] , this Court declared that amendments relating to procedure operated retrospectively subject to the exception that whatever be the procedure which was correctly adopted and proceedings concluded under the old law the same cannot be reopened for the purpose of applying the new procedure. In that case the trial of the appellant had been taken up by Special Judge, Santhal Paraganas when Section 5(3) of the Prevention of Corruption Act, 1947 was still operative. The appellant was convicted by the Special Judge before the Amendment Act repealing Section 5(3) was promulgated. This Court held that the conviction pronounced by the Special Judge could not be termed illegal just because there was an amendment to the procedural law on 18-12-1964. The following passage is, in this regard, apposite: (AIR p. 1639, paras 5-6)*

*"5. ... It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force (see A Debtor, In re, ex p Debtor[(1936) 1 Ch 237 (CA)] and Attorney General v. Vernazza [1960 AC 965 : (1960) 3 WLR 466 : (1960) 3 All ER 97 (HL)]). The same principle is embodied in Section 6 of the General Clauses Act which is to the following effect: ****

6. The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by

the new procedure under the amended law, but whatever procedure was correctly adopted ***and concluded*** *under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on 31-3-1962 by the Special Judge, Santhal Parganas, long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas, has become illegal or in any way defective in law because of the amendment to procedural law made on 18-12-1964. In our opinion, the High Court was right in invoking the presumption under Section 5(3) of the Act even though it was repealed on 18-12-1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case."*

(emphasis supplied)

...

21. *The upshot of the above discussion is that the view taken by the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re, (2008) 3 MPLJ 311] holding the amended provision to be inapplicable to pending cases is not correct on principle. The decision rendered by the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re, (2008) 3 MPLJ 311] would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from the Sessions Court to the Court of the Magistrate, First Class under the orders of the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re, (2008) 3 MPLJ 311] may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us.*

22. The principle of prospective overruling has been invoked by this Court, no matter sparingly, to avoid unnecessary hardship and anomalies. That doctrine was first invoked by this Court in Golak Nathv. State of Punjab [AIR 1967 SC 1643] followed by the decision of this Court in Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299]

[Emphasis supplied]

__23.__ In Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (Cri) 433 : 1999 SCC (L&S) 682] , this Court invoked and adopted a device for avoiding reopening of settled issues, multiplicity of proceedings and avoidable litigation. The Court said: (SCC pp. 364-65, para 5)

"5. The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law."

(emphasis supplied)

__24.__ To the same effect is the decision of this Court in Harsh Dhingra v. State of Haryana [(2001) 9 SCC 550] where this Court observed: (SCC p. 556, para 7)

"7. The prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty andavoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty-bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation."

(emphasis supplied)

__25.__ In Sarwan Kumar v. Madan Lal Aggarwal [(2003) 4 SCC 147] , this Court held that though the doctrine of prospective overruling was initially made applicable to the matters arising under the Constitution but subsequent decisions have made the same applicable even to cases under different statutes. The Court observed: (SCC p. 157, para 15)

"15. ... The doctrine of 'prospective overruling' was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of 'prospective overruling' the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of the doctrine of 'prospective overruling' is left to the discretion of the court to mould with the justice of the cause or the matter before the court."(emphasis supplied)

***26.** In Rajasthan SRTC v. Bal Mukund Bairwa (2) [(2009) 4 SCC 299 : (2009) 2 SCC (Civ) 138 : (2009) 1 SCC (L&S) 812] , this Court relied upon the observations made by Justice Benjamin N. Cardozo in his famous compilation of lectures The Nature of Judicial Process that: (SCC p. 322, para 52)*

"52. ... in the vast majority of cases, a judgment would be retrospective. It is only where the [hardships are] too great that retrospective operation is withheld."

***27. The present case, in our opinion, is one in which we need to make it clear that the overruling of the Full Bench decision of the Madhya Pradesh High Court will not affect cases that have already been tried or are at an advanced stage before the Magistrates in terms of the said decision**."*

[Emphasis supplied]

46. In ***Bangalore City Coop. Housing Society Ltd. v. State of Karnataka*****,** (2012) 3 SCC 727, it was held:

***"129.** We have given serious thought to the submission of the learned counsel but have not felt convinced that this is a fit case for invoking the doctrine of prospective overruling, which was first invoked by the larger Bench in Golak Nath v. State of Punjab [AIR 1967 SC 1643 : (1967) 2 SCR 762] while examining the challenge to the constitutionality of the Constitution (Seventeenth Amendment) Act, 1964. That doctrine has been applied in the cases relied upon by the learned counsel for the appellant but, in our opinion, the present one is not a fit case for invoking the doctrine of prospective overruling because that would result in conferring legitimacy to the influence of money power over the rule of law, which is the edifice of our Constitution.*

__130.__ The finding recorded by the Division Bench of the High Court in Narayana Reddy case [ILR 1991 Kant 2248] that money had played an important role in facilitating the acquisition of land, which was substantially approved by this Court in three cases, is an illustration of how unscrupulous elements in the society use money and other extraneous factors for influencing the decision-making process by the Executive. In this case also the Estate Agent, namely, M/s Rajendra Enterprises with whom the appellant had entered into an agreement dated 21-2-1988 had played a crucial role in the acquisition of land. The tenor of that agreement does not leave any manner of doubt that the Estate Agent has charged huge amount of money from the appellant for getting the notifications issued under Sections 4(1) and 6(1) of the 1894 Act and sanction of layout plan by BDA.

__131.__ The respondents could not have produced any direct evidence that the Estate Agent had paid money for facilitating the acquisition of land but it is not too difficult for any person of reasonable prudence to presume that the appellant had parted with crores of rupees knowing fully well that a substantial portion thereof will be used by the Estate Agent for manipulating the State apparatus. Therefore, we do not find any justification to invoke the doctrine of prospective overruling and legitimise what has been found by the Division Bench of the High Court to be ex facie illegal."

47. In **Chandrashekaraiah v. Janekere C. Krishna,** (2013) 3 SCC 117, it was held:

"Other contentions

__156.__ It was submitted that the practice followed for the appointment of the Upa-Lokayukta in the present case is the same or similar to the practice followed in the past and, therefore, this Court should not interfere with the appointment already made. If at all interference is called for, the doctrine of "prospective overruling" should be applied.

__157.__ I am not inclined to accept either contention. Merely because a wrong has been committed several times in the past does not mean that it should be allowed to persist, otherwise it will never be corrected. The doctrine of "prospective overruling" has no application since there is no overwhelming reason to save the appointment of the Upa-Lokayukta from attack. As already held, in the absence of any consultation with the Chief Justice, the appointment of Justice Chandrashekaraiah as an Upa-Lokayukta is void ab initio. However, this will not affect any other appointment already made since no such appointment is under challenge before us.

158. *It was also contended that the High Court ought not to have laid down any procedure for the appointment of the Upa-Lokayukta. In the view that I have taken, it is not necessary to comment on the procedure proposed by the High Court.*

Conclusion

159. *The appointment of Justice Chandrashekaraiah as the Upa-Lokayukta is held void ab initio. Since some of the contentions urged by the appellants are accepted, the appeals are partly allowed to that extent only."*

48. In ***Punjab Urban Planning & Development Authority v. Amar Singh***, 2014 SCC OnLine SC 1872, it was held:

"4. *By an interim order dated 22nd May, 1996 passed in CWP No. 7401 of 1996, the writ petition was ordered to be heard along with CWP No. 5851 of 1996 (Anil Sabbarwal v. State of Haryana). It was further directed that the said writ petition would be treated as a Public Interest Litigation. The scope of the Court's enquiry, therefore, stood extended to examination of the question of discretionary allotments by all Authorities in the State of Punjab. Though both the writ petitions were to be heard together, CWP No. 5851 of 1996 (Anil Sabbarwal v. State of Haryana) came to be disposed[1] of earlier. The Special Leave Petition filed against the order passed in the writ petition striking down the discretionary quota also came to be dismissed[2]. Thereafter, CWP No. 7401 of 1996 (Amar Singh v. State of Punjab) was heard separately and following the decision in Anil Sabbarwal v. State of Haryana[1], the High Court interfered with the discretionary quota and the allotments made under the said quota with effect from 31st January, 1989 subject to the conditions by which some of the allotments came to be saved as mentioned in detail in the impugned order dated 25-7-2003[3] passed by the High Court.*

5. *It will also be required to be noticed at this stage that in the meantime in an order passed in a similar matter in the case of one Harsh Dhingra, an appeal was filed before this Court which came to be ordered on 28-9-2001[2]. In the said decision, which is reported in Harsh Dhingra v. State of Haryana[2], this Court took the following view.*

"6. ..... Therefore, we think that in the larger public interest and to avoid the discrimination which this Court had noticed in the order dated 5-12-1997[4] the decision of the High Court in Anil Sabbarwal case[1] should be made effective from a prospective date and in this case from the date on which interim order had been passed on 23-4-1996. Therefore, it would

be appropriate to fix that date as the date from which the judgment of the High Court would become effective. If this course is adopted, various anomalies pointed out in respect of different parties referred to above and other instances which we have not adverted to will be ironed out and the creases smoothened so that discrimination is avoided.

7. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. *Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty-bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation. These principles are enunciated by this Court in Baburam v. C.C. Jacob[5] and Ashok Kumar Gupta v. State of U.P.[6]."*

6. *Notwithstanding the fact that the aforesaid judgment of this Court in Harsh Dhingra[2] was noticed by the High Court, the principle laid down in Paras 6 and 7 of the judgment as extracted above was not adhered to and all discretionary allotments made with effect from 31st January, 1989 were struck down by the High Court by following its earlier decision in Anil Sabbarwal v. State of Haryana[1].*

7. *The Punjab Urban Planning & Development Authority (for short "PUDA"), whose allotments also faced the prospect of being affected by the order passed in Amar Singh v. State of Punjab, moved the High Court by way of review seeking the application of the doctrine of prospective overruling laid down in Para 7 of Harsh Dhingra[2]. The review application having been dismissed[7] by the High Court, the present appeal has been filed.*

…

9. *In the present appeal filed by PUDA, no details whatsoever of the names and identity of the allottees whose allotment has been affected by the order of the High Court are disclosed. The fact that the number of such allottees could be extensive cannot be a sufficient ground for this Court to pass orders which would be to the benefit of such persons without the basic foundational facts being laid down before this Court. In this regard, it must also be observed that not a single person who has been affected by the order of the High Court and who is likely to benefit if the doctrine of prospective overruling is to be applied is before the Court or had moved the High Court seeking appropriate relief. The PUDA*

has also not laid before this Court the present status of the land, namely, whether subsequently transfers have taken place in favour of bona fide purchasers and also whether such allotments have been cancelled pursuant to the impugned order passed by the High Court. Though our attention has been drawn to an order dated 8-8-2005[8] passed by the High Court in another connected proceeding i.e. CWP No. 4912 of 2004, which is similar to what has been prayed for in the present appeal, what we find from the aforesaid order of the High Court is that the directions contained therein were issued at the instance of an affected party and not on the application or prayer made by the PUDA or any other such authority.

***10.** In the absence of the requisite and relevant details in the appeal filed before us, as mentioned above, we are not inclined to go further into the claims made by the PUDA in the present appeal. We, therefore, do not entertain the appeal for the reasons stated above. However, we leave it open to the affected parties/persons to seek their remedies in law in the light of the decision of this Court in Harsh Dhingra[2], if they are so advised."*

[Emphasis supplied]

49. In ***Manmohan Sharma v. State of Rajasthan***, (2014) 5 SCC 782, it was held:

"11.** We have heard the learned counsel for the parties at considerable length who were at pains to take us through the judgment of this Court in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] over and over again. That was so because the entitlement of the appellants to any relief in these proceedings depends entirely upon whether the same is permissible in terms of the directions issued by this Court in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] . As noticed earlier in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] this Court invoked the doctrine of prospective overruling primarily for two reasons. Firstly, this Court observed that for nearly one decade selections had been made by awarding bonus marks to the residents of the districts concerned and the rural areas falling therein which method was upheld by the High Court in several decisions. Till the time the selection process in the present case was initiated and completed these decisions were holding the field. The correctness of those decisions was, however, doubted when the writ petitions filed by Kailash Chand Sharma and others came up for hearing before a learned Single Judge with the result that the matters were referred to a larger Bench. By the time the judgment in those writ petitions came to be delivered, the selection list of the candidates had been published in many districts. **The law was thus in a state of flux which justified invocation of the doctrine of

<u>prospective overruling. This Court said : (Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] , SCC p. 590, para 42)</u>

"42. … In the present case, the legality of the selection process with the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates in view of the judicial precedents. A cloud was cast on the said decisions only after the selection process was completed and the results were declared or about to be declared. It is, therefore, a fit case to apply the judgment of the Full Bench rendered subsequent to the selection prospectively."

<u>12. The second reason which this Court gave for invoking the doctrine of prospective overruling was that all those selected and appointed and selected for appointment on the basis of the impugned selection process had not been impleaded as parties to the writ proceedings. This Court observed : (Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] , SCC p. 590, para 42)</u>

"42. … One more aspect which is to be taken into account is that in almost all the writ petitions the candidates appointed, not to speak of the candidates selected, were not made parties before the High Court. Maybe, the laborious and long-drawn exercise of serving notices on each and every party likely to be affected need not have been gone through. At least, a general notice by newspaper publication could have been sought for or in the alternative, at least a few of the last candidates selected/appointed could have been put on notice; but, that was not done in almost all the cases. That is the added reason why the judgment treading a new path should not as far as possible result in detriment to the candidates already appointed. We are not so much on the question whether the writ petitioners were legally bound to implead all the candidates selected/appointed during the pendency of the petitions having regard to the fact that they were challenging the notification or the policy decision of general application; but, we are taking this fact into consideration to lean towards the view of the High Court that its judgment ought to be applied prospectively, even if the non-impleadment is not a fatal flaw."

<u>13. This Court next examined the extent of prospectivity that could be given to the declaration of law vis-à-vis the selection and appointment process under challenge.</u> *A threefold argument was noticed by this Court in that regard. Firstly, the Court noted the contention that those selected and/or appointed should remain unaffected of the law declared in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] for it would be more rational and logical to apply the judgment to future selections. The fortuitous circumstance of not being in a position to securing appointment orders for a variety of administrative reasons could not stand in the way of candidates already*

*appointed or to be appointed after the date of the judgment. The rival contention urged on behalf of the respondents that there was no legal or moral justification for making further appointments after 18-11-1999 when Kailash Chand Sharma case [Kailash Chand Sharma v. State, WP (C) No. 3928 of 1998, order dated 18-11-1999 (Raj)] was decided was also noticed by this Court. Reference was also made to the decision of this Court in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] and other cases relied upon by the selected candidates in support of the contention that the writ petitioners having taken a chance and participated in the selection process could not turn around and question the said process upon their failure to secure an appointment***. It was in the backdrop of all these submissions that this Court moulded the relief suitably and issued directions. This Court, it is evident, considered it just and proper to confine the relief only to such of the candidates as were the writ petitioners before the High Court with a direction that appointments made on or after 18-11-1999 in any of the districts shall remain subject to the claims of such appellants.***

***14.** Para 46 of the judgment of this Court in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] which holds the key to several questions raised before us may, at this stage, be extracted : (SCC pp. 591-92, para 46)*

"46. Having due regard to the rival contentions adverted to above and keeping in view the factual scenario and the need to balance the competing claims in the light of acceptance of prospective overruling in principle, we consider it just and proper to confine the relief only to the petitioners who moved the High Court and to make appointments made on or after 18-11-1999 in any of the districts subject to the claims of the petitioners. Accordingly, we direct:

1. The claims of the writ petitioners should be considered afresh in the light of this judgment vis-à-vis the candidates appointed on or after 18-11-1999 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 18-11-1999.

2. The appointments made up to 17-11-1999 need not be reopened and reconsidered in the light of the law laid down in this judgment.

3. Writ Petition No. 542 of 2000 filed in this Court under Article 32 is hereby dismissed as it was filed nearly one year after the judgment of the High Court and no explanation has been tendered for not approaching the High Court under Article 226 at an earlier point of time."

A careful reading of the above leaves no manner of doubt that:

(a) this Court invoked the doctrine of prospective overruling which implies that the law declared by this Court would apply only to future selections and appointments;

(b) that although prospective overruling left the appointments made before 18-11-1999 untouched, the writ petitioners who had moved the High Court had to be considered afresh vis-à-vis candidates appointed on or after 18-11-1999 or those in the select list without giving to such appointed/selected candidates the benefit of bonus marks under the circular; and

(c) that upon such consideration of the writ petitioners if they are found to be superior in merit than those appointed after 18-11-1999 they shall be offered appointments, if necessary, by removing the latter.

