purpose of placing the burden of proving the adoption upon the plaintiff-petitioner. If the provisions of the said Act are ignored, we have to revert to the general law regarding placing of burden on the question of adoption. In this behalf, reference has been made to para 512 of Mulla's Hindu Law (Thirteenth Edition), wherein it has been mentioned that the evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. The rule of law as laid down aforesaid has been reiterated in *Ranjit Sahu* v. *Nilambar Sahu and another*, (1). The said case, of course, dealt with the question of adoption under the Act, but during the course of the discussion, the learned Single Judge observed that apart from the Act, a heavy burden lay on the person who claims on the basis of adoption. In this position of law, the order of the trial Court placing the burden of proving the adoption on the petitoner is patently illegal and requires to be reversed.

(3) No other point has been argued in this Revision petition. The impugned order of the trial Court is reversed to the extent that the burden of proving issue No. 1 shall be placed upon the respondents instead of the petitioner. The case shall go back to the trial Court for proceeding further in accordance with law.

The parties, through their counsel have been directed to appear before the trial Court on November 2, 1978.

N. K. S.

Before S. S. Sandhawalia, C.J. and Harbans Lal, J.

DES RAJ JUNEJA AND OTHERS—*Petitioners.*

versus

UNION OF INDIA AND OTHERS—*Respondents.*

Civil Writ Petition No. 3958 of 1977

February 19, 1979.

Capital of Punjab (Development and Regulation) Act (XXVII of 1952) as amended by Punjab Act (XXXVII of 1957)—Sections 7, 7A and Second Schedule—Punjab Municipal Act (III of 1911)—Sections 4, 11, 51, 52, 61 to 84—Constitution of India 1950—Article

(1) A.I.R. 1978 Orissa 48.

141—*Assurance by Government not to levy any tax for a specific period—Successor Government—Whether estopped from levying house tax before the expiry of that period—Doctrine of promissory estoppel—Whether applicable—Decision to levy house tax based on notifications by the Chief Commissioner—Such notifications including section 61 and allied provisions of the Municipal Act in the Second Schedule and applying them to Chandigarh—Whether hit by the vice of excessive delegation of legislative functions—Chief Commissioner acting as delegate of the legislature—Whether performs legislative functions—Constitution of a 'municipality' and 'municipal fund'—Whether necessary pre-conditions before the levy of house tax—Conflict between different judgments of Supreme Court—Which of the judgments to be taken as declaration of law.*

Held, that the Union Territory Administration Chandigarh while deciding to levy house tax and including section 61 and other provisions of the Punjab Municipal Act 1911 in the Second Schedule to the Capital of Punjab (Development and Regulation) Act 1952 exercised the legislative functions as delegate of the legislature. This being so, the assurance extended by the earlier Government that no tax would be levied in Chandigarh for a specific period cannot operate as a promissory or estoppel of any other kind as the legislature is a sovereign body and has been invested with sovereign powers regarding legislation under Article 265 of the Constitution of India 1950. Its delegate also partakes of that character when exercising legislative functions. Any estoppel if held to be binding will be in the nature of a mandate to the legislature not to pass a certain law regarding house tax which cannot be done. It is uncontroverted that there can be no estoppel against a statute of a legislature. Thus, the delegated authority who was Chief Commissioner exercising the power of the legislature in issuing the notification levying house tax was immune from the attack on the basis of the doctrine of promissory estoppel. In view of the assurance by the earlier Government not to levy any tax including house tax on lands and buildings in the city of Chandigarh for a specific period, the Union Territory Administration of Chandigarh as a successor State was not barred under the doctrine of promissory estoppel from levying house tax before the expiry of that period. (Para 17).

Held, that delegation of power by the legislature on the Government or the executive is the accepted policy of all legislatures in all the democratic countries including our country, but such delegation in order to be valid, must operate only within the four walls of the specified field. The legislature must lay down the policy, principle or standard in a particular enactment clearly and without leaving any scope for vagueness and sufficient guide-lines must be provided lest the power of delegation is in any manner misused. While in

the field of taxation also, delegation of power is admissible, but the mind of the legislature to impose a particular tax must be made clear in the statute itself. Imposition of tax as a matter of policy cannot be left to the mercy and whim of the executive. Power to tax is an essential attribute of sovereignty of the people which has been vested in the legislature under the Constitution. If the legislature as a matter of principle or policy clearly decides to levy a certain tax, the rates of tax, manner of levying the same and even the persons on whom the burden should fall may be delegated to the executive within the specified limits after laying down clear guidelines. However, the decision to levy tax as such cannot be delegated. The delegation of such essential powers will be tantamount to abdication, of essential legislative, functions. It is in section 61 of the Municipal Act that the policy of the legislature to impose tax on the owners of the buildings etc. or in other words to impose house tax is embodied. If the legislature had made up its mind while enacting the Amendment Act of 1957 that house tax should be imposed and only details were to be left to the executive, nothing stood in the way of the legislature in expressing its will and intention by including atleast sections 61 and 62 of the Municipal Act in the Second Schedule. The non-inclusion of these two most vital provisions relating to tax leaves no manner of doubt that the then legislature had not at all applied its mind to the desirability or the appropriateness with regard to the imposition of house tax in Chandigarh which was a newly developing city, as a matter of policy. The mere fact that power was given to the State Government under Section 7A (4) of the Principal Act and the Chief Commissioner after the re-organisation, to include any provision of the Municipal Act in the Second Schedule cannot be interpreted to be the expression of the will by the legislature in clear terms that it wanted the house tax to be imposed in Chandigarh. In the matter of laying down of policy, power has been delegated which is not permissible as the same cuts at the very root of sovereign power of legislation with the legislature. It was left to the uncanalised and unfettered discretion of the Government to include any provision of the Municipal Act in the Second Schedule under section 7-A including the provision relating to imposition of tax and the manner and machinery for levying the same. The delegation of such wide powers and the exercise of the same cannot be included within the ambit of "conditional legislation". The notification issued by the Chief Commissioner whereby section 61 and the other provisions of the Municipal Act relating to the imposition of house tax in Chandigarh were included in the Second Schedule is clearly not sustainable as it suffers from the vice of excessive delegation of essential legislative functions. (Paras 36, 37, 38 and 40).

Held, that according to the scheme of the Municipal Act, the Municipal Committee whether nominated or elected, presumes the existence of a duly constituted municipality under section 4 of the

Municipal Act. Sections 4, 51, 52 and 61 of the Municipal Act have to be read together as they are inter-linked to achieve the aims and objects of the Act. According to the scheme all the income and revenues derived from taxes or otherwise have to be credited to the Municipal fund which has to be constituted in the name of the 'municipality' concerned. Without coming into the existence of the legal entity known as 'municipality' as contemplated under section 4 of the Municipal Act, there cannot be any municipal fund as envisaged under section 51 of the said Act as the fund must be in the name of the municipality and the same has to be utilized for the purposes and in the manner as laid down clearly and expressly under section 52 of the Municipal Act. In the absence of the municipality and the municipal fund therefor, the machinery for utilising the tax which may be levied and collected under section 61 and other allied provisions will be totally lacking and it cannot be said that the tax has been levied 'for the purposes of this (municipal) Act". Thus, the municipal fund could not be created without bringing into existence the municipality and without the constitution of the municipal fund, levy of municipal tax could not be effected as the municipality and the municipal fund were necessary preconditions before the levy of house tax could be resorted to as otherwise, the purpose of the Act and the manner as envisaged under section 61 of the Act could not be carried out. (Para 41).

Held, that in cases where a High Court finds any conflict between different judgments of the Supreme Court, it must try to find out and follow the opinion expressed by the larger benches in preference to the opinion expressed by smaller benches, although the latter opinion may be later in point of time. The decision of the larger bench would, therefore, be binding on the High Court as declaration of law as envisaged under Article 141 of the Constitution.

(Paras 14 and 15).

