

[2012] 6 S.C.R. 661

STATE OF M.P.

v.

RAKESH KOHLI & ANR.

(Civil Appeal No. 684 of 2004)

MAY 11, 2012

**[R.M. LODHA AND H.L. GOKHALE, JJ.]**

*Stamp Act, 1899 - Article 45(d) of Schedule 1-A [as introduced by Stamp (Madhya Pradesh Amendment) Act, 2002] - Constitutional validity of - Test of classification - Power of Attorney to sell/transfer immovable property situated in the State of Madhya Pradesh - Article 45(d) prescribing stamp duty on market value of property when power of attorney given without consideration to a person other than the kith and kin - Distinction carved out in Article 45(d) between an agent who was a blood relation and who was an outsider - Challenge to - High Court held Article 45(d) as violative of Article 14 of the Constitution - Justification of - Held: Not justified - By creating two categories, namely, an agent who is a blood relation and an agent other than the kith and kin, without consideration, the Legislature sought to curb inappropriate mode of transfer of immovable properties - The legislative idea behind Article 45(d) was to curb tendency of transferring immovable properties through power of attorney and inappropriate documentation - In effect, by bringing in this law, the Madhya Pradesh State Legislature sought to levy stamp duty on such ostensible document, the real intention of which was transfer of immovable property - Classification between blood relative and outsider not without any rationale - It has a direct nexus to the object of the Act - Constitution of India, 1950 - Article 14.*

*Constitution of India, 1950 - Part III and Article 245 - Statute enacted by Parliament or State Legislature - Constitutional validity of - Judicial review - Scope - Held: Sans*

- A *flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad - Legislative enactment can be struck down by Court only on two grounds, namely (i), that the appropriate Legislature did not have competency to make the law and (ii), that it did not*
- B *take away or abridge any of the fundamental rights enumerated in Part - III of the Constitution or any other constitutional provisions.*

- C *Constitution of India, 1950 - Article 14 - Constitutional validity of a statute - Judicial review - Scope - Held: When provision enacted by the State Legislature is not found to be discriminatory, it cannot be struck down on the ground that it was arbitrary or irrational.*

- D *Tax / Taxation - Constitutional validity of taxation law - Scope of Judicial review - Guiding principles stated viz.(i) presumption in favour of constitutionality of a law made by Parliament or State Legislature, (ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational, unless some constitutional infirmity found, (iii)*
- E *Court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent, (iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and (v) in the field of taxation, the Legislature enjoys greater latitude for classification - Interpretation of Statutes - Fiscal statute.*
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- G **By the Indian Stamp (Madhya Pradesh Amendment) Act, 2002 [M.P. 2002 Act], stamp duty relating to power of attorney has been prescribed in Article 45 of Schedule 1-A of the Indian Stamp Act,1899. Clause(d) thereof prescribes stamp duty @ 2% on the market value of the property which is subject matter of power of attorney when power of attorney is given without consideration**
- H **to a person other than father, mother, wife or husband,**

son or daughter, brother or sister in relation to the executant and authorizing such person to sell immovable property situated in Madhya Pradesh. The validity of the said provision was challenged. It was contended that the distinction carved out in Article 45, Clause (d) between an agent who was a blood relation and who was an outsider is legally impermissible; and that the impugned provision violates Article 14 of the Constitution. The High Court held Article 45, Clause (d) as violative of Article 14 of the Constitution being arbitrary, unreasonable and irrational. The said decision of the High Court was challenged in the instant appeals.

Allowing the appeals, the Court

HELD: 1.1. The High Court was clearly in error in declaring Clause (d), Article 45 of Schedule 1-A of the Indian Stamp Act, 1899 as violative of Article 14 of the Constitution. It is very difficult to approve the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonable and irrationality. The High Court failed to keep in mind the well defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad. Legislative enactment can be struck down by Court only on two grounds, namely (i), that the appropriate Legislature does not have competency to make the law and (ii), that it does not take

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A away or abridge any of the fundamental rights  
enumerated in Part - III of the Constitution or any other  
constitutional provisions. [Paras 13, 14] [676-D-H; 677-A]

1.2. The High Court has not given any reason as to  
why the provision contained in clause (d) was arbitrary,  
B unreasonable or irrational. The basis of such conclusion  
is not discernible from the judgment. The High Court has  
not held that the provision was discriminatory. When the  
provision enacted by the State Legislature has not been  
found to be discriminatory, such enactment could not  
C have been struck down on the ground that it was arbitrary  
or irrational. [Para 16] [679-A-C]

