M/S. Murarilal Mahabir Prasad and Others

Vs

Shri B. R. Vad and Others

Civil Appeal No. 1802 of 1970

(Y. V. Chandrachud, A. C. Gupta, R. S. Sarkaria JJ)

05.09.1975

JUDGMENT

CHANDRACHUD, J.

1. (for himself and Sarkaria, J.) - The question which arises for decision in this appeal is whether under the Bombay Sales Tax Act, 1959 a dissolved firm can be assessed or reassessed to sales tax in respect of its pre-dissolution turnover.

2. The first appellant - M/s. Murarilal Mahabir Prasad - was a partnership firm constituted under a deed of partnership dated December 3, 1953. It was doing business at 30, Commercial Chambers, Masjid Bunder Road, Bombay, as importers, commission agents, indenting agents, del credere agents and financiers and also as wholesale dealers in colours, chemicals, dyes, etc. the firm consisted of 5 partners : appellants No. 2 to 5 and one other who died in 1965. The firm was registered as a to 5 and one other who died in 1965. The firm was registered as a dealer under the Acts of 1953 and 1959.

3. Under diverse orders of assessment passed prior to its dissolution, the firm was assessed to sales tax for the period July, 1953 to March 31, 1958. On November 10, 1960 the sales Tax Officer (VIII), Enforcement Branch, Bombay, seized certain documents from the firm's office Notices were issued to the firm from time to time for attendance explain these documents. Over sixty meetings took place between the firm's representatives and the authorities, at the end of which, two notice dated November 20, 1963 came to issued to the firm. By the first of these notices, the firm was asked to explain certain discrepancies inits books of account. The second notice was issued under Section 15 of the Act of 1953, by which the firm was asked to show cause why the assessment already made for the period April 1, 1957 to March 31, 1958 should not be reopened on the ground that certain sales were suppressed by the firm as a result of which a part of its turnover had escaped assessment. Respondent No. 1, the Sales Tax Officer (VIII), Enforcement Branch, Greater Bombay, fixed the hearing of the assessment proceeding on April 1, 1965 but the firm requested by its letter dated April 3, for an adjournment till May on the ground that one of the partners would be back in Bombay by May. On May 26, 1965 respondent No. 1 addressed a notice to the firm stating that the hearing would be taken up from day to day from June 14, 1965 and that the partners should remain present at the hearings.

4. There was considerable difficulty in serving the aforesaid notice, as another firm by the name of M/s. Murarilal Balkrishna had apparently started doing business at the place where the assessee firm was carrying on its business. Intimations were sent to the registered address of the firm and an Inspector of the department went personally to effect the service. Eventually, on August 31, 1965

respondent No. 1 passed exparte orders of reassessment for the period April 1, 1957 to March 31, 1958 and ex parte orders of assessment for the period April 1, 1958 to March 31, 1961. The assessment of the firm for the period subsequent to March 31, 1958 was pending ever since, as it had to await the result of inspection of the incriminating document seized from the firm's office in November, 1960. On October 2, 1965 demand notices were pasted on the office of the firm at its Musjid Bunder Road address. M/s. Murarilal Balkrishna who were doing business there are said to have informed a partner of the firm that demand notices were so pasted.

5. By the revised assessment order, respondent No. 1 held that for the period April 1, 1957 to March 31, 1958, the turnover of suppressed sales which had escaped assessment was Rs. 41,47,090. He assessed on this turnover an additional tax of Rs. 1,95,582.47. Respondent No. 1 found that for subsequent periods also a large part of the turnover was suppressed by; the firm. Om that footing. He assessed the sales tax for the period April 1, 1958 to March 31, 1961, breaking up the period in four assessments. By the demand notices, the firm was called upon to pay a total tax of Rs. 6,70,969.96, inclusive of the sales tax quantified in the revised assessment. The notices apprised the firm of its liability to pay penalty if the tax was not paid within the stated period.

6. The assessment for the period April 1, 1957 to December 31, 1959 was made under the Act of 1953. The tax due for this period comes to Rs. 5,63,900 add. The assessment for the period January 1, 1960 to March 31, 1961 was made under the Act of 1959. The tax due for this period comes to Rs. 92,300 and odd. The firm has filed appeals against the aforesaid orders, which are pending before the Assistant Commissioner, Sales tax, Bombay. In view of those appeals the recovery proceeding were stayed by the appellate authority.

7. During the pendency of the assessment proceedings no formal intimation appears to have been give by or on behalf of the firm to the assessing authority that the firm was dissolved. It was on December 21, 1964 that in a Letter written to respondent No. 1, one of the partners made a casual and fleeting reference to that fact : "You will also appreciate that the firm was dissolved 4 years back". It is however futile to pursue this line of inquiry because, on being called upon to produce the deed of dissolution the partners did produce a deed showing that the firm was dissolved on May 20, 1962. Respondent No. 1 appears to have accepted the authenticity of the deed of dissolution and in fact. acting upon it. The sales tax authorities cancelled the restrain of the firm under the Sales Tax Acts with effect from June 16, 1962. We cannot now go behind the position that the from was dissolved on May 20, 1962.

8. On November 24, 1965 the appellants filed a writ petition in the High Court of Bombay challenging the orders of reassessment and assessment on various grounds. In view of the fact that the appeals filed by the filed before the Assistant Commissioner of Sales Tax were pending, the High Court did not decide the question whether the procedure prescribed by law was followed in the assessment proceedings and whether the orders were justified on merits. The only question which the High Court considered was whether the impugned orders were without jurisdiction as having been passed against a dissolved firm By its judgment dated December 8, 1969 the High Court rejected the contention of the firm and held that in view of the provisions contained in the Bombay Sales Tax of Acts of 1953 and 1959, it was permissible to assess a dissolved firm. The correctness of that finding is challenged by the appellants in this appeal by special leave.

9. The only question with which we are concerned in this appeal is whether the orders of reassessment and assessment passed by respondent No. 1 are without jurisdiction by reason of the fact that assessee firm was dissolved prior to the date on which those orders were passed years were

commenced after the dissolution of the firm. The notice under which those proceedings were started is dated November 20, 1962. We may mention that in a judgment to which we must immediately turn, this Court has taken the view that if under a statute a dissolved firm cannot be assessed to sales tax, it does not make any difference whether the proceeding was initiated before or after the dissolution. Thus, the true question for decision is whether a dissolved firm can be assessed or reassessed under the Bombay Sales Tax Act, 1959.

10. A similar question came up for decision before this Court in state of Punjab v. M/s. Jullunder Vegetables Syndicate ((1966) 2 SCR 457 : AIR 1966 SC 1295 : (1966) 17 STC 326). That was a case under the East Punjab to sales Tax Act, 1948. The respondent firm therein was assessed to sales tax in 1953 but that order was set aside for want of jurisdiction. Fresh proceedings were then started for assessment but the firm was dissolved before the commencement of those proceeding. The firm was thereafter assessed and the order the of the sales tax officer was confirmed in further proceeding with some modification. On a reference the Punjab High Court set aside the assessment on the ground that the east Punjab General Sales Tax Act, 1948 did not provide for a machinery for assessing a dissolved firm in respect of its pre-dissolution turnover. The judgment of the High court was confirmed by this Court.

11. Since the learned Counsel for the appellants has relied heavily on the aforesaid decision, if is necessary to analyse it closely. The Court, speaking through Subba Rao, J. observed at the outset that the question as regards the validity of the assessment depended upon the outset that the question as regards the validity of the assessment depended upon the relevant provisions of the particular Act. On examining the relevant provisions, namely, Sections 2[d], 4[1], 7[1], 16[b], 17 and Rule 40 the Court held that there was no provision in the statute expressly authorising the assessing authority to assess a dissolved firm. The Court then proceeded to find whether such a power could be gathered by necessary implication from the other provisions of the Act and held in the negative. Thus, by reason of the language and scheme of the Punjab Act, a dissolved firm could not be assessed. Relying on Section 2[d] which defined a dealer to include a firm, The Court held that though under the partnership law a firm was not a legal entity, the firm was an independent assessable unit for the purposes of the Punjab Act. If that be so, on dissolution the firm ceased to be a legal entity and could not be assessed in the absence of a statutory provision permitting the assessment of a dissolved firm. The Court found that there was a lacuna in the Punjab Act of 1948 which was filled up later by an amendment but that amendment was not retrospective. Finally, the Court touched upon the conflicting decisions of the High Courts on the point and observed that all of those decisions were overburdened with the consequences of a contrary construction on the incidence of taxation and also their mixing up the question of the statutory power of assessing a dissolved firm with the liability of the partner to pay the tax so assessed on the firm before its dissolution. The reasons given by some of the High Court in support of a contrary were rejected by this Court.

12. The Jullunder Vegetables Syndicate case (supra) is a clear and direct authority for the following propositions : (1)A dissolved firm cannot be assessed to sales tax unless the statute under which the assessment is made authorises the assessment either expressly or by necessary implication; (2) It by definition, a firm is a dealer under an Act, it becomes a legal entity or an independent assessable unit for the purposes of that Act. If that be so, the firm ceases to be a legal entity on dissolution and thereafter, on principle it cannot be assessed to sales tax unless the statute so authorises expressly or by necessary implication; (3) Neither a provision requiring a dealer to inform the authorities if it discontinues its business, nor a provision imposing a joint and several liability on the dealer and its partners for the payment of tax, penalty or any other amount due under the Act or rules can be

interpreted as conferring jurisdiction to assess a dissolved firm : (4) In interpreting a fiscal statute the court cannot proceed to make good the deficiencies, if any, in the statute : it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the taxpayer. The language of a taxing Act cannot be strained in order to hold a subject liable to tax.

