REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5793 OF 2008

The State of Karnataka & Ors. .... Appellant(s)

Versus

The Karnataka Pawn Brokers Assn. & Ors. ... Respondent(s)

With

CIVIL APPEAL NOS. 2874-2878 OF 2018
(Arising out of SLP© Nos. 8652-8656 of 2012)

J U D G M E N T

Deepak Gupta J.

Leave granted in SLP(C) Nos. 8652-8656 of 2012.

2. The main issue raised in these appeals is whether the amendments made to the Karnataka Money Lenders Act, 1961 and the Karnataka Pawn Brokers Act, 1961 in the year 1998 providing

that the security deposit furnished by the money lenders and pawn brokers in terms of Sections 7-A and 4-A of the Acts respectively shall not carry interest, is constitutional, legal and valid.

Background

3. The State of Karnataka enacted the Karnataka Money Lenders Act, 1961 (for short the M.L. Act) with a view to regulate and control the transactions of money lending in the State. Section 5 of the M.L. Act makes it obligatory for any person carrying on the business of money lending to procure licence before carrying on the business of money lending.

4. The State of Karnataka simultaneously enacted the Karnataka Pawn Brokers Act, 1961 (for short the P.B Act) to regulate and control the business of pawn brokers. Section 3 of the P.B. Act makes it obligatory for every person desirous of carrying on the business as a pawn broker to conduct his business only after he obtains a licence in accordance with the provisions of the Act.

5. The main business of both money lenders and pawn brokers is to advance or lend money to individuals who approach them for loans. The only difference is that a pawn broker is authorized to

accept valuable articles like gold, gold ornaments etc. as pledge for security of the payment.

6. In the year 1985, amendments were brought out to both the Acts. Section 7-A & 7-B were introduced in the M.L. Act and corresponding Sections 4-A & 4-B were introduced in the P.B. Act. These amendments provided that the persons desirous of obtaining a licence had to deposit a security and the rate of security was fixed slab-wise in relation to the extent of business carried on by the licensee. These amendments were challenged by a large number of pawn brokers and money lenders. A Division Bench of the Karnataka High Court in ***Manakchand Motilal*** vs**.** ***State of Karnataka***[1] upheld the validity of Sections 7-A & 7-B of the M.L. Act and Sections 4-A & 4-B of the P.B. Act. It would be pertinent to mention that in this case one of the grounds raised to challenge the validity of the aforesaid provisions was that there is no provision for payment of interest on the security amount. The Division Bench relying upon the judgment of this Court in ***Jagdamba Paper Industries (P) Ltd***. vs. ***Haryana State Electricity Board***[2] held

1 I.L.R 1991 KAR 1928
2 (1983) 4 SCC 508

that the money lenders / pawn brokers were entitled to interest on the security deposits at the prevailing rate of interest payable by the scheduled banks on a fixed deposit for a period of one year. The State Government was also directed to make proper rules in this behalf. The relevant portion of the judgment reads as follows :-

> "**16**.....It is true that the Sections do not make a provision for giving interest but at the same time the Sections do not prohibit the payment of interest. If the Sections prohibited the payment of interest, such a provision would be arbitrary and therefore there would have been force in the contention of the petitioners that the provisions were violative of Article 14 on the ground that it is arbitrary, for, Article 14 strikes at arbitrariness in State action. (See: E.P. ROYAPPA v. STATE OF TAMIL NADU, and MANEKA GANDHI v. UNION OF INDIA). Further, there would have been also force in the contention of the petitioners that such a provision which compelled them to deposit considerable amount in cash with the Government without any provision for payment of interest was an unreasonable restriction on their fundamental right to carry on business guaranteed under Article 19(1)(g) of the Constitution, It is indisputable that by such deposit not only the petitioners lose the opportunity of earning profit on the said amount but the value of the money also goes down as years pass and thereby the petitioners would be forced to incur losses instead of earning profit out of the money, which they would have invested in their business, but for the compulsion to deposit a portion of it in the Government. Therefore, it appears to us that in the absence of any prohibition in the provisions of the Act regarding payment of interest, in view of Article 14, the Government while making Rules for the purposes of

> the Act under Section 44 of the Money Lenders Act and Section 22 of the Pawn Brokers Act has not only the power but also a duty to provide for payment of interest. As far as the rate of interest is concerned, in our opinion, as the deposit prescribed under Section 7A of the Money Lenders Act and Section 4A of the Pawn Brokers Act is for a period of one year, as the duration of the licence on, each occasion being one year, the Government should pay interest on the amount of security deposit made by a licensee at the rate at which the interest is paid by any Scheduled Bank on a fixed deposit for one year."