1.3. Stamp duty is a tax and hardship is not relevant  
in interpreting fiscal statutes. While dealing with  
D constitutional validity of a taxation law enacted by  
Parliament or State Legislature, the court must have  
regard to the following principles: (i), there is always  
presumption in favour of constitutionality of a law made  
by Parliament or a State Legislature (ii), no enactment can  
E be struck down by just saying that it is arbitrary or  
unreasonable or irrational but some constitutional  
infirmity has to be found (iii), the court is not concerned  
with the wisdom or unwisdom, the justice or injustice of  
the law as the Parliament and State Legislatures are  
supposed to be alive to the needs of the people whom  
F they represent and they are the best judge of the  
community by whose suffrage they come into existence  
(iv), hardship is not relevant in pronouncing on the  
constitutional validity of a fiscal statute or economic law  
and (v), in the field of taxation, the Legislature enjoys  
G greater latitude for classification. Had the High Court kept  
in view the above well-known and important principles in  
law, it would not have declared Clause (d), Article 45 of  
Schedule 1-A as violative of Article 14 of the Constitution  
being arbitrary, unreasonable and irrational while holding

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that the provision may pass test of classification. By A  
creating two categories, namely, an agent who is a blood  
relation, i.e. father, mother, wife or husband, son or  
daughter, brother or sister and an agent other than the  
kith and kin, without consideration, the Legislature has  
sought to curb inappropriate mode of transfer of B  
immovable properties. Ordinarily, where executant  
himself is unable, for any reason, to execute the  
document, he would appoint his kith and kin as his power  
of attorney to complete the transaction on his behalf. If  
one does not have any kith or kin who he can appoint C  
as power of attorney, he may execute the conveyance  
himself. The legislative idea behind Clause (d), Article 45  
of Schedule 1-A is to curb tendency of transferring  
immovable properties through power of attorney and  
inappropriate documentation. By making a provision like D  
this, the State Government has sought to collect stamp  
duty on such indirect and inappropriate mode of transfer  
by providing that power of attorney given to a person  
other than kith or kin, without consideration, authorizing  
such person to sell immovable property situated in E  
Madhya Pradesh will attract stamp duty at two per cent  
on the market value of the property which is subject  
matter of power of attorney. In effect, by bringing in this  
law, the Madhya Pradesh State Legislature has sought to  
levy stamp duty on such ostensible document, the real F  
intention of which is the transfer of immovable property.  
The classification, thus, cannot be said to be without any  
rationale. It has a direct nexus to the object of the Indian  
Stamp Act, 1899. The conclusion of the High Court,  
therefore, that the impugned provision is arbitrary,  
unreasonable and irrational is unsustainable. [Paras 17, G  
29, 30] [679-C-D; 686-A-H; 687-A-C]

*State of A.P. and others v. McDowell and Co. and others*  
(1996) 3 SCC 709; 1996 (3) SCR 721; *Government of  
Andhra Pradesh and others v. P. Laxmi Devi (Smt.)* (2008) 4 H