13. The decision in the Jullunder case (supra) was followed by this Court, without more, in Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur ((1967) 19 STC 381), and in Additional Tahsildar, Raipur v. Gendalal ((1968) 21 STC 263). Khushi Ram's case (supra) arose under the East Punjab General Sales Tax act, 1948, the provisions of which were considered by this Court in the Jullunder case. Gendalal's case (supra) arose under the Central Provinces and Berar Sales Tax Act 1947. The Court did not examine the provisions of that Act seperately, presumably because those provisions were considered by the M. P. High Court in Lalji v. Assistant commissioner, Sales Tax, Raipur ((1958) 9 STC 571 (MP)), and the decision of the Madhya Pradesh High Court was expressly disapproved by this Court in the Jullunder case. The Madhya Pradesh High Court had relied upon Section 17 of the C.P. and Bere Sales Tax Act, corresponding to Section 16(b) of the East Punjab Act, to sustain the continuity of the firm as a legal entity; until information of dissolution was given to the prescribed authority. No other provision of the C.P. Act, apart from Section 17, appears to have been canvassed before this Court in support of the argument that it was permissible under that Act to assess a dissolved firm.

14. Applying the ratio in the Jullunder case (supra) we must examine the provisions of the two Bombay Acts in order to find whether those provisions, expressly or by necessary; implication, authorise the assessment of a firm.

15. Turning first to the Act of 1953, Sector 2(6) of that Act defines a 'dealer', in so far as relevant, to mean any 'person' who carries on the business of selling or buying goods. This definition does not by itself make the firm a distinct assessable entity and the position obtaining under the general law that a firm is but compendious name for the partners who compose it remains outstanding. But Section 3(35) of the Bombay General Clauses Act, 1904 defines 'person' as including "any company or association or body of individuals whether incorporated or not". The provision of the Bombay General Clauses Act apply to the interpretation of the Bombay Act unless there is anything repugnant in the subject or context of the Act under review. There is no such repugnancy and therefore the word 'person' in Section 2(6) of the Act of 1953 must be taken to include a 'body of individuals' that a firm is. Not only is there nothing in the Act of 1953 which is repugnant to the notion that the firm could be a dealer, but Section 24 of that Act furnishes a strong indication for saying that the framers of the Act intended to recognise firms as a legal entity. That section provides that every dealer who is liable to pay the tax and who is an undivided Hindu family, an association or a club, society, firm or company, shall send to the prescribed authority a declaration stating the name of the person who shall be deemed to be the manager of such dealer's business. Section would 24 would be meaningless in its reference to a 'firm', unless the fundamental assumption of the provision was that a firm as distinct from its partners is an independent assessable entity. That assumption is made good by the combined operation of Section 2(6) of the Act of 1953 and Section 3(35) of the Act of 1953 and Section 3(35) of the Bombay General Clauses Act.

16. Since the Act of 1953 considers a partnership firm to be a legal entity, on the dissolution of the firm its legal personality would cease to exist. On the firm ceasing to have existence in the eye of law, there can be no assessment of the firm as such for, in the absence of an express statutory intendment, a dead person cannot be assessed.

17. Section 2(2) of the Income-tax Act, 1922 defined as assessee as "a person any whom income-tax is payable". The Bombay High Court in Ellis C. Reid v. C. I. T. ((1930) 5 ITC 100 (Bom)), held that the definition in terms applied to living persons only, that the treasury had no power to tax without the express permission of the Legislature and therefore if an assessee failed to make a return of his income under Section 22(2), the income tax officer had no power to make an assessment under Section 23(4) after the assessee's death. Seeing that, originally, in the Income-tax Act, 1922 there was no reference to the decease of a person on whom the tax was charged, the mind of the Legislature that whatever privileges the payment of income-tax may confer, the privilege of immortality is not amongst them, and that it was very difficult to assume that the omission in the Act as regards the power to tax a dead assessee was unintentional. Section 24B which was introduced in the Income-tax Act, 1922 to remove the lacuna pointed out in the Bombay judgment extends the legal personality of a deceased assessee for the duration of a previous year, so that income received by an assessee during the previous year and the income received by his heirs and legal representatives after his death but in the previous year can be brought to tax after his death. In C. I. T., Bombay City v. Amarchand N. Shroff ((1963) 48 ITR 59 : 1963 Supp 1 SCR 699 : AIR 1963 SC 1448) this Court observed that the individual assessee under the Income-tax Act has ordinarily to be a living person, that there can normally be no assessment of a person after his legal personality ceases and that, apart from Section 24B, no assessment could be made on a dead person.

18. We must therefore proceed on the basis that the first appellant firm was an independent assessable entity under the Act of 1953 and that on its dissolution on May 20, 1962 its legal personality ceased to have existence. Is there then any provision in the 1953 Act which permits or contemplates the assessment of a firm after it dissolution ? If not, the general rule would apply that a dead person cannot be assessed.

19. It is plausible that a distinction ought to be made between the death of an individual and the dissolution of a firm. Human beings, as assesses, are not generally known to court death to evade taxes. Death, normally, is not volitional and it is understandable that on the death of an individual, his liability to be assessed to tax should come to an end unless the statute provides to the contrary. With firms it is different, because a firm which incurs during its existence a liability to pa sales tax may, with a little ingenuity, evade its liability by the voluntary act of dissolution. The dissolution of a firm could therefore be viewed differently from the death of an individual and the partners could be denied the advantage of their own wrong. But we do not want to strike this new path because the Jullunder case (supra) and the two cases which follow it have likened the dissolution of a firm to the death of an individual. Let us therefore proceed to examine the other provisions of the 1953 Act.

20. Section 5 of the 1953 Act provides that every dealer whose turnover exceeds the limits therein mentioned shall be liable to pay sales tax. Sub-section (3) of Section 5 says that every dealer who has thus become liable to pay the tax "shall continue to be so liable until cancellation of his registration under sub-section (6) of Section 11, and upon such cancellation his liability to pay the tax, shall cease". This provision shows that if a firm has incurred the liability to pay sales tax, that liability continues until the cancellation of the registration. There may be a hiatus between the dissolution of the firm and the cancellation of its registration and during this interregnum the liability of the firm is expressly kept alive by the statute. Under Section 11(6), the prescribed authority has to cancel the registration with effect from the prescribed date if inter alia, the business in respect of which a certificate has been granted under Section 11 has been discontinued or transferred. On being satisfied that the business has been discontinued or transferred, the authority concerned has undoubtedly to cancel the registration but the obligation to cancel the registration would arise not on the statement of an assessee that the business has been discontinued or

transferred but on the satisfaction of the authority that this is truly so. In other words, by virtue of Section 5(3) the mere fact of dissolution does not by itself bring to an end the firm's liability of be taxed.

21. Section 15(1) of the 1953 Act has an important bearing on the question under consideration. That section reads thus :

> 15. (1) If in consequence of any information which has come into his possession the Collector is satisfied that any turnover in respect of sales or purchases of any goods chargeable to the tax has escaped assessment in any year or has been underassessed or assessed at a lower rate or any deductions have been wrongly made therefrom, the Collector may, in any case where such turnover has escaped assessment or has been underassessed or assessed at a lower rate for the reason that the provisions of sub-section (1) of Section 2 of the Bombay Sales Tax (validating Provisions) Act, 1957 were not then enacted, at any time, within eight years, and in any case where he has reason to believe that the dealer has concealed the particulars of such sales or purchase or has knowingly furnished incorrect returns, at any time within eight years and in any other case, are any time within five years of the end of that year, serve on the dealer liable to pay the tax in respect of such turnover a notice containing all or any of the requirement which may be included in a notice under sub-section (3) of Section 14 and may proceed to assess or reassess the amount of the tax due from such dealer and the provisions of this Act shall apply according as if the notice were a notice served under that sub-section :
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> Provided that the amount of the tax shall be assessed after making the deductions permitted from time to time under the Bombay Sales Tax Act. 1946, the Bombay Sales Tax (No. 2) Ordinance, 1952; and this Act, as the case may be at the rates at which it would have been assessed had the turnover not escaped assessment or full assessment as the case may be :
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> Provided further that where in respect of such turnover or deduction, as the case may be, an order has already been passed under Section 30 or Section 31, the Collector shall make a report to the appropriate appellate or revising authority, as the case may be which shall thereupon after giving the dealer concerned a reasonable opportunity of being heard, pass such order as it deems fit.

This provision leaves no doubt that the dissolution of a firm cannot operate as a bar to a fresh assessment of the turnover which had escaped assessment provided that the action contemplated therein is taken within the specified period. In substance, Section 15(1) provides that if the Collector is satisfied that any turnover has escaped assessment or has been under assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, he can after serving a notice on the assessee proceed to assess or reassess the amount of the tax due from him. It is clear and necessary implication of Section 15 (1) that even a dissolved firm can solution cannot operate as a bar to the exercise by the Collector of his power to reopen an assessment and indeed it is difficult to a contemplated that liability to reassessment could be avoided by the erring firm by the simple expedient of winding up its affairs.

22. Section 15(1) contains an important clause that action there under can be taken by the Collector after giving a notice to the assessee under Section 14(3) of the Act within the prescribed period. Once such a notice is given, the Collector gets the jurisdiction to assess or reassess the amount of tax due from the dealer and all the provisions of the Act "shall apply accordingly as if the notice

were a notice served under" Section 14(3). Section 14(3) speaks of the power of the Collector to assess the amount of tax due from the dealer after giving notice to him, if the Collector is not satisfied that the returns furnished are correct and complete. The jurisdiction to assess or reassess which is conferred by Section 15(1) is thus equated with the original jurisdiction to assess the dealer under Section 14, By this method, the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. It is no answer to a notice under Section 15 that the partners having dissolved the firm, the assessment cannot be reopened. It puts a premium on one's credulity to accept that having created a special jurisdiction to assess or reassess an escaped turnover, the Legislature permitted that salutary jurisdiction to be defeated by the device of dissolution. The argument of the appellants really comes to this : suppress the turnover, evade the sales tax, dissolve the firm and earn your freedom from taxation.

23. Importantly, the notice dated November 21, 1963 for reopening the assessment for the period April 1, 1957 to March 31, 1958 was served on the firm under Section 15. On reassessment, the firm was assessed to a sales tax of Rs. 1,95,582.47 on sales suppressed during that period.