Petition under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court may be pleased to issue* :—

(*i*) *A writ of certiorari quashing the impugned Notifications* vide *Annexure P*-1, *P*-5, *P*-6, *P*-7, *P*-8, *P*-9, *P*-10, *P*-11 *and P*-13;

(*ii*) *A writ of mandamus declaring that the impugned notifications and orders are void, invalid, without jurisdiction and unconstitutional*;

(*iii*) *That any other writ, direction or order as this Hon'ble Court may deem fit in the circumstances of the case in the interest of justice*;

(*iv*) *A writ of mandamus declaring that no House tax can be imposed in Chandigarh upto the year* 1984 *and that the*

Respondents are estopped from enforcing the provisions of Punjab Municipal Act in Chandigarh till that time.

(*v*) A *writ of mandamus declaring that the notifications,*—vide *Annexures P-5, P-6 are void-abinitio, nonest and no force of law and that P-7 has no restrospective effect.*

(*vi*) *A writ of mandamus declaring that Sec. 61 of the Punjab Municipal Act so far as it is applicable to Chandigarh is unconstitutional ultravires and void ;*

(*vii*) *A writ of mandamus declaring that the decision of the erstwhile State of Punjab in 1959, cannot be withdrawn by the successor State Respondent No. 1 and is binding on them and the doctrine of promisory estopple applies to the circumstances of the present case and the respondents are bound by the representations made by the predecessor State and the successor is not competent to withdraw the same;*

(*viii*) *Cost of this petition be awarded to the petitioners.*

(*ix*) *Servicing of notices of motion be dispensed with ;*

It is further prayed that till the decision of the above noted Writ Petition, operation of the impugned orders and proceedings before the Assessing Authority be stayed.

H. L. Sibal, Senior Advocate, *for the petitioners.*

B. S. Malik, S. C. Sibal, R. C. Setia, A. K. Jaiswal, J. S. Chawla, and R. N. Narula, Advocates, with him.

Anand Swaroop, Advocate with M. L. Bansal, Advocate, *for the Respondents.*

JUDGMENT

Harbans Lal, J.

(1) This order will dispose of Civil Writ Petitions Nos. 7218 of 1976, 519, 2538, 3880 and 3958 of 1977 and 319, 1046, 1241, 1577 and 4733 of 1978, as most of the questions of law and fact arising therein are identical.

2. House tax was levied by the Union Territory Administration, Chandigarh, with effect from October 1, 1976. The legality

and validity of the same has been impugned in all these writ petitions under Articles 226 and 227 of the Constitution mainly on the basis of the following two important propositions of law :

(1) The then Punjab Government of which the Union Territory Administration of Chandigarh is the successor, after reorganisation in 1966, had given an assurance in 1959 that no taxes including the house tax will be imposed in the city of Chandigarh for 25 years. Consequently, the Chandigarh Administration was estopped from levying the house tax under the doctrine of promissory estoppel, and

(2) The decision to levy house tax was based on notifications by the Chief Commissioner, and the Chief Administrator, Union Territory, Chandigarh, which were hit by the vice of excessive delegation of legislative powers.

3. At this stage, it is appropriate to enumerate, in brief, the relevant facts as referred to in Civil Writ Petition No. 3958 of 1977, which have a bearing on the dispute.

4. As a result of the historical holocaust and the consequential partition of the country in 1947, Lahore, the capital of Punjab, was left in Pakistan and the remaining part of Punjab, known as East Punjab, was left without any capital. In order to carry out the day to day administration, all the major offices of the new State of Punjab were shifted to Simla in the first instance. After a good deal of discussion at the highest level, finally it was decided to locate its new capital at the place which is now called Chandigarh. In 1952, the Capital of Punjab (Development and Regulation) Act, 1952, (Punjab Act No. XXVII of 1952) (hereinafter called the Principal Act), was promulgated. Its purpose was, as is clear from the statement of Objects and Reasons, as under :

"The construction of the new capital of Punjab at Chandigarh is in progress. It is considered necessary to vest the State Government with legal authority to regulate the sale of building sites and to promulgate building rules on the lines of Municipal Bye-laws so long as a properly constituted local body does not take over the administration of the city."

Under section 7 of this Act, the State Government was authorised to levy "such fees or taxes as it may consider necessary to provide, maintain and continue any amenity at Chandigarh. This Act was amended by the Punjab Act No. 37 of 1957; The Capital of Punjab (Development and Regulation) (Amendment) Act, 1957 (hereinafter to be called the Amendment Act), which received the assent of the Governor on November 11, 1957. According to the Objects and Reasons for the promulgation of the Amendment Act, the purpose of the amendment was to "give powers to the Chief Administrator at Chandigarh similar to those vested in the local bodies under the Municipal Act of 1911, which he would exercise within the capital area of Chandigarh. Section 7-A was newly added by section 2 of the Amendment Act, which is reproduced below :

"7-A(1) The Chief Administrator may, from time to time by notification in the Official Gazette, and with the previous approval of the State Government, apply to Chandigarh or any part thereof, with such adaptations and modifications not affecting the substance as may be specified in the notification, all or any of the provisions of the Punjab Municipal Act, 1911, specified in the Second Schedule appended to this Act in so far as such provisions are not inconsistent with the provisions of this Act.

(2) On the issue of a Notification under sub-section (1), the Chief Administrator, shall in relation to Chandigarh or any part thereof, as the case may be, exercise the same powers and perform the same functions under the provisions applied by such notification as a Municipal Committee or its President or Executive Officer or any other functionary of the Committee would exercise and perform if Chandigarh were a Municipality of the first class.

(3) While exercising the powers or performing the functions under the provisions of the Punjab Municipal Act, 1911, applied to Chandigarh by a notification under sub-section (1), the Chief Administrator shall be subject to the control of the State Government and not to that of the Commissioner or Deputy Commissioner.

(4) The State Government may from time to time, by notification in the Official Gazette, omit any provision of the

Punjab Municipal Act, 1911, from the Second Schedule or add thereto, any other provision of that Act.

(5) Every notification made under sub-section (1) shall be laid before each House of the State Legislature for a period of fourteen days as soon as possible."

In the Second Schedule annexed to this Act, some provisions of the Punjab Municipal Act, 1911 (hereinafter to be called the Municipal Act), were included. A perusal of section 7-A and the Schedule makes it evident that the provisions of the Municipal Act included in the Second Schedule could be enforced in the Union Territory, Chandigarh, by the Administrator with the previous approval of the State Government. The other provisions which did not find mention in the Second Schedule could be enforced only if the State Government by a notification included them in the Second Schedule. It may be appropriate to make a specific mention here that sections 61 to 84 of the Municipal Act relating to the levy of house-tax and the manner and method of levying the same, were not included in the Second Schedule under the Amendment Act. It was only on July 10, 1968, that the Chief Commissioner of the Union Territory, Chandigarh, issued a notification in exercise of the powers under section 7-A(4) of the Principal Act, adding sections 61, 62, 63, 81, 84 and 85 of the Municipal Act in the Second Schedule. On July 31, 1968, these new provisions were made applicable to Chandigarh with the previous approval of the Chief Commissioner by means of a notification dated July 31, 1968.

5. According to sub-section (5) of section 7-A of the Principal Act, every notification under sub-section (1) was required to be laid before each House of the State Legislature for a period of fourteen days as soon as possible. The above-mentioned two notifications dated July 10, 1968 and July 31, 1968, relating to the inclusion of some provisions of the Municipal Act authorising levy of house-tax had not been laid before the State Legislature.

6. After the partition of the country, the process of re-organisation of various provinces in independent India had been initiated. So far as the erstwhile princely States adjoining the then East Punjab were concerned, they had been integrated into a separate union known as Patiala and East Punjab States Union

(PEPSU) in 1951. Thereafter, they were merged into the Punjab province by means of the States Reorganisation Act, 1956. Subsequently, the newly integrated province of Punjab was again reorganised into three separate provinces known as Punjab, Haryana and the Union Territory of Chandigarh in 1966 by the Punjab Reorganisation Act, 1966 (hereinafter to be called the Reorganisation Act). So far as the Union Territory of Chandigarh, which was directly administered by the Central Government was concerned, section 89 of the Reorganisation Act had vested power in the Central Government to make such adaptations and modifications of the laws existing in the then Punjab before the first day of November, 1966. In exercise of this power, the Central Government issued a notification known as the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on States and Concurrent Subjects) Order, 1968 (hereinafter to be called the Order), by means of which, the Principal Act and the Amendment Act were enforced in the Union Territory of Chandigarh while deleting sub-section (5) of section 7-A, which required all notifications under sub-section (1) of section 7-A, to be laid before the State Legislature. Obviously, the purpose of this adaptation was to absolve the Central Government from the responsibility of placing any notifications before the State Legislature, which did not exist so far as the Union Territory of Chandigarh was concerned or its successor, the Parliament.