- A **SCC 720: 2008 (3) SCR 330**; *Mohd. Hanif Quareshi and others v. State of Bihar* **AIR 1958 SC 731: 1959 SCR 629**; *Mahant Moti Das v. S.P. Sahi*, **AIR 1959 SC 942**; *Hamdard Dawakhana and another v. The Union of India and others* **AIR 1960 SC 554: 1960 SCR 671**; *Karnataka Bank Limited v. State of Andhra Pradesh and others* **(2008) 2 SCC 254: 2008 (1) SCR 986**; *M/s. Steelworth Limited v. State of Assam* **1962 Supp (2) SCR 589**; *Gopal Narain v. State of Uttar Pradesh and another* **AIR 1964 SC 370: 1964 SCR 869**; *Ganga Sugar Corporation Limited v. State of Uttar Pradesh and others* **(1980) 1 SCC 223: 1980 (1) SCR 769**; *R.K. Garg v. Union of India and others* **(1981) 4 SCC 675: 1982 (1) SCR 947** and *State of W.B. and another v. E.I.T.A. India Limited and others* **(2003) 5 SCC 239: 2003 (2) SCR 668 - relied on.**
- D *State of T.N. and others v. Ananthi Ammal and others* **(1995) 1 SCC 519: 1994 (5) Suppl. SCR 666**; *Commissioner of Income Tax, Madras v. R.S.V. Sr. Arunachalam Chettiar* **AIR 1965 SC 1216: 1965 SCR 815**; *Income Tax Officer, Tuticorin v. T.S. Devinatha Nadar etc.* **AIR 1968 SC 623: 1968 SCR 33**; *Rt. Rev. Msgr. Mark Netto v. State of Kerala and others* **(1979) 1 SCC 23: 1979 (1) SCR 609**; *Bengal Immunity Co.Ltd. v. State of Bihar and others* **AIR 1955 SC 661: 1955 SCR 603**; *Charanjit Lal Chowdhury v. Union of India and others* **AIR 1951 SC 41: 1950 SCR 869** and *The State of Bombay and another v. F.N. Balsara* **AIR 1951 SC 318: 1951 SCR 682 - referred to.**
- G *Balaji v. Income Tax Officer, Special Investigation Circle, Akola and others* **AIR 1962 SC 123: 1962 SCR 983**; *Ramesh Chand Bansal and Others v. District Magistrate/Collector Ghaziabad and others* **(1999) 5 SCC 62: 1999 (3) SCR 462**; *Veenā Hasmukh Jain and another v. State of Maharashtra and others* **(1999) 5 SCC 725: 1999 (1) SCR 302**; *Hanuman Vitamin Foods Private Limited and others v. State of Maharashtra and another* **(2000) 6 SCC 345: 2000 (1) Suppl. SCR 623**; *Union of India v. R. Gandhi, President*;
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*Madras Bar Association* (2010) 11 SCC 1: 2010 (6) SCR 857 and *Suraj Lamp and Industries Private Limited v. State of Haryana and another* (2012) 1 SCC 656: 2011 (11) SCR 848 - cited. A

## Case Law Reference:

1962 SCR 983	cited	Para 6	B
1996 (3) SCR 721	relied on	Paras 6, 15	
1999 (3) SCR 462	cited	Para 6	
1999 (1) SCR 302	cited	Para 6	C
2000 (1) Suppl. SCR 623	cited	Para 6	
2008 (1) SCR 986	relied on	Paras 6, 26	
2008 (3) SCR 330	relied on	Paras 6, 20	D
2010 (6) SCR 857	cited	Para 6	
2011 (11) SCR 848	cited	Para 6	
1994 (5) Suppl. SCR 666	referred to	Para 15	E
1955 SCR 603	referred to	Paras 17, 24	
1965 SCR 815	referred to	Para 18	
1968 SCR 33	referred to	Para 19	F
1979 (1) SCR 609	referred to	Para 20	
1959 SCR 629	relied on	Para 23	
AIR 1959 SC 942	relied on	Para 23	
1960 SCR 671	relied on	Paras 24, 27	G
1950 SCR 869	referred to	Para 25	
1951 SCR 682	referred to	Para 25	

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- A 1962 Supp (2) SCR 589 relied on Para 27  
1964 SCR 869 relied on Para 27  
1980 (1) SCR 769 relied on Para 27  
B 1982 (1) SCR 947 relied on Paras 27, 28  
2003 (2) SCR 668 relied on Para 27

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 684 of 2004 etc.

- C From the Judgment & Order dated 15.09.2003 of the High Court of Judicature Jabalpur (M.P.) in Writ Petition No. 4683 of 1999.

WITH

- D C.A. No. 1270 of 2004.

Vibha Dattta Makhija, B.S. Banthia for the Appellant.

The Judgment of the Court was delivered by

- E **R.M. LODHA, J.** 1. The only point for consideration here is, whether or not the Division Bench of the Madhya Pradesh High Court was justified in declaring Clause (d), Article 45 of Schedule 1-A of the Indian Stamp Act, 1899 (for short, '1899 Act') which was brought in by the Indian Stamp (Madhya Pradesh Amendment) Act, 2002 (for short, 'M.P. 2002 Act') as unconstitutional being violative of Article 14 of the Constitution of India.

- G 2. The above point arises in this way. Two writ petitions came to be filed before the Madhya Pradesh High Court. In both writ petitions initially it was prayed that Clauses (f) and (f-1), Article 48, Schedule 1-A brought in the 1899 Act by Section 3 of the Indian Stamp (Madhya Pradesh Amendment) Act, 1997 (for short, 'M.P. 1997 Act') be declared ultra vires. During the pendency of these petitions, the 1899 Act as applicable to H Madhya Pradesh was further amended by the M.P. 2002 Act.