24. Section 15A confers on the Collector analogous powers to assess or reassess a dealer for taxes due prior to November 21, 1956 when the States were reorganised, if either no assessment was made for the prior period or if any turnover had escaped assessment. This Provision, like the one contained in Section 15, is of general application and makes no exception in favour of dissolved firms. Therefore, if a firm was not assessed prior to the reorganisation of States or if any part of its turnover had escaped assessment, it is competent to the Collector to assess or reassess the firm notwithstanding its subsequent dissolution. This is the necessary implication of Section 15 A. It must follow as a corollary that the power to rectify a mistake apparent from the record can be exercised by the Collector under Section 35 of the Act of 1953 even after the dissolution of an assessed firm, though on conditions specified in the section. The section contains a compelling implication that evident errors can be corrected no matter whether the firm is in existence or is dissolved. Dissolution is not a panacea for liability to pay sales tax.

25. A difficulty was raised on behalf of the appellants that on the dissolution of the firm the principle of agency would cease to apply as amongst the partners and therefore no partner would have the right to represent either the firm or any of the other partners in the proceeding under Section 15, commenced or continued after the dissolution of the firm. This question does not bear on the liability of a dissolved firm under Section 15. It may perhaps be that in the assessment of a dissolved firm, each of the erstwhile partners may have a right to be heard because each of them would be interested in warding off a liability which may fall on them jointly and severally. But that is more a matter of procedure which the assessing authority must adopt in the assessment proceeding in order to give efficacy to the order which may eventually be passed in the proceeding. Who, in the assessment proceeding against a dissolved firm, has the right to be heard will not determine whether a dissolved firm, has the right to be heard will not determine whether a dissolved firm can be assessed under the Act of 1953.

26. Sub-sections 3(i) and 3(ii) of Section 26 provide that when a firm liable to pay the tax is dissolved, it shall be liable to pay the tax on the goods allotted to any partner "as if" the goods had been sold to such partner, unless he; holds a certificate of registration or obtains it within the prescribed period. This provision in terms envisages the assessment of a dissolved firm, though only to the limited extent and for the limited purpose that the goods allotted to a partner at the time of dissolution shall be deemed to have been sold to that partner. By the use of the words "as if",

Section 26(3)(ii) creates a fiction that the allotment of goods to a partner on dissolution of the firm shall be deemed to be a sale made by the dissolved firm to that partner. The fiction cannot be extended further than the sub-section warrants but there is no fiction in regard to the liability of the dissolved firm to be assessed to sales tax in respect of the goods thus deemed to be sold. The imposition of such a liability is in keeping with the general scheme of the Act, the various provisions of which show that the assessment of a dissolved firm is within the clear intendment of the statute.

27. The construction which we have placed on these provisions of the 1953 Act does no violence to the familiar principle which in Cape Brandy Syndicate v. Commissioner of Inland Revenue ((1921) 12 TC 358 : (1921) 2 KB 403 : 90 LJ KB 461) , was expressed thus by Rowlatt, J. :

In a taxing statute one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

This Principle was approved and adopted by this Court in several decisions : (A. V. Fernandez v. State of Kerala ((1957) SCR 837 : AIR 1957 SC 657 : (1957) 8 STC 561); C. I. T., Bombay v. Provident Investment Co. Ltd. ((1957) SCR 1141 : AIR 1957 SC 664 : (1957) 32 ITR 90); C. I. T., Madras v. Ajax Products Ltd. through its Liquidator ((1965) 1 SCR 700 : AIR 1965 SC 1358 : (1965) 55 ITR 741); C. I. T., Gujarat v. M/s. B. N. Kharwar ((1969) 1 SCR 651 : AIR 1969 SC 812 : (1969) 72 ITR 603); C. I. T., West Bengal v. Vegetables Products Ltd. ((1973) 1 SCC 442 : 1973 SCC (Tax) 282)). The principle is variously expressed by saying that in fiscal statutes one must have regard to the letter of the law and not to the spirit of the law, that the subject cannot be taxed by inference or analogy, that in a taxing Act there is no governing principle to look at and one has simply to go on the Act itself to see whether the tax claimed is that which the statute imposes, that while construing taxing Act it is not the function of the court to give to the words used a strained and unnatural meaning and that the subject can be taxed only if the Revenue satisfies the court that the case falls strictly within the provisions of the law.

28. The principle thus stated has hardly ever been doubted but it is necessary in the application of that principle to remember that though the benefit of an ambiguity; in a taxing provision must go to the subject and the taxing provision must receive a strict construction, "that is not the same thing as saying that a taxing previous should not receive a reasonable construction" (Wealth Tax Commissioner v. Kirpashankar, ((1971) 2 SCC 570). If the statute contains a lacuna or a loophole, it is not the function of the court to plug it by a strained construction in reference to the supposed intention of the Legislature. The Legislature must then step in to resovle the ambiguity and so long as it does not do so, the tax payer will get the benefit of that ambiguity. But, equally courts ought not to be astute to hunt out ambiguities by an unnatural construction of a taxing section. Whether the statute. Even a taxing statute, contains an ambiguity has to be determined by applying normal rules of construction for interpretation of statutes. As observed by Lord Cairns in Prece v. Monmouthshire Canal and Railway Companies ((1879) 4 AC 197 : 49 LJ QB 130 : 40 LT 630), cases which decided that taxing Acts are to be exacted from the subject which is not clearly and unequivocally required by Act of Parliament to be made, probably meant little more than this, that, inasmuch as there was not any a priori liability in a subject to pay any particular tax. Nor any antecedent relationship between the taxpayer and the taxing authority, no reasoning founded upon the construction of the Act and therefore, the taxpayer had a right to stand upon a literal construction of the words used, whatever might be the consequences.

29. The true implication of the principle that a taxing statute must be construed strictly is often misunderstood and the principle is unjustifiably extended beyond the legitimate field of its operation. Indeed, the more well-expressed the principle as in the Cape Brandy case (supra), greater the reluctance to see its limitations. In that famous passage marked by a happy turn of phrase, Rowlatt, J. said, "there is no equity about a tax. There is no presumption as to a tax." There is no equity about a tax in the sense that a provision by which a tax is imposed has to be construed strictly, regardless of the hardship that such a construction may cause either to the treasury or to the taxpayer. If the subject falls squarely within the letter of law he must be taxed, howsoever inequitable the consequences may appear to the judicial mind. If the Revenue seeking to tax cannot bring the subject within the letter of law, the subject is free no matter that such a construction may cause serious prejudice to the Revenue. In other words, though what is called equitable construction may be admissible in relation to other statures or other provisions of a taxing statute. Such a construction is not admissible in the interpretation of a charging or taxing provision of a taxing statute. Speaking for the Court in C. I. T., MADRAS v. Ajax Products Ltd. (supra) Subba Rao, J. after citing the passage from the judgment of Rowlatt, J. in the Cape Brandy case said : "To put it in other words, the subject is not to be taxed unless the charging provision clearly imposes the obligation"

30. We are concerned in this case to determine not whether a particular turnover can be brought to sales tax but whether if the turnover was liable to be charged to sales tax, the firm can be assessed to tax after its dissolution. In other words, we are concerned with a provision which prescribes the machinery for the computation of tax and not with a charging provision of the Sales Tax Acts.

31. In C. I. T., Bengal v. Mahaliram Ramjeedas (67 IA 239, 247 : AIR 1940 PC 124 : 189 IC 154), it was held by the Privy Council that section 34 of the Income-tax Act, 1922, although a part of taxing Act, imposed no charge on the subject but dealt merely with the machinery of assessment. Lord Normand who delivered the judgment of the judicial committee observed : "Interpreting provisions of this kind the rule is that construction should be preferred which makes the machinery workable, ut res valeat notius quam pereat." In India United Mills v. Commissioner of Excess Profit Tax ((1955) 1 SCR 810, 816 : AIR 1955 SC 79 : (1955) 27 ITR 20), this Court held that Section 15 of the Excess Profits Tax Act was not a charging Section but a "machinery section, and a machinery section should be so construed as to effectuate the charging sections". Section 15 was intended to vest in the Excess Profits Tax Officer a power to amend the assessment, when it was found that the relief granted was in excess of what the law allowed. One of the sections under which relief could be granted was Section 26(3). This Court held that Section 15 must be so interpreted as to confer a power on the Excess Profits Tax Officer to revise the assessment when relief had been erroneously granted under Section 26(3). In Gursahai Saigal v. C. I. T., Punjab ((1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1), an assessee was called upon to pay interest under Section 18A(8) of the Income-tax Act, 1922 for failure to make an estimate of his income and pay tax according to that estimate under Section 18A(3). The assessee relied on the rule of construction formulated by Rowlatt, J. in the Cape Brandy case (supra) and contended that he could not be charged with as interest as it was not possible to calculate interest in accordance with sub-section (6) by reason of his not having paid tax at all. This Court approved the ratio of the Privy Council in Mahaliram Ramjeedas's case (supra) and held that it was well-recognised that the rule of constriction on which the assessee relied applied only to a taxing statute. The Court observed that the rule did not apply to a provision not creating the charge for the tax but laying down the machinery for its calculation or procedure for its collection. Sarkar, J., speaking for the Court, said :

The provisions in a taxing statute dealing with machinery for assessment have to be construed by

the ordinary rules of construction, that is to say, in accordance with the clear intention of the Legislature which is to make a charge levied effective.

Sub-section (6) was accordingly read by the Court in a manner which made it workable, thereby preventing the clear intention of sub-section (8) from being defeated.

32. It is indisputable that the first appellant firm was liable to be charged to sales tax on its business turnover. The charging provisions are contained in Chapter III of the Act of 1953 and Chapter II of the Act of 1959. In this appeal, we have to construe the machinery provision of those Acts. In accordance with the view taken in the cases cited above, the machinery sections ought to be construed so as to effectuate the charging sections. The construction which we have placed on the machinery provision of the 1953 Act will give meaning and content to the charging sections, in the sense that our construction will effectuate the provision contained in the charging sections. The resourcefulness and ingenuity which go into well-timed dissolution of firms ought not to be allowed to be used as convenient instruments of tax evasion. As observed by Lord Dundedin in Whitney v. Commissioners of Inland Revenue ((1925) 10 TC 88) :

A statue is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.