15. *It was strenuously contended by the learned counsel for the appellants that the expression "the appellants who moved the High Court" appearing in para 46 was wide enough and actually covered not only such of the writ petitioners as had approached the High Court in the two batch of cases decided by this Court in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] but also all such candidates as may have filed the writ petitions at any time after 18-11-1999 including those who filed such petition after 30-7-2002 when this Court decided the appeals in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] and connected matters.*

16. *We find it difficult to accept that contention. There is nothing in the judgment of this Court in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] or the directions that were issued in para 46 thereof to suggest that this Court was either conscious of or informed of pendency of any writ petition filed before the High Court after 18-11-1999. There is also nothing to suggest that this Court intended the benefit granted in terms of Direction (1) under para 46 to extend not only to the writ petitioners who had moved the High Court in Kailash Chand Sharma case [Kailash Chand Sharma v. State, WP (C) No. 3928 of 1998, order dated 18-11-1999 (Raj)] and in the writ petition filed by Naval Kishore and others but the same has intended to benefit all those who had or may have moved the High Court at any point of time. On the contrary there is positive indication of the fact that the Court did not intend to extend the benefit to any appellant who had challenged the award of bonus marks and the selection process on the basis thereof at any stage after 18-11-1999. This is evident from the fact that Writ Petition No. 542 of 2000 filed in this Court under Article 32 of the Constitution of India was dismissed by this Court in terms of Direction (3) under para 46 on the ground that the same had been filed nearly one year after the judgment of the High Court. The expression "as it has been filed after the judgment of the High Court" appearing in Direction (3) under para 46*

clearly suggests that for the grant of relief this Court had only petitions filed before the judgment in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] in mind and not those filed after 18-11-1999 [Kailash Chand Sharma v. State, WP (C) No. 3928 of 1998, order dated 18-11-1999 (Raj)] when the said judgment was pronounced. The observation of this Court that the writ petitioners had offered no explanation for not approaching the High Court under Article 226 of the Constitution at an earlier point of time too has two distinct facets, namely, (1) that the writ petitioners in Writ Petition No. 542 of 2000 should have ordinarily approached the High Court, and (2) They should have done so at an earlier point of time. The latter of these reasons again emphasised the importance this Court attached to the delay in the filing of the petitions in the matter of grant of relief for those who did not challenge the selection process in good time were not granted any relief.

***17.** Judged in the above backdrop the present appeals can be classified into two categories, namely, Category I comprising writ petitions that were filed after 18-11-1999 and before 30-7-2002 as was the position in Writ Petition No. 542 of 2000 filed under Article 32 and dismissed [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] by this Court and Category II comprising writ petitions that were filed after 30-7-2002. While there is nothing that could be logically argued in regard to Category II cases for extending the benefit of the judgment in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] to those cases, even in regard to Category I cases the judgment of this Court holds no hope for the appellants. All that was contended by the learned counsel for the appellants in Category I cases was that the writ petition in Naval Kishore Sharma's batch was filed after the pronouncement of the Full Bench judgment of the High Court in Kailash Chand Sharma case [Kailash Chand Sharma v. State, WP (C) No. 3928 of 1998, order dated 18-11-1999 (Raj)] . Grant of benefit to the appellants in Naval Kishore Sharma's batch of writ petitions and refusal of a similar treatment to the writ petitioners who had similarly filed their petitions no matter later in point of time would be unfair and inequitable. They contended that the relief given by this Court to Naval Kishore Sharma and others ought to be extended even to other similarly situated writ petitioners by construing the directions of this Court in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] liberally.*

***18.** There is, in our opinion, no merit in that contention either. In Category I cases none of the writ petitions were filed earlier than the date on which the writ petition in Naval Kishore Sharma's case was filed. At any rate, the argument that some writ petitions had been filed around the same time when Naval Kishore Sharma's case was decided may be no reason for us to enlarge the scope of the direction issued in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] which is*

on true and proper construction limited to the writ petitioners who had moved the High Court in those cases. We need to remind ourselves that we are not hearing a review petition in Kailash Chand Sharma case [(2002) 6 SCC 562 : 2002 SCC (L&S) 935] nor can we modify the order passed in that case. What cannot be done directly by us, cannot also be done indirectly by placing what is described as a liberal interpretation by the learned counsel for the appellants."

[Emphasis supplied]

50. In ***K. Madhava Reddy v. State of A.P.*****,** (2014) 6 SCC 537, it was held:

*"**10.** We have heard the learned counsel for the parties at length. The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in Golak Nath v. State of Punjab [Golak Nath v. State of Punjab, AIR 1967 SC 1643] , with this Court proceeding rather cautiously in applying the doctrine, was conscious of the fact that the doctrine had its origin in another country and had been invoked in different circumstances. The Court sounded a note of caution in the application of the doctrine to the Indian conditions as is evident from the following passage appearing in Golak Nath case [Golak Nath v. State of Punjab, AIR 1967 SC 1643] wherein this Court laid down the parameters within which the power could be exercised. This Court said : (AIR p. 1669, para 51)*

"51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions : (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

11. It is interesting to note that the doctrine has not remained confined to overruling of earlier judicial decision on the same issue as was understood in Golak Nath case [Golak Nath v. State of Punjab, AIR 1967 SC 1643] . *In several later decisions, this Court has invoked the doctrine in different situations including in cases where an issue has been examined and determined for the first time. For instance in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12] , this Court not only held that the levy of the cess was ultra vires the power of the State Legislature brought about by an amendment to the Madras Village Panchayat Amendment Act, 1964 but also directed that the State would*

not be liable for any refund of the amount of that cess which has been paid or already collected. In Orissa Cement Ltd. v. State of Orissa[1991 Supp (1) SCC 430] , this Court drew a distinction between a declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof. This Court held that it was open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way so as to advance the interest of justice.

12. *Reference may also be made to the decision of this Court in Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] where non-furnishing of a copy of the enquiry report was taken as violative of the principles of natural justice and any disciplinary action based on any such report was held liable to be set aside. The declaration of law as to the effect of non-supply of a copy of the report was, however, made prospective so that no punishment already imposed upon a delinquent employee would be open to challenge on that account.*

13. *In Ashok Kumar Gupta v. State of U.P. [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , a three-Judge Bench of this Court held that although Golak Nath case [Golak Nath v. State of Punjab, AIR 1967 SC 1643] regarding unamendability of fundamental rights under Article 368 of the Constitution had been overruled in Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225] yet the doctrine of prospective overruling was upheld and followed in several later decisions. This Court further held that the Constitution does not expressly or by necessary implication provide against the doctrine of prospective overruling. As a matter of fact Articles 32(4) and 142 are designed with words of width to enable the Supreme Court to declare the law and to give such directions or pass such orders as are necessary to do complete justice. This Court observed : (Ashok Kumar Gupta case [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , SCC pp. 246-47, para 54)*

"54. … So, there is no acceptable reason as to why the Court in dealing with the law in supersession of the law declared by it earlier could not restrict the operation of law, as declared, to the future and save the transactions, whether statutory or otherwise, that were effected on the basis of the earlier law. This Court is, therefore, not impotent to adjust the competing rights of parties by prospective overruling of the previous decision in Rangachari [Southern Railway v. Rangachari, AIR 1962 SC 36] ratio. The decision in Mandal case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] postponing the operation for five years from the date of the judgment is an instance of, and an extension to the principle of prospective

overruling following the principle evolved in Golak Nath case [Golak Nath v. State of Punjab, AIR 1967 SC 1643] ."

14. Dealing with the nature of the power exercised by the Supreme Court under Article 142, this Court held that the expression "complete justice" are words meant to meet myriad situations created by human ingenuity or because of the operation of statute or law declared under Articles 32, 136 or 141 of the Constitution. *This Court observed : (Ashok Kumar Gupta case [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , SCC pp. 250-51, para 60)*

"60. ... The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase 'complete justice' engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise."

15. *In Somaiya Organics (India) Ltd. v. State of U.P. [(2001) 5 SCC 519] , this Court held that the doctrine of prospective overruling was in essence a recognition of the principle that the court moulds the relief claimed to meet the justice of the case and that the Apex Court in this country expressly enjoys that power under Article 142 of the Constitution which allows this Court to pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before this Court. This Court observed : (SCC p. 532, para 27)*

"27. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case — justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to 'pass such decree or make such order as is

necessary for doing complete justice in any cause or matter pending before it'. In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do 'complete justice'."

16. The "doctrine of prospective overruling" was, observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law.

***17.** In Kailash Chand Sharma v. State of Rajasthan [Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562 : 2002 SCC (L&S) 935] , the constitutional validity of the rules providing for weightage based on domicile of the candidates was assailed before the High Court of Rajasthan. The High Court while reversing its earlier decisions upholding the grant of such weightage declared the rule to be unconstitutional. In an appeal before this Court one of the questions that fell for consideration was whether the selection made on the basis of the impugned rule could be saved by invoking the doctrine of prospective overruling. Answering the question in the affirmative, this Court cited two distinct reasons for invoking the doctrine:*

***17.1.**Firstly, it was pointed out that the law on the subject was in a state of flux inasmuch as the previous decisions of the High Court had approved the award of such weightage**. This Court observed that on the date, the selection process started and by the time it was completed, the law as declared in the earlier decisions of the High Court held the field. Reversal of that legal position on account of a subsequent decision overruling the earlier decisions was considered to be a sufficient reason for complying with the doctrine of prospective overruling to save the selection process and the appointments made on the basis thereof.** Reliance in support was placed upon the decision of this Court in ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] .*

***17.2.**Secondly, this Court held that candidates who stood appointed on the basis of the selection process had not been impleaded as parties to the writ petitions that challenged the Rules providing for marks based on the domicile of the candidates. **That being so, a judgment treading a new path should not as far as possible result in detriment to the candidates already appointed.** The following observations made by this Court are apposite in this regard : (Kailash Chand Sharma*

case [Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562 : 2002 SCC (L&S) 935] , SCC p. 590, para 42)

"42. … By the time the selection process was initiated and completed, these decisions were holding the field. However, when the writ petitions filed by Kailash Chand and others came up for hearing before a learned Single Judge, the correctness of the view taken in those two decisions was doubted and he directed the matters to be placed before the learned Chief Justice for constituting a Full Bench. By the time this order was passed on 19-7-1999, we are informed that the select lists of candidates were published in many districts. On account of the stay granted for a period of three months and for other valid reasons, further lists were not published. It should be noted that in a case where the law on the subject was in a state of flux, the principle of prospective overruling was invoked by this Court. The decision in ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] is illustrative of this viewpoint. In the present case, the legality of the selection process with the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates in view of the judicial precedents. A cloud was cast on the said decisions only after the selection process was completed and the results were declared or about to be declared. It is, therefore, a fit case to apply the judgment of the Full Bench rendered subsequent to the selection prospectively. One more aspect which is to be taken into account is that in almost all the writ petitions the candidates appointed, not to speak of the candidates selected, were not made parties before the High Court. Maybe, the laborious and long-drawn exercise of serving notices on each and every party likely to be affected need not have been gone through. At least, a general notice by newspaper publication could have been sought for or in the alternative, at least a few of the last candidates selected/appointed could have been put on notice; but, that was not done in almost all the cases. That is the added reason why the judgment treading a new path should not as far as possible result in detriment to the candidates already appointed."

…

***19.** Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of the appellants, on the other hand, argued and, in our opinion, rightly so that it was unnecessary for this Court to go into the question whether the doctrine of prospective overruling was available even to the High Court. He urged that there could be no manner of doubt that even if the High Court was not competent to invoke the doctrine, nothing prevented this Court from doing so having regard to the fact that those promoted under the impugned Rules had held their respective positions for a considerable length of time making reversion to their parent zone/cadre not only administratively difficult but unreasonably harsh and unfair. It was argued by Mr Jayant Bhushan that the law as to the validity of the Rules impugned in the present case was in a state of flux till the*

judgment of this Court in Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] finally declared that provisions like the one made by the Rules in the instant case are constitutionally impermissible being in violation of the Presidential Order. That apart no promotion had been made after 7-11-2001, the date when the judgment of this Court in Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] was pronounced. Such of the promotions as were already made could therefore be saved to balance equity and prevent miscarriage of justice vis-à-vis those who had on the basis of a rule considered valid during the relevant period been promoted against posts outside their zone/cadre.

***20.** In Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] , the petitions were filed in the year 1987. The State Administrative Tribunal had declared the rule providing for interdepartmental transfer by promotion to be bad by its order dated 17-4-1995. The legal position eventually came to be settled by the decision of this Court in the case on 7-11-2001. The petitions in the present case were filed before the State Administrative Tribunal in the year 1997. The Tribunal had on the authority of the judgment aforementioned struck down the Rules providing for ex cadre/zone promotions by its order dated 27-3-2003, but saved the promotions already made. The judgment of the High Court of Andhra Pradesh in the WPs challenging the order passed by the Tribunal to the extent it saved the promotions earlier made was pronounced on 9-3-2007 [G. Rajababu v. State of A.P., (2007) 4 ALD 105] . The review petition filed by those affected by the striking down of the Rules and facing the prospects of reversion were dismissed by the High Court on 3-11-2010. The promotions made before the pronouncement of the order in Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] i.e. before 7-11-2001 have, thus, continued for nearly ten years till the review petition filed by the petitioners was dismissed and the matter brought up before this Court. We had in that backdrop asked the learned counsel for the respondent State to take instructions whether the State Government was ready to create supernumerary posts to accommodate the petitioners and prevent their reversion.*

…

***23.** The fact that the petitioners were not arrayed as parties before the Tribunal or before the High Court also brings the fact situation of the present case closer to that in Kailash Chand case [Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562 : 2002 SCC (L&S) 935] . The law in the present case was, as in Kailash Chand case [Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562 : 2002 SCC (L&S) 935] , in a state of flux. Such being the position, we see no reason why the doctrine of prospective overruling cannot be invoked in the instant*

case. Just because, this Court had not addressed that question in Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] is also no reason for us to refuse to do so in the present case. That apart, Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] was dealing with a different set of norms comprising GOMs Nos. 14 and 22 referred to earlier. While the basic question whether such GOMs permitting promotion by transfer from one department to the cadre or zone of another may have been the same, it cannot be denied that the Rules with which this Court was concerned in Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] were different from those with which we are dealing in the present case. We feel that on the question of application of doctrine of prospective overruling, the judgment in Jagannadha Rao case [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] will not stand as an impediment for this Court.

24. In the result, we allow these appeals, set aside the orders passed by the High Court and hold that while GOMs Nos. 14 and 22 have been rightly declared to be ultra vires of the Presidential Order by the State Administrative Tribunal, the said declaration shall not affect the promotions and appointments made on the basis of the said GOMs prior to 7-11-2001, the date when Jagannadha Rao [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] was decided by this Court. The parties are left to bear their own costs."

[Emphasis supplied]

51. In ***Sepal Hotel (P) Ltd. v. State of Punjab***, (2014) 7 SCC 269, it was held:

"26. We have given our anxious thought to the aforesaid submissions of the learned counsel for the parties. It is a common case of the parties that the judgment in Yogendra Pal [Yogendra Pal v. Municipality, Bhatinda, (1994) 5 SCC 709] is prospective i.e. from the date of judgment which is 15-7-1994. It is also a common case of the parties that the Scheme in question was framed much earlier. *Thus, as pointed out above, the only issue is as to whether the Scheme had attained finality and answer to this question depends upon another issue viz. whether objections of the appellant to the Scheme were disposed of by Respondent 2 or not, in compliance with directions dated 19-6-1980 of the High Court.*

[Emphasis supplied]

52. In ***B.A. Linga Reddy v. Karnataka State Transport Authority***, (2015) 4 SCC 515, it was held:

> ***"34.*** *The view of the High Court in Ashrafulla [Karnataka SRTC v. Ashrafulla, Writ Appeal No. 403 of 1988, order dated 21-7-1988 (KAR). For order, see Karnataka SRTC v. Ashrafulla Khan, (2002) 2 SCC 560 at pp. 565-66, para 3] has been reversed by this Court. The decision is of retrospective operation, as it has not been laid down that it would operate prospectively; more so, in the case of reversal of the judgment. This Court in P.V. George v. State of Kerala [(2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] held that the law declared by a court will have a retrospective effect if not declared so specifically. Referring to Golak Nath v. State of Punjab [AIR 1967 SC 1643] it had also been observed that the power of prospective overruling is vested only in the Supreme Court and that too in constitutional matters. It was observed: (P.V. George case [(2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , SCC pp. 565 & 569, paras 19 & 29)*
>
> *"19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens.* ***The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term.*** *The decisions of this Court are clear pointer thereto.*
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> *****
>
> *29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."*
>
> ***35.*** *In Ravi S. Naik v. Union of India [1994 Supp (2) SCC 641] , it has been laid down that there is retrospective operation of the decision of this Court. The interpretation of the provision becomes effective from the date of enactment of the provision. In M.A. Murthy v. State of Karnataka [(2003) 7 SCC 517 : 2003 SCC (L&S) 1076] , it was held that the law declared by the Supreme Court is normally assumed to be the law from inception. Prospective operation is only exception to this normal rule. It was held thus: (M.A. Murthy case [(2003) 7 SCC 517 : 2003 SCC (L&S) 1076] , SCC pp. 520-21, para 8)*
>
> *"8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court*

enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. ***The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in Golak Nath v. State of Punjab [AIR 1967 SC 1643] . In ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (Cri) 433 : 1999 SCC (L&S) 682] .) It is for this Court to indicate as to whether the decision in question will operate prospectively.*** *In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling.* ***The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs.*** *That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] . All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."*

36. *It was also submitted on behalf of one of the operators that as some of the permits granted were illegally cancelled, fixation of the cut-off date and validating the permits held on the cut-off dates would be discriminatory as that would create monopoly in favour of the incumbent private operators who were operating their vehicles on the cut-off date.*

37. *It was submitted on behalf of Ksrtc that it was at the behest of the private operators that the exercise of modification had been undertaken by the State Government.*

38. *We refrain to dilate upon the various aforesaid aspects as these were required to be considered by the State Government when such objections had been taken before it by Ksrtc. It was necessary to consider, inter alia, the objections raised by Ksrtc as to the necessity of modification, legality of the permits which were granted and the plea of discrimination so raised by other operators including the observation made above by this Court in Karnataka SRTC v. Ashrafulla Khan [Karnataka SRTC v. Ashrafulla Khan, (2002) 2 SCC 560 : AIR 2002 SC 629] .*

39. *Resultantly, the appeals being bereft of merits are hereby dismissed. Let the State Government hear the objections, consider and decide the same in accordance with law by a reasoned order within three months. In the intervening period, the arrangement as directed by the High Court in the impugned order to continue."*

[Emphasis supplied]

53. In ***Union of India v. I.P. Awasthi*****,** (2015) 17 SCC 340, it was held:

"3. *There is no doubt that this Court has evolved the doctrine of prospective overruling in order to avoid confusion in matters where large number of parties have settled their affairs by the law which stood before the overruling was done by this Court. We are, however, unable to accede to the request made by the learned counsel for the appellants for two reasons. First, we are informed at the Bar that the amendment to the Rules was made in the year 1992 and CAT set aside the amendment in the year 2000. During this period, there were only 12 promotions that were granted under the amended Rules. As a consequence of the order of CAT being upheld by the judgment [Union of India v. I.P. Awasthi, WP (C) No. 5460 of 2001, order dated 5-2-2002 (Del)] of the High Court under challenge, it is only 12 cases which have to be reopened. We are not, therefore, satisfied that large public interest is likely to be affected by permitting the amended Rule being struck down retrospectively from the date on which it was amended. Second, the doctrine of prospective overruling pertains only to the powers of this Court. As far as CAT is concerned, we doubt that there is any such doctrine available for exercise of its powers. For both reasons, we decline the suggestion made.*

__4.__ Since neither party is really aggrieved by the law declared in the judgment [Union of India v. I.P. Awasthi, WP (C) No. 5460 of 2001, order dated 5-2-2002 (Del)] impugned before us, the appeal is dismissed as infructuous. No order as to costs."