7. In May, 1959, the then Government of Punjab took decision in a meeting of the Cabinet giving assurance to the citizens of Chandigarh that for 25 years no house-tax or property tax etc. as envisaged in the Punjab Municipal Act or the Punjab Urban Immovable Property Act will be levied. This assurance and declaration of policy was to the following effect :

> "In order to encourage the construction of private houses in Chandigarh, the Punjab Government have decided to exempt Chandigarh for 25 years from the operation of the East Punjab Rent Restriction Act, Marla Tax and the provisions of the Punjab Urban Immovable Property Act, 1951, and the Punjab Municipal Act, 1911, for purposes of House Tax and Property Tax. Similarly the Security of Tenure (Urban Immovable Property) Bill according to which residential/business premises beyond one unit of one house/one shop per individual

are proposed to be declared as surplus, will also not apply to Chandigarh for 25 years."

The making of this assurance is admitted by the respondents both in their original return as well as the additional affidavit in which even the wording of the assurance is reproduced which is identical in terms as reproduced above.

8. According to the averments in paragraph 22 of the petition, Shri A. N. Vidyalankar, Member Parliament from Chandigarh, enquired from Shri K. C. Pant, the then Union Minister of State for Home Affairs, in Parliament regarding the advisability of setting up an elected body for Chandigarh, on June 9, 1971. This request was declined by the Hon'ble Minister and one of the reasons for this was stated to be that the then Punjab Government had given an assurance that no municipal taxes would be levied for 25 years in the interest of Chandigarh's development and further that without levying local taxes, it will not be possible for any elected body to carry on its functions. At that time, the entire expenditure of the Union Territory was being borne by the Cenral Government. This averment had been made on the basis of a news item published in the English daily Tribune dated June 10, 1971. This was not denied in categorical terms by the respondents. The only reply given was that there was no official record available relating to the same.

9. Up to June, 1976, the Chandigarh Administration did not take any ostensible steps to levy tax in Chandigarh. It was only on July 14, 1976, that a notification was published in the Chandigarh Administration Gazette (Extraordinary) inviting objections against the proposal for the imposition of tax on lands and buildings in Chandigarh. In reply to the same, about 295 objections were filed which were rejected by Shri K. K. Mookerjee, the then Chief Administrator, Chandigarh, by his order dated August 24, 1976, a copy of which is Annexure P. 9. The imposition of tax on lands and buildings was notified by the Chief Administrator in exercise of the powers under section 61(1)(a) read with section 62(10)(b) of the Municipal Act,—*vide* notification dated August 27, 1976, a copy of which is annexure P. 10. Thereafter, notices under section 65 of the Municipal Act, proposing some amount of house tax on each of the petitioners was issued by the Assessing Authority in June, 1977. A

copy of one such notice is Annexure P. 11. After the objections were filed, the same were decided. A copy of one of the orders passed by the Assessing Authority on August 24, 1977, rejecting the objections and finally assessing the amount of house tax is Annexure P. 13.

10. The case of the petitioners was that in view of the categorical assurance by the then Punjab Government in 1959 not to levy any tax including the house tax on lands and buildings in the city of Chandigarh for a period of 25 years, the Union Territory Administration of Chandigarh as a successor State after reorganisation of 1966 was barred under the doctrine of promissory estoppel before the expiry of this period from levying the house tax. In other words, no house tax could be levied before May, 1984. This levy was also challenged on the ground that by the Amendment Act of 1957, the provisions relating to the levy of house tax as contained in sections 61 and 62 of the Municipal Act had not been enforced in the city of Chandigarh by the then Punjab Legislature. The subsequent notifications by the Chief Commissioner in July, 1968 including these provisions in the Second Schedule of the Principal Act and another notification by the Chief Administrator in July, 1968, enforcing these provisions in the city of Chandigarh were vitiated as they suffer from the vice of excessive delegation of essential legislative functions. It was also contended that the house tax could be levied in the manner and for the purposes as mentioned in section 61 of the Municipal Act. As section 4 of this Act which provided for the constitution of a municipality in a particular area had not been made applicable to the city of Chandigarh up to this time and separate municipal fund also had not been constituted as envisaged under section 51 of the Municipal Act, the imposition of house tax was also *ultra vires* sections 51 and 61 of the Municipal Act.

11. According to the reply on behalf of the respondents by way of affidavit and the additional affidavit by the Deputy Cheif Administrator though the assurance by the then Punjab Government made in May, 1959, as reproduced above, was admitted, yet it was categorically and emphatically denied that the principle of promissory estoppel stood in the way of the Chandigarh Administration in levying the house tax, as the decision to levy the same was as a result of the change in Government policy and in view of the ever mounting expenditure which is required to be incurred for providing and maintaining municipal services like sanitation etc. which

city of Chandigarh has developed and the population has also increased manifold. A detailed history and background of the thinking in the office of the Chief Commissioner of Chandigarh right from December 20, 1972, regarding the levy of house tax and the desirability of raising resources through taxes in order to augment sanitation, to provide additional vehicles for collection and disposal of garbage etc. has been given in the additional affidavit. It was averred in paragraph 23 of the return as under :—

> "The working of democratic Government would become impossible if the freedom to change particular policies is fettered by announcements made by the previous Governments."

Regarding the other contention, it was stated that the powers conferred by section 7-A of the Principal Act upon the State Government and the Chief Commissioner was not a case of excessive delegation and the guidelines had been provided by the scheme of the Act itself. It was stressed that the imposition of house tax was quite lawful and did not suffer from any infirmity whatsoever.

12. As stated above, the main thrust of the attack challenging the legality and the soundness of the levy of house tax by the petitioners is two fold viz., the levy of the house tax is untenable both on the ground of promissory estoppel as well as excessive delegation of essential legislative functions. According to Mr. Sibal, the learned counsel for the petitioners, the doctrine of promissory estoppel or equitable estoppel has been evolved in course of time by the Courts in America, England as well as in this country by equity to avoid injustice and to prevent legal fraud being committed. Main reliance has been placed on the latest judgment of their Lordships of the Supreme Court in *M/s. Motilal Padampat Sugar Mills Co. Private Limited* v. *The State of U.P. and others*, delivered on December 12, 1978. Bhagwati, J., who spoke for the Court therein held,—

> "The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom

the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it, and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealing which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

After closely scrutinising the statements of law as commented upon by the various jurists and the Courts in America and England and also analysing the decisions of the Supreme Court from time to time, the following propositions of law in the field of promissory estoppel were laid down in this decision:

(1) Where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee acting in reliance of it alters his position, the Government would be bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required under Article 299 of the Constitution;

(2) The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. The doctrine is fully applicable against the Government in the exercise of its governmental, public or executive powers;

(3) The doctrine is equally applicable against a public authority like the municipal corporation;

(4) The doctrine of promissory estoppel cannot be applied in the teenth of an obligation or liability imposed by law;

(5) There can be no promissory estoppel against the exercise of legislative powers;

(6) As the doctrine of promissory estoppel is an equitable doctrine, the same will yield when the equity so requires.

It will be open to the Government to bring to light the facts and circumstances which may subsequently develop to show that it would be inequitable to hold the Government to the promise made by it and in such a situation, the Court would not raise equity in favour of promisee, or if the public interest would be prejudiced if the Government were required to carry out the promise. The court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act or to alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government;

(7) The liability to carry out the promise cannot be exempted on some "indefinite or undisclosed" grounds of necessity or exigency;

(8) The mere claim of change of policy would not be sufficient to exonerate the Government from the liability; and

(9) Even where there is no such overriding public interest, it may still be competent for the Government to resile from the promise on giving a reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position; provided, of course, it is possible for the promisor to restore *status quo ante.*

The above mentioned propositions of law were laid down while affirming the *ratio* of the decisions in the *Union of India and others* v. *M/s. Anglo Afghan Agencies and others* (1), *Collector of Bombay* v. *Municipal Corporation of the city of Bombay and others* (2) *and Century Spinning and Manufacturing Co., Ltd.,* and *another* v. *The Ulhasnagar Municipal Council and another* (3).