Far from there being any crucial omission or a clear direction in the present case which would make the end unattainable, the various provisions to which we have drawn attention leave it in no doubt that a dissolved firm can be assessed on its pre-dissolution turnover.

33. The Bombay Sales Tax act, 1959 presents no difficulty as its provisions are even clearer than those of the 1953 Act. Section 2(11) of the 1959 Act defines a dealer to mean any "person who carries on the business of buying or selling gods. . . . .". Under Section 2(19), "person" includes, inter alia, a firm. There is therefore no doubt that a firm is distinct assessable entity under the 1059 Act also.

34. Section 19(3) of the 1959 Act puts the matter under inquiry beyond all doubt by providing :

Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under Section 18, the tax (including any penalty) due from the firm under this Act or under any earlier law, up to the time of dissolution, whether such tax (including any penalty) has been assessed before such dissolution but has remained unpaid, or is assessed after dissolution.

This provision in terms envisages the assessment of a dissolved firm by providing that erstwhile partners of a dissolved firm shall be liable jointly and severally to pay the tax and penalty due from the whether the tax, including any penalty, has been assessed before or after the dissolution. The assessment which the sub-section speaks of is assessment of the firm as such because where the assessment is made on the partners themselves, it was unnecessary to provide that they shall be liable jointly and severally to pay the tax assessed on them. The joint and several liability of the partners in respect of taxes which the firm is liable to pay is provided by Section 18. The purpose of Section 19(3) is to make the partners jointly as severally liable even if the firm is assessed to sales tax after its dissolution. Section 19(3) would otherwise be otiose. Thus, Section 19(3) of the 1959 Act makes explicit what was implicit in the Act of 1953.

35. It is relevant, though we did not refer to this aspect while dealing with the provisions of the

1953 Act, that Section 19(3) of the 1959 Act contains a clear indication that the Legislature intended that a dissolved firm could be assessed under the 1953 Act also. Section 19(3) speaks of the liability of partners for the tax due from a dissolved firm and provides that they shall be jointly and severally liable to pay the tax due from the firm under the Act of 1959 or "under any earlier law", whether such tax has been assessed before or after dissolution. Section 2(12) of the 1959 Act defines "earlier law" to mean, inter alia, the Bombay sales Tax Act, 1953. Thus, one of the postulates of Section 19(3) at any rate is that a dissolved firm could be assessed under the 1953 Act. Such a postulate accords with the principle that if the legislature provided for a charge of sales tax, it could not have intended to render that charge ineffective by permitting the partners to dissolve the firm, an easy enough thing to do. Nothing, in fact, would be easier to evade a tax liability than to declare that the firm, admittedly liable to pay tax, has been dissolved. Section 19(3) of the 1959 Act not only makes clear what was necessarily implied in the 1953 Act, but it throws additional light on the true construction of the earlier law. But we though it advisable to keep Section 19(3) of the 1959 Act apart while construing the 1953 Act because it is the courts, not the legislature, who have to construe the laws of the land authoritatively. As said in Craies on Stature Law :

Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. (6th Ed, p. 146)

The limited use which may be made of the language of section 19(3) of the 1959 Act, though such a course is unnecessary, is for saying that it serves to throw some light on the Act of 1953, in case the argument is that the Act of 1953 is ambiguous.

36. Section 19(3) being quite clear and explicit, it is unnecessary to dwell on the other provision of the Act of 1959 in order to show that a dissolved firm can be assessed under it. We may only point out that the Act of 1959 contains provisions similar to those in Sections 15, 15A and 35 of the Act of 1953 on which we have dwelt at some length. Those provisions can be found in Sections 35, 35A and 62 of the Act.

37. The view taken by Full Bench of the Madras High Court in S.T.O. (XIX), Enforcement Branch, Bombay v. K. M. S. Mari Chettiar ((1975) 35 STC 148 (Mad)), that a dissolved firm can be assessed under the Act of 1959 is, in our opinion correct though it was wholly unnecessary to say that the words "is assessed after dissolution" occurring in Section 19(3) should be read as "is assessed after dissolution as if the firm exists". Such an addition is superfluous and serves to make the meaning of the sub-section no clearer than it is.

38. For these reasons, we uphold the judgment of the Bombay High Court and dismiss the appeal with costs.

Gupta, J. (dissenting) - I regret my inability to agree.

40. This appeal by special leave is directed against an order of the Bombay High Court dismissing the writ petition filed by the appellants before us for quashing certain assessment order and demand notices issued under the Bombay Sales Tax Acts of 1953 and 1959. Of the five appellants Nos. 2 to 5 are the partners of a dissolved firm, and the name of the dissolved, firm appears as the first appellant. The firm had another partner who died before the writ petition was filed. The firm, M/s. Murarilal Mahabir Prasad, constituted on December 3, 1953, used to carry on business at Bombay as importers and commission agents and also as wholesale dealers in chemicals, dyes and various other goods. The firm was registered as a dealer both under the Bombay Sales Tax Act. 1953 and

the Bombay Sales Tax Act, 1959 (hereinafter referred to as the 1953 Act and the 1959 Act) and had been assessed by the sales tax authorities for the period from July 1953 to March 31, 1958 on the basis of the returns filed by it. On November 10, 1960 the Sales Tax Officer seized a number of documents from the office of the firm. According to the appellants the firm discontinued its business from the month of May, 1961. On May 20, 1962 the firm was dissolved. On June 26, 1962 the Sales Tax Officer cancelled the firm's registration certificate under the Central Sales Tax Act as well as the registration certificate, authorisation and licence under the Bombay Sales Tax Act which the partners of the firm had surrendered. On November 20, 1963 the Sales Tax Officer issued two notices to the firm, one asking for elucidation of certain items in the books of accounts seized, and the other under Section 15 of the 1953 Act calling upon the firm to show cause why the assessment already made for the period April 1, 1957 to March 31, 1958 should not be reopened. It is not relevant to the question arising for decision in this case and therefore not necessary to recount all that happened before August 31, 1965 on which date the Sales Tax Officer passed five orders, all against the dissolved firm : the first was a reassessment order for the year April 1, 1957 to March 31, 1958 on the ground that certain sales and purchases purchases during that period had been concealed, and the other four were assessment orders for subsequent years covering the period from April 1, 1956 to March 31, 1961. On these five orders a total sum of Rs. 6,56,365.47 p. was found due from the firm. On October 22, 1965 the demand notices issued upon these assessment orders, all in the name of the dissolved firm, were affixed to the premises in which the firm had its office before it was dissolved. The partners of the defunct firm filed a writ petition in the Bombay High Court Challenging as invalid the assessment orders and the demand notices issued in the name of the dissolved firm which was dismissed. In this appeal the appellant question the correctness of the order of the High Court dismissing the writ petition.

41. The point that was urged before the High Court and also canvassed in this appeal is that there is no provision either in the 1953 Act or in the 1959 Act which permits the sales tax authorities to asses or reassess a dissolved firm. The dates mentioned above disclose that the impugned orders of the Sales Tax Officer were all made after the firm was dissolved. The respondents' contention is that "firm" in the context of the 1953 Act or the 1959 Act mean only the partners of the firm, and that the firm, if at all an assessable unit, continues to be so even after its dissolution in respect of its predissolution turnovers. The first question therefore is whether a firm is a distinct assessable unit under either of the two Acts and, if it is so, the next question that arises is, whether it remains so even after its dissolution. This leads to an examination of the provisions of the two Acts.

42. Taking the 1953 Act first, Section 2(6) of the Act defines a dealer. The relevant part of the definition is as follows :

Dealer means any person who carries on the business of selling or buying goods. . . and includes. . . any society, club or association which sells goods to or buys from its members.

This definition of dealer does not specifically include a firm. Under the general law a firm is not a distinct legal entity but a compendious name for all its partners. The definition includes an association, but it is limited to such associations only which sell goods to or buy goods from its members. A firm carrying on the business of selling or buying goods would be a dealer according to this definition only if it could be called a 'person'. The Bombay General Clauses Act, 1904 defines 'person' in Section 3[35] as including "any company or association or body of individuals, whether incorporated or not". This definition of'person'will include a firm which is a body of individuals "unless there is anything repugnant in the subject or context" as the opening words of Section 3 of the Bombay General Clauses Act indicate. It is thus necessary to find out if there is any provision in

the 1953 Act which repels the notion of a firm being a 'person.'

43. In this case, as stated earlier, the firm was registered as a dealer both under 1953 and 1959 Acts, but the question remains whether the registration certificate was legally for the benefit of the partners and not the firm as such. Section 5 of the 1953 Act provides, inter alia, that every dealer whose turnover exceeds the amount specified in the section is liable to pay tax under this Act on his turnover. Section 11 requires that a dealer carrying on business and liable to pay tax under the Act must apply for registration and get a certificate of registration from the prescribed authority. Section 13(6) provides that the prescribed authority shall cancel the registration of a dealer on the application of the dealer if he has discontinued or transferred his business, or if during any year his turnover does not exceed the limits specified in Section 5(1). Section 13 requires every registered dealer to furnish return of his turnover. Section 14 provides, inter alia, that the amount of the tax due from a registered dealer shall be assessed seperately for each year. Section 15 empowers the Collector to serve on the dealer within the period specified in the section a notice in case his turnover had escaped assessment and to assess or reassess the amount of tax due from such dealer. Section 16 contains provisions for the payment and recovery of tax. None of these section appears to be repugnant to the firm being a dealer as defined in Section 2(6).