The respondents, referred to as writ petitioners, amended their writ petitions and prayed that Clause (d), Article 45 of Schedule 1-A of the 1899 Act as substituted by M.P. 2002 Act be declared ultra vires. The writ petitioners set up the case that original Article 48 of the 1899 Act, Schedule 1-A prescribed stamp duty payable at Rs. 10/- if attorney was appointed for a single transaction. By M.P. 1997 Act, Article 48 Clause (f) was substituted by Clauses (f) and (f-1). Clause (f-1) provided that where power of attorney was executed without consideration in favour of person who is not his or her spouse or children or mother or father and authorizes him to sell or transfer any immovable property, the stamp duty would be leviable as if the transaction is conveyance under Article 23. Explanation II inserted by M.P. 1997 Act provided that where under Clauses (f) and (f-1), duty had been paid on the power of attorney and a conveyance relating to that property was executed in pursuance of power of attorney between the executant of the power of attorney and the person in whose favour it was executed, the duty on conveyance should be the duty calculated on the market value of the property reduced by duty paid on the power of attorney. By M.P. 2002 Act, stamp duty relating to power of attorney has been prescribed in Article 45 of Schedule 1-A. Clause (d) thereof prescribes stamp duty at two per cent on the market value of the property which is subject matter of power of attorney when power of attorney is given without consideration to a person other than father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorizing such person to sell immovable property situated in Madhya Pradesh. The writ petitioners pleaded, inter alia, that the distinction between an agent who was a blood relation and who was an outsider carved out in Article 45, Clause (d) was legally impermissible. The provision violates Article 14 of the Constitution as it has sought to create unreasonable classification.

3. The State of Madhya Pradesh stoutly defended the challenge to the above provisions and stated before the High

A Court that the matter of rate of stamp duty was solely in the domain of State Legislature and none of the provisions of the Constitution was offended by the above provisions.

B 4. The Division Bench of the High Court has accepted the constitutional challenge to Clause (d), Article 45 of Schedule 1-A brought in the 1899 Act by M.P. 2002 Act and held that the said provision was violative of Article 14 of the Constitution of India. The Division Bench gave the following reasoning:

C "11. As far as clauses (d) is concerned, it lays a postulate that postulate [sic] that when the power of authority is given without consideration to a person other than the father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorizing such person to sell immovable property, 2% on the market value of the property is to be collected. Submission of Mr. Agrawal is that this clause is absolutely unreasonable and smacks of arbitrariness, as there is no rationale to include the category of persons who have been included and to leave out to all other persons. Mr. S.K. Yadav, learned Government Advocate submitted that near relatives can constitute a class by itself and all others can fit into a different category and, therefore, the said provision does not offend the concept of classification, as there is intelligible differentia. On a first blush the aforesaid submission of the learned counsel for the State appears to be quite attractive, but on a deeper probe it is not what it is. In the guise of the classification something has been stated in the said provision. One can give certain examples. One may not have kith or kin and intact [sic] even that case to deprive him to execute the power of attorney for selling the property, unless 2% is paid on the market value is arbitrary. The provisions may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonable and irrationality.

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The State may have a laudable purpose but the laudable purpose alone cannot sustain the provision. The matter would be [sic] different had it included a rider that it is executed in favour of any other for consideration or some other purposes is not the situation. In view of the same, we are of the considered opinion, the aforesaid provision is defiant of Article 14 of the Constitution. Accordingly, we have no hesitation to declare the same as violative of Article 14 of the Constitution."

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5. Ms. Vibha Datta Makhija, learned counsel for the appellant - State of Madhya Pradesh - submitted that the High Court was in error in declaring Clause (d), Article 45, Schedule 1-A as violative of Article 14 of the Constitution of India. She would submit that the test of challenge to a legislative provision was completely different from that of an administrative action. A legislative provision cannot be struck down as being arbitrary, irrational or unreasonable. She further submitted that the classification made in Clause (d) of Article 45, Schedule 1-A had intelligible differentia with a direct nexus to the object of the 1899 Act. The object of the 1899 Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. The legislative wisdom took into consideration that genuine power of attorney documents would be executed by the executants without consideration mostly in favour of kith and kin to complete sale transactions on behalf of the executants. The said category attracts lower stamp duty than power of attorney executed in favour of third parties/strangers since such power of attorney document would be for extraneous reasons.