54. In ***__Suresh Chand Gautam v. State of U.P.__***, (2016) 11 SCC 113, it was held:

__"13.__ It is contended by Dr Chauhan that the decision in Rajesh Kumar [U.P. Power Corpn. Ltd. v. Rajesh Kumar, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289] has a prospective application. To buttress the said submission he has commended us to paras 85 to 87. Placing reliance on the said paragraphs, it is argued by Dr Chauhan that the provisions of Section 3(7) of the 1994 Act remained in force up to 7-5-2012 as it was omitted by the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Amendment Ordinance, 2012. We do not intend to address to the said facets. Suffice it to say, the Court in Rajesh Kumar [U.P. Power Corpn. Ltd. v. Rajesh Kumar, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289] has clearly held that Section 3(7) of the 1994 Act and Rule 8-A of the 2007 Rules are ultra vires. What has been stated in the said judgment is that any promotion that has been given on the dictum of Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and without the aid or assistance of Section 3(7) and Rule 8-A was to remain undisturbed. Thus, the decision has made it distinctly clear what has been stated.

__14.__ The stand that the provisions remained in force till the State omits it by an omission has no force. When the statutory provisions and the Rules have been declared ultra vires, the two-Judge Bench was absolutely conscious what is to be stated and accordingly, has directed so. In this regard, reference may be made to the decision in Ganga Ram Moolchandani v. State of Rajasthan [Ganga Ram Moolchandani v. State of Rajasthan, (2001) 6 SCC 89 : 2001 SCC (L&S) 928] , wherein a particular rule was declared ultra vires. A contention was advanced that the Court must hold that the decision would have prospective operation to avoid a lot of complications. The Court referred to the authorities in Ganga Ram Moolchandani [Ganga Ram Moolchandani v. State of Rajasthan, (2001) 6 SCC 89 : 2001 SCC (L&S) 928] and observed thus: (SCC p. 104, para 20)

"20. ... To meet the then extraordinary situation that may be caused by the said decision, the Court felt that it must evolve some doctrine which had roots in reason and precedents so that the past may be preserved and the future protected. In that case it was laid down that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution and the same can be applied only by this Court in its

discretion to be moulded in accordance with the justice of the cause or matter before it."

After so stating, the Court proceeded to hold as follows: (SCC p. 104, para 20)

"20. Accepting the lead given in the above decision, this Court has since extended the doctrine to the interpretation of ordinary statutes as well. In the cases of Waman Rao v. Union of India [Waman Rao v. Union of India, (1980) 3 SCC 587] , Atam Prakash v. State of Haryana [Atam Prakash v. State of Haryana, (1986) 2 SCC 249] , Orissa Cement Ltd. v. State of Orissa [Orissa Cement Ltd. v. State of Orissa, 1991 Supp (1) SCC 430] , Union of India v. Mohd. Ramzan Khan [Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] and ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the device of prospective overruling was resorted to even in the case of ordinary statutes. We find in the fitness of things, the law decided in this case be declared to be prospective in operation."

***15.** In the said case, eventually the Court, while declaring the Rules ultra vires, opined that: (Ganga Ram Moolchandani case [Ganga Ram Moolchandani v. State of Rajasthan, (2001) 6 SCC 89 : 2001 SCC (L&S) 928] , SCC p. 105 para 24)*

"24. … It is made clear that this judgment will not affect any appointment made prior to this date under the Rules which have been found to be invalid hereinabove."

***16.** In M.A. Murthy v. State of Karnataka [M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076] , it has been held that: (SCC p. 521, para 8)*

"8. … It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case (2) [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] . All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the

subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."

***17.** Tested on the aforesaid principles, it is luminescent that the pronouncement in Rajesh Kumar [U.P. Power Corpn. Ltd. v. Rajesh Kumar, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289] is by no means prospective. The declaration is clear and the directions are absolutely limpid. The Court has not stated that the entire past promotions should be saved. It allows limited sphere of saving. Thus viewed, the submission that prospectivity is inhered in the said judgment does not appeal to us. If a promotee is saved as per the judgment of the said case, the same is saved; and for that reason, the Court has already directed in certain interlocutory applications that the promotees who have been reversed, their grievance shall be looked into by a committee and the decision of the committee can directly be challenged by way of interlocutory application before this Court in this case. We may ingeminate without any reservation that by no means prospectivity in entirety can be given to the said decision.*

***18.** The centripodal stand of the petitioners is that assuming the principle stated in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] is correct and what has been stated in Rajesh Kumar case [U.P. Power Corpn. Ltd. v. Rajesh Kumar, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289] following the dictum in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] holds sound; then also the enabling constitutional provisions cannot remain absolutely static. The constitutional amendments have been brought in, and once they have been held valid, it is the obligation of the State and the competent authority to give effect to the same as per the norms envisaged in the judgments of this Court. In case the said exercise is not carried out, it is the constitutional duty of this Court to see that the constitutional norm, philosophy and the purpose are worked out, especially keeping in view Articles 16(4), 16(4-A), 16(4-B), 46 and 335 of the Constitution of India and also the principle of affirmative action which is meant for certain historically disadvantaged groups."*

55. In ***Uddar Gagan Properties Ltd. v. Sant Singh***, (2016) 11 SCC 378, it was held:

*"**13.** Dr Dhavan added that the issues of undue influence could be decided only in a suit. **The finding of mala fides was recorded unmindful of the standard of the proof required and requirement of impleading party against whom allegation was made. In any case, the relief could be moulded having regard to the transactions which had already taken place laying down law prospectively.** It was also*

submitted that after acquisition, HUDA could dispose of the acquired land even without carrying out any development thereon. Acquisition could not be challenged after the award. Bona fide purchasers were entitled to restitution.

14. *Shri Salve submitted that as against the problem of farmers on account of the forcible acquisition, equally serious problem of urban middle classes for living space needs to be considered. Once acquisition is quashed, the validity of sale by farmers to the builder should be left to be gone into in private law remedy where equity could be balanced. If the acquisition is valid and the order of release under Section 48 is quashed, the land has to revert to the State. In this fact situation, the impugned order could not be justified. In the absence of cross-examination and weighing of equities, the land could not be returned to the landowners who have already received the compensation or the sale consideration. The alleged fraud and undue influence or coercion may render a contract voidable but not void and the civil court has to balance equities for setting aside such a sale.*

…

26. *In view of the above, we do not find any ground to interfere with the finding recorded by the High Court that there was an abuse of power in releasing the land in favour of the builder. Once it is found that action of the State and the builder resulting in transfer of land from landowners to the builder was without any authority of law and by colourable exercise of power, none of the contentions raised by the builder could be accepted [Vyalikaval Housebuilding Coop. Society v. V. Chandrappa, (2007) 9 SCC 304] .* ***We may consider the issue of moulding relief separately but the builder cannot be allowed to retain the land acquired illegally. Undoing of such illegal actions would clearly be in the interests of justice. The wrong has to be remedied.***

27. *We find that the operative part of the order passed by the High Court needs modification. The entirety of the acquisition need not be quashed. What needs to be quashed is the abuse of power and illegal consequential actions which took place after the acquisition notifications. The High Court has rightly observed that the notified public purpose was valid but the subsequent events resulted in illegality. The High Court also rightly held that it will be inappropriate to release the land in favour of the builder by permitting the builder to take over the property and granting licence for colonisation on the land covered by acquisition [Sant Singh v. State of Haryana, 2013 SCC OnLine P&H 26646, para 69] . Further, the view of the High Court that doctrine of severability cannot be invoked and the entire acquisition was liable to be quashed needs modification in the facts of this case.*

find out the considerations for such misuse.

...

30. *Land is scarce natural resource. Owner of land has guarantee against being deprived of his rights except under a valid law for compelling needs of the society and not otherwise. The commercial use of land can certainly be rewarding to an individual. Initiation of acquisition for public purpose may deprive the owner of valuable land but it cannot permit another person who may be able to get permission to develop colony to take over the said land. If the law allows the State to take land for housing needs, the State itself has to keep the title or dispose of land consistent with Article 14 after completion of acquisition. If after initiation of acquisition, process is not to be completed, land must revert back to owner on the date of Section 4 notification and not to anyone else directly or indirectly. This is not what has happened.*

31. *As already observed, the power to release land from acquisition has to be exercised consistent with the doctrine of public trust and not arbitrarily. Functioning of a democratic Government demands equality and non-arbitrariness. Rule of law is the foundation of a democratic society [Noida Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508, paras 40-41 : (2011) 2 SCC (Cri) 1015 : (2011) 2 SCC (L&S) 717] .*

32. However, having regard to the irreversible situation which has been brought about, though in normal circumstances land may have reverted to landowners, the relief will have to be moulded.

33. *Keeping the above in mind, we are of the view that ends of justice will be served by moulding the relief as follows:*

33.1. *Notifications dated 11-4-2002, 8-4-2003 and awards dated 6-4-2005 are upheld. The land covered thereby vests in HUDA free from all encumbrances. HUDA may forthwith take possession thereof.*

33.2. *All release orders in favour of the builder in respect of land covered by the award in exercise of powers under Section 48 are quashed.*

33.3. *Consequently, all licences granted in respect of the land covered by acquisition will stand transferred to HUDA.*

33.4. *Sale deeds/other agreements in favour of the builder in respect of the said land are quashed. The builder will not be entitled to recover the*

consideration paid to the owners but will be entitled to reimbursement as indicated hereinafter. Creation of any third-party rights by the builder also stands quashed.

33.5. *The sale consideration paid by the builder to the landowners will be treated as compensation under the award. The landowners will not be required to refund any amount. The landowners who have not received compensation will be at liberty to receive the same. The landowners will also be at liberty to prefer reference under Section 18 of the 1894 Act within a period of three months, if such reference has not been earlier preferred.*

33.6. *The builder will be entitled to refund/reimbursement of any payments made to the State, to the landowners or the amount spent on development of the land, from HUDA on being satisfied about the extent of actual expenditure not exceeding HUDA norms on the subject. Claim of the builder will be taken up after settling claim of third parties from whom the builder has collected money. No interest will be payable on the said amount.*

33.7. *The third parties from whom money has been collected by the builder will be entitled to either the refund of the amount, out of and to the extent of the amount payable to the builder under the above direction, available with the State, on their claims being verified or will be allotted the plots at the price paid or price prevalent, whatever is higher. No interest will be payable on the said amount.*

33.8. *The State shall give benefit of "Rehabilitation and Resettlement of Land Acquisition Oustees" policy of the State/HUDA to the landowners. Area so required shall be reserved out of the acquired land itself.*

33.9. *The State Government may enquire into the legality and bona fides of the action of the persons responsible for illegally entertaining the applications of the builder and releasing the land to it, when it had no title to the land on the date of the notification under Section 4 of the 1894 Act and proceed against them in accordance with law.*

33.10. *This judgment be complied with within one year.*

33.11. *Quarterly progress report of the action taken in pursuance of this judgment be filed by the State in this Court and final report of*

compliance may be filed within one month after expiry of one year from today for such further direction as may become necessary.

34. *The matters will be treated as disposed of except for consideration of the report of compliance to be submitted by the State Government."*

[Emphasis supplied]

56. In ***State of Rajasthan v. Nemi Chand Mahela*****,** (2019) 14 SCC 179, it was held:

"13. *Our attention was also drawn to the case of Neeraj Saxena in whose case the writ appeal filed by the State Government against the order of the Single Judge was dismissed on the ground of delay and inaction. The special leave petition against the decision of the Division Bench was also dismissed on the ground of delay. This decision of the Division Bench in Neeraj Saxena and the dismissal of the special leave petition on the ground of delay does not lay down any ratio in the form of precedent. At best, the decision of the Single Judge in Neeraj Saxena as in Danveer Singh would apply to the specific candidates in whose case the decision would operate as res judicata.* ***This, however, would not be a ground to negate and nullify the ratio and direction invoking the doctrine of prospective overruling, applied in Kailash Chand Sharma case [Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562 : 2002 SCC (L&S) 935] , which was thereafter affirmed and elucidated by this Court in Manmohan Sharma case[Manmohan Sharma v. State of Rajasthan, (2014) 5 SCC 782 : (2014) 2 SCC (L&S) 8] .***

14. *In view of the aforesaid discussion, we hold that the candidates who had not filed writ petitions on or before 17-11-1999 would not be entitled to appointment upon recalculation of marks by exclusion of bonus marks from the marks of the selected candidates. The aforesaid direction would not apply to individual cases where the principle of res judicata would apply i.e. wherein the decision of the Single Judge or the Division Bench has become final since it was not challenged before the Division Bench or before this Court. All other pending writ petitions and appeals, before the High Court, would be disposed of and decided on the basis of decisions in Kailash Chand Sharma [Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562 : 2002 SCC (L&S) 935] , Manmohan Sharma [Manmohan Sharma v. State of Rajasthan, (2014) 5 SCC 782 : (2014) 2 SCC (L&S) 8] cases and the present matter, subject to condonation of delay, when justified and satisfactorily explained."*

[Emphasis supplied]

57. In ***Asha John Divianathan v. Vikram Malhotra***, (2021) 19 SCC 629, it was held:

> ***"49.*** *We hold that the condition predicated in Section 31 of the 1973 Act of obtaining "previous" general or special permission of RBI for transfer or disposal of immovable property situated in India by sale or mortgage by a person, who is not a citizen of India, is mandatory. Until such permission is accorded, in law, the transfer cannot be given effect to; and for contravening with that requirement, the person concerned may be visited with penalty under Section 50 and other consequences provided for in the 1973 Act. Hence, the trial court as well as the High Court committed manifest error in dismissing the suit filed by the plaintiff for a declaration in respect of suit property admeasuring 12,306 sq ft and for consequential reliefs referred to therein.*
>
> ***50.*** *A priori, we conclude that the decisions of the High Courts concerned taking the view that Section 31 of the 1973 Act is not mandatory and the transaction in contravention thereof is not void or unenforceable, is not a good law.* ***However, transactions which have already become final including by virtue of the decision of the court of competent jurisdiction, need not be reopened or disturbed in any manner because of this pronouncement. This declaration/direction is being issued in exercise of our plenary power under Article 142 of the Constitution of India. For, there has been a paradigm shift in the general policy of investment by foreigners in India and more particularly, the 1973 Act itself stands repealed. Accordingly, we deem it appropriate to overrule the decisions of the High Courts, taking contrary view, albeit, prospectively.***
>
> ***51.*** *In view of the above, the appeal is allowed. The impugned judgment and decree of the trial court, as confirmed [Asha John Divianathan v. Vikram Malhotra, 2009 SCC OnLine Kar 936] by the High Court, is set aside. Instead, OS No. 10079 of 1984 filed by Mr R.P. David (predecessor of the appellant and Respondent 4) stands decreed in toto in favour of the plaintiff. The appellant (being the legal representative of the plaintiff) is entitled for possession of the suit property being the owner thereof and also for mesne profits for the relevant period for which a separate inquiry be conducted under Order 20 Rule 12 of the Code of Civil Procedure, 1908. Ordered accordingly. No order as to costs."*
>
> ***[Emphasis supplied]***

58. In ***State of Manipur v. Surjakumar Okram*,** 2022 SCC OnLine SC 130, it was held:

*"**21.** The crucial point that arises next for our consideration is the validity of the saving clause in the Repealing Act, 2018. It was submitted by the Appellants that any act done or decision taken during the currency of the Repealing Act, 2018 required to be saved to avoid any confusion. Dr. Dhawan submitted that decisions made by persons appointed under the 2012 Act can be saved by virtue of (a) the de facto doctrine; (b) the express saving provision of the Repealing Act, 2018; and (c) Section 6 of the General Clauses Act. He placed reliance on the judgments of this Court in Gokaraju Rangaraju v. State of Andhra Pradesh[5], State of Punjab v. Harnek Singh[6] and Election Commission of India v. Dr. Subramaniam Swamy[7] in support of his submissions.*

***22.** Where a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made[8]. Field, J. in Norton v. Shelby County[9], observed that "an unconstitutional act is not law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed".*

***23.** An unconstitutional law, be it either due to lack of legislative competence or in violation of fundamental rights guaranteed under Part III of the Constitution of India, is void ab initio. In Behram Khurshid Pesikaka v. State of Bombay[10], it was held by a constitution bench of this Court that the law-making power of the State is restricted by a written fundamental law and any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus, a nullity. A declaration of unconstitutionality brought about by lack of legislative power as well as a declaration of unconstitutionality brought about by reason of abridgement of fundamental rights goes to the root of the power itself, making the law void in its inception. This Court in Deep Chand v. State of Uttar Pradesh[11] summarised the following propositions:*

"(a) Whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power;

(b) The Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution;

(c) It follows from the premises that a law made in derogation or in excess of that power would be ab initio void..."

