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considered fully by the High Court and we agree with the conclusion of the High Court about the answer to be given to the question submitted for the High Court's opinion. The appeals fail and are therefore dismissed with costs.

Appeals dismissed.

Agent for the appellants : *S. P. Verma.*

Agent for the respondent : *K. Y. Bhandarkar.*

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March 26 ; April 11.

RAJA BAHADUR KAMAKSHYA NARAIN SINGH OF RAMGARH

v.

COMMISSIONER OF INCOME-TAX BIHAR.

[SIR PATRICK SPENS C.J., SIR MUHAMMAD ZAFRULLA KHAN and SIR HARILAL J. KANIA JJ.]

Government of India Act, 1935, *ss.* 91, 92—*Indian Income-tax Act* (*XI of 1922*), *ss. 22, 23—Bihar Regulation I of 1941—Bihar Regulation IV of 1942—Partially excluded area—Assessment to income-tax—Regulation introducing Finance Acts of* 1938 *and* 1939 *into the area with restrospective effect passed after assessment order and pending appeal before Income-tax Appellate Tribunal—Validity of assessment—Applicability of new laws to pending proceedings—Retrospective and retroactive operation of Statutes.*

The appellant resided in a "partially excluded area" in the Province of Bihar. He was assessed to income-tax for the accounting year 1938-39 on 14th February, 1940. Bihar Regulation I of 1941 which introduced the Indian Finance Act of 1940 with retrospective effect from 6th April, 1940, into this area received the Governor-General's assent on 13th June, 1941. It was subsequently discovered that the Finance Acts of 1938 and 1939 had not been introduced and Bihar Regulation IV of 1942, (which amended Regulation I of 1941, so as to include within the Acts applicable to this area with retrospective effect the Finance Acts of 1938 and 1939 was passed, and this Regulation received the Governor-General's assent only on the 30th June, 1942. The assessee appealed to the Appellate Assistant Commissioner on the 26th May, 1940, and this appeal was dismissed on 3rd March, 1942. He appealed to the Income-tax Appellate Tribunal and this Tribunal, holding that Regulations I of 1941 and IV of 1942 were not *ultra vires* and applying Regulation IV of 1942, confirmed the assessment order on the 31st March, 1943. *Held*, that Regulations I of 1941, and IV of 1942 were not *ultra vires* and the Appellate Tribunal acted right

in deciding the appeal in accordance with the provisions of Regulation IV of 1942, even though that Regulation was passed long after the first assessment order.

APPEAL from the High Court of Judicature at Patna: Civil Appeal No. VI of 1946.

The material facts are set out in the judgment. This appeal was heard along with Civil Appeals Nos. III, IV and V of 1946 and the arguments of counsel are reported p. 118 supra.

L. K. Jha (*R. J. Bahadur* with him) for the appellant.

Sir Noshirwan P. Engineer, Advocate-General of India, (*G. N. Joshi* and *S. N. Datta* with him) for the respondent.

Cur. adv. vult.

April 11. The judgment of the Court was delivered by KANIA J.—This is an appeal from the judgment of the High Court of Judicature at Patna and relates to the assessment of the assessee to income-tax and super-tax for the year 1939-40. The assessee is the proprietor of the Ramgarh Raj in the district of Hazaribagh in the Chota Nagpur Division of the Province of Bihar. The assessment was for the year 1939-40 and the accounting year was 1938-39. The Income-tax Officer completed the assessment on the 14th February, 1940. The assessee appealed to the Appellate Assistant Commissioner. On the 26th May, 1940, the Governor of Bihar acting under s. 92 (1) of the Government of India Act, 1935, issued a Notification in the following terms :—

"In exercise of the power conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bihar is pleased to direct that each of the Acts specified in the Schedule shall be deemed to have been applied to the Santal Parganas and the Chota Nagpur Division with effect restrospectively from the date on which each of the said Acts came into force in other parts of the Province of Bihar."

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SCHEDULE.

(1) The Indian Income-tax (Amendment) Act, 1939, (VII of 1939).

(2) The Income-tax Law Amendment Act, 1940, (XII of 1940).

(3) The Excess Profits Tax Act, 1940, (XV of 1940).