No appeal was filed by the State of Karnataka against this judgment. However, the money lenders and pawn brokers filed an SLP which was dismissed. It appears that thereafter the State framed certain rules pursuant to the directions of the Division Bench of the Karnataka High Court. These Rules were also challenged by the money lenders/pawn brokers. It appears that the High Court of Karnataka approved some portions of the Rules but, at the same time, directed that the Rules be reframed in compliance with the earlier judgment.

7. Thereafter, the State of Karnataka enacted the Karnataka Money Lenders (Amendment) Act, 1998 and a similar amendment was also made to the P.B. Act. In this case we are not concerned

with the other amendments. We are restricting our discussion only to sub-section 3 of Section 7-A and 4-A of the M.L. Act and the P.B. Act respectively. Sub-section 3 of Section 7-A and 4-A of the M.L. and the P.B. Acts, after amendment, read as follows:

> **"Section 7-A. Conditions of licence.-**
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> xxx xxx xxx
>
> xxx xxx xxx
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> (3) For the purposes of sub-section(2), the amount of the security payable in a year by a licensee shall be determined on the basis of the [the amount invested by him in the business during the previous year **[and such security deposit shall not carry any interest**:**]**"[3]
>
> **"Section 4-A. Conditions of licence.-**
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> (3) For the purposes of sub-section(2), the amount of the security payable by a licensee in a year shall be determined on the basis of the [the amount invested by him in the business during the previous year] [**and such security deposit shall not carry any interest]**:"[4]

The highlighted parts of the above Sections were introduced by the amendments of 1998 but were deemed to be inserted from 31.05.1985 making it retrospective in application.

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3 Introduced vide Act No.14 of 1998

4 Introduced vide Act No.9 of 1998

8. The association of pawn brokers and money lenders filed writ petitions in the High Court of Karnataka challenging the constitutional validity of these amendments. The learned Single Judge dismissed the writ petitions. However, the Division Bench allowed the writ petitions and held that though all other amendments made to Sections 7-A and 7-B of the M.L. Act and Sections 4-A and 4-B of the P.B. Act are constitutionally valid and legal, the provisions providing for non-payment of interest on security deposits were held to be constitutionally bad and were accordingly set aside.

9. The Division Bench held that as far as interest is concerned, in the earlier judgment in ***Manakchand Motilal's*** case, the Karnataka High Court had held that the money lenders and pawn brokers were entitled to interest on the amount of deposit and the said judgment had become final since the SLP against the same was dismissed. The Division Bench further held that the judgment of the Apex Court in ***Ferro Alloys Corpn. Ltd***. vs. ***A.P. State Electricity Board***[5] was not applicable and was wrongly relied upon by the learned Single Judge. It was also observed that the

5 1993 Supp (4) SCC 136

High Court in ***Manakchand Motilal's*** case (supra) had clearly held that in case there was a provision for non-payment of interest then such provision would be un-constitutional. It was further held that the State Government could not nullify the judgment of the High Court in ***Manakchand Motilal's*** case by way of subsequent amendment.

10. In the appeal filed by the State of Karnataka , Shri Devadatt Kamath, learned AAG, has raised the following issues :-

(i) Business of money lending or pawn broking is an usurious business and, therefore, the State wanted to frame a policy to discourage the business of money lending and pawn broking and hence stringent conditions have been laid down including the condition that no interest would be payable on the security. He also contends that nobody is forced to do the business of money lending or pawn broking and if persons want to obtain licence then they will have to submit the security deposits in terms of the Acts.

(ii) The amendments of 1998 are in the nature of validating Acts. He submits that the State of Karnataka is fully competent to enact such a provision and, therefore, the State was within its powers to

make the amendments to effectively negate the judgment in ***Manakchand Motilal's*** case (supra).