(13) In *Excise Commissioner, U.P.* v. *Ram Kumar* (4), the sale of country liquor had been exempted from sales tax at the time

(1) AIR 1968 S.C. 718.
(2) AIR 1951 S.C. 469.
(3) AIR 1971 S.C. 1021.
(4) AIR 1976 S.C. 2237.

of the auction of licences to sell such liquor by retail by a notification issued under section 4 of the U.P. Sales Tax Act, 1948. The respondents participated in the auctions and being the highest bidders, were granted licences for retail sale of country spirit. On the day following the commencement of the licences, the U.P. Government issued another notification superseding the earlier notification and thereby imposed sales tax on the turn over of the country spirit. As a result of the scrutiny of the earlier judgments of the Supreme Court as reported in *N. Ramanatha* v. *State of Kerala* (5), *State of Kerala and another* v. *The Gwalior Rayon Silk Manufacturing (wvg.) Company Ltd., and others* (6), the American Jurisprudence and the decision of the House of Lords, it was held,—

> "It is now well-settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers."

The levy and the withdrawal of the exemptions was consequently held to be valid. This decision was also the subject-matter of consideration in the latest judgment of the Supreme Court in *M/s. Motilal Padmapat Sugar Mills's case* (supra), and it was held,—

> "The next decision to which me must refer is that in *Excise Commissioner, U.P. Allahabad v. Ram Kumar* (4 supra). This was also a decision on which strong reliance was placed on behalf of the State. It is true that, in this case, the Court observed that "it is now well-settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers', but for reasons which we shall presently state, we do not think this observation can persuade us to take a different view of the law that enunciated in the Indo-Afghan Agencies' case."

After discussing some earlier judgments of the Supreme Court, again it was observed,—

> "It will thus be seen from the decisions relied upon in the judgment that the Court could not possibly have intended

(5) AIR 1973 S.C. 2641.

(6) AIR 1973 S.C. 2734.

to lay down an absolute proposition that there can be no promissory estoppel against the Government in the exercise of its governmental, public or executive powers. That would have been in complete contradiction of the decicions of this Court in the Indo-Afghan Agencies case, Century Spinning and Manufacturing Co.'s case and Turner Morrison's case and we find it difficult to believe that the Court could have ever intended to lay down any such proposition without expressly referring to these earlier decisions and over-ruling them. We are, therefore, of the opinion that the observation made by the Court in Ram Kumar's case does not militate against the view we are taking on the basis of the decisions in the Indo-Afghan Agencies' case, Century Spinning & Manufacturing Co.,s case and Turner Morrison's case in regard to the applicability of the doctrine of promissory estoppel against the Government."

14. Thus, according to the law laid down in *Ram Kumar's case* (4 supra), there can be no promissory estoppel or equitable estoppel against the Government in the exercise of its sovereign, legislative or executive functions, whereas according to the *ratio* of the deci- in *M/s. Motilal Padampat Sugar Mill's case* (supra), the Government while exercising its executive functions cannot claim immunity from this doctrine and is bound by its promises and assurances unless facts can be proved showing the overriding consideration of public interest and equity in its favour not to be hampered by estoppel arising from its promises. There appears to be apparent divergence of opinion regarding the scope and ambit of this doctrine of promissory estoppel between the two latest judgments of the Supreme Court. Faced with this delicate situation, this Court is called upon to chalk out a course for itself. The same depends on the answer to the question: The decision of which judgement is binding on the High Court as declaration of law as envisaged under Article 141 of the Constitution?

15. In *Mattulal* v. *Radhe Lal*, (7), when contradiction between two judgments of the Supreme Court was discovered, it was held,—

"But whatever be the reason, it cannot be gainsaid that it is not possible to reconcile the observations in these two

(7) AIR 1974 S.C. 1596.

decisions. That being so, we must prefer to follow the decision in Sarvate T.B.'s case as against the decision in Smt. Kamla Soni's case, as the former is a decision of a larger Bench than the latter."

16. In the *State of U.P.* v. *Ram Chandra Trivedi* (8) in somewhat similar situation, their Lordships held,—

"It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case as observed by this Court in *Union of India* v. *K. S. Subramanian* (9) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by this court itself."

In the present case, the decision in *Ram Kumar's case* (supra), wherein it was expresly held that there cannot be any promissory estoppel against the Government while performing its sovereign legislative and executive functions, is by four-Judge Bench whereas the one in *M/s. Motilal Padampat Sugar Mills's case* (supra), is by a Bench of two Judges though the same is later in point of time. Keeping in view the dictum of law by the Supreme Court itself in the above-mentioned two decisions, I am bound by the law as laid down in *Ram Kumar's case* (supra).

17. To be fair to the learned counsel for the respondents notice may be taken of his contention that he challenges the correctness of the decision in *M/s. Motilal Padampat Sugar Mills's case* (supra), in so far as it was held therein that the doctrine of promissory estoppel was binding even on the Government when performing its executive functions. However, it is not for this Court to go into this question. It will be for the highest judicial authority in

(8) AIR 1976 S.C. 2547.

(9) C.A. 212 of 1975 decided on 30.7.76.

the country, that is, the Supreme Court, to resolve the controversy by laying down the law finally and lucidly in view of the apparent contradictions in the judicial opinion. There is no doubt that the proper scope and amplitude of the doctrine of promissory estoppel or equitable estoppel is a matter of vital importance both for the citizens who have no alternative but to act upon the solemn assurances and promises of the Government as well as the Government which is in essence and substance a party Government at all times in the type of democracy that we have and in a developing economy, Governments are required, even *bona fide* to change their policies from time to time and thus override the promises already made.

17. Another emphaitc contention was raised by Mr. Anand Swaroop, the learned counsel for the Chandigarh Administration, that in the present case, the house tax was levied in pursuance of the notification issued in July, 1968, by the Chief Commissioner exercising the powers of the Central Government whereby section 61 of the Municipal Act and other allied provisions were included in the Schedule annexed to the principal Act, and thereafter, another notification was issued by the Chief Administrator in August, 1968, whereby these provisions were enforced in the city of Chandigarh. It was stressed that both these notificaitons were issued as a delegate of the legislature in pursuance of the power conferred under section 7A of the Principal Act. In view of the same, the Government, in fact, performed essential legislative functions as delegate of the legislature and not executive functions. Even according to the ratio of the decision of *M/s. Motilal Padampat Sugar Mills's case* (supra), the principle of promissory estoppel could not apply against the legislature. As such, the levy of the house tax was immune from this attack. This contention was refuted strongly by Mr. Sibal, the learned counsel for the petitioners. According to him, the Government even while acting as delegate of the legislature cannot be held to act as the legislature itself and secondly, the power conferred by the legislature on the Government under section 7A of the Principal Act was vitiated as it was the result of excessive delegation of powers. At this stage, I am concerned only with one aspect of the contention raised by Mr. Sibal. For the purpose of determining the scope of the doctrine of promissory estoppel as

against the legislature, the objection regarding excessive delegation of legislative powers to the executive does not have any bearing. That is an independent question which is not linked with the present controversy. For this purpose, we have to proceed on the assumption that the Government or the Chief Commissioner acted on behalf of the Central Government in issuing the notification including section 61 of the Municipal Act in the Second Schedule as a delegate of the legislature and within the scope of permissible delegation. The question at this stage is: What is the nature of this power when exercised by the Government? Whether it is legislative or executive? Somewhat similar questions arose in *Narinder Chand, Hem Raj and others* v. *Lt. Governor, Administrator, Union Territory, Himachal Pradesh and others* (10) before the Supreme Court. In that case, at the time of auction, the Collector of Excise and Taxation announced that no sales tax would be liable to be paid on the sale of Indian-made foreign liquor and beer. Despite that assurance, the Government had levied and collected sales tax from the appellants and was taking further steps for realising the same. According to the Government, in reply, the Deputy Commissioner had told the bidders only that the Government was considering the question of removing the sales tax on Indian-made foreign liquor and that the Himachal Pradesh Government could take the decision to remove the sales tax on the Indian-made foreign liquor, but could not enforce that decision since the Union Government had not accorded approval therefor. Regarding the nature of the power exercised by the delegate of the legislature, it was held as under:

> "The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the Legislature directly or, subject to certain conditions, the Legislature may delegate that power to some other authority, but the exercise of that power, whether by the Legislature or by its delegate, is an exercise of a legislative power. The fact that the power is delegated to the executive does not convert that power into executive or administrative power. No Court can issue a mandate to a Legislature to enact a particular law. Similarly, no Court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact."