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6. Learned counsel for the State of M.P. also submitted that the wisdom of the Legislature in protecting the revenue and carving out genuine classes from others had been well recognized. The court cannot sit in judgment over their wisdom. She relied upon decisions of this Court in *Balaji v. Income Tax*

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- A *Officer, Special Investigation Circle, Akola and others*<sup>1</sup>; *State of A.P. and others v. Mcdowell and Co. and others*<sup>2</sup>; *Ramesh Chand Bansal and Others v. District Magistrate/Collector Ghaziabad and others*<sup>3</sup>; *Veena Hasmukh Jain and another v. State of Maharashtra and others*<sup>4</sup>; *Hanuman Vitamin Foods Private Limited and others v. State of Maharashtra and another*<sup>5</sup>; *Karnataka Bank Limited v. State of Andhra Pradesh and others*<sup>6</sup>; *Government of Andhra Pradesh and others v. P. Laxmi Devi (Smt.)*<sup>7</sup>; *Union of India v. R. Gandhi, President; Madras Bar Association*<sup>8</sup> and *Suraj Lamp and Industries Private Limited v. State of Haryana and another*<sup>9</sup>.

7. The respondents despite service have not chosen to appear.

- D 8. The definition of 'conveyance' is contained in Section 2(10) of the 1899 Act which reads as under:

"S.2. Definitions.-In this Act, unless there is something repugnant in the subject or context,--

- E (10) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I.

- F 9. Section 2(21) defines 'power of attorney'. It reads as follows :

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1. AIR 1962 SC 123.  
 2. (1996) 3 SCC 709.  
 3. (1999) 5 SCC 62.  
 G 4. (1999) 5 SCC 725.  
 5. (2000) 6 SCC 345.  
 6. (2008) 2 SCC 254.  
 7. (2008) 4 SCC 720.  
 8. (2010) 11 SCC 1.  
 H 9. (2012) 1 SCC 656.

"S. 2(21) "Power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it;"

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10. The 1899 Act has been amended from time to time by the Madhya Pradesh State Legislature insofar as its application to the State of Madhya Pradesh is concerned. The stamp duty on power of attorney was originally prescribed in Article 48, Schedule - 1-A of the 1899 Act. Clause (f) in original Article 48, Schedule 1-A read as under:

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"SCHEDULE-1A  
Stamp Duty on Instruments  
(See section 3)

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Description of Instruments (1)	Proper Stamp Duty (2)
48. Power of Attorney, as defined by Section 2(21), not being a Proxy [No. 52].  (f) when giving for consideration and authorizing the attorney to sell any immovable property;	The same duty as Conveyance (No. 23) for a market value equal to the amount of the consideration."

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11. Section 3 of the M.P. 1997 Act brought in amendment in the 1899 Act, inter alia, as under :

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"In Schedule 1-A of the Principal Act, in Article 48,--

(i) For clause (f), the following clauses shall be substituted, namely:-

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(f) when given for consideration and authorizing the attorney to sell or transfer any

The same duty as a conveyance under Article 23 on the market value of the property

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- A immovable property. The same duty as a conveyance under Article 23 on the market value of the property
- (f-1) when given without consideration in favour of persons who are not his or her spouse or Children, or mother or father and authorizing the attorney to sell or transfer any immovable property
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- C (ii) the existing explanation shall be renumbered as explanation I thereof and after explanation I as so renumbered, the following explanation shall be inserted, namely :-
- D "Explanation II:--Where under clause (f) and (f-1) duty has been paid on the power of attorney and a conveyance relating to that property is executed in pursuance of power of attorney between the executant of power of attorney and the person in whose favour it is executed, the duty on conveyance shall be the duty calculated on the market value of the property reduced by duty paid on the power of attorney".
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F The Objects and Reasons for the above amendment were to check the tendency to execute power of attorney authorising the attorney to sell or transfer immovable property in place of a conveyance deed and to increase the revenue of the Government in the State of Madhya Pradesh.