(iii) The observations made in ***Manakchand Motilal's*** case (supra) were in the nature of *obiter* and were not called for in the facts of the said case.

(iv) Lastly, that there is no fundamental right or legal right to claim interest and the State is legally competent to enact a provision that no interest shall be paid on the amount of security deposited.

11. On the other hand Mr. Gurukrishna Kumar, learned senior counsel appearing for the respondents contended that the matter *inter-se* parties was settled by the judgment rendered in ***Manakchand Motilal's*** case (supra). He also contended that the statute cannot nullify the mandamus issued in the earlier judgment without removing the basis of the judgment. He further contended that the judicial decisions which have become final, cannot be set at naught by the legislature. The main contention was that both under law and equity a person whose money, which is property, is kept by another, is entitled to compensation by way of interest for

the period for which the money has been retained by the other party. He, therefore, submitted that the provisions prohibiting the payment of interest are arbitrary and liable to be set aside.

12. The following points arise for decision:-

(i) What is the scope, ambit and effect of the judgment of the Karnataka High Court in ***Manakchand Motilal's*** case (supra)?;

(ii) Whether the amendments brought into Section 7-A and 4-A of the M.L. Act and the P.B. Act respectively providing that security deposit would not carry any interest is contrary to the judgment in ***Manakchand Motilal's*** case (supra) and the State was not competent to introduce such amendments; and

(iii) Whether the provisions providing that no interest is payable are arbitrary and hence violative of Article 14 of the Constitution of India.

Issue No.1

13. As far as the first issue is concerned, at the outset, we may note that the main issue raised in ***Manakchand Motilal's*** case (supra) was with regard to the validity of Section 7-A and 4-A of the

M.L. Act and the P.B. Act respectively, in so far as they made a provision for deposit of security as a pre-requisite to the grant of licence. At that time, there was no provision with regard to the payment of interest. The Court held that the State Government was entitled to introduce a condition for payment of deposit. The Court, however, felt that for the provision to be constitutionally valid, the deposit must carry interest. We have quoted the relevant portion of the judgment in **Manakchand Motilial's case** in the earlier part of this judgment. The Division Bench noticed that the Acts do not have any provision for payment of interest and observed that, at the same time, there was also no prohibition for the payment of interest.

14. In our view, the observations that if there was a provision prohibiting payment of interest, the same would be arbitrary and hence illegal, were not necessary in the fact situation of ***Manakchand Motilal's*** case (supra). As observed by the High Court itself, there was no provision prohibiting the payment of interest. Therefore, the observations in this behalf were not called for and were hypothetical and in the nature of *obiter*. We may also

point out that there was no discussion on the issue as to whether a provision providing that no interest would be payable on the security deposit would be legally valid or not? A passing observation has no doubt been made that there would have been force in the contention of the money-lenders and pawn brokers that the provisions would be violative of Article 14 of the Constitution but this, in our opinion, was not the *ratio decidendi* of the case.

15. It would also be apposite to mention that after making the aforesaid observation, the Division Bench again noted that in the absence of any prohibition in the provisions of the Acts, regarding payment of interest, in view of Article 14, the Government while making rules must provide for payment of interest. This itself was a clear indicator that the Court decided the issue in ***Manakchand Motilal's*** case (supra) mainly on the ground that there was no provision prohibiting the payment of interest. We are, therefore, of the considered view that the observation made in ***Manakchand Motilal's*** case (supra) that a provision prohibiting payment of interest would be arbitrary and violative of Article 14 of the

Constitution of India was a passing observation in the nature of *obiter* not arising for decision in the said case.

Issue No.2

16. The second issue is whether the effect of the judgment in ***Manakchand Motilal's*** case (supra) can be undone by bringing out amendments in question. A large number of authorities have been cited in this regard. We may refer to a few of them.

17. In ***Shri Prithvi Cotton Mills Ltd. and Another*** vs. ***Broach Borough Municipality and Others*** [6], a Constitution Bench of this Court, dealing with the question of validity of a validation Act passed with a view to get over the judgment of this Court, held that even it has competence, the Legislature cannot merely pass a law that a decision of this Court shall not bind. This Court held as follows :-

> "**4.**.....Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances....."

6 1969(2) SCC 283

18. In the matter of ***Cauvery Water Disputes Tribunal, Re***[7] a Constitution Bench of this Court after referring to a large number of authorities held as follows :-

> "**76.**The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal."