(10) (1972) 29 Sales Tax cases 169.

In view of the *ratio* of the decision in the above case, it has to be held that the Union Territory Administration, Chandigarh while deciding to levy house tax and including section 61 and other provisions of the Municipal Act in the Second Schedule to the Principal Act exercised the legislative functions as a delegate of the legislature. This being so, the assurance extended by the then Punjab Government in May, 1959, that no tax will be levied in Chandigarh for 25 years to come cannot operate as a promissory estoppel or estoppel of any other kind as the legislature is a sovereign body and has been invested with sovereign powers regarding legislation under Article 265 of the Constitution. Its delegate also partakes of that character when exercising legislative functions. Any estoppel, if held to be binding will be in the nature of a mandate to the legislature not to pass a certain law regarding house tax which cannot be done. It is uncontroverted that there can be no estoppel against a statute of a legislature. Thus, the delegated authority who was the Chief Commissioner in the present case exercising the power of the legislature in issuing the invulnerable impugned notification was immune from the attack on the basis of the doctrine of promissory estoppel.

18. Some argument was also addressed on both sides regarding the discharge of onus by the Government in regard to equitable considerations in favour of the Chandigarh Administration to repel the attack of equity in favour of the petitioners as a consequence of the assurance by the then Punjab Government not to levy any tax up to 1984. According to Mr. Anand Swaroop, the learned counsel for the Administration after the alleged assurance in 1959, Chandigarh had developed into a full-fledged city and the population had also multiplied manifold with the result, the Administration has to undertake the onerous social duty of providing adequate municipal services like drainage, sanitation, drinking water supply, fire brigade etc. and it was not possible to discharge these functions without tapping the source of house tax which had been resorted to by all the municipal committees and that the Chief Administrator had been conferred all the powers of a municipal committee under the Amendment Act. Emphatic reference was made to the additional affidavit filed on behalf of the Administration giving the detailed background leading to the imposition of the house tax. According to Mr. Sibal, the learned counsel for the

petitioners, levy of house tax was the direct consequence of a change of policy by the executive which according to the express ratio in *M|s Motilal Padampat Sugar Mills's case* (supra), affirming the earlier decisions of the Supreme Court did not entitle the executive to go back from its undertakings and commitments. However, it does not appear necessary to scrutinise and consider this aspect of the matter in view of the categorical conclusion that the doctrine of promissory estoppel is not at all attracted to the present case.

19. The second attack on behalf of the petitioners which is more invulnerable and weighty is that the impugned notification including section 61 and other allied provisions up to section 84 of the Municipal Act in the Second Schedule to the Principal Act, and the second notification applying these provisions to Chandigarh are vitiated and unsustainable as the same were issued by the delegate of the legislature in a field which is hit by the doctrine of excessive delegation of legislative powers. This important principal of law has been the subject-matter of consideration and discussion by the Supreme Court in a chain of decisions beginning from in *re. Article 143 Constitution of India and Delhi Laws Act.* In this case, power had been conferred by a statute on the Provincial Government to enforce any Act of British India in the province of Delhi by a notification. Several judgments had been rendered separately. Patanjali Sastri J., who was one of the Hon'ble Judges on the Bench deciding this case, observed subsequently in *Kathi Raning Rawat* v. *State of Saurashtra,* (11) about this case as under:

> "On the second point, the appelant's learned counsel claimed that the majority view *in re. Constitution of India and Delhi Laws Act,* 1912, *etc.,* (12) supported his contention. He attempted to make this out by piecing together certain dicta found in the several judgments delivered in that case. While undoubtedly certain definite conclusions were reached by the majority of the Judges who took part in the decision in regard to the constitutionality of certain specified enactments, the reasoning in each case was different, and it is difficult to say that any particular principle has been laid down by the majority which can be of assistance in the determination of other cases."

(11) AIR 1952 S.C. 123.

(12) 1951 S.C.R. 747=(A.I.R. 1951 S.C. 332).

In the *State of Bombay* v. *Narottamdas Jethabhai and another*, (13), the Bombay City Civil Court Act was held to be valid by which the City Court had been created, but the power had been vested in the Provincial Government to confer jurisdiction on this City Court of such value not exceeding Rs. 25,000. It was held,—

> "The provision relates only to enforcement of the policy which the Legislature itself has laid down. The law was full and complete when it left the legislative chamber permitting the Provincial Government to increase the pecuniary jurisdiction of the City Court up to a certain amount, which was specified by the statute itself. What the Provincial Government is to do is not to make any law; it has to execute the will of the Legislature by determining the time at which and the extent to which, within the limits fixed by the Legislature, the jurisdiction of the Court should be extended. This is a species of conditional legislation which comes directly within the principal enunciated in *The Queen* v. *Burah*, 5 I.A. 178 (P.C.)."

20. In *Rajnarain Singh* v. *Chairman, Patna Administration Committee, Patna and another*, (14), *ratio of the Delhi Laws Act case* (supra), was explained and it was held,—

> "An executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms. But this much is clear that it cannot include a change of policy."

Therein, the notification extending section 104 of the Bihar and Orissa Municipal Act, 1922, to the Patna village area was held to introduce a radical change in the policy of the Act and was struck down as *ultra vires*.

21. According to Mr. Anand Swaroop, the learned counsel for the respondents, the legislative policy was clearly discernible from

(13) AIR 1951 S.C. 69.
(14) AIR 1954 S.C. 569.

the statement of Objects and Reasons of the Amendment Act by which section 7-A was added to the Principal Act. Therein, it was clearly laid down that the purpose for applying the provisions of the Municipal Act was to provide municipal services to the city of Chandigarh analogous to those as incorporated in the Municipal Act. *M. K. Ranganathan and another* v. *Government of Madras and others,* (15), was pressed into service in this regard, but therein, it was laid down that the statement of Objects and Reasons can be referred to only for a very limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsors of the Bill to introduce the same and the extent and the urgency of the evil which he sought to remedy. It was also held expressly as under :

> "The Statement of Objects and Reasons is certainly not admissible as an aid to the construction of a statute."

In *Harishankar Bagla and another* v. *The State of Madhya Pradesh,* (16), the extent and scope of delegation of legislative powers was lucidly laid down by Mahajan, C.J., who spoke for the Court as follows:

> "The Legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into binding rule of conduct."

22. *In Inder Singh* v. *The State of Rajasthan,* (17), the distinction between delegated legislation and the conditional legislation was explained thus:

> "When an appropriate legislature enacts a law and authorises an outside authority to bring it into force in such area or

(15) AIR 1955 S.C. 604.
(16) AIR 1954 S.C. 465.
(17) AIR 1957 S.C. 510.

at such time as it may decide, that is conditional and not delegated legislation and such legislation is valid.

23. In *Bhatnagars & Co. Ltd. and another* v. *The Union of India and others*, (18), the *ratio* of the decision in *Harishankar Bagla's case* (supra) *was* re-affirmed.

24. In *Pandit Banarsi Das Bhanot* v. *The State of Madhya Pradesh*, (19), there was a challenge to certain provisions of the Central Provinces and Berar Sales Tax Act (XXI of 1947),—*vide* which power had been conferred on the State Government to amend the Schedule relating to the goods on which Sales Tax could be imposed and also to prescribe rates of sales tax, it was held as under:

> "It is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like. The power conferred on the State Government by section 6(2) to amend the schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic, and is not unconstitutional."