44. It was however argued on behalf of the respondents that the the definition of 'dealer' in Section 2(6) which includes an association that sells goods to or buys goods from its members, by implication excludes an association of persons, that a firm is, which does not sell goods to or buy goods its members, and admittedly the firm concerned in this case did not. This contention is similar to that raised on behalf of the Revenue before the Bombay High Court in State v. R. M. Shah & Co ((1958) 9 STC 683). and in repelling this contention the Bombay High Court observed :

The reference to any society or association, which sells goods to or buys goods from its members in the definition of the word dealer has a special purpose of its own and that is to include within the definition of the word "sales" made as mentioned therein which otherwise may not amount to sales and could not have been intended to excluded the operation of the definition as given in the General Clauses Act. That also appears to be abundantly clear from the fact that dealings between the members of the club, society or association, which normally may not amount to sales are intended to be included in the definition of "sale".

I think that the lines quoted above effectively answer the respondents contention.

45. Apart from the provisions we have referred to so far, there are other sections in the 1953 Act which indicate positively that a firm could be a dealer under the Act. Section 24 of the 1953 Act reads as follows :

24. Dealer to declare the name of manager of his business. - Every dealer who is liable to pay the tax and who is an undivided Hindu family, an association or a club, society, firm or company or who carries on business as the guardian or trustee or otherwise on behalf of another person, shall within the prescribed period send to the prescribed authority a declaration in the prescribed manner stating the name of the person who shall be deemed to be the manager of such dealer's business for the purposes of this Act. Such declaration may be revised from time to time.

This section requires every dealer who is liable to pay the tax and who is an undivided Hindu family, an association or a club, a society, a firm or a company to declare in the prescribed manner the name of the manager of such dealer's business. Section 24 thus makes it clear that a firm can be

a dealer, and does not seem to be limited in its application to such firms that buy goods from or sell goods to their partners. Section 26(3) which is also relevant in this context provides that when "a firm liable to pay the tax is dissolved" or when an undivided Hindu family liable to pay the tax is partitioned,

such firm or family, as the case may be, shall be liable to pay the tax on the goods allotted to any partner or member thereof as if the goods had been sold to such partner or member unless he holds a certificate of registration or obtains it within the prescribed period.

This section clearly indicates that a firm as such may be a dealer under the Act.

46. Section 36A appears to put the issue beyond doubt. It is in Chapter VIII which deals with offences and penalties. The section provides that where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The section includes an explanation which states that for the purpose of this section,-(a) "company" means a body corporate, and includes a firm or other association of individuals; and (b) "director" in relation to a firm means a partner in the firm. This section making the persons in charge of the business of the firm when the offence was committed, and the firm as such, both guilty of the offence, is clearest indication that a firm as distinct from its partners could be a dealer under the 1953 Act.

47. Turning now to the 1959 Act which came into operation from January 1, 1960, "dealer" as defined in Section 2(11) of this Act is a little differently worded from the definition in the 1953 Act, but in substance there is no difference between the two. Here also the 'dealer' is a person who carries on the business of buying and selling goods and it includes, among others, any society, club or other association of persons which buys goods from or sells goods to its members. Here again the definition does not specifically mention a firm. But the 1959 Act itself defines 'person' in Section 2(19), and it is not necessary to refer to the Bombay General Clauses Act. 'Person' as defined in Section 2(19) includes "any company or association or body of individuals whether incorporated or not, and also Hindu undivided family, a firm and a local authority." Section 18 of the 1959 Act provides :

Notwithstanding any contract to the contrary, where any firm is liable to pay tax under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment :

Provided that, where any such partner retires from the firm, he shall be liable to pay the tax and the penalty (if any) remaining unpaid at the time of his retirement, and any tax due up to the date of retirement though unassessed at that date.

In plain terms this section recognizes the liability of a firm to pay tax as distinct from the liability of its partners. Clearly, therefore, a firm can be a dealer also under the 1959 Act.

48. The question that now remains to be answered is whether a firm as such continues to be liable to pay tax under these Acts even after its dissolution on its pre dissolution turnovers. Section 15 of the 1953 Act provides, inter alia, that in the case of escaped assessment or underassessment or assessment at a lower rate or where any deductions have been wrongly made from the turnover, the Collector may within the period specified in the section proceed to assess or reassess the amount of the tax due after serving notice on the dealer concerned. This is a provision, it was argued, which

shows that it is permissible to proceed against a dissolved firm because under the section the Collector can proceed to assess or reassess the amount of tax due within the prescribed period, and no exception has been made for firms which may have been dissolved before the expiry of that time. This argument overlooks that the foundation of the Collector's jurisdiction is the notice which must be served on the dealer before the Collector proceed against him, and 'dealer' has been defined in the Act as a person who carries on the business of selling or buying goods. In a case, as the one before us, where the dealer was a firm dissolved before the notice was issued, there is no person carrying on the business of selling or buying goods on whom the notice can be served. If the section admits of a construction as suggested on behalf of the respondents, then a notice under the section in the name of a dead man who used to be dealer when alive, would also be effective if issued within the specified period. I do not think that position can be maintained. The question here is not how and against whom the dues of a dissolved firm can be realised, but whether the firm as such can be proceeded against after it has been dissolved. Section 35 of the 1959 Act is in terms similar to Section 15 of the 1953 Act.

49. Section 18 of the 1959 Act makes the firm as well as each of its partners jointly and severally liable for the tax payable by the firm. Sub-section (3) of Section 19 of the 1959 Act reads :

Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, the every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under Section 18, the tax (including any penalty) due from under this Act or under any earlier law, up to the time of dissolution, whether such tax (including any penalty) has been assessed before such dissolution but has remained unpaid, or is assessed after dissolution.

Section 19(3) thus provides that on the dissolution of a firm, every person who was a partner shall be jointly and severally liable to pay the tax including any penalty due from the firm under the 1959 Act or under any earlier law upto the time of dissolution, whether such tax including penalty has been assessed before the dissolution of the firm and has remained unpaid, or is assessed after dissolution."Earlier law" as defined in Section 2(12) of the 1959 Act includes, inter alia, the 1953 Act. Section 19(3) of the 1959 Act makes the erstwhile partners jointly and severally liable for the tax due from a dissolved firm but does not say that assessment or recovery proceeding may be initiated or continued against a firm as such even after its dissolution.

50. A Full Bench of the Madras High Court in S. T. O. v. K. M. S. Mari Chettiar (supra) held that Section 19(3) of the Bombay Sales Tax Act, 1959 provides a procedure for assessing a defunct firm by deeming it as continuing to exist for purposes of assessment. This is what the Full Bench observed :

It seems to us that the expression "whether such tax has been assessed before such dissolution but has remained unpaid or is assessed after dissolution" is clearly indicative of the fact that the Legislature addressed its mind to assessment and collection of tax not only from an existing firm but also from a defunct firm in respect of its transactions when the firm existed. There can be no doubt that charge, assessment and collection, though they are all related, have got to be seperately provided for. But such provision may be express or implied. The implication must be clear and the circumstances should warrant it to be necessary. The words "is assessed after dissolution", to out minds, are not ambiguous and are capable of being understood as "is assessed after dissolution as if the firm exists." No other construction appears to us to be reasonable. The object of the Legislature being clear, namely, that where the joint and several liability of the partners of a firm has been declared, it is followed by a provision to quantify it by laying down the procedure therefor and the

provision so laid down provides both for assessment and collection of tax from a defunct firm.

I do not think Section 19(3) can bear such a construction. It allows the dues of a firm to be assessed or collected even after its dissolution, but in my opinion it is not permissible to read in this provision the additional words "as if the firm exists". To provide that the tax due from a firm may be assessed or collected after its dissolution is not the same thing as allowing the assessment or recovery proceeding to be started or continued against the dissolved firm. As Subba Rao, J. pointed out in State of Punjab v. M/s. Jullunder Vegetables Syndicate (supra), to which I shall presently refer in more detail - "the question of the statutory power of assessing a dissolved firm" is not to be 'mixed up' with the liability of the partners. A firm under the two Acts we are concerned with is a distinct assessable entity; on the dissolution of the firm that entity ceases to exist, unless the unless the statue by a fiction of law keeps it alive for any specified purpose. For instance, Section 189(1) of the Income-Tax Act, 1961 states :

Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Income-tax officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment. There is no such provision either in the 1953 or in the 1959 Act. In this context it may be relevant to refer to Section 34 of the 1959 Act which provides :

where in respect of any tax (including any penalty) due from a dealer under this Act or under any earlier law, any other person is liable for the payment thereof under Section 19, all the relevant provisions of this Act or, as the case may be of the earlier law, shall in respect of such liability apply to such person also, as if he were the dealer himself.

Therefore all the provisions relating to the assessment or recovery of tax including provisions requiring service of notice on the assessee would, in the case of a dissolved firm, apply to the erstwhile partners and all proceedings intended against the firm must be taken against them. Neither the 1953 Act nor the 1959 Act contains any provision permitting assessment or recovery proceeding being taken against a dissolved firm.

51. The cases cited at the Bar on this question may now be examined. The appellants' case rests on the decision of this Court in State of Punjab v. M/s. Jullunder Vegetables Syndicate (supra). In this case the respondent firm liable to pay sales tax under the East Punjab General Sales Tax Act, 1948 was dissolved before assessment was made. The Sales Tax officer however proceeded to complete the assessment against the dissolved firm. The question therefore arose as to the statutory rights of a taxing authority to assess a dissolved firm in respect of its pre-dissolution turnover. In the aforesaid Act 'dealer' was defined as "any person, firm or Hindu joint family, engaged in the business of selling or supplying goods in East Punjab. . ."Rule 40 of the East Punjab General Sales Tax Rules, 1949 provided that

a dealer and his partner or partners shall be jointly and severally responsible for payment of the tax, or any amount due under the Act or these Rules.

It was held that thought under the partnership law a firm was not a legal entity but consisted of individual partners for the time being under the East Punjab General Sales Tax Act, 1948 it was a legal entity and, that being so, on dissolution the firm ceased to exist. It was observed that unless

there was a statutory provision permitting the assessment of a dissolved firm there was no scope for assessing the firm which ceased to have a legal existence. Referring to Rue 40 of the East Punjab General Sales Tax Rules, 1949, it was held that this only imposed a joint and several liability on the dealer and its partners for the payment of tax, penalty or any amount due under the Act or the Rules and that it did not "provide for a case of the dissolution of the firm and the assessment of the dissolved firm. This Court held further that unless there was a provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution of unless such a power could be gathered by necessary implication from the other provisions of the Act, the assessment proceeding against the dissolved firm was not maintainable.