19. In ***S.R. Bhagwat and Others*** vs. ***State of Mysore*** [8], a three-Judge Bench was dealing with a case where the petitioners were held entitled to certain promotions and service benefits from a particular date. Even though these benefits were given to them the State did not give them the monetary benefits and, in fact, passed a law which had the effect of denying the monetary benefits due to the petitioners, in terms of the judgments earlier passed in their

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7 1993 Supp.(1) SCC 96(II)
8 (1995) 6 SCC 16

favour. After dealing with the entire law on the subject this Court held as follows :-

> "**12.** It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.....
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> xxx xxx xxx
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> xxx xxx xxx
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> **15.** We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned provisions in a new statute. This in our view would be clearly impermissible legislative exercise."

20. In ***State of Tamil Nadu*** vs. ***State of Kerala and Another*** [9] , the Constitution Bench of this Court again dealt with the question as to whether the Legislature could set at naught the decision of the

9 (2014) 12 SCC 696

superior courts. After referring to a large number of judgments, this Court laid down the following principles:-

(i) that the doctrine of separation of powers is an entrenched principle in the Constitution of India even though there is no specific provision in the Constitution;

(ii) Independence of Courts from Executive and Legislature is fundamental to the rule of law and one of the basic tenets of the Indian Constitution;

(iii) the doctrine of separation of powers between the three organs of the State – Legislature, Executive and the Judiciary is a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Consequently, a law can be set aside on the ground that it breaches the doctrine of separation of powers since that would amount to negation of equality under Article 14 of the Constitution of India;

(iv) the High Courts and the Supreme Court are empowered by the Constitution of India to determine whether a law made by the Parliament or State Legislature is void;

(v) the doctrine of separation of powers applies to the final judgments of the courts. The Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde;

(vi) if the Legislature has the power and competence to make a validating law it can make the law retrospective;

(vii) even where the law is enacted by the Legislature appears within its competence but if in substance it is shown as an attempt to interfere with the judicial process, such law can be invalidated being in breach of the doctrine of separation of powers.

21. The same principle has been reiterated in ***Cheviti Venkanna Yadav*** vs. ***State of Telangana and Others***[10] in the following terms**:-**

> "**30.**……The legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. When a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past……"

10 (2017) 1 SCC 283

22. On analysis of the aforesaid judgments it can be said that the Legislature has the power to enact validating laws including the power to amend laws with retrospective effect. However, this can be done to remove causes of invalidity. When such a law is passed the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling.

23. However, the Legislature cannot set at naught the judgments which have been pronounced by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier. The Legislature may have the power to remove the basis or foundation of the judicial pronouncement but the Legislature cannot overturn or set aside the judgment, that too retrospectively by introducing a new provision. The legislature is bound by the mandamus issued by the Court. A

judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity. What the Legislature can do is to amend the provisions of the statute to remove the basis of the judgment.

24. Applying these principles to the present case it is apparent that when the decision was rendered in ***Manakchand Motilal's*** case (supra) there was no provision providing for payment of interest or prohibiting payment of interest. The Court had observed that even if such a provision prohibiting payment of interest had been there in the statute such provision would be illegal. Therefore, there was no error pointed out by the Court which could have been corrected by the State Legislature. As pointed out above, the State, in fact, first tried to implement the judgment by framing rules providing for payment of interest. Later, it incorporated the contentious provisions prohibiting payment of interest. These amendments did not in any way alter the basis of the judgment.

25. Therefore, the State, in so far as it has made the amended provisions retrospective, has attempted to nullify the writ of mandamus issued by the Court in favour of the respondents. This mandamus could not have been set at naught by making the provisions retrospective. This would be a direct breach of the doctrine of separation of powers as laid down in ***State of Tamil Nadu*** (supra). We are clearly of the view that the State Legislature could not have nullified the judgment passed in ***Manakchand Motilal's*** case (supra) by retrospectively amending the Acts. Therefore, the validating Acts in so far as they are retrospective, are held to be illegal.

26. However, since we have clearly held that the observations made in ***Manakchand Motilal's*** case (supra) that if the provision prohibits payment of interest then such a provision would be violative of Article 14 of the Constitution, is *obiter*, the issue whether such an amendment is valid or not will have to be decided on its own merits.