However, in the *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills, Delhi and another*, (20), *the ratio of the* above decision to the effect that fixation of rates of tax was not an essential feature of legislation was not agreed to and it was held,—

> "The observation in *Banarsi Das's case* (21) that rates of tax are not essential features of legislation therefore seems, with respect, to be too broadly stated, though it may be

(18) AIR 1957 S.C. 478.

(19) AIR 1958 S.C. 989.

(20) AIR 1968 S.C. 1232.

(21) 1959 S.C. 427=(AIR 1958 S.C. 909).

admitted that rates of taxation also can in certain circumstances be delegated to a subordinate authority with proper guidance and subject to safeguards and limitations in that behalf."

25. In the *Corporation of Calcutta and another* v. *Liberty* Cinema, (21-A), the municipal committee had increased the licence fee on cinema houses from Rs. 400/- to Rs. 6,000/- per year in 1958 in exercise of the powers conferred under the Calcutta Municipal Act. It was held that the fixation of rates of taxes was not of the essence of the legislative power of taxation. However, it was emphasised that while conferring such a power, the legislature must provide guidance for such fixation. It was also held that it will be a good guidance if it leads to the achievement of the object of the statute which delegated the power.

26. In the *Municipal Croporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills, Delhi and another*, (20 supra), their Lordships after closely examining the previous decisions held that the essential legislative function which is the determination of the legislative policy and its formulation as a rule of conduct cannot be delegated. As the legislature cannot presumably work out all the details to suit the varying aspects of a complex developing society and is also busy with more important legislative work, there is no alternative but to delegate the working out of the details to the executive. As the principle of delegation is also pregnant with inherent dangers, the legislature while delegating the authority should not efface itself and should lay down guidelines for the delegate. Their Lordships also made a detailed study of the nature and scope of the guidelines. It was held that the guidance may be in the form of providing maximum rates of the taxes up to which a local body may be given the discretion. If the delegation is to an elected body, the very fact that the elected members are required to go to the electorate for election periodically, served as a great check not to act unreasonably. It was also held that the need of the Corporation and the objects for the achievement of which it has to function also served as a guideline. The provision that any notification or decision of the delegated authority was required to be laid before the legislature for a certain minimum period also went a long way in furnishing the guidance.

(21A) A.I.R. 1965 Supreme Court 1107.

27. According to Mr. Sibal, the learned counsel for the petitioners, *B. Sharma Rao* v. *Union Territory of Pondicherry*, (22) laid down a very important *ratio* as regards the essential legislative functions which could not be delegated under any circumstances. Therein, in August, 1962, Pondicherry was constituted as a separate Centrally administered unit and a Legislative Assembly was also set up in the area. The said legislature passed the Pondicherry General Sales Tax Act, 1965. Under section 2, power was conferred on the Government to enforce, by a notification, the Madras General Sales Tax Act, 1959. In pursuance of this power, the Pondicherry Government issued a notification. Not only the then Madras General Sales Tax Act, 1959, but also the subsequent amendments were also enforced in Pondicherry. According to their Lordships of the Supreme Court, the Pondicherry legislature had abdicated its essential legislative functions and it was held,—

"The question then is whether in extending the Madras Act in the manner and to the extent it did under section 2(1) of the Principal Act, the Pondicherry legislature abdicated its legislative power in favour of the Madras legislature. It is manifest that the Assembly refused to perform its legislative functions entrusted under the Act constituting it. It may be that a mere refusal may not amount to abdication if the legislature instead of going through the full formality of legislation applies its mind to an existing statute enacted by another legislature for another jurisdiction, adopts such an Act and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act and directs the executive to apply and implement such an Act. But when it not only adopts such an Act but also provides that the Act applicable to its territory shall be the Act amended in future by the other legislature, there is nothing for it to predicate what the amended Act would be. Such a case would be clearly one of non-application of mind and one of refusal to discharge the function entrusted to it by the Instrument constituting it. It is difficult to see how such a case is not

(22) AIR 1967 S.C. 1480.

one of the abdication or effacement in favour of another legislature at least in regard to that particular matter."

The notifications were thus held to be bad and were struck down.

28. Mr. Anand Swaroop, the learned counsel for the respondents, in order to canvass his proposition that the impugned notifications did not exceed the limit of permissible legislative power, relied specifically upon some decisions of the Supreme Court, which, however, do not appear to lend any support keeping in view the peculiar facts and circumstances of the present case.

29. In *Edward Mills Co. Ltd.* v. *State of Ajmer and another*, (23) under the Minimum Wages Act, 1948, the Central Government or the State Government was conferred powers to fix minimum wages payable to employees employed in any employment specified in the Schedule at the time of the commencement of the Act or added to it subsequently in accordance with the provisions of section 27. In March, 1950, the Cheif Commissioner of Ajmer published a notification, in terms of section 27 of the Act giving three months' notice of his intention to include employment in the textile mills as an additional item in the Schedule. In October, 1950, final notification was issued. One of the challenges in the writ petition filed was to the validity of these notifications on the principle of excessive delegation of powers. This contention was repelled and it was held,—

"The legislative policy is apparent on the face of the Minimum Wages Act, 1948. What it aims at the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganised labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. It is with an eye to these facts that the list of trades has been drawn up in the Schedule attached to the Act but the list is not an exhaustive one and it is the policy of the Legislature not to lay

(23) AIR 1955 S.C. 25.

down at once and for all time, to which industries the Act should be applied."

It was also held that by enacting section 27, the legislature had not in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessary or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act.

30. According to Mr. Anand Swaroop, the learned counsel for the respondents, the power conferred by section 7-A of the Principal Act on the Chief Commissioner and the Chief Administrator was analoguos to the one conferred under the Minimum Wages Act. According to Mr. Sibal, the conferment of this power is basically and substantially different and not identical.

31. In *Union of India and others* v. *Bhanamal Gulzarimal Ltd. and others,* (24), powers were conferred on the Central Government under sections 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946, to fix minimum prices of iron and steel from time to time. In pursuance of this power, an Order was promulgated according to which a statutory prohibition was imposed against the specified persons from selling or offering to sell any iron or steel at a price exceeding the maximum prices fixed therein. Power under section 3 had been exercised. It was thought expedient to make the stocks of iron and steel available for equitable distribution at fair prices. It was held,—

"It is obvious that by prescribing the maximum prices for the different categories of iron and steel clause IIB directly carries out the legislative object prescribed in section 3 because the fixation of maximum prices would make stocks of iron and steel available for equitable distribution at fair prices."

The provision was thus held constitutional and not hit on the ground of excessive delegation.

32. In *Mohemedalli and others* v. *Union of India and another,* (25), the Employees' Provident Funds Act, 1952, was applicable to

(24) A.I.R. 1960 S.C. 475.
(25) A.I.R. 1964 S.C. 980.

every establishment which was a factory engaged in any industry specified in Schedule I and in which 20 or more persons were employed. It was also to be applicable to such establishments which were specified by the Central Government by a notification. The Central Government in exercise of this power under section 1 of the aforesaid Act issued a notification in 1961 in which hotels and restaurants were also included in the classes of establishments. This notification was challenged as vitiated on the ground of excessive delegation of legislative power. The contention was negatived by the Supreme Court and it was held that if after examining all the facts and circumstances of the relevant provisions of a statute the Court comes to the conclusion that the underlying principle of the legislation had been expressly indicated and proper standards and criteria had also been laid down, but only the application of those principles and standards had been left to the executive with regard to particular cases, such a delegation of power was within the permitted limits it was also held:—

> "On the other hand, if a review of all those facts and circumstances and the provisions of the statute including the preamble leaves the Court guessing as to the principles and standards, then the delegate has been entrusted not with the mere function of applying the law to individual cases, but with a substantial portion of legislative power itself."

