1963

August 13

THE SOUTH INDIA CORPORATION(P) LTD.

v.

THE SECRETARY, BOARD OF REVENUE, TRIVANDRUM & ANR.

(S. K. DAS, ACTING C. J., K. SUBBA RAO, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR, JJ.)

Sales Tax—Assessment in respect of works contracts—Constitutionality—Agreement between President and Raj Pramukh of Part B State—Validity-Continuance in force of existing laws and their adaptation—"Subject to the other provisions of the Constitution"—Scope and effect of—Constitution of India, Arts. 277, 278, *and* 372—*Travancore-Cochin General Sales Tax Act.* 11 *of* 1125 *M.E.—Travancore-Cochin General Sales Tax Act* 1957 (12 *of* 1957)—*Kerala Act* 11 *of* 1957.

On March 17, 1959 the appellant, a private limited company was assessed to sales tax under the Travancore-Cochin General Sales Tax Act, 1125 M.E. for the assessment year 1952-53 in respect of "works contracts". The company filed a revision petition before the 1st respondent, but it was rejected. Likewise, the 2nd respondent assessed the company to sales tax for the assessment years 1956-57, 1957-58, 1958-59 in respect of "works contracts". The assessment for the year 1952-53 was made only under the Travancore-Cochin General Sales Tax Act (11 of 1125 M.E.) and, therefore, the subsequent alleged enhancement of the tax did not affect the assessment of that year. Assessment for the years 1956-57, 1957-58 and 1958-59 were made under the Travancore-Cochin General Sales Tax (Amendment) Act, 1957(12 of 1957) and, therefore, the provisions if any, enhancing the rate under the Act would affect the said assessments. The enhancements made under the Kerala Act 11 of 1957 would not govern the assessment year 1956-57 but only the assessment years 1957-58 and 1958-59. The appellant moved the High Court under Arts. 226 and 227 of the Constitution for quashing the said orders of assessment. The petitions were dismissed. In this Court, the appellant mainly contended: (1) Art. 277 can only save the levy of a tax that was being lawfully levied by a State immediately before the commencement of the Constitution and that as the Act came into force only after the Constitution, the levy made thereunder does not satisfy the condition laid down by the Article. (2) Assuming that Art. 277 saved the levy of a tax under the Act, there was an agreement between the President of India and the Rajpramukh of the State of Travancore-Cochin and under the said agreement the Union agreed to recoup the loss in revenue incurred by the said State by reason of the constitutional transference of the B State's power of taxation in respect of certain items to the Union List and that, thereafter, the State ceased to have the power to levy any tax in

respect of the subjects so transferred. (3) Article 372 is subject to other provisions of the Constitution and a law empowering a State to impose a tax in respect of a federal subject is inconsistent with the federal structure of the Constitution and, therefore, is bad; and, that apart, it is also inconsistent with the express provisions of Part XII of the Constitution and particularly with those of Arts. 277 and 278 thereof.

Held : The tax under the Act would not be saved, as the necessary condition that the levy should have been lawfully made before the Constitution, was not satisfied.

The effect of the provisions in Art. 278 is that to the extent covered by an agreement the power of the State Government to continue to levy taxes under Art. 277 is superseded.

Union of India v. *Maharaja Krishnagarh Mills Ltd.* [1961] 3 S.C.R. 524, applied.

The agreement in question fell squarely within the scope of the power. That would have its full force unless the Constitution (Seventh Amendment) Act, 1956, in terms avoided it. The said amendment was only prospective in operation and it could not have affected the validity of the agreement. It must be held, therefore, that the impugned assessment orders were not validly made by the sales tax authorities in exercise of the power saved under Art. 277 of the Constitution.

A pre-Constitution law made by a competent authority, though it has lost its legislative competency under the Constitution, shall continue in force, provided the law does not contravene the "other provisions" of the Constitution.

M/s. Cannon Dunkerlay & Co. v. *Sales Tax Officer, Maatancherry*, I.L.R [1957] Kerala 462, *Sagar Mall* v. *State*, I.L.R. [1952] 1 All 862, *Kanpur Oil Mills* v. *Judge (Appeals) Sales Tax, Kanpur*, A.I.R. 1955 All 99, *The Amalgamated Coalfields Ltd.* v. *The Janapada Sabha, Chhindwara*, [1962] 1 S.C.R. 1, *Jagdish Prasad* v. *Saharanpur Municipality* A.I.R. 1961 All. 583; *Sheoshankar* v. *M. P. State*, A.I.R. 1951 Nag. 58, *State* v. *Yash Pal*, A.I.R. 1957 Punj. 91 and *Binoy Bhusan* v. *State of Bihar*, A.I.R. 1954 Pat. 346, followed.