Issue No.3

27. To decide this issue we must first understand the concept of interest. It has been repeatedly held that interest is basically compensation for the use or retention of money. In ***Halsbury's Laws of England, Fourth Edition, Volume 32***, interest has been defined as follows:-

> "**127. Interest in general**. Interest is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. Interest accrues from day to day even if payable only at intervals, and is, therefore, apportionable in respect of time between persons entitled in succession to the principal."

According to ***Law Lexicon, by P. Ramanathan Aiyar 3rd Edition (2005) (page 2402) Vol 2:***

> "Interest" means the time value of the funds or money involved, which, unless otherwise agreed, is calculated at the rate and on the basis customarily accepted by the banking community for the funds of money involved."

In ***WORDS AND PHRASES permanent editions, Vol 22-page 148,*** Interest means :-

> i) "Interest" is compensation for loss of use of principal. Jersey City v. Zink, 44 A.2d 825, 828, 133 N.J. Law 437"

> ii) "Interest" means compensation for the use or forbearance of money. Commissioner of Internal Revenue v. Meyer, CCA, 139 F.2d 256,259"

Black's Law Dictionary, Sixth Edition (page 812) defines 'Interest' as:-

> "*For use of money.* Interest is the compensation allowed by law or fixed by the parties for the use or forbearance of borrowed money. Jones V. Kansas Gas & Electric Co.222 Kan. 390, 565, P.2d 597, 604."

28. There is no manner of doubt that normally a person would be entitled to interest for the period he is deprived of the use of money and the same is used by the person with whom the money is lying. The issue that arises for determination is whether a provision providing for non-payment of interest is so inequitable that it can be termed to be arbitrary and held to be violative of Article 14 of the Constitution of India.

29. The respondents have referred to the recommendations made by the Law Commission of India in its 63rd Report. In Para 7.9 of the Report it was noted that in case of security deposits, if a demand for interest is not made, interest is not recoverable. This observation is based on the decision of the Nagpur High Court in

Sheikh Mehtab S/o Sheikh Farid Mussalman vs. ***Dharamrao Bhujangrao***[11]. The Law Commission felt that in view of the fact that deposits are often taken for performance of contractual or statutory obligations it would be fair that interest from the date of deposit should be allowed on such deposits. Despite the recommendation of the Law Commission no statutory provision was introduced making it obligatory on the part of any authority to pay interest on deposits.

30. Though various judgments have been cited, we are of the view that only two are required to be considered. The first is the judgment relied upon by the Division Bench of the Karnataka High Court in ***Jagdamba Paper Industries (P) Ltd***. (supra). We may note that the said judgment does not lay down any proposition of law because the direction for payment of interest has been issued with the agreement of the parties. This Court in the above judgment had observed that the respondent should pay interest and the respondent agreed to do so. This cannot be termed as a judgment laying down law that in every case of deposit, interest must be paid.

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11 AIR (31) 1944 Nagpur 330

31. The second important judgment is ***Ferro Alloys Corpn. Ltd.*** (supra). Various issues were raised in this case but we are concerned only with that portion of the judgment which deals with the payment of interest on the security deposits, deposited by the consumers. In this case, this Court dealt with the regulations framed by various electricity boards.

32. There were two types of cases before the Supreme Court. The regulation of some boards provided for payment of very low rate of interest. The regulation of some boards did not provide for payment of interest on security deposit at all. The issue before the Apex Court was whether the consumers were entitled to interest on the security deposit.

33. Dealing with the question whether the interest on the security deposits is payable in equity or under common law, this Court observed as follows :-

> "**129.** Strictly speaking, the word "interest" would apply only to two cases where there is a relationship of debtor and creditor. A lender of money who allows the borrower to use certain funds deprives himself of the use of those funds. He does so because he charges interest which may be described as a kind of rent for the use of the funds. For example, a bank or a lender lending out money on payment of interest. In this

> case, as already noted, there is no relationship of debtor and creditor."