G 12. Article 48 in the 1899 Act as amended by M.P. 1997 Act was substituted by M.P. 2002 Act. The new provision, Article 45 in respect of power of attorney in Schedule 1-A which was brought in by M.P. 2002 Act reads as follows :

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"SCHEDULE-1A  
Stamp Duty on Instruments  
(See section 3)

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Description of Instrument	Proper Stamp Duty	
(1)	(2)	B
45. Power of attorney [as defined by section 2(21)] not being a proxy:-	Fifty rupees.	C
(a)when authorizing one person or more to act in single transaction, including a power of attorney executed for procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;		D
(b)when authorizing one person to act in more than one transaction or generally; or not more than ten persons to act jointly or severally in more than one transaction or generally;	One hundred rupees.	E
(c)when given for consideration and authorizing the agent to sell any immovable property.	The same duty as a conveyance (No. 22) on the market value of the property.	F
(d)when given without consideration to a person other than the father, mother, wife or husband, son or	Two percent on the market value of the property which is the subject matter of power of attorney.	G
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A daughter, brother or sister in relation to the executant and authorizing such person to sell immovable property situated in Madhya Pradesh.

B (e)In any other case; Fifty rupees for each person authorized

C Explanation-I.-For the purpose of this article, more persons than one when belonging to the same firm shall be deemed to be one person.

D Explanation-II.-The term 'registration' includes every operation incidental to registration under the Registration Act, 1908 (16 of 1908)."

E 13. In our opinion, the High Court was clearly in error in declaring Clause (d), Article 45 of Schedule 1-A of the 1899 Act which as brought in by the M.P. 2002 Act as violative of Article 14 of the Constitution of India. It is very difficult to approve the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonable and irrationality. The High Court failed to keep in mind the well defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

H 14. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds,

namely (i), that the appropriate Legislature does not have competency to make the law and (ii), that it does not take away or abridge any of the fundamental rights enumerated in Part - III of the Constitution or any other constitutional provisions.

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15. In *Mcdowell and Co.*<sup>2</sup> while dealing with the challenge to an enactment based on Article 14, this Court stated in paragraph 43 (at pg. 737) of the Report as follows :

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".....A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground....."

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..... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. *No enactment can be struck down by just saying that it is arbitrary or unreasonable.* Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom....."

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(Emphasis supplied)

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Then dealing with the decision of this Court in *State of T.N. and others v. Ananthi Ammal and others*<sup>10</sup>, a three-Judge Bench

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A in *Mcdowell and Co.*<sup>2</sup> observed in paragraphs 43 and 44 [at pg. 739) of the Report as under :

B ".....Now, coming to the decision in *Ananthi Ammal*, we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was C substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features D of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7)

E "7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said F to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis."

G 44. It is this paragraph which is strongly relied upon by *Shri Nariman*. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 H insofar as it provided for payment of compensation in

instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

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16. The High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such enactment could not have been struck down on the ground that it was arbitrary or irrational.

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17. That stamp duty is a tax and hardship is not relevant in interpreting fiscal statutes are well known principles. In *Bengal Immunity Co. Ltd. v. State of Bihar and others*<sup>11</sup>, a seven-Judge Bench speaking through majority in paragraph 43 (at pg. 685) of the Report while dealing with hardship in the statutes stated as follows :

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".....If there is any real hardship of the kind referred to, there is Parliament which is expressly invested with the power of lifting the ban under cl. (2) either wholly or to the extent it thinks fit to do. Why should the Court be called upon to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful, when the Constitution itself has expressly provided for another authority more competent to evaluate the correct position to do the needful?"

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18. In *Commissioner of Income Tax, Madras v. R.S.V. Sr. Arunachalam Chettiar*<sup>12</sup>, a three-Judge Bench of this Court, inter alia, observed in paragraph 13 (at pgs. 1220-21) of the

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11. AIR 1955 SC 661.

12. AIR 1965 SC 1216.

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A Report, "equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not."

B 19. In the *Income Tax Officer, Tuticorin v. T.S. Devinatha Nadar etc.*<sup>13</sup>, this Court in paragraph 30 (at pg. 635) of the Report observed as follows :

C "30. From the foregoing decisions it is clear that the consideration whether a levy is just or unjust, whether it is equitable or not, a consideration which appears to have greatly weighed with the majority, is wholly irrelevant in considering the validity of a levy. The courts have repeatedly observed that there is no equity in a tax. The observations of Lord Hatherley, L.C. in (1869) 4 Ch. A 735. "In fact we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the legislature contemplated," were made while construing, a non-taxing statute. The said rule has only a limited application in the interpretation of a taxing statute. Further, as observed by that learned Judge in that very case the question in each case is "whether the legislature had sufficiently expressed its intention" on the point in issue."