(4) The Indian Finance Act, 1940, (XVI of 1940)."

To remove doubts as to the retrospective applicability of the Indian Finance Act, 1940, and the other Acts mentioned in the Notification, acting under s. 92 (2) of the Government of India Act, 1935, the Governor of Bihar made Regulation I of 1941, for the peace and good government of the area in question. It received the assent of the Governor-General on the 13th of June, 1941, and was published in the Bihar official Gazette on the 17th of June, 1941. The Regulation was in the following terms :—

"(BIHAR REGULATION I OF 1941).

The Chota Nagpur Division and the Santal Parganas District Validating Regulation, 1941.

A

REGULATION

To remove doubts as to the operation of certain Acts of the Central Legislature in the partially excluded areas of the Province of Bihar.

WHEREAS it is expedient to remove doubts as to the operation of certain Acts of the Central Legislature in the partially excluded areas of the Province of Bihar.

It is hereby enacted as follows:—

Short title extent and commencement.

1. (1) This Regulation may be called the Chota Nagpur Division and the Santal Parganas District Validating Regulation, 1941.

(2) It extends to the Chota Nagpur Division and the Santal Parganas District.

(3) It shall come into force at once.

Operation of Act VII of 1939

2. (1) Section I and Part I of the Indian Income-tax (Amendment) Act, 1939, shall be deemed to have come into force in the area to which the Regulation extends on the 1st day of April 1939.

Provided that sub-clauses (iii) and (iv) of clause (b) of section 11 shall not be deemed to have taken effect earlier than the 1st day of April 1940.

(2) Part II of the Indian Income-tax (Amendment) Act, 1939, shall be deemed to have come into force in the said area on the date appointed by the Central Government for its coming into force throughout British India generally.

Operation of Acts XII, XV and XVI of 1940.

(3) The Income-tax Law Amendment Act, 1940, the Excess Profits Tax Act, 1940, and the Indian Finance Act, 1940, shall be deemed to have come into force in the area to which this Regulation extends on the 26th day of March 1940, the 13th day of April 1940, and the 6th day of April 1940, respectively."

The appeal to the Appellate Assistant Commissioner was dismissed on the 3rd March, 1942. The assessee submitted additional grounds of appeal contending, *inter alia,* that the assessment was *ultra vires,* as the Indian Finance Act of 1939 was not in operation on the date of the assessment and the Validating Regulation I of 1941 passed by the Governor of Bihar on 13th June, 1941, was *ultra vires.* As these grounds were submitted after the appeal was ordered to be dismissed they were not taken into consideration by the Appellate Assistant Commissioner. The assessee appealed to the Income Tax Appellate Tribunal where he urged these grounds. In the meantime it was found that in making Regulation I of 1941 the Finance Acts of 1938 and 1939 were not included in the list of Acts extended to these partially excluded areas. The Governor of Bihar thereupon, acting under s. 92 (2) of the Government of India Act, 1935, made Regulation IV of 1942 on 30th June, 1942. It runs as follows :—

"THE BIHAR GAZETTE.
Extraordinary
PUBLISHED BY AUTHORITY.
Ranchi, Tuesday, July 7, 1942.
LEGISLATIVE DEPARTMENT.

Notification. The 7th July 1942.

No. 133-Leg-R :—The following Regulation made by the Governor under sub-s. (2) of s. 92 of the

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Government of India Act, 1935, has been assented to by the Governor-General on the 30th June, 1942, and is hereby published for general information :—

(BIHAR REGULATION IV OF 1942).

The Chota Nagpur Division and the Santal Parganas District Validating (Amendment) Regulation, 1942.

A

Regulation to amend the Chota Nagpur Division and Santal Parganas District Validating Regulation, 1941, for a certain purpose.

WHEREAS it is expedient to amend the Chota Nagpur Division and the Santal Parganas District Validating Regulation, 1941, for a certain purpose ;

It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Regulation may be called the Chota Nagpur Division and the Santal Parganas District Validating (Amendment) Regulation, 1942.

(2) It shall come into force at once.