Article 372 cannot be construed in such a way as to enlarge the scope of the saving of taxes, duties, cesses or fees. Article 372 must be read subject to Art. 277.

While Art. 372 is subject to Art. 278, Article 278 operates in its own sphere in spite of Art. 372. The result is that Art. 278 overrides Art. 372; that is to say, notwithstanding the fact that a pre-Constitution taxation law continues in force under Art. 372, the Union and

1963

The South India Corporation (P) Ltd. v. *The Secretary, Board of Revenue, Trivandrum*

the State Governments can enter into an agreement in terms of Art. 278 in respect of Part B States depriving the State law of its efficacy. In one view Art. 277 excludes the operation of Art. 372, and in the other view, an agreement in terms of Art. 278 overrides Art. 372. In either view, the result is the same, namely, that at any rate during the period covered by the agreement the States ceased to have any power to impose the tax in respect of "works contracts". The said orders of assessment, therefore, must be set aside.

Chicago, Rock Island and Pacific Railway Company v. *William Moglim,* (1884) 29 L. Ed. 270 and *Vilas* v. *City of Manila,* (1910) 55 L. Ed. 491, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 295 to 298 of 1962.

Appeals from the judgment and order dated February 3, 1961, of the Kerala High Court in O. Ps. Nos. 232 of 1957, 70, 71 and 673 of 1960.

M. K. Nambyar, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the appellant.

V. P. Gopalan Nambyar, Advocate-General for the State of Kerala and *Sardar Bahadur,* for the respondents.

Subba Rao, J.

August 13, 1963. The Judgment of the Court was delivered by SUBBA RAO J.—These four companion appeals arise out of a common judgment of the High Court of Kerala dismissing the four petitions filed by the appellant seeking to quash the orders of assessment made by the Sales Tax authorities imposing sales tax in respect of "works contracts".

The undisputed facts may briefly be stated. The appellant is a private limited company incorporated under the Indian Companies Act. The principal office of the Company is at Mattancherry. It carries on business in iron, hardware, electrical goods, timber, coir, engineering contracts etc. In the course of its business, the Company acted as engineering contractor for the State and Central Government departments and also for private parties. On March 17, 1959, the Sales Tax Officer, special Circle, Ernakulam assessed the Company to sales tax under the Travancore-Cochin General Sales Tax Act, 1125 M.E. for the assessment year 1952-53 in respect of "works contracts". The Company filed a revision petition before the 1st respondent, but it was rejected. Likewise the 2nd respondent assessed the Com-

pany to sales tax by his orders dated 7-1-1960, 4-1-1960 and 31-3-1960 for the assessment years 1956-57, 1957-58 and 1958-59 in respect of "works contracts". The appellant filed four petitions in the High Court of Kerala under Arts. 226 and 227 of the Constitution for quashing the said orders of assessment. The main contention advanced on behalf of the appellant-Company before the High Court was that, after the Constitution came into force the relevant Sales Tax Acts imposing sales tax on "works contracts" were unconstitutional and, therefore, void. The High Court rejected the contention and dismissed the petitions with costs. Hence the appeals.

Before adverting to the rival contentions it would be convenient at the outset to give briefly the historical background of the sales tax legislation in Kerala.

Originally, Travancore and Cochin were two separate sovereign States having plenary powers of taxation. In the Cochin State, the Cochin General Sales Tax Act 15 of 1121 M.E. and in the Travancore State, the Travancore General Sales Tax Act 18 of 1124 M.E. imposed tax on "works contracts". As a result of the merger of the two States, the United State of Travancore-Cochin was formed with a common Legislature. The said Legislature enacted the Travancore-Cochin General Sales Tax Act 11 of 1125 M.E. (1950), hereinafter called the Act. The said Legislature also had plenary powers of taxation and, therefore, it validly imposed sales tax on "works contracts". The Act was published in the Gazette on January 17, 1950, but s. 1(3) thereof provided that it would come into force on such date as the Government might, by notification in the Gazette, appoint. The requisite notification was issued by the Government in May 30, 1950. Rules were framed under powers conferred by s. 24 of the Act prescribing the mode, *inter alia,* for ascertaining the amounts for which goods were sold in relation to "works contracts". Rules 4(3) provided that,