F The court highlighted that the court could not concern itself with the intention of the Legislature when the language expressing such intention was plain and unambiguous.

G 20. In *P. Laxmi Devi (Smt.)*<sup>7</sup>, a two-Judge Bench of this Court was concerned with a judgment of the Andhra Pradesh High Court. The High Court had declared Section 47-A of the 1899 Act as amended by A.P. Act 8 of 1998 that required a party to deposit 50% deficit stamp duty as a condition precedent for a reference to a Collector under Section 47-A unconstitutional. The Court said in *P. Laxmi Devi (Smt.)*<sup>7</sup> as follows :

H <sup>13</sup>. AIR 1968 SC 623.

"19. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide *CIT v. V.M.R.P. Firm Muar*. If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.

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21. It has been held by a Constitution Bench of this Court in *ITO v. T.S. Devinatha Nadar* (vide AIR paras 23 to 28) that where the language of a taxing provision is plain, the court cannot concern itself with the intention of the legislature. Hence, in our opinion the High Court erred in its approach of trying to find out the intention of the legislature in enacting the impugned amendment to the Stamp Act."

While dealing with the aspect as to how and when the power of the court to declare the statute unconstitutional can be exercised, this Court referred to the earlier decision of this Court in *Rt. Rev. Msgr. Mark Netto v. State of Kerala and others*<sup>14</sup> and held in para 46 (at pg. 740) of the Report as under:

"46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision

<sup>14</sup>. (1979) 1 SCC 23.

A of the Constitution (other than the directive principles). But  
 before declaring the statute to be unconstitutional, the court  
 must be absolutely sure that there can be no manner of  
 doubt that it violates a provision of the Constitution. If two  
 views are possible, one making the statute constitutional  
 B and the other making it unconstitutional, the former view  
 must always be preferred. Also, the court must make every  
 effort to uphold the constitutional validity of a statute, even  
 if that requires giving a strained construction or narrowing  
 down its scope *vide Rt. Rev. Msgr. Mark Netto v. State*  
 C *of Kerala* SCC para 6 : AIR para 6. Also, it is none of the  
 concern of the court whether the legislation in its opinion  
 is wise or unwise."

Then in paras 56 and 57 (at pg. 744), the Court stated as  
 follows:

D "56. In our opinion adjudication must be done within the  
 system of historically validated restraints and conscious  
 minimisation of the judges' personal preferences. The  
 court must not invalidate a statute lightly, for, as observed  
 E above, invalidation of a statute made by the legislature  
 elected by the people is a grave step. As observed by this  
 Court in *State of Bihar v. Kameshwar Singh*: (AIR p. 274,  
 para 52)

F "52. ... The legislature is the best judge of what is good  
 for the community, by whose suffrage it comes into  
 existence...."

G 57. In our opinion, the court should, therefore, ordinarily  
 defer to the wisdom of the legislature unless it enacts a  
 law about which there can be no manner of doubt about  
 its unconstitutionality."

21. The Constitution Bench of this Court in *Mohd. Hanif*  
*Quareshi and others v. State of Bihar*<sup>15</sup>, while dealing with the

H <sup>15</sup>. AIR 1958 SC 731.

meaning, scope and effect of Article 14, reiterated what was already explained in earlier decisions that to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have rational relation to the object sought to be achieved by the statute in question. The Court further stated that classification might be founded on different basis, namely, geographical, or according to objects or occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

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22. In *Mohd. Hanif Quareshi*<sup>15</sup>, the Constitution Bench further observed that there was always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. It stated in paragraph 15 (at pgs. 740-741) of the Report as under :

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".....The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation....."

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23. The above legal position has been reiterated by a

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A Constitution Bench of this Court in *Mahant Moti Das v. S.P. Sahi*<sup>16</sup>.

B 24. In *Hamdard Dawakhana and another v. The Union of India and others*<sup>17</sup>, inter alia, while referring to the earlier two decisions, namely, *Bengal Immunity Company Ltd.*<sup>11</sup> and *Mahant Moti Das*<sup>16</sup>, it was observed in paragraph 8 (at pg. 559) of the Report as follows:

C "8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy."