52. The decision in Jullunder Vegetables case (supra) was followed by the Court in Khushi Ram Bihari Lal & Co. v. Assessing Authority, Sangur (supra). This also was a case under the East Panjab General Sales Tax Act, 1948. It was held that an assessment of a dissolved firm, whether the proceeding was initiated before or after the dissolution of the firm, was unsustainable.

53. In Additional Tahsildar, Raipur v. Gendalal (supra), this Court in an appeal from the High Court of Madhya Pradesh, again following the Jullunder Vegetables case (supra) affirmed the decision of the High Court quashing the orders of assessment against a dissolved firm. In this case firm before its dissolution was registered as a dealer under the Central Provinces and Berar Sales Tax Act, 1947.

54. It was contended before us on behalf of the respondents that though the 1953 Act and the 1959 Act contained no express provision permitting a dissolved firm to be taxed, it should be held that the Acts authorised such a course by necessary implication. In answer the appellants relied on A. V. Fernandez v. State of Kerala (supra) in which it was held that if the Revenue satisfies the court that the case falls strictly within the provisions of the law, then only the subject can be taxed and that no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter. This decision Provident Investment Company Ltd. (supra), where it was held that in construing fiscal statutes and in determining the liability of the subject to tax, one must have regard to the strict letter of the law and the true legal position arising out of the transaction in question.

55. Counsel for the respondent pointed out that this Court in Gursahai Saigal v. C. I. T., Punjab (supra) observed referring to A. V. Fernandez v. State of Kerala (supra) and C. I. T. v. Provident Investment Company Ltd. (supra), that the rule of construction stated in these two cases applies only to a taxing provision and has no application to all provision in a taxing statute. It does not. For example, apply to a provision not creating a charge for the tax but laying down the machinery for its calculation or procedure for its calculation. The provisions in a taxing statute dealing with the machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the Legislature which is to make a charge levied effective.

Gursahai's case refers to the judgment of the Privy Council in C.I.T. v. Mahaliram Ramjeedas (supra) where a similar principle has been stated, and the following observation of Lord Dunedin in Whitnay v. Commissioners of Inland Revenue ((1925) 10 TC 88,110) :

A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omissions or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax; there if the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there if the assessment. Liability does not depend on assessment. The ex hypothesis, has already been fixed. But

assessment particularises the exact sum which a person liable has to pay. Lastly come the methods of recovery, if the person taxed does not voluntarily pay.

56. On the authority of Gursahai's case (supra) was submitted that though under the Acts of 1953 and 1959 a firm might be a seperate legal entity and a distinct assessable unit, if its liability to pay tax arose before it was dissolved, we should interpret the provisions of the Acts in a manner to effectuate the charging provision, and that we ought to prefer a construction which would make the machinery of assessment workable. This only means that we should permit a dissolved firm to be proceeded against because the liability had arisen before the dissolution. I have already said that it is open to the Legislature by a legal fiction to keep alive a dissolved firm for some definite purpose, I have also referred to keep the relevant provisions of the dues of the dissolved firm; I have found no provision like Section 189(1) of the Indian Income Act, 1961 in these Acts, and nothing that expressly or by implication permits action against the dissolved firm itself.

57. A Dissolved firm may be equated with a dead person; both cease to be assessable units. The apprehension that the firm may be dissolved voluntarily in order to avoid liability should not, in my opinion, make any differences in principle; a man who takes his own life is in no worse position than one who dies of a natural cause, so far as the tax dues are concerned. As for avoidance of liability, it is up to the Legislature that created the liability to prevent evasion Section 19(3) of the 1959 Act which makes the erstwhile partners of a dissolved firm jointly and severally liable for the tax (including any penalty) due to from the firm, was obviously enacted with that purpose; but making the partners liable for the dues of a dissolved firm does not mean that the dissolved firm as such can be assessed Therefore the assessment orders made and the demand notices issued in the name of the dissolved firm in the instant case must be held to be invalid.

58. The appeal is accordingly allowed with costs

ORDER

59. In view of the decision of the majority, the appeal is dismissed with costs.

M/S. LAKSHMIRATAN COTTON MILLS CO. LTD., APPELLANT v. ITS WORKMEN, RESPONDENTS.

Civil Appeal No. 1868 of 1973 (Appeal by Special Leave from the Award dated September 8, 1973 of the Industrial Tribunal (I) U.P., Allahabad in Reference 167 of 1973 published in the U.P. Gazette dated November 17, 1973), decided on May 2, 1975.

JUDGMENT

The Judgment of the Court was delivered by

BHAGWATI, J. - The appellant is a limited liability company carrying on business of running a cotton textile mill in Kanpur. The workmen employed by the appellant are affiliated to two unions, some to Lakshmi Rattan Mazdoor Panchayat others to Lakshmi Rattan Shramik Union. We are concerned in this appeal with Lakshmi Rattan Mazdoor Panchayat (hereinafter referred to as the Mazdoor Panchayat) as that is the union which has the membership of the workmen.

2. It appears that there were disputes between the appellant its workmen in regard to various industrial matters and these disputes were settled by an agreement dated November 25, 1971 made

between the appellant and the Mazdoor Panchayat under Section 6-B of the U.P. Industrial Disputes Act, 1947 hereinafter referred to as the U.P. Act. Clause (2) of the agreement provided that "the Union will not give notice for strike for one year from today's date." There were other clauses in the agreement which imposed on the appellant, but in the view we are taking, it is not necessary to spend any time in referring to them. Suffice it to state that the dispute between the parties in regard to bonus for the years 1963-64, 1964-65 and 1965-66 was left to the decision of Mohd. Ahsan, Deputy Labour Commissioner, Kanpur. But then dispute again arose between the parties as regards payment of bonus for the years 1967-68, 1968-69 and 1969-70 and this dispute was referred for adjudication to the Industrial tribunal under section 6(3) of the U.P. Act by an order dated June 8, 1971. The reference was numbered Adjudication Case No. 82 of 1971. On or about June 29, 1972, it seems, there were negotiations between parties at the intervention of labour Minister and a formula was evolved for payment of bonus for the years 1967-68, 1968-69, 1969-70. In view of this arrangement, the Mazdoor Panchayat made an application to the Industrial Tribunal on July 25, 1972 stating that the Union did not want to proceed with the dispute because the matter had been discussed between the parties in the presence of the State Minister on June 29, 1972 and during these discussions the State Minister had advised the management to pay four percent bonus to the workmen for each of the three years. Since the workmen were not prepared to pursue the reference, the Industrial Tribunal made an award dated August 14, 1972 holding that the workmen were not entitled to any bonus for the years in question. Though the award was signed on August 14, 1972, it was not published in the Gazette until October 7, 1972.

3. Even so, the Mazdoor Panchayat gave a notice dated August 18, 1972 stating that the workmen would go on strike from September 11, 1972 unless their demands were satisfied. The appellant repeatedly explained to the President and the Secretary of the Mazdoor Panchayat that the contemplated strike would be illegal and advised them to refrain from it, but that had no effect and as threatened in the notice, the workmen commenced the strike on September 11, 1972. The modus operandi followed by the workmen was that they came to the mill and entered the working shed every day during their shift hours, but did not do any work and instead, held meetings and demonstrations, shouted slogans and threatened the supervisory and management staff. The strike was, according to the appellant, illegal for two reasons. One was that the strike was commenced during the pendency of adjudicate - on Case No. 82 of 1971 before the industrial Tribunal and the other was that the strike was in breach of clause (2) of the agreement dated November 25, 1971 which was still in operation. All the workmen participated in the illegal strike, but out of them, there were fifty-three who, according to the appellant, led and incited the illegal strike and some out of these fiftythree, held meetings inside the mill previous written permission of the appellant and also should slogans and made demonstrations inside the mill premises These acts amounted to misconduct within the meaning of clauses (ii), (xx) of Standing Order 25(1)(A).

4. The appellant, therefore, issued charge-sheets against these fifty-three workmen charging all of them with misconduct under clause (ii) of Standing Order 25(1)(A) and some of them also with misconduct under clauses (xv) and (xx) of that standing order and calling upon them to appear on October 3, 1972 to offer their explanation as to why they should not be punished. These charge-sheets were issued on September 25, 1972 and they were sought to be served personally, but since these fifty-three workman refused them, they had to be served by registered post and copies were pasted on the notice board of the mill. None of these fifty-three workmen submitted individual explanation in answer to the charge-sheets issued against him, but a common explanation was furnished by the President and the Secretary of the Mazdoor Panchayat and it was signed by all the fifty-three workmen. It appears that before this common explanation was submitted by the President and the Secretary of the Mazdoor Panchayat, the Labour Commissioner had already filed criminal