> "For the purposes of sub-rule (1), the amount for which goods are sold by a dealer shall, in relation to a works contract, be deemed to be the amount payable to the dealer for carrying out such contract less a sum not exceeding such percentage of the amount payable as may be fixed by the Board of Revenue from time to time for different areas, representing the usual propor-

1963

The South India Corporation (P) Ltd.
v.
The Secretary, Board of Revenue, Trivandrum

Subba Rao J.

tion in such areas of the cost of labour to the cost of materials used in carrying out such contract, subject to the following maximum percentages:—

* * * * *

But, it is stated that the Board of Revenue did not fix the percentage for deduction from the amount payable to the dealer for carrying out a works contract. This fact was not denied in the High Court, but before us an application is made to produce the Travancore-Cochin Gazette to establish that such a percentage was fixed. The Rules also were notified on May 30, 1950. The earlier Acts of Travancore and Cochin were repealed from May 30, 1950. Till May 30, 1950, sales tax was levied on works contracts in Travancore and Cochin areas under the respective Acts and the rules framed thereunder. As from the said date the said Acts were repealed, thereafter the said tax was imposed under the Act and the rules framed thereunder. On November 1, 1956, the States Reorganization Act of 1956 came into force and the new State of Kerala was formed thereunder. The newly formed Kerala State comprised the area covered by the Travancore-Cochin State, excepting a small part thereof, and the district of Malabar in the Madras State. Thereafter, the Kerala Legislature passed the Travancore-Cochin General Sales Tax (Amendment) Act, 1957 (12 of 1957) amending the Act and extending its provisions to the whole State of Kerala. The new Act practically contained the provisions of the earlier Act. The said Act came into force on October 1, 1957. By the provisions of Act 12 of 1957, among other things, the tax on electric goods was enhanced from 3 n.p. to 4 n.p. in the rupee and in regard to cement, this item was freshly added and charged to sales tax at 5 n.p. in the rupee. The State of Kerala does not admit that either there was any enhancement of tax in the case of electrical goods or that any tax was imposed in regard to cement involved in a works contract. Further, the sales tax leviable under the Act was enhanced by the Kerala Surcharge on Taxes Act, 1957 (11 of 1957) and again by the Kerala Surcharge on Taxes Act, 1960. We are not concerned with the latter Act as no assessment was made under that Act in respect of any of the transactions in question.

The factual position may, therefore, be stated thus :

The assessment for the year 1952-53 was made only under the Travancore-Cochin General Sales Tax Act (11 of 1125 M.E.) and, therefore, the subsequent alleged enhancement of the tax does not affect the assessment of that year. Assessments for the years 1956-57, 1957-58 and 1958-59 were made under the Travancore-Cochin General Sales Tax (Amendment) Act, 1957 (12 of 1957) and, therefore, the provisions, if any, enhancing the rate under the Act would affect the said assessments. The enhancements made under the Kerala Act 11 of 1957 would not govern the assessment year 1956-57, but only the assessment years 1957-58 and 1958-59.

The material contentions of Mr. Nambiar, appearing for the appellant may be summarised thus : (1) The Travancore-Cochin Act of 1125 would not continue in force under Art. 372 of the Constitution inasmuch as its provisions were inconsistent with the structure of the Constitution as well as with the provisions of Part XII thereof. (2) Art. 277 of the Constitution cannot be relied upon by the respondent, as it can be availed of only : (a) if a particular tax was lawfully levied by the Government of the State immediately before the commencement of the Constitution and is expressly mentioned in the Union List, and (b) if there is an identity between the tax imposed by the State before the Constitution and that continued by it thereafter in respect of rate, area, State and purpose. It is said that the said two conditions are not satisfied. (3) Assuming that Art. 277 applied, the said provision could not be relied upon by the appellant in view of the agreement entered into between the Rajpramukh of Travancore and the Union Government under Art. 278 of the Constitution. (4) The impugned Act, in so far as it imposed tax in respect of "works contracts", would offend Art. 14 of the Constitution inasmuch as it was not applied to areas other than those covered by the Travancore-Cochin States and, therefore, discriminatory in its application. And (5) in any view, in respect of the assessment year 1952-53 the non-fixation of the percentage by the Board of Revenue under r. 4(3) of the Rules made under the Act renders the said assessment illegal.

The learned Advocate-General of Kerala counters some of the said arguments. We shall refer to his arguments in

1963

The South India Corporation (P) Ltd. v. *The Secretary, Board of Revenue, Trivandrum*

Subba Rao J.

the course of the judgment at appropriate places. It may be metioned at this stage that the learned Advocate-General conceded that the assessment orders for the years 1956-57, 1957-58 and 1958-59 made under the Travancore-Cochin General Sales Tax (Amendment) Act, 1957 (12 of 1957) and the Kerala Surcharge on Taxes Act (11 of 1957) were bad, but prayed that the State might be given liberty to assess the appellant *de novo* for the said years under the Act.