E 25. In *Hamdard Dawakhana*<sup>17</sup>, the Court also followed the statement of law in *Mahant Moti Das*<sup>16</sup> and the two earlier decisions, namely, *Charanjit Lal Chowdhury v. Union of India and others*<sup>18</sup> and *The State of Bombay and another v. F.N. Balsara*<sup>19</sup> and reiterated the principle that presumption was always in favour of constitutionality of an enactment.

F 26. In one of the recent cases in *Karnataka Bank Limited*<sup>6</sup>, while referring to some of the above decisions, in para 19 (at pgs. 262-263) of the Report, this Court held as under :

G "19. The rules that guide the constitutional courts in

16. AIR 1959 SC 942.

17. AIR 1960 SC 554.

18. AIR 1951 SC 41.

H 19. AIR 1951 SC 318.

discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity". Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it. (See *State of Bombay v. F.N. Balsara*.)"

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27. A well-known principle that in the field of taxation, the Legislature enjoys a greater latitude for classification, has been noted by this Court in long line of cases. Some of these decisions are : *M/s. Steelworth Limited v. State of Assam*<sup>20</sup>; *Gopal Narain v. State of Uttar Pradesh and another*.<sup>21</sup>; *Ganga Sugar Corporation Limited v. State of Uttar Pradesh and others*<sup>22</sup>; *R.K. Garg v. Union of India and others*<sup>23</sup> and *State of W.B. and another v. E.I.T.A. India Limited and others*<sup>24</sup>.

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28. In *R.K. Garg*<sup>23</sup>, the Constitution Bench of this Court stated that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.

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20. 1962 Supp (2) SCR 589.

21. AIR 1964 SC 370.

22. (1980) 1 SCC 223.

23. (1981) 4 SCC 675.

24. (2003) 5 SCC 239.

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A 29. While dealing with constitutional validity of a taxation  
law enacted by Parliament or State Legislature, the court must  
have regard to the following principles: (i), there is always  
presumption in favour of constitutionality of a law made by  
Parliament or a State Legislature (ii), no enactment can be  
B struck down by just saying that it is arbitrary or unreasonable  
or irrational but some constitutional infirmity has to be found  
(iii), the court is not concerned with the wisdom or unwisdom,  
the justice or injustice of the law as the Parliament and State  
Legislatures are supposed to be alive to the needs of the  
C people whom they represent and they are the best judge of the  
community by whose suffrage they come into existence (iv),  
hardship is not relevant in pronouncing on the constitutional  
validity of a fiscal statute or economic law and (v), in the field  
of taxation, the Legislature enjoys greater latitude for  
classification.

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30. Had the High Court kept in view the above well-known  
and important principles in law, it would not have declared  
Clause (d), Article 45 of Schedule 1-A as violative of Article  
14 of the Constitution being arbitrary, unreasonable and  
E irrational while holding that the provision may pass test of  
classification. By creating two categories, namely, an agent who  
is a blood relation, i.e. father, mother, wife or husband, son or  
daughter, brother or sister and an agent other than the kith and  
kin, without consideration, the Legislature has sought to curb  
F inappropriate mode of transfer of immovable properties.  
Ordinarily, where executant himself is unable, for any reason,  
to execute the document, he would appoint his kith and kin as  
his power of attorney to complete the transaction on his behalf.  
If one does not have any kith or kin who he can appoint as  
G power of attorney, he may execute the conveyance himself. The  
legislative idea behind Clause (d), Article 45 of Schedule 1-A  
is to curb tendency of transferring immovable properties  
through power of attorney and inappropriate documentation. By  
making a provision like this, the State Government has sought  
to collect stamp duty on such indirect and inappropriate mode

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of transfer by providing that power of attorney given to a person other than kith or kin, without consideration, authorizing such person to sell immovable property situated in Madhya Pradesh will attract stamp duty at two per cent on the market value of the property which is subject matter of power of attorney. In effect, by bringing in this law, the Madhya Pradesh State Legislature has sought to levy stamp duty on such ostensible document, the real intention of which is the transfer of immovable property. The classification, thus, cannot be said to be without any rationale. It has a direct nexus to the object of the 1899 Act. The conclusion of the High Court, therefore, that the impugned provision is arbitrary, unreasonable and irrational is unsustainable.

31. Consequently, these appeals are allowed and the judgment of the Madhya Pradesh High Court passed on September 15, 2003 is set aside. Writ petitions filed by the present respondents before the High Court stand dismissed. No order as to costs.

B.B.B.

Appeals allowed.