33. In *Bimla Chandra Banerjee* v. *State of Madhya Pradesh and others*, (26), the Government of Madhya Pradesh in the purported exercise of its powers under clauses (d) and (h) of section 62 of the Madhya Pradesh Excise Act, 1915, issued a notification by which the liquor licensees were sought to be made liable to pay excise duty on such quantity of liquor which they were required to lift but they had not actually lifted. It was held that no provision of the said Act empowered the rule-making authority to levy duty on any excisable articles which have not been either imported, exported, transported, manufactured, cultivated or collected under the licences granted to the liquor contractors. Laying down the scope of delegation of legislative powers in matters of taxation, it was held as follows:—

> "No tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation

(26) A.I.R. 1971 S.C. 517.

is made specially authorises the imposition even if it is assumed that the power to tax can be delegated to the executive".

34. In *Gwalior Rayon Mills Mfg. (Wvg.) Co., Ltd.*, v. *Assistant Commissioner of Sales Tax and others*, (27), the *vires* of section 8(2)(d) of the Central Sales Tax Act had been challenged. By this provision, the rate of Central Sales Tax was not fixed, but the rate applicable to the sale or purchase of goods inside the appropriate State was adopted in case such rate exceeded 10 per cent. It was held by their Lordships that in doing so, the Parliament had enunciated the legislative policy clearly inasmuch as it was provided that the Central Sales Tax in no case be less than the rate of the local sales tax, but may be more than the same in case it was less than 10 per cent. Keeping in view the object of the Act and the anxiety of the legislature to stop evasion of the inter-State sales tax, the provision was held to be valid. However, Khanna, J., who spoke for the Court in his elaborate judgment repelled the contention that the legislature while conferring the power on the executive to legislate by regulations or notifications need not disclose any policy, principle or standard. The law was categorically and explicitly laid down in paragraph 12 of the judgment as under:—

"We find ourselves unable to agree with the view, which has been canvassed during the course of arguments that if a legislature confers power to make subordinate or ancillary legislation upon a delegate, the legislature need not disclose any policy, principle or standard which might provide guidance for the delegate in the exercise of that power".

It was also emphasised that the excessive delegation of legislative authority was violative of the sovereignity of the people. It was observed,—

"The rule against excessive delegation of legislative authority flows from and is a necessary postulate of the sovereignity of the people. The rule contemplates that it is not permissible to substitute in the matter of legislative policy

(27) A.I.R. 1974 S.C. 1660.

Principal Act, published on November 14, 1957. This power, however, could be exercised with the previous approval of the State Government. The power to make modification in the aforesaid Schedule by deleting or adding any provision of the Municipal Act was conferred under section 7-A(4) on the State Government. These powers by the Chief Commissioner or the State Government could be exercised by publishing a notification and it was enjoined under section 7-A(5) that such a notification shall have to be laid before each House of the State legislature for a period of 14 days "as soon as possible". After the Reorganisation Act, Chandigarh discontinued to be a part of the Punjab State and was made union territory and the head of the administration was the Chief Commissioner. Thus, after 1966, the power to include or delete from the Second Sechedule was vested in the Chief Commissioner of the Union Territory of Chandigarh. In the second Schedule annexed to the Principal Act, the then legislature of Punjab included some provisions of the Municipal Act beginning with section 93 onwards. Their perusal shows that these provisions related to the provision of fire brigade, water supply, sanitary conditions, drains, laying of pipes, sewerage, public health, removal of disorderly persons, inspection of buildings and the construction thereof etc. The provision regarding levy of taxation and the machinery provided therefor as contained in sections 61 to 86 were not included in the said Schedule. The provisions regarding the constitution of a municipality as contained in sections 4 to 10, those regarding the constitution of the municipal fund as contained in section 51 and 52 as well as the provisions under section 56 which related to the property which was to vest in the municipality were also omitted from this Schedule. So far as the preesnt controversy is concerned, section 61 of the Municipal Act is the most important. It is in this provision that the policy of the legislature to impose tax on the owners of the buildings etc., or in other words to impose house tax is embodied. It is in this provision that it was laid down that any municipal committee may impose house tax from time to time in order to carry out the purposes of the Act subject to the limitation that such a tax was not to exceed the maximum rate prescribed therein. If the municipal committee wanted to levy such a tax, the machinery was provided in the provisions from section 62 onwards. This machinery envisages a resolution by the Committee in a special meeting to impose house tax, inviting objections from the public and the final approval by the State Government. Thereafter, the committee is to follow a meticulous procedure regarding the valuation of the properties of

each owner or the occupier for the purpose of determining the actual amount of tax, preparation of the assessment list after providing opportunity to the persons concerned, and the final assessment list. The machinery regarding filing of appeals by the aggrieved persons is also provided. These provisions were made applicable in the area of the city of Chandigarh by including them in Second Schedule of the Principal Act by the Chief Commissioner by publishing a notification, dated July 10, 1968, Annexure P. 5. From 1957 when the Amendment Act was passed whereby the Second Schedule in which some provisions of the Municipal Act were included, was annexed to the Pricipal Act, the Punjab Government up to 1966, that is, till the date of reorganisation and thereafter, the Chief Commissioner did not think it necessary to include any other provision of the Municipal Act in the aforesaid Second Schedule. On the other hand, according to the admitted case of both the sides, in 1959, the then Government of Punjab made a declaration as a policy decision that no tax including the house tax will be levied in the city of Chandigarh for 25 years. In a democratic set up that we have, the party in Government has the majority in the legislature and as such the decision of the Government embodies the decision of the legislature in matters of policy. The fact stands that the decision regarding non-levy of tax in Chandigarh by the Government is not alleged to have been criticised, or disagreed or dissented from by the legislature at any time. It is in these circumstances that I am called upon to determine the important question as to whether the then Punjab legislature by enacting the Amendment Act in 1957, made its intention and policy clear that the house tax as embodied in section 61 of the Municipal Act may be imposed by executive, whether the Chief Administrator or the Chief Commissioner. If the legislature had made up its mind while enacting the Amendment Act that house tax should be imposed and only details were to be left to the executive, nothing stood in the way of the legislature in expressing its will and intention by including at least sections 61 and 62 of the Municipal Act in the Second Schedule. The non-inclusion of these two most vital provisions relating to tax leaves no manner of doubt that the then legislature had not at all applied its mind to the desirablility or the appropriateness with regard to the imposition of house tax, in Chandigarh which was a newly developing city, as a matter of policy. The mere fact that the power was given to the State Government under section 7-A(4) of the Principal Act and the Chief Commissioner after the reorganisation to include

executive under section 7-A of the Principal Act to include any provision of the Municipal Act in the Second Schedule and the issuance of the impugned notification Annexure P. 1 in the exercise of the same, was a case of conditional legislation and not delegated legislation. As such the question of excessive delegation of legislative power was irrelevant. Conditional legislation cannot be held to be invalid on any ground. According to the ratio of the decision in *Inder Singh's Case* (supra) the "conditional legislation" means that the law in all its particulars is indicated by the legislature, but the only power left with the outside authority is "to bring it into force in such area or at such time as it may decide". In the present case, this is not the only power which was delegated to the executive. It was left to the uncanalised and unfettered discretion of the Government to include any provision of the Municipal Act in the Second Schedule under section 7-A including the provision relating to imposition of tax and the manner and machinery for levying the same. The delegation of such wide powers and the exercise of the same cannot be included within the ambit of "conditional legislation". I have, therefore, no hesitation to hold that the impugned notification, Annexure P. 5 dated July 10, 1966, issued by the Chief Commissioner whereby section 61 and other provisions of the Municipal Act relating to the imposition of house tax in Chandigarh were included in the Second Schedule is clearly not sustainable as it suffers from the vice of excessive delegation of essential legislative functions. The subsequent notification, Annexure P. 6, dated July 31, 1968, by the Chief Administrator by which these provisions were enforced in the city of Chandigarh with the previous approval of the Chief Commissioner being a consequential measure has also to be struck down.