The main contention of learned counsel for the appellant centres on the provisions of Arts. 277 and 278 of the Constitution. Under Art. 277, any taxes that were being lawfully levied by the Government of any State before the Constitution could be continued to be levied thereafter, notwithstanding that the said taxes were mentioned in the Union List, till Parliament made a law to the contrary. Article 278 enables the Government of India and a State Government specified in Part B of the First Schedule to the Constitution to enter into an agreement with respect to levy and collection of any tax leviable by the Government of India in such State and for the distribution of the proceeds thereof and also in respect of the grant of any financial assistance by the Government of India to such State if it incurred any loss of revenue derived by it from any source. Under cl. (2) thereof, such an agreement shall continue in force for a period of ten years from the commencement of the Constitution. We are not concerned here with the legal position after the expiry of the said period, and we do not propose to express our view thereon.

The first contention of learned counsel for the appellant is that Art. 277 of the Constitution can only save the levy of a tax that was being lawfully levied by a State immediately before the commencement of the Constitution and that, as the Act came into force only after the Constitution, the levy made thereunder does not satisfy the condition laid down by the article. To appreciate this contention some relevant facts may be recapitulated. The Act was published in the Gazette on January 17, 1950, but was brought into force only on May 30, 1950, *i.e.*, after the commencement of the Constitution. If so, it follows that the tax under the Act would not be saved, as necessary condition that the levy should have been lawfully made before the Constitution was not satisfied.

On the assumption that Art. 277 saved the levy of tax under the Act, the further contention of the appellant is that there was an agreement dated February 25, 1950 between the President of India and the Rajpramukh of the State of Travancore-Cochin in the matter of the federal financial integration in the said State and that under the said agreement the Union agreed to recoup the loss in revenue incurred by the said State by reason of the constitutional transferance of the B State's power of taxation in respect of certain items to the Union List and that, thereafter, the State ceased to have the power to levy tax in respect of the subjects so transferred. The learned Advocate-General, on the other hand, contends that Art. 278(2) enables the Union and a B State to enter into an agreement only in respect of a tax leviable by the Government of India in the said State and in respect whereof a loss has been incurred by the State by reason of the fact that under the Constitution it has ceased to have the power to levy and collect the said tax, and that, as in the instant case by reason of Art. 277 the State would continue to have the power to levy the tax in respect of "works contracts" till Parliament made appropriate law, it did not incur any loss in respect of the said tax and, therefore, no valid agreement could be entered into between the State Government and the Union in respect thereof. To state it differently, Art. 278 does not come into play unless the Government of India acquires the power to levy a particular tax saved by Art. 277 by Parliament making an appropriate law; for, it is said, with some force, there cannot be an agreement to recoup any loss of revenue when there is no such loss. But this question is covered by a decision of this Court in *Union of India* v. *Maharaja Krishnagarh Mills Ltd.*(1). There, the question for determination was whether the Union of India was entitled to levy and recover arrears of excise duty on cotton cloth for the period April 1, 1949 to March 31, 1950, payable by the respondent, a cloth mill in the State of Rajasthan, under the Rajasthan Excise duties Ordinance, 1949. By reason of Art. 277 of the Constitution, the State of Rajasthan became entitled to recover the said duty notwithstanding the fact that it was transferred to the Union List. The provision to the contrary contemplated by

(1) [1961] 3 S.C.R. 524.

1963

The South India Corporation (P) Ltd.
v.
The Secretary, Board of Revenue, Trivandrum

Subba Rao J.

Art. 277 of the Constitution was made by Finance Act XXV of 1950 s. 11 whereof extended the Central Excise and Salt Act, 1944, along with other Acts, to the whole of India except the State of Jammu and Kashmir. That section had effect only from April 1, 1950 and did not apply to arrears of duty of excise in regard to the earlier period. The Union pleaded that an agreement envisaged by Art. 278 was entered into on February 25, 1950 which conceded to the Centre the right to levy and collect the arrears of duty in question. The question now raised before us, namely, whether there can be a valid agreement under Art. 278 of the Constitution in respect of taxes leviable by the State and leviable by the Government of India till an appropriate law is made by Parliament arose for consideration in that case. The learned Chief Justice, speaking for the Court came to the following conclusion, at p. 535 :

> "Thus, the combined operation of Arts. 277 and 278 read with the agreement vests the power of levy and collection of the duty in the Union of India".