2. For section 3 of the Chota Nagpur Division and Santal Parganas District Validating Regulation, 1941, the following section shall be substituted and shall be deemed always to have been so substituted, namely :—

3. The Indian Finance Act, 1938, the Indian Finance Act, 1939, the Income-tax Law Amendment Act, 1940, the Excess Profits Tax Act, 1940, the Indian Finance Act, 1940, the Indian Finance (No. 2) Act 1940, and the Indian Finance Act, 1941, shall be deemed to have come into force in the area to which this Regulation extends on the 26th day of March 1938, the 30th day of March 1939, the 26th day of March 1940, the 13th day of April 1940, the 6th day of April 1940, the 29th day of November 1940, and the 31st day of March 1941, respectively."

The appeal was dismissed by the Tribunal on the 31st March, 1943. The appellant's contention that Regulation I of 1941 and Regulation IV of 1942 were *ultra vires* the Governor was rejected. On the application of

the assessee the Income-tax Appellate Tribunal (Calcutta Branch) under s. 66 (1) of the Indian Income-tax Act, 1922, submitted the following question for the opinion of the High Court of Judicature at Patna :—

"Is the assessment made legal and valid in view of the Bihar Validating Regulations I of 1941 and IV of 1942 ?"

In a considered judgment, the High Court answered the question in the affirmative. As the decision involved the construction of various sections of the Government of India Act, the High Court granted a certificate under s. 205 (1) of the Constitution Act, and the appellant has thereupon come in appeal to this Court.

Section 91 (1), which only is material in this case, and s. 92 of the Constitution Act, run as follows :—

"91. (1) In this Act the expressions 'excluded area' and 'partially excluded area' mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas.

Excluded areas and partially excluded areas.

The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this sub-section before Parliament within six months from the passing of this Act.

Administration of excluded areas and partially excluded areas.

92. (1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good Government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing

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Indian law, which is for the time being applicable to the area in question.

Regulations made under this sub-section shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion."

Before us the appellant raised contentions about the validity of the Notification issued by the Governor of Bihar on the 26th May, 1940, and Regulation I of 1941 and argued the question of the legislative power of the Governor under s. 92 of the Constitution Act. The contentions of the appellant on these points have been discussed fully and rejected by us in our judgment delivered today just before this appeal in Civil Appeals Nos. III, IV and V of 1946 (1). We do not therefore deal with the same arguments again.

In this appeal a further argument was advanced having regard to the following dates. The Income-tax Officer made the assessment order on the 14th February, 1940. Regulation I of 1941 was made by the Governor of Bihar on the 13th of June, 1941, (on which date it received the assent of the Governor-General) and was published in the Bihar Official Gazette on the 17th of June, 1941. At that time the appeal of the appellant was pending before the Appellate Assistant Commissioner. That appeal was dismissed on the 3rd of March, 1942. Regulation IV of 1942 received the assent of the Governor-General on the 30th June, 1942, and was published in the Bihar Official Gazette on the 7th of July, 1942. This was when the appeal of the appellant was pending before the Income-tax Appellate Tribunal. That Tribunal dismissed the appeal on the 31st March, 1943.

It was argued on behalf of the appellant that Regulation I of 1941 and Regulation IV of 1942 were

(1) Reported at p. 116 *supra*.

ineffective, so far as the appellant was concerned, because his assessment was completed when the Income-tax Officer made the order on the 14th February, 1940. It was argued that at that time the Finance Act of 1939 had not been made applicable to the Chota Nagpur Division and therefore the order of the Income-tax Officer was a nullity. It was further argued that the appellant's appeal to the Appellate Assistant Commissioner was dismissed on 3rd March, 1942, and the assessment proceedings thereupon came to an end. The subsequent making of Regulation IV of 1942 by the Governor cannot put life into what was already dead.