cases against some of the workmen in the Court of the City Magistrate, Kanpur charging them with the offence of going on illegal strike. The President and the Secretary of the Mazdoor Panchayat, therefor, in the common explanation submitted by them on behalf of these fifty three workmen, requested the appellant that the domestic enquiry instituted by the service of the charge-sheets should be kept in abeyance until the Court gave its decision on the question whether the strike was illegal. The charges levelled against these fifty-three workmen were also denied in the common explanation furnished by the President and the Secretary of the Mazdoor Panchayat. The appellant, however, declined to adjourn the hearing of the domestic enquiry and by an endorsement dated October 14, 1972, appointed the Labour Officer to hold the domestic enquiry and requested him to submit his report as early as possible. The illegal strike and these fifty-three work men who had struck work were sitting inside the working sheds throughout their hours of shifts. The Labour Officer, therefore, sent for them in order to inform them that he had tentatively fixed the hearing of the domestic enquiry on October 18, 1972, but they refused to come. The Labour Officer consequently on October 19, 1972 fixed another date for the domestic enquiry, namely, October 21, 1972 and again sent a word to these fifty-three workmen to come and "know the date and timings fixed for each of them". They, however, refused to come, though they were inside the working sheds. The Labour Officer was ultimately constrained to put up a notice on the notice board of the mill on October 19, 1972 intimating the different timings at which the domestic enquiry would be held against different groups of persons on October 21, 1972. This notice was also published in the daily newspaper Dainik Jagran on October 20, 1972. The management of the appellant also passed orders on the same day suspending these fifty-three workmen with effect from October 20, 1972 pending the domestic enquiry. The domestic enquiry was thereafter commenced by the Labour Officer at the appointed timings on October 21, 1972, but none of these fifty-three workmen attended for the purpose of the domestic enquiry and the domestic enquiry was accordingly held ex parte. Whilst the domestic enquiry against one of the groups of workmen was in progress, at about 11.30 a.m. three workmen attended the office of the Labour Officer and gave him a letter of the Secretary of the Mazdoor Panchayat and at about 12.30 p.m. one other workman also came and handed over another letter addressed by the Secretary of the Mazdoor Panchayat to the Labour Officer. On the view we are taking, it is not necessary to refer to the contents of these two letters. Suffice it state that the principle complaint made in these two letters was that the charge-sheets issued by the appellant did not mention the names of the witness proposed to be examined on behalf of the appellant, nor did they set out the statements of the witnesses of the appellant and the charge-sheets were, therefore, illegal and invalid. The management of the appellant took the view that the complaint in these two letters was unfounded and passed appropriate orders. The domestic enquiry continued and ultimately, after the conclusion of the domestic enquiry, the Labour Officer submitted to the management seperate reports in respect of each group of workmen finding them guilty of the misconduct charged against them. The management agreed with the findings recorded in the reports of the Labour Officer and on the same day, that is October 21, 1972 issued notices to these fifty-three workmen calling upon them to show cause by 10 a.m. on October 23, 1972 as to why they should not be dismissed from service. These notices along with the relevant reports of the domestic enquiry were pasted on the notice board of the mill on the same day, namely, October 21, 1972. None of these fifty-three workmen submitted an explanation showing cause against the proposed punished of dismissal and the appellant accordingly passed orders on October 23, 1972 dismissing these fifty-three workmen from service.

5. It appears that in evening of October 23, 1972 a meeting took place between the representatives of the Mazdoor Panchayat and the appellant in the presence of the Chief Minister of Utter Pradesh and in the course of this meeting, it was decided by way of settlement that the workmen should

withdraw the strike unconditionally from October 24, 1972 and the appellant should pay to the workmen eight days' deducted wages and one year's old bonus before Diwali, that is November 4, 1972, and regards other matters of dispute including dismissal of these fifty-three workmen, the Chief Minister should give his decision which would be binding on the parties. The strike was accordingly withdrawn on October 24, 1972. On November 1, 1972 the Chief Minister gave his decision directions that thirty-one out of these fifty-three workmen who had been dismissed from service should be reinstated and that so far as the remaining twenty-two workmen were concerned, their case should be referred to the Industrial Tribunal for adjudication. One of these twenty-two workmen, however, settled the dispute and accepted his dues in full and final settlement of his claim against the appellant. That left only twenty-one workmen and with regard to them, a reference was made to the Industrial Tribunal on November 28, 1972 for adjudication of the dispute whether the appellant had terminated their services in an improper of illegal way from October 24, 1972 and if so, to what benefit compensation they were entitled.

6. Whilst this reference was pending before the Industrial Tribunal and before the recording of the evidence commenced, an application dated March 12, 1973 was made by the appellant to the Industrial Tribunal that if for any reason the Industrial Tribunal came to the conclusion that the domestic enquiry culminating in the dismissal of these twenty-one workmen was improper or was not in accordance with law, the appellant should be given an opportunity to prove its case on merits before the Industrial Tribunal and in that event it may be allowed to file and prove additional documents. The Industrial Tribunal passed on the same day the following order on this application :

Both the parties present. They filed their documents. An application was presented by the Employers on which orders would be passed at appropriate time. 10.4.73 is fixed for final hearing on which date both parties would produce their witnesses. Both the parties thereafter led evidence on the question whether the strike was illegal and the domestic enquiry held by the Labour Officer was in compliance with the principles of natural justice and in conformity with the requirements of the Standing Orders. Since it was stated by the Industrial Tribunal that an order would be passed on the application dated March, 12, 1973 at the appropriate time, the appellant preferred to wait until the passing of the order on that application and did not lead any evidence to show that, in any event, these twenty-one workmen were guity of the misconduct charged against them and their dismissal was, therefore, justified. The Industrial Tribunal, however, failed to pass any other on this application and pro ceeded to make its award dated September 8, 1973 disposing of the reference.

7. The Industrial Tribunal by its award, held that the strike of the workmen was not illegal on either of the two grounds on which it was claimed to be so. It was not illegal under clause (e) of Section 65 of the U.P. Act because it was commenced after the proceeding in Adjudication Case No. 82 of 1971 had concluded by the making of the award on August 14, 1972, nor was it illegal under clause (f) of that section because, though clause (2) of the agreement dated November 25, 1971 provided that the union will not give any notice for strike for one year, the workmen could not be held to this clause, when the appellant itself had committed breaches of its obligations under that agreement. So far as the domestic enquiry leading to the dismissal of these twenty-one workmen was concerned, the Industrial Tribunal held that it was invalid, first, because it did not afford a proper and adequate opportunity to these twenty-one workmen to repel the charges of misconduct levelled against them; secondly because the charge-sheets issued against these twenty-one workmen were not in conformity with the requirements of clause (a) of Standing Order 26 and thirdly, because the notices issued to these twenty-one workmen after receipt of reports of the enquiry from the Labour Officer were not served upon them, nor were they given a reasonable opportunity to show cause against the proposed punishment of dismissal. The Industrial Tribunal also observed that when out of fifty-three

workmen, who were dismissed from service, thirty one were reinstated by the appellant pursuant to the decision of the Chief Minister, there was no reason for discriminating against these twenty-one workmen and they were also, therefore, entitled to be reinstated. The Industrial Tribunal accordingly held that the action of the appellant in terminating the services of these twenty-one workmen was improper and illegal and directed that these twenty-one workmen should be reinstated with effect from the date of their suspension and should "be paid full wages for the period of suspension and from the date of dismissal to the date of their resuming duty". The appellant thereupon brought the present appeal against the award of the Industrial Tribunal by special leave obtained from this Court.

8. The first question that arises for consideration is whether the strike which was commenced by the workmen from September 11, 1972 and in which the twenty-one workmen concerned in this appeal admittedly participated was an illegal strike. Section 6T of the U.P. Act declares inter alia that a strike shall be illegal if it is commenced in contravention of Section 6S. Section 6S in its various clauses sets out the circumstances in which a workmen is prohibited from going on strike. Clauses (e) and (f) of Section 6S are material as these are the clause on which reliance was placed on behalf of the appellant in support of its contention that the strike was illegal. We will first refer to clause (e). That clause, so far as material, provides that no person employed in an industrial establishment shall go on strike between the commencement and conclusion of the proceeding before a tribunal, if he is concerned in the dispute which is the subject-matter of such proceeding. The workmen went on strike from September 11, 1972 and therefore, in order to attract the inhibition of clause (e) it would have to be shown by the appellant that on September 11, 1972 and subsequent dates on which the strike continued, a proceeding was pending before the Industrial Tribunal in respect of a dispute in which the striking workmen were concerned. The appellant contended that the proceeding in Adjudication Case No. 82 of 1971 commenced on June 8, 1971 when the reference was made and continued until November 6, 1972 when the award disposing it off became enforceable, and therefore, the strike which commenced on September 11, 1972 and continued thereafter was illegal the view taken by the Industrial Tribunal, however, was that since the award was signed on August 14, 1972, the proceeding in adjudication Case No. 82 of 1971 came to an end on that day and thereafter there could be no impediment in the way of the workmen in going on strike on the ground of pendency of proceeding in the Industrial Tribunal. We cannot assent to this view which found favour with the Industrial Tribunal. We think that the contention of the appellant is correct and must be accepted. Section 6S lays down when a proceeding before a tribunal shall be deemed to have commenced and when it shall be deemed to have concluded. It says that a proceeding before tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication and such proceeding shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6A. Sub-section (1) of Section 6A provides that an award shall become enforceable on the expiry of thirty days from the date of its publication under section 6 Here, the award in Adjudication Case No. 82 of 1971 was published under Section 6 on October 7, 1972 and it, therefore, became enforceable on November 6, 1972. The proceeding in Adjudication Case No. 82 of 1971 must in the circumstances be deemed to have commenced on June 8, 1971 when the reference was made and be deemed to have concluded on November 6, 1972 when the award became enforceable. The strike was commenced and continued between these two dates and the striking workmen were admittedly concerned in the dispute which formed the subject-matter of this proceeding. The strike must, therefore, necessarily be held to be illegal under clause (e) of Section 65 read with Section 6T. Indeed, it must be said in fairness to Mrs. Kapur, learned Counsel on behalf of the workmen, that she right did not dispute this position. On this view, it becomes unnecessary to consider whether the action of the workmen in going on strike was in contravention

also of clause (f) of Section 65 and we need not state the facts bearing on that clause nor enter upon a discussion of that question.