41. It was also vehemently contended on behalf of the petitioners, that even if the aforesaid notifications, Annexures P. 5 and P. 6 were to hold the field as valid and operative, even then the levy of house tax cannot be sustained, as under section 61 of the Municipal Act, it was clearly provided that such a tax could be levied "for the purposes of this Act and in the manner directed by this Act". It was stressed that the purposes so referred to were embodied in sections 51 and 52 of the Municipal Act according to which it was peremptive to create a "municipal fund" for "each municipality" to which all the revenues received by or on behalf the municipal committee had to be credited. In section 52(1) and (2), it has been prescribed in detail as to for what purposes this fund could be utilised. The

constitution of the municipal fund had to be preceded by the constitution of a "municipality" in accordance with the procedure provided under section 4 of the Municipal Act. Any notification issued to constitute such a municipality had to define the limits of the local area to which it relates. "Municipality" and the municipal committee" have been defined to be two different and distinct connotations. Whereas under section 3(9) municipality means any local area declared by or under this (Municipal Act) to be a municipality, "Committee" under section 3(4) means a municipal Committee. Even the constitution of such a committee is contained in section 11 onwards. According to the learned counsel, the municipal fund could not be created without bringing into existence the municipality as provided under section 4 and without the constitution of the municipal fund, levy of municipal tax could not be effected as the municipality and the municipal fund were necessary pre-conditions before the levy of house tax could be resorted to as otherwise, the purpose of the Act and the manner as envisaged under section 61 of the Act could not be carried out. It was also emphasised that though sections 51 and 52 of the Municipal Act have been made applicable by a notification, yet section 4 of the Municipal Act has not been included in the Second Schedule of the Principal Act and as such, the municipality so far had not come into existence. In reply to these contentions, it was admitted by Mr. Anand Swaroop, the learned counsel for the Chandigarh Administration that so far section 4 providing for the constitution of the municipality had not been made applicable to the Union Territory, but reliance was placed on section 7-A(2) as included by the Amendment Act in the Principal Act, which is reproduced below:—

> "On the issue of a Notification under sub-section (1), the Chief Administrator shall in relation to Chandigarh or any part thereof, as the case may be, exercise the same powers and perform the same functions under the provisions applied by such notification as a Municipal Committee or its President or Executive Officer or any other functionary of the Committee would exercise and perform if Chandigarh were a Municipality of the first class."

Its close perusal, however, shows that by enacting this provision, the "municipality of the first class" was not constituted for Chandigarh, nor can it be spelt out that by enacting this provision, it was not

necessary to constitute a municipality for the city of Chandigarh as contemplated under section 4 of the Municipal Act. The aforesaid provision only confers powers of the municipal committee on the Chief Administrator and as such, it was not necessary to take resort to sections 11 and 12 of the Municipal Act for the purpose of constituting an elected municipality. According to the scheme of the Municipal Act, the municipal committee whether nominated or elected, presumes the existence of a duly constituted municipality under section 4 of the Municipal Act. It is not disputed that the Union Territory of Chandigarh comprises not only of the city of Chandigarh, but also a number of villages surrounding it. Unless the limits of the local area for the purpose of constituting the municipality were defined by a notification issued under section 4 of the Municipal Act and after inviting objections and considering the same, final decision was taken, it cannot be said that the "municipality" as such had come into existence and what were its limits for the purpose of the administration. Sections 4, 51, 52 and 61 of the Municipal Act have to be read together as they are inter-linked to achieve the aims and objects of the Act. According to the scheme of the Municipal Act, all the income and revenues derived from taxes or otherwise have to be credited to the municipal fund which has to be constituted in the name of the "municipality" concerned. Without coming into existence of the legal entity known as "municipality" as contemplated under section 4 of the Municipal Act, there cannot be any municipal fund as envisaged under section 51 of the Municipal Act as the fund must be in the name of the municipality and the same has to be utilised for the purposes and in the manner as laid down clearly and expressly under section 52 of the Municipal Act. In the absence of the municipality and the municipal fund therefor the machinery for utilising the tax which may be levied and collected under section 61 and other allied provisions will be totally lacking and it will not be possible to conclude that the tax has been levied "for the purposes of this (municipal) Act." Viewed from this angle, the levy of the impugned house tax also suffers from this inherent and basic defect In order to meet this contention on behalf of the petitioners, Mr Anand Swaroop, the learned counsel for the Chandigarh Administration brought to my notice a letter dated September 20, 1977, received from the Finance Secretary to the Government of India containing the instructions that a separate account be opened by the Chandigarh Administration in the banks to which the house tax so collected was to be credited. It was also pointed out that in pursuance of the

same, an account under the head "house-tax" had been opened in five banks in June, 1977, by the Chief Administrator and a categorical assurance was given that the house tax realised by the impugned tax shall not be credited to the consolidated fund of India and shall not form part of the revenues of the Government of India. It was, however, admitted that before the levy of the house tax in 1976, the Chandigarh Administration had no separate fund for crediting its revenues and income and that the entire expenditure was met from the grants received from the consolidated fund of India as allowed by the Government of India from time to time. From the mere fact that on the instructions from the Finance Secretary to the Government of India, a separate account has been opened pertaining to the income from the house tax, it is not possible to agree with the proposition from the point of view of law that the same procedure was sufficient to comply with the provisions of the Municipal Act as contained in sections 4, 51 and 52 of the Municipal Act and that the income from the house tax will not form part of the consolidated fund of India. Unless the Government of India took a formal and legally valid decision to change the previous position, the municipal fund was not constituted in accordance with the provisions of the Municipal Act as applicable to Chandigarh. The contention on behalf of the petitioners that the amount of tax realised from the impugned levy will form part of the consolidated fund of India cannot be ignored or brushed aside. In similar circumstances, profession tax levied in Chandigarh was set aside by a Full Bench of this Court in *Madan Tarlok Singh and others* v. *Union of India and others*, (28). In view of the above, the levy of house tax in Chandigarh cannot be sustained on this ground also.

42. Mr Jhingan, the learned counsel for the petitioners in Civil Writ Petition No. 2538 of 1977 while adopting the arguments of Mr. Sibal as discussed above have also challenged the validity of the impugned levy on the ground that the house tax had not been levied in accordance with the procedure prescribed under sections 63, 64 and 67 of the Municipal Act. It was contended that under section 63 of the Municipal Act, it was mandatory to prepare valuation lists for the entire city of Chandigarh at one and the same time and it was thereafter that the objections should have been invited, but the valuation lists had been prepared only for some sectors. It was

(28) AIR 1970 Pb. & Hary 471.

emphasised that inspection of the lists had not been allowed, that under section 65, notice to invite objections ought to have been given by the Chief Administrator whereas the same was issued by the Assessing Authority and the delegation of powers to the Assessing Authority in this regard was not permissible under section 33 of the Municipal Act, that no final list had been authenticated so far as envisaged under section 66 and that section 66 envisaged that hearing had to be given by the committee as a whole and not by one member only. According to Mr. Anand Swaroop, the learned counsel for the Chandigarh Administration, the valuation lists in respect of some sectors were published at one time and later on the lists with regard to other sectors were published and objections invited within 30 days of the publication of the lists. Opportunity for inspection had been fully allowed. It was emphasised that the lists for all the sectors in the city had been published by October, 1978 and that it was not mandatory to publish the lists for the entire city at one and the same time. According to the learned counsel, the Chief Administrator was competent to perform all the functions of the committee and according to the notification, Annexure B. 3, the provision regarding signature of not less than two members of the committee on the lists as finally settled under section 66 of the Municipal Act, had been deleted and that the Assessing Authority had also been conferred the powers of the Chief Administrator for certain purposes according to the notification, Annexure B. 1. The Finance Secretary, it was argued, had been conferred the powers of the Chief Administrator by notifications, Annexures B. 6 and B. 7 and a Deputy Chief Administrator had also been appointed by notification, Annexure B. 2. The contention on behalf of the petitioners, that the house tax could not be levied with retrospective effect under section 66 of the Municipal Act was also repelled and reference was made to the provisions itself in this regard. I have only thought it appropriate to take notice of the contentions on both sides, but it is not necessary to pronounce any finding thereon in view of my conclusions on the main contentions as a consequence of which the levy of the house tax in Chandigarh in view of the legal infirmities in the impugned notifications, Annexures P. 5 and P. 6, is quashed.

43. In view of the above, all the writ petitions are allowed, but with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.