The reasons for the conclusion are found at p. 533:

> "It is noteworthy that the provisions of Art. 278 override *pro tanto* other provisions of the Constitution including Art. 277 and the terms of the agreement override the provisions of the Chapter, namely Chapter I of Part XII ....Article 277, therefore, is in the nature of a saving provision permitting the States to levy a tax or a duty which, after the Constitution, could be levied only by the Centre. But Art. 277 must yield to any agreement made between the Government of India and the Government of a State in Part B in respect of such taxes or duties, etc."

The learned Chief Justice proceeded to state thus at p. 535:

> "That a duty of the kind now in controversy on the date of the agreement after coming into force of the Constitution is leviable only by the Government of India even in respect of the State of Rajasthan is clear beyond all doubt. The Union List only, namely, entry 84 in the Seventh Schedule, authorises the levy and collection of the duty in question.....
> It is true that Art. 277 has saved, for the time being, until Parliament made a provision to the contrary, the power of the State of Rajasthan to levy such a duty,

but that is only a saving provision, in terms subject to the provisions of Art. 278."

This Court, therefore, held that after the coming into force of the Constitution the excise duty in question in that case was leviable only by the Government of India, though there was a saving provision in favour of the State of Rajasthan till Parliament made an appropriate law; and on that reasoning it held that the agreement under Art. 278 could be made in respect of such a levy notwithstanding the temporary reservation made in favour of the State. The only difference between that case and the present one is that at the time the agreement was entered into between the Union and the State, Parliament had not made the appropriate law depriving the State of its power to levy taxes in respect of "works contracts". But that cannot make any difference in principle, for, even the earlier decision related only to the validity of the agreement in respect of arrears leviable by the State before the appropriate law was made. The effect of the provisions in Art. 278 is that to the extent covered by an agreement the power of the State Government to continue to levy taxes under Art. 277 is superseded.

The next question is whether there was any such agreement whereunder the State agreed to give up its right to levy the said tax as a part of the agreement entered into by it with the Union. This leads us to consider the terms of the agreement dated February 25, 1950, entered into between the President of India and the Rajpramukh of the State of Travancore-Cochin. It would be convenient to read the relevant clauses of the agreement. It reads:

> "WHEREAS provision is made by Articles 278, 291, 295 and 306 of the Constitution of India for certain matters to be governed by agreement between the Government of India and the Government of a State specified in Part B of the First Schedule to the Constitution:
> * * * * * *
> Now, therefore, the President of India and the Rajpramukh of Travancore-Cochin, have entered into the following agreement, namely:-
>
> The recommendations of the Indian States Finances Enquiry Commission, 1948-49 (hereafter referred to as the Committee) contained in Part I of its Report read with Chapters I, II and III of Part II of its Report,

1963

The South India Corporation (P) Ltd. v. *The Secretary, Board of Revenue, Trivandrum*

Subba Rao J.

in so far as they apply to Travancore-Cochin (hereinafter referred to as the State) together with the recommendations contained in the Committee's Second Interim Report, are accepted by the parties thereto subject to the following modifications, namely:—

(1) With reference to paragraph 6 of the Committee's Second Interim Report, the date of federal financial integration of the State shall be 1st April 1950.

(2) * * * * *

(3) The Committee's formula of guaranteeing the 'federal' revenue-gap for the first five years after federal financial integration and of tapering it down over the next five years will be applied to the combined 'federal' revenue-gap of the former Indian States, Travancore-and Cochin, taken together, computed as in (2) above.

* * * * * *

Subject to the provisions of the Constitution of India, this agreement shall, except where the context of the Committee's Report and of this agreement otherwise require, remain in force for a period of ten years from the commencement of the Constitution of India".

It will be seen from the said agreement that it incorporated the recommendations made by the Indian States Finances Enquiry Committee with some modifications and that the Union of India agreed to recoup the State for the loss caused to it by reason of the federal financial integration in the manner described thereunder. It was not a piecemeal agreement confined to a few items, but a comprehensive one to fill up the entire revenue-gap caused to the State by reason of some of its sources of revenue having been taken away by the Union or otherwise lost to it. A perusal of the main recommendations made by the Indian States Finance Enquiry Committee and incorporated in the agreement also indicates the completeness of the agreement. The Committee was asked to examine and report, *inter alia,* whether, and if so, the extent to which, the process of so integrating Federal Finance in the Indian States and Union with that of the rest of India should be gradual and the manner in which it should be brought about. One of the general principles followed by the Committee was that federal financial integration in States involved not merely the taking over of all their "federal" revenues by the Centre, but also the

assumption of all expenditure in States upon Departments and Services of a "federal" character. In Ch. II of Part II, which dealt with "Specific matter concerning "Federal" revenues and "Federal" service departments, it was stated that with effect from the prescribed date, the Centre will take over all "federal" sources of Revenue and all "federal" items of expenditure in States, together with the administration of the Departments concerned, and that the Centre must also take over all the current outstandings, liabilities claims, etc. and all productive and unproductive Capital assets connected with these departments. Dealing with the States' rights, it observed:

> "With effect from the prescribed date, all 'rights and immunities' enjoyed or claimed by the States, whether expressly or by usage, and whether relating to 'federal' revenues and taxes generally present or future, or to specific matters such as Railways, Customs, Posts and Telegraphs, Opium, Salt, etc. will terminate and must be extinguished. Thereafter, their constitutional position in respect of these matters should be the same as that of provinces under the new Constitution of India."

The Committee recommended that the whole body of State legislation relating to "federal" subjects should be repealed and the corresponding body of Central legislation extended *proprio vigore* to the States, with effect from the prescribed date, or as and when the administration of particular "federal" subjects is assumed by the Centre. In its Second Interim Report, dealing with Travancore and Cochin, the following recommendations were made:

> "Revenue Gap" arising out of Federal Financial Integration:
>
> (i) The net revenue loss to the Travancore and Cochin States, taken together, upon federal financial integration (on the basis of figures for their financial year 1123 M.E.) would be Rs. 330 lakhs; this includes a net loss of Rs. 100 lakhs by abolition of internal Customs Duties in Travancore State.
>
> (ii) We recommend that—
>
> (a) the loss resulting from the immediate abolition of Internal Customs Duties of Travancore must be borne by the State Government:

1963

The South India Corporation (P) Ltd. v. *The Secretary, Board of Revenue, Trivandrum*

Subba Rao J.

(b) as regards the residual net "Central" Revenue-Gap of the two States taken together (Rs. 230 lakhs), there should be a guaranteed reimbursement by the Central Government to the following extent during a transitional period:—

From the date of federal financial integration Rs. 230 lakhs per annum to 31st March 1955.

The agreement, read with the Report, makes the following position clear : The loss arising to the State on account of the federal financial integration in the State was ascertained and a provision was made for subsidizing the State by filling up the said revenue-gap. The agreement *ex facie* appears to be a comprehensive one. It takes into consideration the entire loss caused to the State by reason of some of its sources of revenue being transferred under the Constitution to the Union. It would be unreasonable to construe the agreement as to exclude from its operation certain taxes which the State was authorized to levy for a temporary period. As we have said, that saving was subject to an agreement and, as by the agreement effective adjustments were made to meet the loss which the State would have incurred but for the agreement, there was no longer any necessity for the continuance of the saving and, it ceased to have any force thereafter between the parties to the agreement. We are not called upon in this case to decide whether the said power revived after the expiry of ten years from the commencement of the Constitution, for all the impugned assessments fall within the said period. Nor do we find any force in the contention that as Art. 278 was omitted by the Constitution (Seventh Amendment) Act, 1956, the agreement entered into in exercise of a power thereunder automatically came to an end and thereafter the power of the State to levy the tax came into life again. An obvious fallacy underlies this ingenious argument. The validity of an agreement depends upon the existence of power at the time it was entered into. Its duration will be limited by its terms or by the conditions imposed on the power itself. Article 278 conferred a power upon the Union and the B State to enter into an agreement which would continue in force for a period not exceeding ten years from the commencement of the Constitution. The agreement in question fell squarely within the scope of the power. That agreement, there-

fore, would have its full force unless the Constitution (Seventh Amendment) Act, 1956, in terms avoided it. The said amendment was only prospective in operation and it could not have affected the validity of the agreement. We, therefore, hold that the impugned assessment orders were not validly made by the sales tax authorities in exercise of the power saved under Art. 277 of the Constitution.

Learned Advocate-General for the State of Kerala raises an interesting point, namely, that the impugned law, *i.e.*, the Travancore-Cochin General Sales Tax Act of 1125 M. E. continued in force after the Constitution under the express provisions of Art. 372 thereof till the said law was altered, repealed or amended by the competent authority and, therefore, even if there was an agreement between the Union and the State as aforesaid, it could not affect the power of the State to impose the tax under the said law.