***24.** The power of a legislative body to repeal a law is co-extensive with its power to enact a law. The effect of repealing of a statute is to obliterate it completely from the records of Parliament.[12] While repealing a statute, the Legislature is competent to introduce a clause, saving any right, privilege, liability, penalty, act or deed duly done and any investigation, legal proceeding or remedy arising therefrom, under the repealed statute. There is a distinction between declaration of a statute as unconstitutional by a Court of law and the repeal of a statute by the Legislature. On declaration of a statute as unconstitutional, it becomes void ab initio. Saving past transactions are within the exclusive domain of the Court. On the other hand, though the consequence of repeal is also obliteration of the statute with retrospective effect on past transactions, the Legislature is empowered to introduce a saving clause in the repealing act. Even in cases where a saving clause is not made, the provisions of the General Clauses Act are applicable to central statutes and the principles of the General Clauses Act can be made applicable to statutes made by the State Legislatures as well (See : State of Punjab v. Harnek Singh (supra)). It is relevant to state at this point that the Manipur Legislature enacted the Manipur General Clauses Act, 1966, which came into force on 30.03.1966, by which the provisions of the General Clauses Act, 1897 were made applicable to the statutes of the Manipur Legislature.*

25. Elaborating on the point relating to the exercise of powers by the Court to save past transactions, it is necessary to refer to the law laid down by this Court. Following American jurisprudence, the doctrine of prospective overruling was applied in I.C. Golak Nath v. State of Punjab. In Golak Nath (supra), this Court held that the power of the amendment under Article 368 of the Constitution of India did not allow the Parliament to abridge the fundamental rights enshrined in part III of the Constitution. ***Realising that there would be confusion and chaos if the judgment is given retrospective effect, this Court evolved a "reasonable principle to meet this extraordinary situation".*** *The following propositions were laid down by this Court in Golak Nath (supra):*

"(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution;

(2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India;

(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

26. Though Golak Nath (supra) applied the doctrine of prospective overruling in the context of earlier decisions of this Court on the same issues which had otherwise become final, the doctrine of prospective overruling has been applied by this Court even where the issue was being decided by the Court for the first time.

27. While laying down the principles of prospective overruling, this Court in Golak Nath (supra) dealt with the scope of Article 142 of the Constitution of India and held that the said provision enables the Supreme Court to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. *The conundrum in India Cement Ltd. v. State of Tamil Nadu related to the levy of cess on royalty being within the competence of the State Legislature. A constitution bench of this Court declared the cess imposed by the State of Tamil Nadu as ultra vires.* ***However, this Court observed that the State of Tamil Nadu shall not be liable for any refund of cess already paid or collected. Validity of levy of cess based on royalty was raised again in Orissa Cement Ltd. v. State of Orissa.*** *An argument was advanced in the said case on behalf of the States that declaration of levy as invalid need not automatically result in a direction for refund of amounts collected earlier. Relying upon the earlier judgments of this Court in Golak Nath (supra) and India Cement(supra), this Court declared the levy of cess as unconstitutional.* ***However, this Court refused to give any direction for refund of any amounts collected till the date on which the levy in question has been declared unconstitutional. In Indra Sawhney v. Union of India, this Court overruled its earlier judgment in General Manager, Southern Railway v. Rangachari and held that reservation in promotions cannot be provided under Article 16 of the Constitution of India but directed the decision to be operative from five years from the date of the judgment.*** *The points raised by the appellants in Ashok Kumar Gupta v. State of U.P., inter alia, were : (a) that the reservation in promotion having been declared unconstitutional in Indra Sawhney (supra) was void ab initio and vitiated the promotion of the respondents and therefore, operation of the unconstitutional direction could not be postponed by prospective overruling of the ratio of Rangachari (supra); (b) that the said prospective overruling, even if assumed to be the majority judgment, was violative of the fundamental rights of the appellants/petitioners under Articles 14 and 16 and therefore, the power under Article 142 of the Constitution could not be*

exercised to curtail fundamental rights. The said points were answered by this Court in the following terms:

"60. It would be seen that there is no limitation under Article 142(1) on the exercise of the power by this Court. The necessity to exercise the power is to do "complete justice in the cause or matter". The inconsistency with statute law made by Parliament arises when this Court exercises power under Article 142(2) for the matters enumerated therein. Inconsistency in express statutory provisions of substantive law would mean and be understood as some express prohibition contained in any substantive statutory law. ***The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology.*** *Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise.*

61. *Admittedly, the Constitution has entrusted this salutary duty to this Court with power to remove injustice or to do complete justice in any cause or matter before this Court. The Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] ratio was in operation for well over three decades under which reservation in promotions were given to several persons in several services, grades or cadres of the Union of India or the respective State Governments. This Court, with a view to see that there would not be any hiatus in the operation of that law and, as held earlier, to bring about smooth transition of the operation of law of reservation in promotions, by a judicial creativity extended the principle of prospective overruling applied in Golak Nath case [(1967) 2 SCR 762 : AIR 1967 SC 1643] in the case of statutory law and of the judicial precedent in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] and further elongated the principle postponing the operation of the judgment in Mandal case [1992 Supp (3) SCC 217 : 1992 Supp SCC (L&S) 1 : (1992) 22 ATC 385] for five years from the date of the judgment. This judicial creativity is not anathema to constitutional*

principle but an accepted doctrine as an extended facet of stare decisis. It would not be labelled as proviso to Article 16(4) as contended for."

28. *The principles that can be deduced from the law laid down by this Court, as referred to above, are:*

I. A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.

II. After declaration of a statute as unconstitutional by a court of law, it is non estfor all purposes.

III. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.

IV. Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional.

29. *Therefore, it is clear that there is no question of repeal of a statute which has been declared as unconstitutional by a Court. The very declaration by a Court that a statute is unconstitutional obliterates the statute entirely as though it had never been passed. The consequences of declaration of unconstitutionality of a statute have to be dealt with only by the Court."*

[Emphasis supplied]

59. In ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd***., (2022) 10 SCC 1, it was held:

"The relief

104. *On the findings we have entered, the impugned orders must be set aside and the applications under Order 7 Rule 11 allowed. This would mean that the plaints must be rejected. Necessarily, this would involve the loss of the court fee paid by the plaintiffs in these cases. They would have to bring a fresh suit, no doubt after complying with Section 12-A, as permitted under Order 7 Rule 13. Moreover, the declaration of law by this Court would relate back to the date of the Amending Act of 2018.*

105. *There is a plea by Shri Saket Sikri, that if this Court holds that Section 12-A is mandatory it may be done with only prospective effect. He drew support of the judgment of this Court in**, Jarnail***

Singh v. Lachhmi Narain Gupta [Jarnail Singh v. Lachhmi Narain Gupta, (2022) 10 SCC 595] : (SCC paras 48-49)

"48. … While interpreting the scope of Article 142 of the Constitution, this Court held that the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions.

49. The power of this Court under Article 142 of the Constitution is a constituent power transcendental to statutory prohibition. [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] In Orissa Cement Ltd. v. State of Orissa [Orissa Cement Ltd. v. State of Orissa, 1991 Supp (1) SCC 430] , this Court observed that relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. ***The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case, as has been held in Somaiya Organics (India) Ltd. v. State of U.P. [Somaiya Organics (India) Ltd. v. State of U.P., (2001) 5 SCC 519 : AIR 2001 SC 1723] It was further clarified that while in Golak Nath [Golak Nath v. State of Punjab, AIR 1967 SC 1643 : (1967) 2 SCR 762] , "prospective overruling" implied an earlier judicial decision on the same issue which was otherwise final, this Court had used the power even when deciding on an issue for the first time.*** *There is no need to refer to other judgments of this Court which have approved and applied the principle of prospective overruling or prospective operation of judgments. There cannot be any manner of doubt that this Court can apply its decision prospectively i.e. from the date of its judgment to save past transactions."*

106. The doctrine of prospective overruling began its innings with the decision of this Court in Golak Nath v. State of Punjab [Golak Nath v. State of Punjab, AIR 1967 SC 1643 : (1967) 2 SCR 762] . *This Court in the said case relied upon Articles 32, 141 and 142 of the Constitution and extended this doctrine which was in vogue in the United States. The principle involves giving effect to the law laid down by this Court, from a prospective date, ordinarily the date of the judgment.* ***There is no dispute that while initially the doctrine was confined to matters arising under the Constitution, later on it has been applied to other areas of law as well.***

107. *In Taherakhatoon v. Salambin Mohammad [Taherakhatoon v. Salambin Mohammad, (1999) 2 SCC 635] , this Court while dealing with its powers or rather limitation on its*

power even after grant of special leave under Article 136 held as follows : (SCC p. 643, para 20)

"20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error — still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion."

108. In Somaiya Organics (India) Ltd. v. State of U.P. [Somaiya Organics (India) Ltd. v. State of U.P., (2001) 5 SCC 519 : AIR 2001 SC 1723] , the Court went on to hold as follows in regard to the doctrine of prospective overruling : (SCC pp. 531-32, paras 24-27)

"24. The words "prospective overruling" implies an earlier judicial decision on the same issue which was otherwise final. That is how it was understood in Golak Nath [Golak Nath v. State of Punjab, AIR 1967 SC 1643 : (1967) 2 SCR 762] . However, this Court has used the power even when deciding on an issue for the first time. Thus, in India Cement Ltd. v. State of T.N. [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] when this Court held that the cess sought to be levied under Section 115 of the Madras Panchayats Act, 1958 as amended by Madras Act 18 of 1964, was unconstitutional, not only did it restrain the State of Tamil Nadu from enforcing the same any further, it also directed that the State would not be liable for any refund of cess already paid or collected.

*****

27. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case — justice not in its logical but in its equitable sense. *As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to 'pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it'. In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do "complete justice"."*

109. We may next notice the judgment of this Court in P.V. George v. State of Kerala [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] . In the said case, the doctrine was sought to be invoked in a service matter. The Full Bench [Subaida Beevi v. State of Kerala, 2004 SCC OnLine Ker 144 : (2005) 1 KLT 426] of the High Court overruled a Division Bench [Daniel v. State of Kerala, 1985 SCC OnLine Ker 43 : 1985 KLT 1057] which had declared a rule unconstitutional. On the strength of the Full Bench decision the employees were sought to be

reverted. This Court adverted to the decision of the House of Lords reported in Spectrum Plus Ltd., In re [Spectrum Plus Ltd., In re, (2005) 3 WLR 58 : 2005 UKHL 41] wherein the Court held : (Spectrum Plus case [Spectrum Plus Ltd., In re, (2005) 3 WLR 58 : 2005 UKHL 41] , WLR pp. 63-64, paras 9-10)

"9. Prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or "pure" type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

10. Other forms of prospective overruling are more limited and "selective" in their departure from the normal effect of court decisions. The ruling in its operation may be prospective and, additionally, retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts. There are other variations on the same theme."

(emphasis supplied)

***110.** This is not a case where this Court is overruling its previous decision, which was the case in the decision reported in SBP & Co. v. Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] This is also not a case where this Court is pronouncing a law under which various transactions have been affected void. It may be true that the doctrine of prospective overruling may not be confined to either of the above circumstances as such and its ambit is co-extensive with the equity of a situation whereunder on the law being pronounced it is likely to intrude into or reopen settled transactions. This is not a matter where the Court is overruling a decision of the High Court which has held the field for a long period. See in this regard, Harsh Dhingra v. State of Haryana [Harsh Dhingra v. State of Haryana, (2001) 9 SCC 550] .*

***111.** In the said judgment in **Harsh Dhingra case [Harsh Dhingra v. State of Haryana, (2001) 9 SCC 550] this Court held as follows :** (Harsh Dhingra case [Harsh Dhingra v. State of Haryana, (2001) 9 SCC 550] , SCC p. 556, para 7)*

"7. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and

<u>avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest.</u> *Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty-bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation. These principles are enunciated by this Court in Baburam v. C.C. Jacob [Baburam v. C.C. Jacob, (1999) 3 SCC 362 : 1999 SCC (Cri) 433 : 1999 SCC (L&S) 682] and Ashok Kumar Gupta v. State of U.P. [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] "*

112. *The statute which has generated the controversy is the Amending Act of year 2018. We have noticed that there is undoubtedly a certain amount of cleavage of opinion among the High Courts. The other feature which is to be noticed is that, this is a case where the law in question, the Amending Act containing certain Section 12-A is a toddler. The law necessarily would have teething problems at the nascent stage. The specified value has been lowered drastically from Rs 1 crore to Rs 3 lakhs. The imperative need to comply with the mandate of Section 12-A which we have unravelled if it has not been shared by the parties on the advice they received or on the view prevailing in the High Courts would necessarily mean that unless we hold that the law, we declare is prospective such suits must perish. The court fee paid would have to be written off. In a fresh suit which would be otherwise barred by limitation, shelter can be taken only under Section 14 of the Limitation Act. The availability of the power under Section 14 itself may have to be decided by the court.*

113. *Having regard to all these circumstances, we would dispose of the matters in the following manner:*

113.1. *We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment.* ***<u>We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.</u>***

113.2. *Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of*

limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. *Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.*

114. *In civil appeal arising out of SLP (C) No. 14697 of 2021 taking note of the fact that it is a case where the appellant would have succeeded and the plaint rejected, it is also necessary to order the following. The written statement filed by the appellant shall be treated as the application for leave to defend filed within time within the meaning of Order 37 and the matter considered on the said basis.*

115. *While we disapprove of the reasoning in the impugned orders we decline to otherwise interfere with the orders and the two appeals shall stand disposed of accordingly.*

116. *In civil appeal arising out of SLP (C) No. 5737 of 2022, we set aside the order directing payment of costs of Rs 10,000. The petition for permission to file SLP in SLP (C) Diary No. 29458 of 2021 and the said SLP shall stand disposed of as already indicated in the judgment."*

[Emphasis supplied]

60. In ***Jarnail Singh v. Lachhmi Narain Gupta***, (2022) 10 SCC 595, it was held:

"47. *In M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , this Court upheld the constitutional validity of Article 16(4-A), subject to the State collecting quantifiable data showing inadequate representation. The law declared by this Court interpreting Article 16(4-A) in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] applies from 17-6-1995 i.e. the date on which Article 16(4-A) came into force. (See : Ravi S. Naik v. Union of India [Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641] ; Lily Thomas v. Union of India [Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] .) The contention put forth by the learned Attorney General for India and the learned counsel appearing for the reserved category candidates, which requires to be examined, is regarding the prospective applicability of the law laid down in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] i.e. from the date of the judgment.*

48. *This Court, in Golak Nath v. State of Punjab [Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] , held that Parliament had no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights.* ***However, to save the past transactions, the doctrine of prospective overruling was invoked and the judgment was given prospective operation.*** *The following propositions were laid down in Golak Nath case [Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] : (AIR p. 1669, para 51)*

"51. … (1) The doctrine of prospective overruling can be invoked only in matters arising out of the Constitution;

(2) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India;

(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

While interpreting the scope of Article 142 of the Constitution, this Court held that the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions.