Thereafter, the Court also held as follows :-

> "**132.** The argument of Mr. G. Ramaswamy, learned counsel, that the deposit does not contemplate appropriation is not correct because in the nature of contract it is liable to be appropriated for the satisfaction of any amount liable to be paid by the consumer to the Board for violation of any conditions of supply in the context of wide-scale theft of energy, tampering with the meters and such other methods adopted by the consumers. Therefore, the said consumption security deposit serves not only to secure the interest of the Board for any such violation but should serve as a deterrent on the consumer in discharging his obligations towards the Board."

The Court clearly held that there was no equitable right to claim interest.

34. This Court also considered the question as to whether the stipulation that no interest is payable on the securities furnished would be un-constitutional and arbitrary, and held as follows:-

> "**143.** In the light of the above discussion, we hold that the clause not providing for interest is neither arbitrary nor palpably unreasonable, nor even unconscionable. In holding so we have regard to the following:
>
> 1. The consumer made the security deposit in consideration of the performance of his obligation for obtaining the service which is essential to him.

> 2. The electricity supply is made to the consumers on credit as has been noted above.
>
> 3. The billing time taken by the Board is to the advantage of the consumer.
>
> 4. Public revenues are blocked in generation, transmission and distribution of electricity for the purpose of supply. The Board pays interest on the loans borrowed by the Board. This is in order to perform public service. On those payments made by the Board it gets no interest from the consumers.
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> 5. The Board needs back its blocked money to carry out public service with reasonable recompense.
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> 6. The Board is not essentially a commercial organisation to which the consumer has furnished the security to earn interest thereon."

35. It would also be pertinent to notice that in ***Ferro Alloys Corpn. Ltd***. (supra) after referring to the judgment in ***Jagdamba Paper Industries (P) Ltd***. (supra), it was observed by this Court that ***Jagdamba's*** case did not decide the issue of payment of interest.

36. After going through the judgments in ***Jagdamba's*** and ***Ferro Alloys's*** case, we are of the view that the High Court erred in relying upon the judgment in ***Jagdamba's*** case which, in fact, had not decided this issue at all. In ***Ferro Alloys's*** case this Court had clearly held that the provision providing that no interest is payable was neither arbitrary nor unreasonable.

37. We may now deal with the contention whether a condition providing that no interest is payable for security amount deposited by the money lenders or pawn brokers is unreasonable. This Court in ***M/s Fatehchand Himmatlal and Others*** vs. ***State of Maharashtra***[12] held that even if it be accepted that money lending is a trade then also restrictions can be placed upon it. The following observations are relevant :-

> "**29...**.....Money-lending and trade financing are indubitably "trade" in the broad rubric, but our concern here is blinkered by a specific pattern of tragic operations with no heroes but only anti-heroes and victims.
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> xxx xxx xxx
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> xxx xxx xxx
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> **38.**.....These are weaker sections for whom constitutional concern is shown because institutional credit instrumentalities have ignored them. Money lending may be ancillary to commercial activity and benignant in its effects, but money-lending may also be ghastly when it facilitates no flow of trade, no movement of commerce, no promotion of intercourse, no servicing of business, but merely stagnates rural economy, strangulates the borrowing community and turns malignant in its repercussions. The former may surely be trade, but the latter — the law may well say — is not trade. In this view, we are more inclined to the view that this narrow, deleterious pattern of money- lending cannot be classed as "trade"...."

12 (1977) 2 SCC 670

38. Thereafter this Court observed as follows :_

> "**42.**Maybe, some stray money-lenders may be good souls and to stigmatise the lovely and unlovely is simplistic betise. But the legislature cannot easily make meticulous exceptions and has to proceed on broad categorisations, not singular individualisations. So viewed, pragmatics overrule punctilious and unconscionable money-lenders fall into a defined group.....
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> xxx xxx xxx
>
> **44.**Every cause claims its martyr and if the law, necessitated by practical considerations, makes generalisations which hurt a few, it cannot be helped by the Court....."

39. We must also remember that the businesses of money lending and pawn broking are usurious businesses and the Government may rightly impose onerous conditions to restrict or even discourage people from entering into such businesses. We are not comparing these businesses with the liquor business but the observations of the Kerala High Court in ***Monarch Investments St. Thomas Road, Trichur and Ors.*** vs. ***State of Kerala & Ors***.[13] are relevant:-

> "**8**. Broadly stated, money lending is business. But it has to be remembered that money lenders usually charged heavy interest, impose very onerous conditions for the grant of loans, and the poor debtor may, in almost all cases be compelled to sell his

13 AIR (1989) KER.177

> produce or part with his land. Money lending as a business thus forms part of a pernicious trade requiring greater monetary regulation and control than those imposed on the normal trade or business……."