Mr. Nambiar, on the other hand, argues that Art. 372 is subject to other provisions of the Constitution and a law empowering a State to impose a tax in respect of a federal subject is inconsistent with the federal structure of the Constitution and, therefore, is bad; and, that apart, it is also inconsistent with the express provisions of Part XII of the Constitution and particularly with those of Arts. 277 and 278 thereof. Article 372 reads:

> "(1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.
>
> * * * * * *
>
> *Explanation I.*—The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

The object of this article is to maintain the continuity of the pre existing laws after the Constitution came into force

1963

The South India Corporation (P) Ltd. v. *The Secretary, Board of Revenue, Trivandrum*

Subba Rao J.

till they were repealed, altered or amended by a competent authority. Without the aid of such an article there would be utter confusion in the field of law. The assumption underlying the article is that the State laws may or may not be within the legislative competence of the appropriate authority under the Constitution. The article would become ineffective and purposeless if it was held that pre-Constitution laws should be such as could be made by the appropriate authority under the Constitution. The words "subject to the other provisions of the Constitution" should, therefore, be given a reasonable interpretation, an interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matters. The article posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of certain acts under Art. 395; and the expression "other" in the article can only apply to provisions other than those dealing with legislative competence.

The learned Advocate-General relied upon the following decisions for the said legal position: *Messrs. Gannon Dunkerley & Co.* v. *Sales Tax Officer, Mattancherry*(1); *Sagar Mall* v. *State*(2); *Kanpur Oil Mills* v. *Judge (Appeals) Sales Tax, Kanpur*(3); *The Amalgamated Coalfields Ltd.* v. *The Janapada Sabha, Chindwara*(4); *Jagdish Prasad* v. *Saharanpur Municipality*(5); *Sheoshankar* v. *M.P. State*(6); *State* v. *Yash Pal*(7); and *Binoy Bhusan* v. *State of Bihar*(8).

It is not necessary to consider in detail the said decisions, as they either assume the said legal position or sustain it, but do not go further. They held that a law made by a competent authority before the Constitution continues to be in force after the Constitution till it is altered or modified or repealed by the appropriate authority, even though it is beyond the legislative competence of the said authority under the Constitution. We give our full assent to the view and hold that a pre-Constitution law made by a competent authority, though it has lost its legislative competency un-

(1) I.L.R. 1957 Kerala 462.
(2) I.L.R. (1952) 1 All. 862.
(3) A.I.R. 1955 All. 99.
(4) [1962] 1 S.C.R. 1.
(5) A.I.R. 1961 All. 583.
(6) A.I.R. 1951 Nag. 58.
(7) A.I.R. 1957 Punjab 91.
(8) A.I.R. 1954 Pat. 346.

der the Constitution, shall continue in force, provided the law does not contravene the "other provisions" of the Constitution.

But the real question is whether the said impugned law is inconsistent with the provisions of the Constitution other than those dealing with its legislative competency. The words "subject to other provisions of the Constitution" mean that if there is an irreconcilable conflict between the pre-existing law and provision or provisions of the Constitution the latter shall prevail to the extent of that inconsistency. An article of the Constitution by its express terms may come into conflict with a pre-Constitution law wholly or in part; the said article or articles may also, by necessary implication, come into direct conflict with the pre-existing law. It may also be that the combined operation of a series of articles may bring about a situation making the existence of the pre-existing law incongruous in that situation. Whatever it may be, the inconsistency must be spelled out from the other provisions of the Constitution and cannot be built up on the supposed political philosophy underlying the Constitution. These observations are necessitated by the reliance of Mr. Nambiar on two decisions of the Supreme Court of the United States of America. In *Chicago, Rock Island and Pacific Railway Company* v. *Willian McGlinn*(1), the facts, briefly were: An Act of Kansas purported to cede to the United States exclusive jurisdiction over the Fort Leavenworth Military Reservation. In considering the question whether the previous laws continued after the said cession, the Supreme Court of the United States of America made a distinction between laws of political character and municipal laws intended for the protection of private rights, but we are not concerned with that question in this case; and indeed the law of India appears to be different from that of America in that regard. But what is relied upon is the effect of cession on pre-existing laws which are in conflict with the political character, institution and Constitution of the new Government. Field J., speaking for the Court observed, at p. 272, as follows:

> "As a matter of course, all laws, ordinances and regulations in conflict with the political character, institution and Constitution of the new government are at once

(1) (1884) 29 L. ed. 270.