49. The power of this Court under Article 142 of the Constitution is a constituent power transcendental to statutory prohibition. *[Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] In Orissa Cement Ltd. v. State of Orissa [Orissa Cement Ltd. v. State of Orissa, 1991 Supp (1) SCC 430] , this Court observed that relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice.* ***The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case, as has been held in Somaiya Organics (India) Ltd. v. State of U.P. [Somaiya Organics (India) Ltd. v. State of U.P., (2001) 5 SCC 519] It was further clarified that while in Golak Nath [Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] , "prospective overruling" implied an earlier judicial decision on the same issue which was otherwise final, this Court had used the power even when deciding on an issue for the first time.*** *There is no need to refer to other judgments of this Court which have approved and applied the principle of prospective overruling or prospective operation of judgments.* ***There cannot be any manner of doubt that this Court can apply its decision prospectively i.e. from the date of its judgment to save past transactions.***

50. *While objecting to the contention of the learned Attorney General for India to declare the law laid down by M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] as having prospective operation, Mr Rakesh Dwivedi, learned Senior Counsel appearing for the unreserved candidates, submitted that relief can be moulded in exercise of the power under Article 142 of the Constitution. It is no doubt true that M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] did not state that it would be prospective in operation. It is necessary for this Court to examine whether a judgment can be made prospectively applicable subsequently by a different Bench of this Court. The doctrine of prospective overruling was applied to Indian law in Golak Nath [Golak Nathv. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] by following the theory which was prevalent in the United States of America. Reference was made to the judgment of Linkletter v. Walker [Linkletter v. Walker, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)] which declared an earlier decision of the US Supreme Court in Mapp v. Ohio [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] to be prospective in operation.*

51. *For a better understanding, it is necessary to refer to the issue in Linkletter [Linkletter v. Walker, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)] . The United States Supreme Court in Fremont Weeks v. United States [Fremont Weeks v. United States, 1914 SCC OnLine US SC 61 : 58 L Ed 652 : 232 US 383 (1914)] held that illegally-seized evidence cannot be used in federal courts, by establishing the exclusionary rule. The applicability of the exclusionary rule to States fell for consideration in Wolf v. People of the State of Colorado [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] . Taking note of the fact that 16 States adopted the exclusionary rule laid down in Weeks [Fremont Weeks v. United States, 1914 SCC OnLine US SC 61 : 58 L Ed 652 : 232 US 383 (1914)] while 31 other States rejected the exclusionary rule, the US Supreme Court held that it was not a departure from basic standards of due process to allow States to introduce illegally-obtained evidence in State trials. Later, the US Supreme Court in Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] held that the exclusion of evidence seized in violation of search and seizure provisions of the Fourth Amendment was required of the States by the due process clause of the Fourteenth Amendment.*

52. In Linkletter [Linkletter v. Walker, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)] , the US Supreme Court was confronted with the question of prospective operation of its earlier

judgment in Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] . The overruling of the judgment in Wolf v. People of the State of Colorado [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] by Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] was made prospective by the US Supreme Court by making the following observations *: (Linkletter case [Linkletter v. Walker, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)] , SCC OnLine US SC paras 22-25)*

"22. We believe that the existence of the Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] doctrine prior to Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] is 'an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration'. *Chicot County Drainage Dist. v. Baxter State Bank [Chicot County Drainage Dist. v. Baxter State Bank, 1940 SCC OnLine US SC 1 : 84 L Ed 329 : 60 S Ct 317 : 308 US 371 (1940)] , US at p. 374 and S Ct at p. 319. The thousands of cases that were finally decided on Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine* ***US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] cannot be obliterated. The 'particular conduct, private and official,' must be considered. Here 'prior determinations deemed to have finality and acted upon accordingly' have 'become vested'. And finally, 'public policy in the light of the nature both of the (Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] doctrine) and of its previous application' must be given its proper weight. Ibid. In short, we must look to the purpose of the Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] rule; the reliance placed upon the Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] doctrine; and the effect on the administration of justice of a retrospective application of Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] .***

23. It is clear that the Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] Court, once it had found the Fourth Amendment's unreasonable Search and Seizure Clause applicable to the States through the Due Process Clause of the Fourteenth Amendment, turned its attention to whether the exclusionary rule was included within the command of the Fourth Amendment. This was decided in the negative. It is clear that based upon the factual considerations heretofore discussed the Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] Court then concluded that it was not necessary to the enforcement of the Fourth Amendment for the exclusionary rule to be extended to the States as a requirement of due

process. Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] had as its prime purpose the enforcement of the Fourth Amendment through the inclusion of the exclusionary rule within its rights. This, it was found, was the only effective deterrent to lawless police action. Indeed, all of the cases since Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] requiring the exclusion of illegal evidence have been based on the necessity for an effective deterrent to illegal police action. See e.g. Rea v. United States [Reav. United States, 1956 SCC OnLine US SC 8 : 100 L Ed 233 : 350 US 214 (1956)] . ***We cannot say that this purpose would be advanced by making the rule retrospective.*** *The misconduct of the police prior to Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] has already occurred and will not be corrected by releasing the prisoners involved.* ***Nor would it add harmony to the delicate State-federal relationship of which we have spoken as part and parcel of the purpose of Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] . Finally, the ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late.***

24. It is true that both the accused and the States relied upon Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] . Indeed, Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] and Irvine [Irvine v. People of State of California, 1954 SCC OnLine US SC 16 : 98 L Ed 561 : 347 US 128 (1954)] each pointed the way for the victims of illegal searches to seek reparation for the violation of their privacy. Some pursued the same. See Monroe v. Pape [Monroe v. Pape, 1961 SCC OnLine US SC 21 : 5 L Ed 2d 492 : 365 US 167 (1961)] . In addition, in Irvine, a flag in a concurring opinion warned that Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] was in stormy weather. On the other hand, the States relied on Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] and followed its command. Final judgments of conviction were entered prior to Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] . Again and again this Court refused to reconsider Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] and gave its implicit approval to hundreds of cases in their application of its rule. In rejecting the Wolf [Wolf v. People of the State of Colorado, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)] doctrine as to the exclusionary rule the purpose was to deter the lawless action of the police and to effectively enforce the Fourth Amendment. That purpose will not at this late date be served by the wholesale release of the guilty victims.

25. Finally, there are interests in the administration of justice and the integrity of the judicial process to consider. To make the rule of Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] retrospective would tax the administration of justice to the utmost. Hearings would have to be held on the excludability of evidence long since destroyed, misplaced or deteriorated. If it is excluded, the witnesses available at the time of the original trial will not be available or if located their memory will be dimmed. To thus legitimate such an extraordinary procedural weapon that has no bearing on guilt would seriously disrupt the administration of justice."

53. The point to be noticed is that the US Supreme Court in Linkletter [Linkletter v. Walker, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)] declared its earlier judgment in Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] to be prospective in operation, after considering the consequences of Mapp [Mapp v. Ohio, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)] being given retrospective effect.

54. This Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] *interpreted Article 16(4-A) of the Constitution by holding that reservation cannot be provided in promotions.* ***However, reservation in promotions were permitted for a further period of five years from the date of the judgment.*** *In Ashok Kumar Gupta v. State of U.P. [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , promotions in Public Works Department of the Government of Uttar Pradesh were challenged. One of the grounds of challenge was that the direction of the Supreme Court for prospective overruling of the judgment of this Court in Southern Railway v. Rangachari [Southern Railway v. Rangachari, (1962) 2 SCR 586 : AIR 1962 SC 36] and for operation of the ratio in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] after five years from the date of the judgment was inconsistent with and contrary to the scheme of the Constitution. In other words, it was contended by the appellants in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] that after having declared reservation in promotions under Articles 16(1) and 16(4) as unconstitutional and overruling Rangachari [Southern Railway v. Rangachari, (1962) 2 SCR 586 : AIR 1962 SC 36] as not being correct in law, the Court cannot postpone the operation of the judgment to a future date as it amounts to perpetration of void action and is violative of the appellants' fundamental rights.*

55. In Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , this Court was of the opinion that ***there is no prohibition for this Court to postpone the operation of the judgment in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] or to prospectively overrule the ratio in Rangachari [Southern Railway v. Rangachari, (1962) 2 SCR 586 : AIR 1962 SC 36] .*** *This Court further held that : (Ashok Kumar Gupta case [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , SCC pp. 250-51, paras 60-61)*

"60. It would be seen that there is no limitation under Article 142(1) on the exercise of the power by this Court. The necessity to exercise the power is to do "complete justice in the cause or matter". *The inconsistency with statute law made by Parliament arises when this Court exercises power under Article 142(2) for the matters enumerated therein. Inconsistency in express statutory provisions of substantive law would mean and be understood as some express prohibition contained in any substantive statutory law. The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice.* ***The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology****. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise.*

61. Admittedly, the Constitution has entrusted this salutary duty to this Court with power to remove injustice or to do complete justice in any cause or matter before this Court. Rangachari [Southern Railway v. Rangachari, (1962) 2 SCR 586 : AIR 1962 SC 36] ratio was in operation for well over three decades under which reservation in promotions were given to several persons in several services, grades or cadres of the Union of India or the respective State Governments. This Court, with a view to see that there would not be any hiatus in the operation of that law and, as held earlier, to bring about smooth transition of the operation of law of reservation in promotions, by a judicial creativity extended the principle of prospective overruling

applied in Golak Nath case [Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] in the case of statutory law and of the judicial precedent in Karunakar case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] and further elongated the principle postponing the operation of the judgment in Mandal case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] for five years from the date of the judgment. This judicial creativity is not anathema to constitutional principle but an accepted doctrine as an extended facet of stare decisis. It would not be labelled as proviso to Article 16(4) as contended for."

56. *Whether the judgment of this Court in Indian Council for Enviro-Legal Action v. Union of India [Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281] was prospective was the subject-matter of consideration in Goan Real Estate & Construction Ltd. v. Union of India [Goan Real Estate & Construction Ltd. v. Union of India, (2010) 5 SCC 388] . After a detailed consideration of the judgment in Indian Council for Enviro-Legal Action [Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281] , this Court in Goan Real Estate [Goan Real Estate & Construction Ltd. v. Union of India, (2010) 5 SCC 388] concluded that though not stated categorically in Indian Council for Enviro-Legal Action [Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281] , it was the intention of this Court to give prospective effect to the judgment. The above is an instance where this Court declared an earlier judgment to have prospective effect.*

57. *A contrary view was expressed by this Court in M.A. Murthy v. State of Karnataka [M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076] in which it was held that prospective overruling can be done only by the Court which has rendered the decision. The dispute that arose for consideration of this Court in the said judgment pertained to appointment to the posts of Manager (Finance and Accounts) in the Karnataka State Financial Corporation. The appellants challenged the selection of Respondent 4 before the Karnataka High Court. Though the learned Single Judge of the High Court found Respondent 4 therein to be ineligible as on the date of his appointment, the selection was not disturbed on the ground that he obtained qualifications by the time of interview. The learned Single Judge relied upon the judgment of this Court in Ashok Kumar Sharma v. Chander Shekher [Ashok Kumar Sharma v. Chander Shekher, 1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857] (Ashok Kumar Sharma case No. 1). The judgment of the learned Single Judge was upheld by the Division Bench of the High Court. Thereafter, a review application was filed informing the Division Bench of the High Court that the judgment of this Court in Ashok Kumar Sharma case No. 1 [Ashok Kumar Sharma v. Chander Shekher, 1993 Supp (2)*

SCC 611 : 1993 SCC (L&S) 857] was overruled in Ashok Kumar Sharma v. Chander Shekhar [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] (Ashok Kumar Sharma case No. 2). By holding that on the date of the judgment of the Division Bench, Ashok Kumar Sharma case No. 1 [Ashok Kumar Sharma v. Chander Shekher, 1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857] held the field, the High Court dismissed the review petition. Taking note of the fact that Ashok Kumar Sharma case No. 2 [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] was a judgment of this Court in review of the judgment in Ashok Kumar Sharma case No. 1 [Ashok Kumar Sharma v. Chander Shekher, 1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857] , which, therefore, merged with the subsequent judgment, making the later decision the one and only judgment rendered for all purposes, this Court found that the High Court had committed an error in not following the law laid down by this Court in Ashok Kumar Sharma case No. 2 [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] . While holding so, this Court referred to the doctrine of prospective overruling and earlier judgments of this Court in Golak Nath [Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] , Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and others. This Court proceeded to observe that there shall be no prospective overruling unless it is so indicated in a particular decision.

***58.** The facts of the case and the dispute resolved by this Court in M.A. Murthy [M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076] relate to the applicability of the subsequent judgment of Ashok Kumar Sharma case No. 2 [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] rendered in review of an earlier judgment. The question of prospective overruling did not arise in the said case. The observation made in M.A. Murthy [M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076] that there shall be no prospective overruling unless indicated in the particular decision is obiter.*

***59.** Obiter dictum is defined in Black's Law Dictionary (9th Edn., 2009), as follows:*

"Obiter dictum.— … A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive) — Often shortened to dictum or, less commonly, obiter. …

Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a Judge, in his decision upon a cause, "by the way"—that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the Judge or court

merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extra-judicial expressions of legal opinion are referred to as "dicta", or "obiter dicta", these two terms being used interchangeably."

60.*Wharton's Law Lexicon (14th Edn., 1993) defines the term "obiter dictum" as*

"an opinion not necessary to a judgment; an observation as to the law made by a Judge in the course of a case, but not necessary to its decision, and therefore, of no binding effect; often called as obiter dictum, 'a remark by the way' ".

A decision on a point not necessary for the purpose of or which does not fall for determination in that decision becomes an obiter dictum. [Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85]

61. *It is a well-settled proposition that only the ratio decidendi can act as the binding or authoritative precedent. Reliance placed on mere general observations or casual expressions of the Court, is not of much avail. [Girnar Traders v. State of Maharashtra, (2007) 7 SCC 555] Therefore, the casual and unnecessary observation in M.A. Murthy [M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076] that there shall be no prospective overruling unless it is so indicated in a particular decision is obiter and not binding. Moreover, in M.A. Murthy [M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076] , this Court failed to consider the ratio of the judgment of this Court in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , even after referring to it. As stated above, the prospective overruling of Rangachari [Southern Railway v. Rangachari, (1962) 2 SCR 586 : AIR 1962 SC 36] by Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] was upheld in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] .*

62. This Court in Golak Nath [Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643] and Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , referred to above, has laid down that Article 142 empowers this Court to mould the relief to do complete justice. *To conclude this point, the purpose of holding that M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] would have prospective effect is only to avoid chaos and confusion that would ensue from its retrospective operation, as it would have a debilitating effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the*

conditions prescribed in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013]. Most of them would have already retired from service on attaining the age of superannuation. The judgment of M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] was delivered in 2006, interpreting Article 16(4-A) of the Constitution which came into force in 1995. ***As making the principles laid down in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time, it is necessary that the judgment of M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] should be declared to have prospective effect.”***

[Emphasis supplied]

61. In ***Manoj Parihar v. State of J&K*****,** (2022) 14 SCC 72, it was held:

“26. *What was done in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] was actually a declaration of law. Therefore, the same will have retrospective effect. In P.V. George v. State of Kerala [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , this Court held that “the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically”.*

27. *This Court was conscious of the fact, as could be seen from para 19 of the Report in P.V. George [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.*

28. *Therefore, it is clear that anything done as a consequence of the decision of this Court in P.S. Ghalaut [P.S. Ghalaut v. State of Haryana, (1995) 5 SCC 625 : 1995 SCC (L&S) 1270] , cannot stand since this Court did not apply the doctrine of prospective overruling in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] in express terms. It goes as follows : (N. Santosh Kumar case [N. Santosh Kumar v. T.N. Public Service Commission, 2015 SCC OnLine Mad 362 : 2015 Lab IC 3705 : (2015) 4 Mad LJ 281] , SCC OnLine Mad para 64)*

"64. ... (i) In Union of India v. Virpal Singh Chauhan [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] , this Court upheld the stand taken by the Railways that reserved category candidates who got promotion at roster points would not be entitled to claim seniority at the promotional level as against senior general category candidates who got promoted at a later point of time to the same level. The Court held that the State was entitled to provide, what came to be known in popular terms as the "catch-up rule" enabling the senior general category candidates who got promoted later, to claim seniority over and above the roster point promotee who got promoted earlier.

(ii) The catch-up rule formulated in Virpal [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] was approved by a three-member Bench in Ajit Singh Januja v. State of Punjab [Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540] . This case came to be known as Ajit Singh (1).

(iii) But, another three-member Bench took a different view in Jagdish Lal v. State of Haryana [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] and held that while the rights of the reserved candidates under Articles 16(4) and 16(4-A) were fundamental rights, the right to promotion was a statutory right and that therefore, the roster point promotees have to be given seniority on the very same basis as those having continuous officiation in a post.

(iv) Since Jagdish Lal [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] took a view contrary to the views expressed in Virpal Singh [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] and Ajit Singh (1) [Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540] , the State of Punjab filed interlocutory applications before this Court, seeking clarifications. These interlocutory applications were placed before a Constitution Bench comprising of 5 Judges, in view of the fact that two Benches of coordinate jurisdiction (both three-member Benches) had taken diametrically opposite views. The decision rendered by the larger Bench of 5 Judges on these applications came to be known as Ajit Singh (2), in Ajit Singh (2) v. State of Punjab [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] .

(v) Eventually, the Constitution Bench held in Ajit Singh (2) [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] that the roster point promotees cannot count their seniority in the promoted category, from the date of their continuous officiation in the promoted post, vis-à-vis the general category candidates who were senior to them in the lower category and who were later promoted. As a consequence, Virpal [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] and Ajit Singh (1) [Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540] were declared to have been decided correctly and Jagdish Lal [Jagdish Lal v. State of

Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] was declared to be incorrect."

***29.** Thus, the principle of law discernible from all the aforesaid decisions of this Court is that the roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process. It has nothing to do with the inter se seniority among those recruited. To put it in other words, the roster points do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be appointed on the same date, irrespective of when they joined their posts. The position of law as discussed above could be said to be prevailing even while the High Court of Jammu & Kashmir decided by a Full Court Resolution to determine the seniority on the basis of roster points.*

***30.** We are not inclined to carve out an exception for the 2003 appointees that is the petitioners herein before us. The High Court in our view rightly applied the principle of law explained by this Court in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] .*

***31.** There is one another important aspect of this matter, we need to take notice of. The High Court in its impugned judgment and order has observed that the appointments of the selected officers were made in terms of Rule 42 of the Jammu & Kashmir Civil Services (Judicial) Recruitment Rules, 1967 vide the Government Order dated 6-8-2003 that is much after the pronouncement of the judgment in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] . It makes all the difference.*

***32.** In the overall view of the matter, we are convinced that there is no jurisdictional infirmity or any other infirmity in the impugned judgment passed by the High Court warranting interference at our end."*

62. In ***CBI v. R.R. Kishore*,** 2023 SCC OnLine SC 1146, it was held:

***"26.** Further submission is that a decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency as it is assumed that what is enunciated by this Court is in fact the law from inception. There can be no prospective overruling unless expressly indicated in clear and positive terms. If the Constitution Bench in the case of Subramanian Swamy (supra) had any intentions of*

declaring that the same would be prospective in application, then the same should have been specifically and discretely stated therein. In absence of such declaration, the natural assumption is that the same is retrospective applying the Blackstonian theory of precedence.