In our opinion this argument is unsound. The assessment proceedings had not come to an end nor were they dead. The appellant had kept the proceedings alive by filing appeals and the proceedings were thus pending for decision. The right to appeal against orders of assessment by the Income-tax Officer or the Appellate Assistant Commissioner are valuable rights. In *Raleigh Investment Company Ltd.* v. *The Governor-General in Council* (as yet unreported) ([1]) their Lordships of the Privy Council observed as follows:—"The argument for the appellant was that an assessment was not an assessment 'made under the Act' if the assessment gave effect to a provision which was *ultra vires* the Indian legislature. In law such a provision, being a nullity, was non-existent. An assessment justifiable in whole or in part by reference to, or by, such a provision was more aptly described as an assessment not made under the Act than as an assessment made under the Act. The section in question had therefore, it was urged, no application if the impugned provision in the Income-tax Act, 1922, was *ultra vires*. This construction finds some support in cases decided in India.

"In construing the section it is pertinent, in their Lordships' opinion, to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the Courts the question whether a particular provision of the Income-tax Act bearing on the assessment made is or is not *ultra vires*. The

(1) Privy Council Appeal 63 of 1945; since reported at page 59 *supra*.

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presence of such machinery, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to enquire into the same subject matter. The absence of such machinery would greatly assist the appellant on the question of construction and, indeed, it may be added that, if there were no such machinery, and if the section affected to preclude the High Court in its ordinary civil jurisdiction from considering a point of *ultra vires*, there would be a serious question whether the opening part of the section, so far as it debarred the question of *ultra vires* being debated, fell within the competence of the Legislature.

"In their Lordships' view it is clear that the Income-tax Act, 1922, as it stood at the relevant date, did give the assessee the right effectively to raise in relation to an assessment made on him the question whether or not a provision in the Act was *ultra vires*. Under s. 30, an assessee whose only ground of complaint was that effect had been given in the assessment to a provision which he contended was *ultra vires* might appeal against the assessment. If he were dissatisfied with the decision on appeal—the details relating to the procedure are immaterial—the assessee could ask for a case to be stated on any question of law for the opinion of the High Court and, if his request were refused, he might apply to the High Court for an order requiring a case to be stated and to be referred to the High Court [see s. 30 and *Secretary of State for India* v. *Meyyappa Chettiar* (1)]. It cannot be doubted that included in the questions of law which might be raised by a case stated is any question as to the validity of any taxing provision in the Income-tax Act to which effect has been given in the assessment under review. Any decision of the High Court on that question of law can be reviewed on appeal. Effective and appropriate machinery is therefore provided by the Act itself for the review on grounds of law of any assessment. It is in that setting that s. 67 has to be construed." These observations clearly show that the right of appeal and the machinery provided

(1) [1936] 4 I.T.R. 341; I.L.R. [1937] Mad. 211.

in the Income-tax Act to take a question of law for the opinion of the High Court are important provisions which have a bearing on the question whether a certain piece of legislation is *ultra vires* or not.

The fact that an appeal was pending against the assessment is a material fact. When an Appellate Tribunal (whether it is the Assistant Commissioner, or the Tribunal of Appeal, or the High Court, or the Federal Court) decides the appeal it has to do so according to the law then in operation. If pending the litigation or pending the appeal some relevant legislation is enacted by the appropriate legislative authority, the deciding tribunal must give effect to it. In *K. C. Mukherjee* v. *Mt. Ramratan Kuer and Others* ( ) the Judicial Committee of the Privy Council had occasion to consider the effect of the Bihar Tenancy Amending Act, 1934, pending an appeal to His Majesty-in-Council. In delivering the judgment of the Board, Sir George Rankin observed as follows:—"The first question to which their Lordships have to address themselves is the question whether this Act does not take away from the appellant the right which he is proposing to enforce by bringing this appeal to His Majesty-in-Council." After considering the different sections of the Bengal Tenancy Act of 1885 it was observed as follows:—"In these circumstances it appears to their Lordships that unless some saving can be implied as regards occupancy-holdings, which at the date of the commencement of the Act are in question in a pending suit, s. 26 (N) must be applied to the present case and the plaintiff's appeal must fail *in limine*. Their Lordships are of opinion that no such saving can be implied. Section 26(N) is not a provision to the effect that no action shall lie in certain circumstances, nor has it any reference directly to litigation. Its provision is that every person claiming an interest as a landlord shall be deemed to have given his consent to every transfer made before the 1st January 1923. This is retrospective: the question is not whether general language shall be taken only in a prospective sense....As substantive rights of landlords and their accrued causes of action were to be abrogated,

(1) (1935) L.R. 63 I.A P. 47.