1963

The South India Corporation (P) Ltd. v. *The Secretary, Board of Revenue, Trivandrum*

Subba Rao J.

displaced. Thus, upon a cession of political jurisdiction and legislative power—and the latter is involved in the former—to the United States, the laws of the country in support of an established religion or abridging the freedom of the press, or authorising cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters."

The same view was reiterated by the Supreme Court of the United States of America in a later decision in *Vilas* v. *City of Manila*(1). We are not concerned in this case with the the general principles enunciated by the law of America, but only with the express provisions of Art. 372 of our Constitution. That apart, it may also be inappropriate to rely upon the legal consequences of a cession of a State under the American law for the interpretation of Art. 372 of our Constitution, which deals with different situation and lays down expressly the legal position to meet the same. We would, therefore, confine our attention to the express provisions of the Constitution in considering the question raised before us.

The relevant provisions which have a bearing on the said question are found in Part XII of the Constitution. Chapter I deals with finance; and this chapter contains a scheme of federal financial integration in the States. Though the Constitution conferred upon the Union and the States independent powers of taxation and constituted separate consolidated funds, it evolved a procedure for an equitable readjustment of the taxes collected between the Union and the States. But before the Constitution came into force the States were levying and collecting certain taxes which, under the Constitution, were allotted to the Union. The immediate exercise of the Union power of taxation in respect of such taxes would dislocate the finances of the States and introduce difficulties in the administration. To avoid this, Art. 277 saved the existing taxes levied by the States, though they have been transferred to the Union List by the Constitution, till Parliament made appropriate law. But the Constitution was also made applicable to Part B

(1) (1910) 55 L. Ed. 491.

States. They had plenary powers of taxation. Their relationship with the paramount power differed from State to State. Further, most of the States were in a state of financial instability and required substantial help from the Union to bring them up to the standard of Part A States. There would be a serious dislocation in the administration of the said States by a sudden withdrawal of the federal sources of revenues. The provisions of Part XII of the Constitution with the saving embodied in Art. 277, may have met the situation obtaining in Part A States, but they were inadequate for Part B States. Therefore, a special provision under Art. 278 was made in respect of Part B States enabling them to enter into an agreement with the Union embodying terms contrary to the other provisions of the Constitution in respect of levy and collection of taxes and the grant of any financial assistance to such State or States.

With this background let us now consider the following two questions raised before us: (1) Whether Art. 372 of the Constitution is subject to Art. 277 thereof; and (2) whether Art. 372 is subject to Art. 278 thereof. Article 372 is a general provision and Art. 277 is a special provision. It is settled law that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. The earlier discussion makes it abundantly clear that the Constitution gives a separate treatment to the subject of finance, and Art. 277 saves the existing taxes etc. levied by States if the conditions mentioned therein are complied with. While Art. 372 saves all pre-Constitution valid laws, Art. 277 is confined only to taxes, duties, cesses, or fees lawfully levied immediately before the Constitution. Therefore, Art. 372 cannot be construed in such a way as to enlarge the scope of the saving of taxes, duties, cesses or fees. To state it differently, Art. 372 must be read subject to Art. 277. We have already held that an agreement can be entered into between the Union and the States in terms of Art. 278 abrogating or modifying the power preserved to the States under Art. 277.

That apart, even if Art. 372 continues the pre-Constitution laws of taxation, that provision is expressly made subject to the other provisions of the Constitution. The expression "subject to" conveys the idea of a provision yielding

1963

The South India Corporation (P) Ltd. v. *The Secretary, Board of Revenue, Trivandrum*

Subba Rao J.

place to another provision or other provisions to which it is made subject. Further Art. 278 opens out with a *non-obstante* clause. The phrase "notwithstanding anything in the Constitution" is equivalent to saying that in spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of Art. 278. While Art. 372 is subject to Art. 278, Art. 278 operates in its own sphere in spite of Art. 372. The result is that Art. 278 overrides Art. 372; that is to say, notwithstanding the fact that a pre-Constitution taxation law continues in force under Art. 372, the Union and the State Governments can enter into an agreement in terms of Art. 278 in respect of Part B States depriving the State law of its efficacy. In one view Art. 277 excludes the operation of Art. 372, and in the other view, an agreement in terms of Art. 278 overrides Art. 372. In either view, the result is the same, namely, that at any rate during the period covered by the agreement the States ceased to have any power to impose the tax in respect of "works contracts".

In this view we need not express our opinion on the other contentions raised by Mr. Nambiar.

In the result, the said orders of assessment are set aside and the appeals are allowed with costs here and in the High Court. One set of hearing fee.

Appeals allowed.