27. *Reference was made by Shri Mehta to the cases of I.C. Golaknath v. State of Punjab*[21] *and Managing Director, ECIL, Hyderabad v. B. Karunakar*[22] *for the proposition that prospective overruling is to be exercised as an exception in rare circumstances and such power should be seldom exercised. He has further placed reliance upon a judgment of this Court in the case of M.A. Murthy v. State of Karnataka*[23] *for the proposition that if prospective overruling is not specifically provided in the decision, it would not be open for Courts in future to declare such a decision to be prospective in nature. If prospective applicability of a decision is not provided in the said decision, then it is presumed that it will have retrospective effect and declaration of any law as invalid would be unenforceable and nonexistent from the statute book from the time of its inception. The judgment in the case of Subramanian Swamy (supra) would, therefore, operate retrospectively and at least would be unenforceable ab initio.*

...

Retrospective or Prospective application of the judgment in the case of *Subramanian Swamy* ***(supra) (Question No. 3).***

89. *The Constitution Bench in case of Subramanian Swamy (supra) declared Section 6A of the DSPE Act as unconstitutional on the ground that it violates Article 14 of the Constitution on account of the classification of the Government servants, to which the said provision was to apply. The invalidity of Section 6A of the DSPE Act is not on the basis of legislative incompetence or for any other constitutional violation. In Vineet Narain (supra) this Court had held that Single Directive No. 4.7(3) to be invalid and it was struck down on the ground that by an administrative instruction the powers of the CBI conferred under statute could not be interfered with. It was because of the said declaration that Section 6A was inserted in the DSPE Act in 2003.*

90. *The question for determination is whether declaration of any law as unconstitutional by a Constitutional Court would have retrospective effect or would apply prospectively.*

91. *Much emphasis has been laid on the interpretation of the word 'void' used in Article 13(2) of the Constitution. The same word 'void' is used in Article 13(1) of the Constitution also. The judgments relied upon by the*

parties which will be shortly discussed hereinafter relate to the interpretation of the said word 'void' by various Constitution Benches and a seven-judge Bench and other regular Benches. In the Oxford dictionary, the word 'void' is defined to mean something is not legally valid or binding, when used as an adjective and further when used as a verb, it means to declare that something is not valid or legally binding.

92. *Article 13 of the Constitution has two sub-Articles (1) and (2). It reads as follows:*

"13(1). *All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void*

13(2). *The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."*

93. *Under Article 13(1) all existing laws prior to the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part-III, would be void to the extent of inconsistency. Further, according to Article 13(2), the State is prohibited from making any law which takes away or abridges the rights conferred by Part-III and further that any law made in contravention of this clause would be void to the extent of contravention. Article 13(2) prohibits making of any law so it would be relating to laws made post commencement of the Constitution, like the case at hand. In the present case, as it has been held that Section 6A of DSPE Act is violative of Article 14 of Part-III of the Constitution, as such, the same would be void. The word "void" has been interpreted in a number of judgments of this Court beginning 1951 till recently and it has been given different nomenclature such as 'non est', 'void ab initio' 'still born' and 'unenforceable'.*

94. *A brief reference to the case law on the point would be necessary at this stage. It may be worthwhile to mention that the earlier seven-judge Bench and Constitution Bench judgments relate to Article 13(1) of the Constitution, dealing with pre-existing laws at the time of commencement of the Constitution. There are later judgments relating to Article 13(2) of the Constitution. However, reliance is placed upon the judgments on Article 13(1) while interpreting the word 'void' used in Article 13(2).*

(i) The facts in the case of Keshavan Madhava Menon (supra), was that a prosecution was launched against the appellant therein under the provision of the Indian Press (Emergency Powers) Act, 1931[57] *for a*

publication issued without the necessary authority under Section 15(1) of the said Act, and as such, became an offence punishable under Section 18 (1) of the same Act. This prosecution had been launched in 1949 itself and registered as Case No. 1102/P of 1949. During the pendency of the said proceedings, the Constitution of India came into force on 26.01.1950. The appellant therein took an objection that provisions of 1931 Act were ultra vires of Article 19(1)(a) read with Article 13(1) of the Constitutionand would, therefore, be void and inoperative as such he may be acquitted. The High Court was of the view that the proceedings pending on the date of commencement of the Constitution would not be affected even if the 1931 Act was inconsistent with the Fundamental Rights conferred by Part III of the Constitution. However, the same would become void under Article 13(1) of the Constitution only after 26.01.1950.

(ii) The seven-judge Bench of this Court gave rise to three separate opinions : Justice Sudhi Ranjan Das authored the majority judgment with Chief Justice Kania, Justice M. Patanjali Sastri and Justice N. Chandrasekhara Aiyar concurring; Justice Mehar Chand Mahajan authored a separate opinion concurring with the majority view; Justice Fazal Ali wrote a dissenting judgment with Justice B.K. Mukherjea agreeing with him. The majority agreed with the view taken by the High Court. They accordingly dismissed the appeal. Para 16 of the report which contains the dictum is reproduced hereunder:

"16. As already explained above, Article 13(1) is entirely prospective in its operation and as it was not intended to have any retrospective effect there was no necessity at all for inserting in that article any such saving clause. The effect of Article 13(1) is quite different from the effect of the expiry of a temporary statute or the repeal of a statute by a subsequent statute. As already explained, Article 13 (1) only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned, for, to say that it is, will be to give the law retrospective effect. There is no. fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights."

However, Justice Fazal Ali was of the view that though there can be no doubt that Article 13(1) will have no retrospective operation and transactions which are past and closed, and rights which have already

vested will remain untouched. However, with regard to inchoate matters which were still not determined when the Constitution came into force, and as regards proceedings not begun, or pending at the time of enforcement of the Constitution and not yet prosecuted to a final judgment, the answer to this question would be that the law which has been declared by the Constitution to be completely ineffectual, can no longer be applied. To be precise, paragraph no. 63 of the report from SCC Online referred has been reproduced hereunder:

"There can be no doubt that Article 13(1) will have no retrospective operation, and transactions which are past and closed, and rights which have already vested, will remain untouched. But with regard to inchoate matters which were still not determined when the Constitution came into force, and as regards proceedings whether not yet begun, or pending at the time of the enforcement of the Constitution and not yet prosecuted to a final judgment, the very serious question arises as to whether a law which has been declared by the Constitution to be completely ineffectual can yet be applied."

(iii) In the case of Behram Khurshed Pesikaka (supra), a seven-judge Bench of this Court was considering the legal effect of the declaration made in the case of State of Bombay v. F.N. Balsara[58], whereby part of Section 13 clause (b) of the Bombay Prohibition Act (Act 25 of 1949) was declared unconstitutional. It was held by the majority opinion that declaration of such provision as invalid and unconstitutional will only mean that it is inoperative and ineffective and thus unenforceable.

(iv) The Constitution Bench in the case of M.P.V. Sundararamier and Co. (supra) was dealing with the validity of Sales Tax Laws Violation Act, 1956. In paragraph 41, while dealing with difference between law being unconstitutional on account of it being not within the competence of the legislature or because it was offending some constitutional restrictions differentiated between the two. Relevant extract is reproduced here under:

"41. Now, in considering the question as to the effect of unconstitutionality of a statute, it is necessary to remember that unconstitutionality might arise either because the law is in respect of a matter not within the competence of the legislature, or because the matter itself being within its competence, its provisions offend some constitutional restrictions. In a Federal Constitution where legislative powers are distributed between different bodies, the competence of the legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that legislature. Thus, a law of the State on an Entry in List 1, Schedule VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed, as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the

repugnancy will be void. ***<u>Thus, a legislation on a topic not within the competence of the legislature and a legislation within its competence but violative of constitutional limitations have both the same reckoning in a court of law; they are both of them unenforceable.</u>*** *But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the legislature is a nullity, a law on a topic within its competence but repugnant to the constitutional prohibitions is only unenforceable. This distinction has a material bearing on the present discussion. If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment.*

(emphasis supplied)"

The distinction drawn was that where a law is not within the domain of the legislature, it is absolutely null and void. But where a law is declared to be unconstitutional, then it would be unenforceable and to that extent void, as per Article 13(2) of the Constitution.

(v) The challenge in the case of Deep Chand (supra) was with respect to the validity of the Uttar Pradesh Transport Service (Development) Act, 1955. The Constitution Bench, after discussing merit of Article 13(2) of the Constitution, was of the firm view that a plain reading of the Clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a still born law. The relevant extract which is part of the paragraph 13 (from the AIR reference), is reproduced hereunder:

"13. ...A Legislature, therefore, has no power to make any law in derogation of the injunction contained in Art. 13. Article 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency be void. The clause, therefore, recognizes the validity of, the pre-Constitution laws and only declares that the said laws would be void thereafter to the extent of their inconsistency with Part III; whereas cl. (2) of that article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III and declares that laws made in contravention of this clause shall, to the extent of the contravention, be

void. There is a clear distinction between the two clauses. Under cl. (1), a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III; ***whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception****. If this clear distinction is borne in mind, much of the cloud raised is dispelled. When cl. (2) of Art. 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition.* ***A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions****; nor can we appreciate the argument that the words “any law” in the second line of Art. 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound. The words “any law” in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause.* ***A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a still-born law.***

(emphasis supplied)”

(vi) In the case of Mahendra Lal Jaini (supra), again a Constitution Bench dealing with validity of the U.P. Land Tenures (Regulation of Transfers) Act, 1952 as also the amendment of 1956 in the Forests Act, 1957 had the occasion to analyse the difference between Article 13(1) and 13(2). Paragraph nos. 23 and 24 of the report contains the relevant discussion. In paragraph No. 23, it was laid down that the distinction between the voidness in one case arises from the circumstance that it was a pre-Constitutional law and the other is post-Constitutional law. However, the meaning of the word void is used in both the sub-Articles clearly making the law ineffectual and nugatory, devoid of any legal force or binding effect in both the cases. Further in paragraph no. 24 of the report, the Bench proceeds to deal with the effect of an amendment in the Constitution, with respect to the pre-Constitutional laws, holding that removing the inconsistency would result in revival of such laws by virtue of doctrine of eclipse as the pre-existing laws were not still born. However, in the case of the post-Constitutional laws, the same would be still born, and as such doctrine of eclipse would not be applicable to the post-Constitutional laws. Doctrine of eclipse does not apply in the present case, for Section 6A of the DSPE Act has been struck down as unconstitutional. There is no attempt to re-legislate this provision by

removing the illegality resulting in unconstitutionality. We may beneficially reproduce paragraph nos. 23 and 24 of the said report hereunder:

"23. It is however urged on behalf of the respondents that this would give a different meaning to the word 'void" in Art. 13 (1). as compared to Art. 13 (2). We do not think so. The meaning of the word "void" in Art. 13 (1) was considered inKeshava Madhava Menon's case and again in Behram Khurshed Pesikaka's case In the later case, Mahajan, C. J., pointed out thatthe majority in Keshava Madhava Menon's case (3) clearly held that the word "void" in Art. 13(1) did not mean that the statute stood repealed and therefore obliterated from the statute book; nor did it mean that the said statute was void ab initio. This, in our opinion if we may say so with respect, follows clearly from the language of Art. 13(1), which presupposes that the existing laws are good except to the extent of the inconsistency with the fundamental rights. Besides there could not be any question of an existing law being void ab initio on account of the inconsistency with Art. 13(1), as they were passed by competent legislatures at the time when they were enacted. Therefore, it was pointed out that the effect of Art. 13(1) with respect to existing laws insofar as they were unconstitutional was only that it nullified them, and made them "ineffectual and nugatory and devoid of any legal force or binding effect". ***The meaning of the word "void" for all practical purposes is the same in Art. 13(1) as in Art. 13(2), namely, that the laws which were void were ineffectual and nugatory and devoid of any legal force or binding effect. But the pre-Constitution laws could not become void from their inception on account of the application of Art. 13(1) The meaning of the word, "void" in Art. 13(2) is also the same viz., that the laws are ineffectual and nugatory and devoid of any legal force on binding effect, if they contravene Art. 13(2). But there is one vital difference between pre-Constitution and post-Constitution laws in this matter. The voidness of the pre-Constitution laws is. not from inception. Such voidness supervened when the Constitution came into force; and so, they existed and operated for some time and for certain purposes; the voidness of post-Constitution laws is from their very inception and they cannot therefore continue to exist for any purpose****. This distinction between the voidness in one case and the voidness in the other arises from the circumstance that one is a pre-Constitution law and the other is a post-Constitution law; but the meaning of the word void" is the same in either case, namely, that the law is ineffectual and nugatory and devoid of any legal force or binding effect.*

24. Then comes the question as to what is the effect of an amendment of the Constitution in the two types of cases. So far 'as pre-Constitution laws are concerned the amendment of the Constitution which removes the inconsistency will result in the revival of such laws by virtue of the doctrine of eclipse, as laid down in Bhikaji Narain's case (1) for the pre-

*existing laws were not still-born and would still exist though eclipsed on account of the inconsistency to govern_ pre-existing matters. **But in the case of post-Constitution laws, they would be still born to the extent of the contravention. And it is this distinction which results in the impossibility of applying the doctrine of eclipse to post-Constitution laws, for nothing can be revived which never had any valid existence**. We are therefore of opinion that the meaning of the word "void" is the same both in Art 13 (1) and Art. 13 (2), and that the application of the doctrine of eclipse in one case and not in the other case does not depend upon giving a different meaning to the word "void' in the two parts of Art. 13; it arises from the inherent difference between Art. 13 (1) and Art. 13 (2) arising from the fact that one is dealing with pre-Constitution laws, and the other is dealing with post-Constitution laws, with the result that in one case the laws being not still-born the doctrine of eclipse will apply while in the other case the laws being still born-there will be no scope for the application of the doctrine of eclipse. Though the, two clauses form part of the same Article, there is a vital difference in the language employed in them as also in their content and scope. By the first clause the Constitution recognises the existence of certain operating laws and they are declared void, to the extent of their inconsistency with fundamental rights. Had there been no such declaration, these laws would have continued to operate. Therefore, in the case of pre-Constitution laws what an amendment to the Constitution does is to remove the shadow cast on it by this declaration. **The law thus revives. However, in the case of the second clause, applicable to post Constitution laws, the Constitution does not recognise their existence, having been made in defiance of a prohibition to make them. Such defiance makes the law enacted void. In their case therefore there can be no revival by an amendment of the Constitution, MO though the bar to make the law is removed, so far as the period after the amendment is concerned. In the case of post-Constitution laws, it would be hardly appropriate to distinguish between laws which are wholly void-as for instance, those which contravene Art. 31-and those which are substantially void but partly valid, as for instance, laws contravening Art. 19. Theoretically, the laws falling under the latter category may be valid qua non-citizens; but that is a wholly unrealistic consideration and it seems to us that such nationally partial valid existence of the said laws on the strength of hypothetical and pedantic considerations cannot justify the application of the doctrine of eclipse to them. All post Constitution laws which contravene the mandatory injunction contained in the first part of Art. 13 (2) are void, as void as are the laws passed without legislative competence, and the doctrine of eclipse does not apply to them**. We are therefore of opinion that the Constitution (Fourth Amendment) Act cannot be applied to the Transfer Act in this case by virtue of the doctrine of eclipse It follows therefore that the Transfer Act is unconstitutional because it did not comply with*

Art. 31 (2), as it stood at the time it was passed. It will therefore have to be struck down, and the petitioner given a declaration in his favour accordingly.

(emphasis supplied)"

(vii) In the case of State of Manipur (supra), recently a three-judge Bench of this Court, was dealing with an appeal against the judgment of the Manipur High Court which had declared the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act No. 10 of 2012) as also the Repealing Act, 2018, as unconstitutional. Justice L. Nageswara Rao, speaking for the Bench, observed that where a statute is adjudged to be unconstitutional, it is as if it had never been and any law held to be unconstitutional for whatever reason, whether due to lack of legislative competence or in violation of fundamental rights, would be void ab initio. Paragraph Nos. 22 and 23 of the said judgment are reproduced hereunder:

"22. Where a statute is adjudged to be unconstitutional, it is as if it had never been*. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made. Field, J. in Norton v. Shelby County, observed that "an unconstitutional act is not law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed".*

23. An unconstitutional law, be it either due to lack of legislative competence or in violation of fundamental rights guaranteed under Part III of the Constitution of India, is void" ab initio*. In Behram Khurshid Pesikaka v.State of Bombay, it was held by a constitution bench of this Court that the law-making power of the State is restricted by a written fundamental law and any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus, a nullity.* ***A declaration of unconstitutionality brought about by lack of legislative power as well as a declaration of unconstitutionality brought about by reason of abridgement of fundamental rights goes to the root of the power itself, making the law void in its inception****. This Court in Deep Chand v. State of Uttar Pradesh summarised the following propositions:*

"(a) Whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power;

(b) The Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby

circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution;

(c) ***It follows from the premises that a law made in derogation or in excess of that power would be ab initio void...***

(emphasis supplied)"

95. *Further after discussing the law laid down by the previous pronouncements, the principles were deduced in paragraph no. 28 to state that a statute declared unconstitutional by a court of law would be still born and non est for all purposes. Paragraph 28 of the report is reproduced hereunder:*

"28. The principles that can be deduced from the law laid down by this Court, as referred to above, are:

I. A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.

II. After declaration of a statute as unconstitutional by a court of law, it is non est for all purposes.

III. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.