> "**9**. Money-lenders whether described as belonging to a "narrow noxious category" or "as oppressive and back breaking", whether there are honest money lenders or unscrupulous money-lenders form a special class whose business require greater statutory control and supervision and whose "freedom to fleece" has to be restrained in public interest……."

40. It is thus apparent that the courts have frowned upon the "trade" of money lending. The profession of money lending, may be a trade, but onerous restrictions may be placed on such trade which is definitely usurious. These onerous restrictions would be reasonable keeping in view the nature of the trade. The Legislature in its wisdom can decide whether it should make it more difficult for people to engage in the business of money lending and pawn broking.

41. A money lender or a pawn broker applies for licence to do this business knowing fully well that the security that he shall deposit shall not earn any interest. He with open eyes accepts the condition which is part of the Acts. Nobody forces a person to

engage in the trade of money lending or pawn broking. Therefore, the impugned provisions cannot be held to be unreasonable.

42. Lastly, we have to consider the submission as to whether a provision providing that no interest is payable on the security deposit is so arbitrary, as to make it unconstitutional.

43. In ***Independent Thought*** vs. ***Union of India and Anr***.[14] this Court held that arbitrariness must be writ large to make it un-constitutional. Whether the interest should be paid or not is a matter which parties decide amongst themselves. Supposing, there is a contract providing that no interest will be paid on the amount advanced; can it be said that such a clause in the contract is so arbitrary that the contract becomes void or becomes inoperative. We do not think so. If we make reference to every day transactions, banks do not pay interest on current account. Supposing, a person's money lies in the current account for 3-4 years he cannot claim interest only on the ground that the bank would have utilized this money for commercial purposes. There are various instances where schools, other educational institutions, clubs, societies ask for refundable deposits on which no interest is payable. These are

14 (2017) 10 SCC 800

accepted to be normal routine practices because these bodies are not engaged in commercial activities. Even a pawn broker pays no interest on the value of the security pledged with him.

44. Contracts providing for non-payment of interest on earnest money and security deposits have been considered in the context of the Arbitration Acts. The Courts have held that in view of the agreement entered into between the parties, the arbitrator cannot award interest prior to the date of passing of the award. In fact, this Court has clearly held that the arbitrator cannot award *pendente lite* interest[15]. Though these authorities do not directly deal with the issue with which we are concerned, it is obvious that in all these cases, the Court has not construed the provision of the contract providing for non-payment of interest to be void. The said provision has, in fact, been legally enforced. We may, however, note that under the Arbitration Act of 1940, this Court held that the arbitrator could award *pendente lite* interest[16] but under the Arbitration and Conciliation Act, 1996 the arbitrator cannot award interest prior to the date of award[17]. The clause for non-payment of

15 Sri Chittaranjan Maity v. Union of India, (2017) 9 SCC 611

16 Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy, (1992) 1 SCC 508

17 Sayeed Ahmed & Company v. State of Uttar Pradesh & Ors., (2009) 12 SCC 26, Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat

interest has not been held void in any case. Therefore, we are clearly of the view that the impugned provisions prohibiting payment of interest on the amount of security deposits cannot be said to be arbitrary or violative of Article 14 of the Constitution of India.

45. In view of the above discussion it is held as follows :-

(i) Section 7-A & 7-B of the M.L. Act and 4-A & 4-B of the P.B. Act are valid from the date of their enactment;

(ii) That the provisions making these amendments retrospective from 1985 are illegal and invalid.

46. In view of the above discussion the appeals are partly allowed and the judgment of the High Court of the Karnataka is set aside in the aforesaid terms. Pending application(s), if any, stand(s) disposed of.

.....J.
(MADAN B. LOKUR)

.....J.
(DEEPAK GUPTA)

New Delhi
March 15, 2018

& Ors., (2010) 8 SCC 767, Union of India v. Bright Power Projects (India) Pvt. Ltd., (2015) 9 SCC 695