9. We must then proceed to consider whether the domestic enquiry held by the appellant culminating in the dismissal of these twenty-one workmen was a proper enquiry conducted in accordance with the principles of natural justice and in conformity with Standing Order 26. If the domestic enquiry was in breach of the requirements of Standing Order 26 or in violation of the principles of natural justice, it would be vitiated and the dismissal of these twenty-one workmen consequent upon it would be invalid. The Industrial Tribunal, as already pointed out, found, in the main, three infirmities in the domestic enquiry. We need not discuss the first two infirmities - whether the view of the Industrial Tribunal in regard to them was correct or not - as we find that the Industrial Tribunal was right in holding that the third infirmity vitiated the domestic enquiry. The view taken by the Industrial was that the domestic enquiry was invalidated because the notices issued by the appellant to these twenty-one workmen after receipt of reports of the Labour Officer finding them guilty of the misconduct charged against them were not served on them, nor were they given a proper and adequate opportunity to show cause why the punishment of dismissal should not be imposed on them. The learned Counsel appearing on behalf of the appellant made a heroic attempt to assail the correctness of this view, but we are afraid this attempt cannot succeed. Clause (e) of Standing Order 26 provides that where it is proposed to inflict the punishment of dismissal for any misconduct, the workman shall be given notice in writing to show cause within a specified period why the proposed punishment may not be awarded and along with such notice. He shall be given a copy of the findings of the enquiring officer on the charge or charges. This clause clearly contemplates a notice to be given to the workman for the purpose of enabling him to show cause within a specified period as to why the proposed punishment of dismissal should not be inflicted on him the notice is required to be given not as a mere idle formality it has a meaning and a purpose. It is intended to provide opportunity to the workman to show cause against the proposed punishment of dismissal. The workman may show that the findings of the enquiring officer are not justified on the evidence on record or that even if the findings are justified they do not warrant the extreme penalty of dismissal from service having regard to the nature or gravity of the misconduct, the past record of the workman and any other extenuating circumstances. The notice must, therefore, give a reasonable opportunity to the workman. That is a condition precedent which must be satisfied before an order of dismissal can be validly passed by the employer.

10. Here in the present case, it is obvious from the various timings notified to the erring workmen at which the domestic enquiry would be held against different groups of workmen, that the domestic enquiry against the first group of workmen must have commenced at 10 a.m. and against the last group of workmen, it must have ended not earlier than 9.15 p.m. on October 21, 1972. The Labour Officer must then have prepared his reports setting out the conclusions reached by him on the evidence recorded at the domestic enquiry and these reports must thereafter have been forwarded by the Labour Officer to the Manager of the appellant. The Manager of the appellant, on receipt, of these reports from the Labour Officer, must have considered the cases of these different groups of workmen in the light of these reports and the evidence recorded at the domestic enquiry for the purpose of satisfying himself prima facie that the workmen were guilty of the misconduct charged against them, before issuing notices calling upon them to show cause why they should not be dismissed from service. This whole procedure must have taken a certain amount of time and the show-cause notice inter alia to the twenty-one workmen concerned in this appeal, could, therefore, have been issued at the earliest not before 10.30 p.m. on October 21, 1972. Now admittedly no attempt was made to serve the show-cause notices on any of these twenty-one workmen and the only mode in which service was purported to be effected was by pasting the show-cause notice

board of the mill. We may point out that this mode of service adopted by the appellant was wholly unjustified and that in itself introduces a serious infirmity in the domestic enquiry, unless it can be shown by the appellant that these twenty-one workmen were otherwise aware of the contents of the show-cause notices and no prejudice was occasioned to them by reason of non-service of show-cause notices. Of that, however, there is no evidence as there is nothing to show that these twenty-one workmen read the show-cause notices on the workmen of the appellant, including these twenty-one workmen, were on strike and no presumption can, therefore, be drawn that they would look at the notice board and read the show-cause notices pasted on it. But even if we assume in favour of the appellant that these twenty-one workmen must have looked at the notice board and seen what was pasted there, it is clear from what is stated above that the show-cause notices could not have been pasted on the notice board before 10.30 p.m. on October 21, 1972. If that be so, the earliest that these twenty-one workmen could possibly come to know of the show-cause notices would have been the next day, that is October 22, 1972, but that day happened to be a closed day for the mill and none of these twenty-one workmen could, therefore, be expected to be present and was in fact present at the mill, so that he could come to know about the show-cause notices by looking at the notice board. These twenty-one workmen than October 23, 1972 when the came to the mill in the morning for the purpose or sit in strike. But the time specified in the notices within which these twenty-one workmen were required to show cause against the proposed punishment of dismissal was 10 a.m. on October 23, 1972 and that would mean that they had hardly a couple of hours within which to show cause against the action proposed to be taken against them. It does not need much argument to come to the conclusion that this could hardly be regarded as affording a reasonable opportunity to these twenty-one workmen to show cause against the proposed punishment of dismissal. There can, therefore, be no doubt that there was not only non-compliance with the requirements of clause (c) of Standing Order 26 but also infraction of the principles of natural justice. The orders of dismissal passed against these twenty-one workmen could not, in the circumstances, be justified on the basis of the domestic enquiry held by the appellant.

11. But that does not mean that the workmen are entitled to succeed in the reference. It is now well settled as a result of several decisions of this Court, of which we may mention only two, namely, Oriental Textile Furnishing mills, Amritsar v. Labour Court, Jullundur ((1972) 1 SCR 490 : (1971) 3 SCc 646) and Delhi Cloth & General Mills Co. v. Ludh Budh Singh ((1972) 3 SCR 29 : (1972) 1 SCC 595), that even where it is found that the domestic enquiry held by the employer is due to some omission or deficieny, not valid, the employer can nonetheless support the order of dismissal by producing satisfactory evidence and proving misconduct, when the dispute arising out of the order of dismissal is referred for industrial adjudication. This Court pointed out in Oriental Textile Finishing Mills, Amritsar v. Labour Court, Jullunder (supra) that in such cases (SCC p. 652, para 9)

the evidence which is produced to substantiate and justify the action taken against the workmen is not as stringent as that which is required in a court of law.

What is required is "that the evidence should be such a should satisfy the Tribunal that the order of termination is proper". It was for this reason that in the present case the appellant made the application dated March 12, 1973 praying that if for any reason the Industrial Tribunal was inclined to take the view that the domestic enquiry held by the appellant was improper or not according to law, the appellant should be given an opportunity to prove its case on merits and for that purpose file and prove additional documents. This was clearly a request to the Industrial Tribunal to try the issue as to the validity of the domestic enquiry as preliminary issue and if the finding on this preliminary issue was against the appellant, to give an opportunity to the appellant to adduce; evidence for the purpose of establishing that the orders of dismissal were justified. Now, the

question as to what is the procedure to be followed by the Industrial Tribunal when such a request is made by the employer, came up for consideration before this Court in Delhi Cloth & General Mills Co. Ludh Budh Sing (supra). This Court, after discussing the previous decisions on the subject, culled out certain principles which, according to it, emerged from a consideration of these decisions. Theses principles were formulated in the form of seven propositions and of them, the fourth and fifth propositions are material for our purpose : [SCC pp. 616-617 para]

4. When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding, on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal in the first instance, as preliminary issue the validity of the domestic inquiry. If its finding on the preliminary issue is in favour of the management. But, if the finding on he preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the letter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as prima a facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper, It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the tribunal itself being satisfied, on evidence adduced before it, that he was not guilty of the alleged misconduct.

(5) The management has got right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievances that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceeding and it has to decide whether the proceeding have been held properly and the findings recorded therein are also proper.

It will, therefore, be seen that when the application dated March 12, 1973 was made by the appellant, the Industrial Tribunal should have either declined to try the issue as to the validity of the domestic enquiry as a preliminary issue and directed the appellant to lead its evidence simultaneously on the issue as to the validity of the domestic enquiry as also in regard to the misconduct of the workmen so as to justify its action, or divided to deal with the validity of the domestic enquiry as a preliminary issue and if the finding on the preliminary issue went against the appellant, then to give an opportunity to the appellant to adduce additional evidence to justify its action. Strangely enough, however, the Industrial refused to give either of these two directions on the application of the appellant and merely passed an order that on the application "orders would be passed at the appropriate time". We fail to see what "appropriate time" the Industrial Tribunal had in mind. It seems that "appropriate time" never arrived, because in fact no order was made on that application by the Industrial Tribunal at any time and without passing such an order the award was made. It would be perfectly intelligible if the Industrial Tribunal did not pass an order on the

application immediately, but there can be little doubt that it should have passed the appropriate order or the application sufficiently before the recording of the evidence commenced. The cryptic remark made by the Industrial Tribunal that it would pass an order on the application at "appropriate time" could well lead the appellant to believe that the Industrial Tribunal would first decide the issue as to the validity of the domestic enquiry and if its finding went against the appellant, it would give an opportunity to the appellant to lead further evidence. The award made by the Industrial Tribunal without giving an opportunity to the appellant to lead addition evidence to establish that the workmen were guilty of misconduct and that the action of the appellant in dismissing them was justified, cannot, therefore, be sustained.

12. It may be pointed out that one of the contentions which appealed to the Industrial Tribunal in setting aside the orders of dismissal against these twenty-one workmen was that originally orders of dismissal were passed against fifty-three workmen, but out of them, thirty-one were reinstated and there was no reason why these twenty-one workmen, whose cases were identical, should be treated differently and denied reinstatement. We do not think there is any force in this contention. Out of fifty-three workmen against whom orders of dismissal were passed. Thirty-one had to be restated by the appellant because of the decision of the Chief Minister which, it was agreed by way of settlement, would be binding on both the parties. But that could not be a ground for reinstatement of these twenty-one workmen whose cases were differentiated by the Chief Minister himself and in regard to whom reference was made for industrial adjudication. There would have been no need for making reference for industrial adjudication in case of these twenty-one workmen, if they were to treated, straightway, without any further enquiry into their respective cases, on a par with the thirty-one workmen who were directed to be reinstated.

13. We, therefore, allow the appeal, set aside the award made by the Industrial Tribunal and remand the matter to the Industrial Tribunal with a direction to allow the appellant and the workmen to lead such additional evidence as may be relevant on the question whether these twenty-one workmen were guilty of the misconduct charged against them and the orders of dismissal passed against them were justified. Mrs. Kanpur on behalf of the workmen appealed to us that even though the award of the Industrial Tribunal is being set aside by us, we should give a direction to the appellant to continue these twenty-one workmen, who have been reinstated recently pursuant to the award of the Industrial Tribunal. But we are afraid we cannot do so. It would indeed by beyond our jurisdiction to give any such direction when the award under which these twenty-one workmen are reinstated is set aside by us. So far as the question of costs of this appeal is concerned, we think that a fair and proper order of costs would be that each party should bear and pay its own costs of the appeal.

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