IV. Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional. ***(emphasis supplied)"***

96. *From the above discussion, it is crystal clear that once a law is declared to be unconstitutional, being violative of Part-III of the Constitution, then it would be held to be void ab initio, still born, unenforceable and non est in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements.* ***Thus, the declaration made by the Constitution Bench in the case of*** *Subramanian Swamy* ***(supra) will have retrospective operation. Section 6A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11.09.2003.***

97. *As indicated in the earlier part of this judgment, this Court has not delved into the other issues and arguments not germane to the reference order."*

[Emphasis supplied]

63. In ***Union of India v. Ganpati Dealcom (P) Ltd.***, (2023) 3 SCC 315, it was held:

> ***"66.*** *At this stage, we may only note that when a court declares a law as unconstitutional, the effect of the same is that such a declaration would render the law not to exist in the law books since its inception. It is only a limited exception under constitutional law, or when substantial actions have been undertaken under such unconstitutional laws that going back to the original position would be next to impossible. In those cases alone, would this Court take recourse to the concept of "prospective overruling".*
>
> ***67.*** *From the above, Section 3 (criminal provision) read with Section 2(a) and Section 5 (confiscation proceedings) of the 1988 Act are overly broad, disproportionately harsh, and operate without adequate safeguards in place. Such provisions were stillborn law and never utilised in the first place. In this light, this Court finds that Sections 3 and 5 of the 1988 Act were unconstitutional from their inception.*
>
> ***68.*** *Having said so, we make it abundantly clear that the aforesaid discussion does not affect the civil consequences contemplated under Section 4 of the 1988 Act, or any other provisions."*

APPENDIX-B

1. In ***Great Northern Railway Co. v. Sunburst Oil & Refining Co.*** [287 US 358 (1932)], the US Supreme Court held as follows:

> *"**11.** We think the posture of the case from the viewpoint of constitutional law was the same after the decision of the appeal as it was after the trial. There would certainly have been no denial of due process if the court in affirming the judgment had rendered no opinion or had stated in its opinion that the Doney Case was approved. The petitioner is thus driven to the position that the Constitution of the United States has been infringed because the Doney Case was disapproved, and yet, while disapproved, was followed. Adherence to precedent as establishing a governing rule for the past in respect of the meaning of a statute is said to be a denial of due process when coupled with the declaration of an intention to refuse to adhere to it in adjudicating any controversies growing out of the transactions of the future.*
>
> ***12.** We have no occasion to consider whether this division in time of the effects of a decision is a sound or an unsound application of the doctrine of stare decisis as known to the common law. Sound or unsound, there is involved in it no denial of a right protected by the Federal Constitution. This is not a case where a court, in overruling an earlier decision, has given to the new ruling a retroactive bearing, and thereby has made invalid what was valid in the doing. Even that may often be done, though litigants not infrequently have argued to the contrary. Tidal Oil Co. v. Flanagan, 263 U.S. 444, 450, 44 S.Ct. 197, 68 L.Ed. 382; Fleming v. Fleming, 264 U.S. 29, 44 S.Ct. 246, 68 L.Ed. 547; Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673, 680, 50 S.Ct. 451, 74 L.Ed. 1107; cf. Montana Bank v. Yellowstone County, 276 U.S. 499, 503, 48 S.Ct. 331, 72 L.Ed. 673. This is a case where a court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal.*
>
> ***13. We think the Federal Constitution has no voice upon the subject. A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may say that decisions of its highest court, though later overruled, are law none the less for intermediate transactions. Indeed, there are cases intimating, too broadly (cf. Tidal Oil Co. v. Flanagan, supra), that it must give them that effect; but never has doubt been expressed that it may so treat them if it pleases, whenever injustice or hardship will thereby be averted.** Gelpcke v. Dubuque, 1 Wall. 175, 17 L.Ed. 520; Douglass v. County of*

Pike, 101 U.S. 677, 687, 25 L.Ed. 968; Loeb v. Columbia Township Trustees, 179 U.S. 472, 492, 21 S.Ct. 174, 45 L.Ed. 280; Harris v. Jex, 55 N.Y. 421, 14 Am.Rep. 285; Menges v. Dentler, 33 Pa. 495, 499, 75 Am.Dec. 616; Com. v. Fidelity & Columbia Trust Co., 185 Ky. 300, 215 S.W. 42; Mason v. Cotton Co., 148 N.C. 492, 510, 62 S.E. 625, 18 L.R.A.(N.S.) 1221, 128 Am.St.Rep. 635; Hoven v. McCarthy Bros. Co., 163 Minn. 339, 204 N.W. 29; Farrior v. New England Mortgage Security Co., 92 Ala. 176, 9 So. 532, 12 L.R.A. 856; Falconer v. Simmons, 51 W.Va. 172, 41 S.E.193. On the other hand, it may hold to the ancient dogma that the law declared by its courts had a Platonic or ideal existence before the act of declaration, in which event the discredited declaration will be viewed as if it had never been, and the reconsidered declaration as law from the beginning. Tidal Oil Co. v. Flanagan, supra; Fleming v. Fleming, supra; Central Land Co. v. Laidley, 159 U.S. 103, 112, 16 S.Ct. 80, 40 L.Ed. 91; see, however, Montana Bank v. Yellowstone County, supra. 2 The alternative is the same whether the subject of the new decision is common law (Tidal Oil Co. v. Flanagan, supra) or statute. Gelpcke v. Dubuque, supra; Fleming v. Fleming, supra. The choice for any state may be determined by the juristic philosophy of the judges of her courts, their conceptions of law, its origin and nature. We review, not the wisdom of their philosophies, but the legality of their acts. The state of Montana has told us by the voice of her highest court that, with these alternative methods open to her, her preference is for the first. In making this choice, she is declaring common law for those within her borders. The common law as administered by her judges ascribes to the decisions of her highest court a power to bind and loose that is unextinguished, for intermediate transactions, by a decision overruling them. ***As applied to such transactions, we may say of the earlier decision that it has not been overruled at all. It has been translated into a judgment of affirmance and recognized as law anew.***

14. Accompanying the recognition is a prophecy, which may or may not be realized in conduct, that transactions arising in the future will be governed by a different rule. If this is the common-law doctrine of adherence to precedent as understood and enforced by the courts of Montana, we are not at liberty, for anything contained in the Constitution of the United States, to thrust upon those courts a different conception either of the binding force of precedent or of the meaning of the judicial process."

[Emphasis supplied]

2. In ***Victor Linkletter v. Victor G. Walker***, [381 US 618 (1965)], the US Supreme Court held as follows:

"14. While the cases discussed above deal with the invalidity of statutes or the effect of a decision overturning long established

common-law rules there seems to be no impediment-constitutional or philosophical-to the use of the same rule in the constitutional area where the exigencies of the situation require such an application. It is true that heretofore, without discussion, we have applied new constitutional rules to cases finalized before the promulgation of the rule. *Petitioner contends that our method of resolving those prior cases demonstrates that an absolute rule of retroaction prevails in the area of constitutional adjudication. However, we believe that the Constitution neither prohibits nor requires retrospective effect. As Justice Cardozo said, 'We think the Federal Constitution has no voice upon the subject.'*

15. Once the premise is accepted that we are neither required to apply, nor prohibited from applying, a decision retrospectively, we must then weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. We believe that this approach is particularly correct with reference to the Fourth Amendment's prohibitions as to unreasonable searches and seizures. Rather than 'disparaging' the Amendment we but apply the wisdom of Justice Holmes that '(t)he life of the law has not been logic: it has been experience.' Holmes, The Common Law 5 (Howe ed. 1963).

....

27. *Nor can we accept the contention of petitioner that the Mapp rule should date from the day of the seizure there, rather than that of the judgment of this Court. The date of the seizure in Mapp has no legal significance. It was the judgment of this Court that changed the rule and the date of that opinion is the crucial date.* ***In the light of the cases of this Court this is the better cutoff time. See United States v. Schooner Peggy, supra. All that we decide today is that though the error complained of might be fundamental it is not of the nature requiring us to overturn all final convictions based upon it. After full consideration of all the factors we are not able to say that the Mapp rule requires retrospective application.***

...

29. *Affirmed."*

[Emphasis supplied]

3. Thereafter, in 1966, the US Supreme Court in ***Sylvester Johnson & Stanley Cassidy v. State of New Jersey***, [384 US 719 (1966)] held as follows:

> *"**11.** In the past year we have twice dealt with the problem of retroactivity in connection with other constitutional rules of criminal procedure. Linkletter v. Walker, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965); Tehan v. United States ex rel. Shott, 382 U.S. 406, 86 S.Ct. 459, 15*

*L.Ed.2d 453 (1966). **<u>These cases establish the principle that in criminal litigation concerning constitutional claims, 'the Court may in the interest of justice make the rule prospective * * * where the exigencies of the situation require such an application.'</u>** 381 U.S., at 628, 85 S.Ct., at 1737; 382 U.S., at 410, 86 S.Ct., at 461. These cases also delineate criteria by which such an issue may be resolved. We must look to the purpose of our new standards governing police interrogation, the reliance which may have been placed upon prior decisions on the subject, and the effect on the administration of justice of a retroactive application of Escobedo and Miranda. See 381 U.S., at 636, 85 S.Ct., at 1741; 382 U.S., at 413, 86 S.Ct., at 464.*

***12.** In Linkletter we declined to apply retroactively the rule laid down in Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), by which evidence obtained through an unreasonable search and seizure was excluded from state criminal proceedings. In so holding, we relied in part on the fact that the rule affected evidence 'the reliability and relevancy of which is not questioned.' 381 U.S., at 639, 85 S.Ct., at 1743. Likewise in Tehan we declined to give retroactive effect to Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), which forbade prosecutors and judges to comment adversely on the failure of a defendant to testify in a state criminal trial. In reaching this result, we noted that the basic purpose of the rule was to discourage courts from penalizing use of the privilege against selfincrimination. 382 U.S., at 414, 86 S.Ct., at 464.*

***13.** As Linkletter and Tehan acknowledged, however, we have given retroactive effect to other constitutional rules of criminal procedure laid down in recent years, where different guarantees were involved. For example, in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), which concerned the right of an indigent to the advice of counsel at trial, we reviewed a denial of habeas corpus. Similarly, Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964), which involved the right of an accused to effective exclusion of an involuntary confession from trial, was itself a collateral attack. In each instance we concluded that retroactive application was justified because the rule affected 'the very integrity of the fact-finding process' and averted 'the clear danger of convicting the innocent.' Linkletter v. Walker, 381 U.S., at 639, 85 S.Ct., at 1743; Tehan v. United States ex rel. Shott, 382 U.S., at 416, 86 S.Ct., at 465.*

***14.** We here stress that the choice between retroactivity and nonretroactivity in no way turns on the value of the constitutional guarantee involved. The right to be represented by counsel at trial, applied retroactively in Gideon v. Wainwright, supra, has been described by Justice Schaefer of the Illinois Supreme Court as 'by far the most pervasive * * * (o)f all of the rights that an accused person has.' Yet*

Justice Brandeis even more boldly characterized the immunity from unjustifiable intrusions upon privacy, which was denied retroactive enforcement in Linkletter as 'the most comprehensive of rights and the right most valued by civilized men.' To reiterate what was said in Linkletter, we do not disparage a constitutional guarantee in any manner by declining to apply it retroactively. See 381 U.S., at 629, 85 S.Ct., at 1737.

15. We also stress that the retroactivity or nonretroactivity of a rule is not automatically determined by the provision of the Constitution on which the dictate is based. Each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice, and the way in which these factors combine must inevitably vary with the dictate involved. Accordingly as Linkletter and Tehan suggest, we must determine retroactivity 'in each case' by looking to the peculiar traits of the specific 'rule in question.' *381 U.S., at 629, 85 S.Ct., at 1737; 382 U.S., at 410, 86 S.Ct., at 461."*

...

17. *Having in mind the course of the prior cases, we turn now to the problem presented here: whether Escobedo and Miranda should be applied retroactively. Our opinion in Miranda makes it clear that the prime purpose of these rulings is to guarantee full effectuation of the privilege against self-incrimination, the mainstay of our adversary system of criminal justice. See 384 U.S., pp. 458—466, 86 S.Ct., pp. 1619—1624. They are designed in part to assure that the person who responds to interrogation while in custody does so with intelligent understanding of his right to remain silent and of the consequences which may flow from relinquishing it. In this respect the rulings secure scrupulous observance of the traditional principle, often quoted but rarely heeded to the full degree, that 'the law will not suffer a prisoner to be made the deluded instrument of his own conviction.' Thus while Escobedo and Miranda guard against the possibility of unreliable statements in every instance of in custody interrogation, they encompass situations in which the danger is not necessarily as great as when the accused is subjected to overt and obvious coercion.*

18. *At the same time, our case law on coerced confessions is available for persons whose trials have already been completed, providing of course that the procedural prerequisites for direct or collateral attack are met. See Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). Prisoners may invoke a substantive test of voluntariness which, because of the persistence of abusive practices, has become increasingly meticulous through the years. See Reck v. Pate, 367 U.S. 433, 81 S.Ct. 1541, 6 L.Ed.2d 948 (1961). That test now takes specific account of the failure to advise the accused of his privilege against self-incrimination or to allow him access to outside assistance. See Haynes*

v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963); Spano v. People of State of New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959). Prisoners are also entitled to present evidence anew on this aspect of the voluntariness of their confessions if a full and fair hearing has not already been afforded them. See Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963). Thus while Escobedo and Miranda provide important new safeguards against the use of unreliable statements at trial, the nonretroactivity of these decisions will not preclude persons whose trials have already been completed from invoking the same safeguards as part of an involuntariness claim.

19. Nor would retroactive application have the justifiable effect of curing errors committed in disregard of constitutional rulings already clearly foreshadowed. We have pointed out above that past decisions treated the failure to warn accused persons of their rights, or the failure to grant them access to outside assistance, as factors tending to prove the involuntariness of the resulting confessions. See Haynes v. State of Washington, supra; Spano v. People of State of New York, supra. Prior to Escobedo and Miranda, however, we had expressly declined to condemn an entire process of in custody interrogation solely because of such conduct by the police. *See Crooker v. State of California, 357 U.S. 433, 78 S.Ct. 1287, 2 L.Ed.2d 1448 (1958); Cicenia v. La Gay, 357 U.S. 504, 78 S.Ct. 1297, 2 L.Ed.2d 1523 (1958). Law enforcement agencies fairly relied on these prior cases, now no longer binding, in obtaining incriminating statements during the intervening years preceding Escobedo and Miranda. This is in favorable comparison to the situation before Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961), where the States at least knew that they were constitutionally forbidden from engaging in unreasonable searches and seizures under Wolf v. People of State of Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949).*

20. At the same time, retroactive application of Escobedo and Miranda would seriously disrupt the administration of our criminal laws. It would require the retrial or release of numerous prisoners found guilty by trustworthy evidence in conformity with previously announced constitutional standards. *Prior to Escobedo and Miranda, few States were under any enforced compulsion on account of local law to grant requests for the assistance of counsel or to advise accused persons of their privilege against self-incrimination. Compare Crooker v. State of California, 357 U.S., at 448, n. 4, 78 S.Ct., at 1296 (dissenting opinion). By comparison, Mapp v. Ohio, supra, was already the law in a majority of the States at the time it was rendered, and only six States were immediately affected by Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229 (1965). See Tehan v. United States ex rel. Shott, 382 U.S., at 418, 86 S.Ct., at 466.*

21. In the light of these various considerations, we conclude that Escobedo and Miranda, like Mapp v. Ohio, supra, and Griffin v. State of California, supra, should not be applied retroactively. *The question remains whether Escobedo and Miranda shall affect cases still on direct appeal when they were decided or whether their application shall commence with trials begun after the decisions were announced. Our holdings in Linkletter and Tehan were necessarily limited to convictions which had become final by the time Mapp and Griffin were rendered. Decisions prior to Linkletter and Tehan had already established without discussion that Mapp and Griffin applied to cases still on direct appeal at the time they were announced. See 380 U.S., at 622 and n. 4, 85 S.Ct., at 1237; 382 U.S., at 409, n. 3, 86 S.Ct., at 461. On the other hand, apart from the application of the holdings in Escobedo and Miranda to the parties before the Court in those cases, the possibility of applying the decisions only prospectively is yet an open issue.*

22. All of the reasons set forth above for making Escobedo and Miranda nonretroactive suggest that these decisions should apply only to trials begun after the decisions were announced. Future defendants will benefit fully from our new standards governing in-custody interrogation, while past defendants may still avail themselves of the voluntariness test. *Law enforcement officers and trial courts will have fair notice that statements taken in violation of these standards may not be used against an accused. Prospective application only to trials begun after the standards were announced is particularly appropriate here. Authorities attempting to protect the privilege have not been apprised heretofore of the specific safeguards which are now obligatory. Consequently, they have adopted devices which, although below the constitutional minimum, were not intentional evasions of the requirements of the privilege.* ***In these circumstances, to upset all of the convictions still pending on direct appeal which were obtained in trials preceding Escobedo and Miranda would impose an unjustifiable burden on the administration of justice."***

[Emphasis supplied]

4. In ***Chevron Oil Company v. Gaines Ted Hudson***, [404 US 97 (1971)], it was held:

*"**14.** In our cases dealing with the nonretroactivity question, we have generally considered three separate factors. First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, see e.g., Hanover Shoe, Inc. v. United Shoe Machinery Corp., supra, 392 U.S., at 496, 88 S.Ct., at 2233, or by deciding an issue of first impression whose resolution was not clearly foreshadowed, see, e.g., Allen v. State Board of Elections, supra, 393 U.S., at 572, 89 S.Ct., at 835. Second, it*

has been stressed that we sust at a weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' Linkletter v. Walker, supra, 381 U.S., at 629, 85 S.Ct., at 1738. Finally, we have weighed the inequity imposed by retroactive application, for '(w)here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity.' Cipriano v. City of Houma, supra, 395 U.S., at 706, 89 S.Ct., at 1900.