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respect for pending suits over all transfers cannot be assumed." This principle came to be considered by this Court in *Lachmeshwar Prasad Shukul and Others* v. *Keshwar Lal Chaudhuri and Others* (1). In that case soon after the decision of the High Court the Bihar Legislature repealed the Money-Lenders Act of 1938 and substantially re-enacted it as Act VII of 1939, taking certain precautions which were required to obviate the objections to the validity of the earlier Act. It was the agreed view of all the Judges that in deciding the appeal they had to take into account legislative changes made since the decision under appeal was given. It was pointed out that this rule of law has been accepted not only in England [*Attorney-General* v. *Birmingham, Tame, and Rea District Drainage Board* (2)] but also in the United States of America. Once the new legislation is held to have retrospective operation it is clear that the Court of Appeal had to decide the appeal according to the law then prevailing, because the adjudication on the rights of the parties as made by the Lower Court was not final.

The Court has therefore to consider whether when the Income-tax Appellate Tribunal decided the appeal and when the High Court expressed its view on the question of law submitted for its opinion, the same was according to the law then in operation. The dates mentioned at the commencement of the judgment show that by Regulation IV of 1942, cl. 3 of that Regulation was declared "as deemed always to have been substituted" in place of s. 3 of Bihar Regulation I of 1941. That clause included, *inter alia,* the Indian Finance Act of 1939 in the Acts which were declared as deemed to have come into force in the areas mentioned therein, on the dates therein specified. As already pointed out in the previous judgement in Civil Appeals Nos. III, IV and V of 1946 (3), the effect of the words "deemed to have been applied" is to treat as if they were in existence, although not so in fact, from the dates mentioned in the Regulation. Giving effect to the words used in the Regulation it is therefore clear that the Finance Act of 1939 was in operation in the

(1) [1940] F.C.R. 84
(2) [1912] A. C. 788.
(3) Reported at p. 116 *supra.*

partially excluded area of Chota Nagpur when the Income-tax Appellate Tribunal and the High Court decided the points put before them. The orders passed by those Tribunals are valid according to the law then in force and the fact that on the date the Income-tax Officer passed the assessment order the Finance Act of 1939 had not been extended to the Chota Nagpur Division, is irrelevant. Under the circumstances the appellant's further contention urged in this appeal fails and the appeal is dismissed with costs.

Appeal dismissed.

Agent for the appellant : *S. P. Verma.*
Agent for the respondent : *K. Y. Bhandarkar.*

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v.

THE KING EMPEROR.

(CRIMINAL APPEAL No. I OF 1947.)

J. K. GAS PLANT MANUFACTURING CO., (RAMPUR) AND OTHERS *v.* THE KING EMPEROR.
(CRIMINAL APPEAL No. II OF 1947.)

MOTIRAM NARAYAN DESAI AND OTHERS *v.* THE KING EMPEROR.
(CRIMINAL APPEAL No. III OF 1947.)

DUNICHAND AND OTHERS *v.* THE KING EMPEROR.
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KARUMUTHEE THIYAGARAJAN CHETTIAR AND OTHERS *v.* THE KING EMPEROR.
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VENKATARAMAN CHETTY *v.* THE KING EMPEROR.
(CRIMINAL APPEAL No. V OF 1946.)

S. V. SRINIVASAN AND OTHERS *v.* THE KING EMPEROR.
(CRIMINAL APPEAL No. VI OF 1946.)

N. RAMAKRISHNAN AND OTHERS *v.* THE KING EMPEROR.
(CRIMINAL APPEAL No. VII OF 1946.)

S. RANGARAJU NADAR *v.* THE KING EMPEROR.
(CRIMINAL APPEAL No. VIII OF 1946.)

S. RANGARAJU NADAR *v.* THE KING EMPEROR.
(CRIMINAL APPEAL No. IX OF 1946.)

GOVERNOR-GENERAL IN COUNCIL. { INTERVENER IN CRIMINAL APPEALS NOS. III AND IV OF 1947 AND IV TO IX OF 1946.)