15. Upon consideration of each of these factors, we conclude that the Louisiana one-year statute of limitations should not be applied retroactively in the present case. Rodrigue was not only a case of first impression in this Court under the Lands Act, but it also effectively overruled a long line of decisions by the Court of Appeals for the Fifth Circuit holding that admiralty law, including the doctrine of laches, applies through the Lands Act. See, e.g., Pure Oil Co. v. Snipes, 293 F.2d 60; When the respondent was in injured, for the next two years until he instituted his lawsuit, and tor the ensuing year of pretrial proceedings, these Court of Appeals decisions represented the law governing his case. *It cannot be assumed that he did or could foresee that this consistent interpretation of the Lands Act would be overturned. The most the could do was to rely on the law as it then was. 'We should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did not avail themselves of it waived their rights.' Griffin v. Illinois, 351 U.S. 12, 26, 76 S.Ct. 585, 594, 100 L.Ed. 891 (Frankfurter, J., concurring in judgment).*

16. *To told that the respondent's lawsuit is retroactively time barred would be anomalous indeed. A primary purpose underlying the absorption of state law as federal law in the Lands Act was to aid injured employees by affording them comprehensive and familiar remedies. Rodrigue v. Aetna Casualty & Surety Co., supra, 395 U.S., at 361, 365, 89 S.Ct., at 1840, 1842.* ***Yet retroactive application of the Louisiana statute of limitations to this case would deprive the respondent of any remedy whatsoever on the basis of superseding legal doctrine that was quite unforeseeable. To abruptly terminate this lawsuit that has proceeded through lengthy and, no doubt, costly discovery stages for a year would surely be inimical to the beneficent purpose of the Congress.***

17. *It would also produce the most 'substantial inequitable results,' Cipriano v. City of Houma, supra, 395 U.S., at 706, 89 S.Ct., at 1900, to hold that the respondent 'slept on his rights' at a time when he could not have known the time limitation that the law imposed upon him****. In Cipriano v. City of Houma, supra, we invoked the doctrine of***

nonretroactive application to protect property interests of 'cities, bondholders, and others connected with municipal utilities'; and, in Allen v. State Board of Elections, supra, we invoked the doctrine to protect elections held under possibly discriminatory voting laws. Certainly, the respondent's potential redress for his allegedly serious injury-an injury thatmay significantly undercut his future earning power-is entitled to similar protection. *As in England v. State Board of Medical Examiners, supra, nonretroactive application here simply preserves his right to a day in court. I 18. Both a devotion to the underlying purpose of the Lands Act's absorption of state law and a weighing of the equities requires nonretroactive application of the state statute of limitations here.* ***Accordingly, although holding that the opinion of the Court of Appeals reflects a misapprehension of Rodrigue, we affirm its judgment remanding this case to the trial court. It is so ordered."***

[Emphasis supplied]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

Civil Appeal Nos. 1883 of 2006

State of Orissa …Appellants

Versus

National Aluminium Co. Ltd. & Ors. …Respondents

BRIEF SUBMISSIONS ON PROSPECTIVE APPLICABILITY OF THE JUDGMENT

PARTY: RESPONDENT NO. 2 I.E. EASTERN ZONE MINING ASSOCIATION

ADVOCATE OF RECORD: RITIKA GAMBHIR KOHLI

BRIEF SUBMISSIONS ON PROSPECTIVE APPLICABILITY OF THE JUDGMENT

A. THE DECISION OF 7-JUDGES IN *INDIA CEMENT* HELD THE FIELD FOR 35 YEARS I.E. FROM 25.10.1989 TILL 25.07.2024

A1. It is well-settled that till a judgment under reference is altered, modified or overruled, it would continue to hold the field. One of the key questions in the reference order [***MADA vs. SAIL***, *(2011) 4 SCC 450*, ***3JJ***], particularly Question No. 5, was whether ***State of West Bengal vs. Kesoram Industries Ltd.***, *(2004) 10 SCC 201 [**5JJ**]* was departing from the law laid down in ***India Cement Ltd. vs. State of Tamil Nadu***, *(1990) 1 SCC 12 [**7JJ**]*.

A2. The general principle of *stare decisis* is that view of a larger bench prevails over that of a smaller bench, and the bench of smaller strength cannot disagree or dissent from the view taken by the larger bench. (See ***Dawoodi Bohra Community vs. State of Maharashtra***, (2005) 2 SCC 673, para. 12 [***5JJ***] and ***Trimurti Fragrances (P) Ltd. vs. Govt of NCT of Delhi***, 2022 SCCOnline 1247, para. 19 [***5JJ***]

A3. In view of the same, it is clear that ***Kesoram*** *(supra) [**5JJ**]* could not have departed from ***India Cement*** *(supra) [**7JJ**]*, and that ***India Cement*** *(supra)* continued to hold the field till the present judgment dated 25.07.2024.

A4. The reference order framed a specific question (Question No. 5) as to whether ***Kesoram*** had departed from ***India Cement.*** Nagarathna, J. in her dissent has categorically answered this question and held that ***Kesoram*** *(supra)* was a serious departure from the law laid down in ***India Cement*** *(supra)* [para. 42(ii)]. Although the majority overrules ***India Cement*** (on an independent analysis), this finding by Nagarathna, J. in the dissent is not disputed.

A5. In ***Ashok Sadarangani vs. Union of India,*** *(2012) 11 SC 321 **[2JJ]*** it was specifically held by the Hon'ble Court that if a judgment is under reference, then until it is altered or modified, it would continue to hold the field. The issue arose in the context of the reference made by a 2-judge bench (***Gian Singh***) doubting the correctness of three (3) other decisions by 2-judge benches namely ***BS Joshi vs. State of Haryana***, *(2003) 4 SCC 675*, ***Nikhil Merchant vs. CBI*** *(2008) 9 SCC 677*, ***Manoj Sharma vs. State & Ors***, *(2008) 16 SCC 1*. This Hon'ble Court held:

> *"29. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a*

> *decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us.* ***Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field****.*

A6. It is significant that mere reference to a larger bench does not alter, modify or dilute the judgment under reference until the receiving larger bench answers the reference. In ***M.S. Bhati vs. National Insurance Co. Ltd.****, (2019) 12 SCC 248 [****2JJ****],* this Hon'ble Court was considering the fact that the law down by a 3-judge bench in ***Mukund Dewangan vs Oriental Insurance Co. Ltd****., (2017) 14 SCC 663* was referred to a larger bench in ***Bajaj Alliance General Insurance Co. Ltd. vs. Rambha Devi****, (2019) 12 SCC 816*. This Hon'ble Court, speaking through Chandrachud, J. held that pending the reference, the law laid down in ***Mukund Dewangan*** would continue to hold the field:

> *10. The learned counsel further submitted on the alternative plea that the decision in Mukund Dewangan [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] has been reserved for reconsideration by a larger Bench in Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi [Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi, (2019) 12 SCC 816] by a two-Judge Bench of this Court on 3-5-2018.*
>
> *11. The law which has been laid down by a three-Judge Bench of this Court in Mukund Dewangan [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] binds this Court.* ***As a matter of judicial discipline, we are duty-bound to follow that decision which continues to hold the field.***

A7. That therefore, it is respectfully submitted that ***India Cement*** *(supra)* held the field for 35 long years i.e. since 25.10.1989 till 25.07.2024, when it was specifically overruled. All transactions settled on the basis of the law laid down in ***India Cement*** *(supra)* for the last 35 years ought not to be unsettled, and this Hon'ble Court may specifically clarify that the judgment dated 25.07.2024 would apply prospectively.

B. IT IS WELL-SETTLED THAT THE DOCTRINE OF PROSPECTIVE OVERRULING CAN BE USED BY THIS HON'BLE COURT TO MOULD RELIEF

B1. The doctrine of prospective overruling is well-entrenched in Indian constitutional jurisprudence since ***Golak Nath vs. State of Punjab, AIR 1967 1643,*** *para. 115-117* ***(11 JJ)*** and has been used repeatedly by this Hon'ble Court to mould the relief.

B2. In ***India Cement*** *(supra),* para. 35-36 *[7**JJ**]* itself, it was applied. Although the cess in question was declared to be *ultra vires*, it was directed that the Respondents will not be liable for any refund of cess already paid or collected.

> ***35. Mr. Krishnamurthy Iyer, however, submitted that in any event, the decision in H.R.S. Murthy case [(1964) 6 SCR 666 : AIR 1965 SC 177] was the decision of the Constitution Bench of this Court.*** *Cess has been realised on that basis for the organisation of village and town panchayats and comprehensive programme of measures had been framed under the National Extension Service Scheme to which our attention was drawn. Mr. Krishnamurthy Iyer further submitted that the Directive Principle of State Policy embodied in the Constitution enjoined that the State should take steps to organise village panchayats and endow them with power and authority as may be necessary to enable them to function as units of self-government and as the amounts have been realised on that basis, if at all, we should declare the said cess on royalty to be ultra vires prospectively.* ***In other words, the amounts that have been collected by virtue of the said provisions, should not be declared to be illegal retrospectively and the State made liable to refund the same. We see good deal of substance in this submission. After all, there was a decision of this Court in H.R.S. Murthy case [(1964) 6 SCR 666 : AIR 1965 SC 177] and amounts have been collected on the basis that the said decision was the correct position. We are, therefore, of the opinion that we will be justified in declaring the levy of the said cess to be ultra vires the power of the State legislature prospectively only.***
>
> ***36.*** *In that view of the matter, the appeals must, therefore, be allowed and the writ petitions also succeed to the extent indicated above.* ***We declare that the said cess by the Act under Section 115 is ultra vires and the respondent State of Tamil Nadu is restrained from enforcing the same any further. But the respondents will not be liable for any refund of cess already paid or collected.*** *The appeals are disposed of accordingly. The special leave petitions and writ petitions are also disposed of in those terms. In the facts and the circumstances of the case, the parties will pay and bear their own costs.*

B3. Similarly, in ***Synthetics & Chemicals Ltd. vs. State of UP***, *(1990) 1 SCC 109 [**7JJ**]*, again applied the doctrine of prospective overruling while overruling its earlier decision in ***Synthetics & Chemicals Ltd***, *(1980) 2 SCC 441*

> ***89.*** *We must, however, observe, that these imposts and levies have been imposed by virtue of the decision of this Court in Synthetics & Chemicals Ltd. case [(1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614] .* ***The States as well as the petitioners and manufacturers have adjusted their rights and their position on that basis except in the case of State of Tamil Nadu. In that view of the matter, it would be necessary to state that these provisions are declared to be illegal prospectively. In other words, the respondents States are restrained from enforcing the said levy any further but the respondents will not be liable for any refund and the tax already collected and paid will not be refunded. We prospectively declare these imposts to be illegal and invalid, but do not affect any realisations already made.*** *The writ petitions and the appeals are disposed of accordingly. The review petitions, accordingly, succeed though strictly no grounds as such have been made out but in the view we have taken, the decision in the Synthetics & Chemicals Ltd. case [(1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614] cannot be upheld. In the view we have taken also, it is not necessary to decide or to adjudicate if the levy is valid as to who would be liable, that is to say, the manufacturer or the producer or the dealer.*

B4. This rationale was also followed in ***Orissa Cement Ltd. vs. State of Orissa,*** *(1991) Supp (1) SCC 430* [***3JJ***], para. 63-68 and para. 72, and again it was directed that no refund of the levy already collected would be directed.

B5. Similarly, in ***Belsund Sugar Co. Ltd. vs State of Bihar***, *(1999) 9 SCC 620 [**5JJ**]*, a Constitution Bench held:

> ***112.*** *Shri Shanti Bhushan, learned Senior Counsel for the appellants in this connection submitted that accepting the principle of unjust enrichment we may reserve liberty to the appellants to show before the authorities whether they have in fact passed on the burden of the impugned market fee at the relevant time and if they could show to the satisfaction of the authorities that in fact they have not passed on the burden then they may be treated to be entitled to get refund of all the appropriate amounts of market fee not passed on. In our view it is not possible to accept this contention as years have rolled by since the impugned market fees have been levied by the different Market Committees in the*

State of Bihar. In the normal course of events, no prudent businessman/manufacturer would ever bear the burden of such compulsory fee or tax to be paid from his own pocket. Even otherwise reserving such liberty would create unnecessary complication and may give rise to a spate of avoidable litigations in the hierarchy of proceedings. ***Under these circumstances, keeping in view the peculiar facts and circumstances of these cases, we deem it fit to direct in exercise our powers under Article 142 of the Constitution of India that the present decision will have only a prospective effect. Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced therefrom by utilising this purchased sugarcane by these factories will not be subjected to the levy of market fee under Section 27 of the Market Act by the Market Committees concerned. All past transactions up to the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees***.

113. *However, one rider has to be added to this direction. If any of the Market Committees has been restrained from recovering market fee from the writ petitioners in the High Court or if any of the writ petitioners in the High Court has, as an appellant before this Court, obtained stay of the payment of market fee, then for the period during which such stay has operated and consequently market fee was not paid on the transactions covered by such stay orders, there will remain no occasion for the Market Committee concerned to recover such market fee from the sugar mill concerned after the date of this judgment even for such past transactions.* ***In other words, market fees paid in the past shall not be refunded. Similarly market fees not collected in the past also shall not be collected hereafter****. The impugned judgments of the High Court in this group of sugar matters will stand set aside as aforesaid. The writ petition directly filed before this Court also will be required to be allowed* in the aforesaid terms.

B6. The doctrine was also explained in the case of ***Somaiya Organics (India) Ltd. etc. v. State of U.P. & Anr.*** 2001 (5) SCC 519 [***5JJ***]

> *"27. **In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case- justice not in its logical but in its equitable sense.** As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do complete justice.*

B7. Another clear application of the doctrine was in the case of ***BALCO vs. Kaiser Aluminium Technical Services**, (2012) 9 SCC 552 **[5JJ]*** where a Constitution Bench overruled ***Bhatia International vs. Bulk Trading S.A.**, (2002) 4 SCC 105 **[3JJ]*** and ***Venture Global Engg. vs. Satyam Computer Services Ltd***., (2008) 4 SCC 190 ***[2JJ]***, but made it clear that the judgment would apply prospectively:

> ***197.** The judgment in Bhatia International (supra) was rendered by this Court on 13th March, 2002. Since then, the aforesaid judgment has been followed by all the High Courts as well as by this Court on numerous occasions. In fact, the judgment in Venture Global Engineering (supra) has been rendered on 10th January, 2008 in terms of the ratio of the decision in Bhatia International (supra). **Thus, in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter.***

B8. Therefore, in the circumstances, it is just and expedient that the present judgment dated 25.07.2024 be given prospective effect.

C. THE PRINCIPLE OF *ACTUS CURIAE NEMINEM GRAVABIT* APPLIES

C1. All parties, including assesses, arranged their affairs over the last 35 years in accordance with the law laid down in ***India Cement.*** Parties made provisioning of costs and taxes on the basis of the law as it stood. Parties in States like Orissa had the further benefit of a High Court judgment which followed ***India Cement*** and struck down the levy as unconstitutional.

C2. The invocation of the principle of *actus curiae neminem gravabit* in conjunction with doctrine of prospective overruling is also well-settled (***ESI Corporation vs. Jardine Henderson Staff***, (2006) 6 SCC 581 ***[2JJ]***, para. 61-68)

C3. The errors of ***India Cement*** have been found to be legal errors only by way of the present judgment, and these errors may not be allowed to cause prejudice to any of the parties.

C4. It is further to be noted that ***India Cement*** was unquestioned till 2004 (*Kesoram)*, and the reference in question was also made only in 2011. The reference has finally been answered on 25.07.2024. By way of the present judgment, the Hon'ble Bench of 9-judges has, for the first time, overruled multiple judgments of differing bench-strengths, including ***India Cement*** *(supra) [7**JJ**]*, ***Orissa Cement*** *(supra) [**3JJ**],* ***Federation of Mining Associations of Rajasthan vs. State of Rajasthan****, (1992) Supp (2) SCC 239, [**3JJ**],* ***State of MP vs. Mahalaxmi Fabric Mills,*** *(1995) Supp (1) SCC 642 [**3JJ**],* ***P. Kannadasan vs State of Tamil Nadu****, (1996) 5 SCC 670 [**2JJ**]; and* ***Saurashtra Cement & Chemical Industries Ltd. vs. Union of India****, (2001) 1 SCC 91 [**2JJ**],* which had remained undisturbed for 35 years.

C5. In the circumstances, it is just and expedient that this Hon'ble Court declare that the judgment dated 25.07.2024 would apply prospectively.

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