

# PUNJAB AND HARYANA HIGH COURT

Ganga Ram Suraj Parkash

Vs

State of Punjab

(M Singh, C.J. Shamsheer Bahadur, J.)

24.10.1962

## ORDER

**Shamsheer Bahadur, J.**

1. This judgment will dispose of a grant of ten petitions under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act), all raising a common question of law stated by the Financial Commissioner as a result of the directions given to him by this Court under Sub-section (3) of Section 22 of the Act. In petitions *Ganga Ram Suraj Parkash v. The State*, S.T.R. No. 4 of 1961, *Sultani Mal Amar Chand v. The State*<sup>1</sup>, *Vijay Bharat Oil Mills v. The State*<sup>2</sup>, *Sansari Mal Jagdish Chand v. The State*<sup>3</sup>, *Man Singh Gian Singh v. The State*<sup>4</sup>, and *Hira Nand Daulat Ram v. The State*<sup>5</sup>, the Financial Commissioner, Punjab, by his order of the 30th of March, 1961, has referred the following question for the opinion of this Court: Having found that notification No. 3483-E. & T.-54/723(CH) of 5th August, 1954, had the effect of imposing a tax on the sale of edible oils, which were declared tax-free before and which had been declared by Act 52 of 1952 to be essential for the life of the community and that the said notification had never received the assent of the President of India, is the Financial Commissioner justified in holding that the notification of 5th August, 1954, did not constitute law made by the Legislature of the State.

2. In the other set of four petitions, *Sansari Mal Puran Chand v. The State*, S.T.R. No. 13 of 1961, *Hira Nand Daulat Ram v. The State of Punjab*<sup>6</sup>, *Ganga Ram Suraj Parkash v. The Punjab State*<sup>7</sup>, and *Hira Nand Daulat Ram v. The State of Punjab*<sup>8</sup>, the Financial Commissioner, Punjab, by his order of the 31st of August, 1961, has referred the following question for the opinion of this Court:-

The question which arises in all these cases is whether a notification issued by the Punjab Government dated the 5th of August, 1954, whereby exemption from sales tax granted by the Government in respect of certain edible oils was abolished in the case of such edible oils

produced in ghanis run by mechanical process was *intra vires*.

3. Though the form of question is somewhat different in the two sets of references, the substance of the dispute in all these cases touches the validity of the notification of the 5th of August, 1954. The petitioners in all the ten cases are commission agents and have been transacting business in edible oils. In the case of six petitions, the assessment has been made for the years 1954-55 and 1955-56, while in the set of the remaining four cases the assessment years are those of 1955-56 and 1956-57.

4. To appreciate the point in controversy it is necessary to state a few facts. The East Punjab General Sales Tax Act (East Punjab Act No. 46 of 1948), as it was then called, was enacted on 15th of November, 1948. The charging section of this Act is in these terms :-

5. (1) Subject to the provisions of this Act, there shall be levied on the taxable turnover every year of a dealer a tax at such rates as the State Government may by notification direct....

5. under Sub-section (1) of Section 6 of the Act was set out a list of tax-free goods in the Schedule and under Sub-section (2) the State Government was empowered to add to or delete from the Schedule "after giving by notification not less than three months' notice of its intention so to do". By a notification of the Punjab Government No. 3483-E & T-51/2518 dated 30th May, 1951, "edible oils" was added as item No. 57 of the Schedule in the list of tax-free goods. The entry was made in this form:-

57. Edible oils produced from sarson, toria, and til in ghanis but not in hydrogenated form, e.g., vegetable ghee, vanaspati, etc.

6. Thus, an immunity was enjoyed by the dealers in edible oils from the payment of sales tax. A later notification of the Punjab Government No. 3483-E & T-54/723 (CH), dated 5th August, 1954, however, replaced entry No. 57 in the Schedule by the following entry:-

57. Edible oils produced from sarson, toria and til in indigenous Kohlus worked by animal or human agency when sold by the owners of such Kohlus only.

7. In other words, edible oils produced from til ghanis were excluded from the purview of the tax-free goods. It is in pursuance of this notification that the petitioners have been assessed to sales tax and it is their case that this imposition is invalid and *ultra vires* being in contravention of Section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (Act No. 52 of 1952), which was passed by the Parliament on 9th of August, 1952. under Section 3 of this Act, "no law made after the commencement of this Act by the Legislature of a State

imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent." under Section 2, the goods specified in the Schedule to the Act have been declared to be essential for the life of the community. Item No. 5 of the Schedule consists of "edible oils and oilseeds from which edible oils are extracted." It is contended on behalf of the petitioners that after the 9th of August, 1952, no tax could be imposed on edible oils by any law made by the Legislature of a State without it having received the President's assent. It is not disputed that the impugned notification of 5th of August, 1954, was never submitted to the President for assent and in such a situation no tax could be imposed on edible oils. Having failed to obtain redress from the Financial Commissioner the petitioners approached this Court under Section 22(2) of the Punjab General Sales Tax Act and the Financial Commissioner had been directed by this Court to state a case. The Financial Commissioner has accordingly referred these cases for opinion of this Court.

8. Before setting out the contentions of the learned counsel for the petitioners it would be well to make mention of the few legislative changes which have been made in the Act. As a result of the decision of their Lordships of the Supreme Court in *In re Delhi Laws Act, 1912* [1951] S.C.R. 747, any law which delegates the legislative powers to the executive is considered ultra vires and unconstitutional. Section 5 of the Act having given unfettered authority to the State Government to levy sales tax at such rates which it may by notification direct was amended by Punjab Act No. 19 of 1952 and the amended section with retrospective effect stated that the rate should not exceed two naye paise in a rupee. It may be observed in parenthesis that this rate has further been amended by Punjab Act No. 16 of 1961 by the words "not exceeding five naye paise in a rupee". It is contended by the learned counsel that the East Punjab General Sales Tax Act, because of the unfettered discretion which it gave to the State Government to levy tax at whatever rate it liked, was ultra vires in its entirety and consequently there was no authority vested in it even to make any changes in the Schedule contemplated by Section 6. The Act which, according to the counsel, was unconstitutional acquired validity only after 'the passage of the Punjab Amending Act No. 19 of 1952. It is further submitted that the Act, after the amendment in 1952, came to be governed by the overriding provisions of the Central Act passed by Parliament on 9th of August, 1952 (Act No. 52 of 1952) and consequently no tax on goods which were declared essential for the life of the community, as edible oil was, could be imposed by a Legislature of the State without obtaining the assent of the President.

9. On behalf of the State, it is submitted that the Act having come into force before the enactment of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, would continue to be enforceable as an existing law and consequently any notification made in

pursuance of Section 6 of the Punjab General Sales Tax Act, 1948, would be valid and binding.

10. The learned counsel for the petitioners submits that the Act was invalid from its very inception and even before the ruling of the Supreme Court given in the case of the Delhi Laws Act [1951] S.C.R. 747. He has invited our attention to *Jatindra Nath Gupta v. Province of Bihar and Ors*<sup>9</sup>. in which their Lordships of the Federal Court (Sir Harilal Kania, C.J., Sir Fazl Ali, Patanjali Sastri, Mehr Chand Mahajan and Mukherjea, JJ.) had expressed unequivocally that even under the provisions of the Government of India Act there could be no delegation of legislative power to the executive. Any legislation which vested unfettered legislative powers in the executive would be ipso facto void and unconstitutional. It can admit of no doubt whatever that Section 5 of the Act has given an unlimited power to the executive to levy sales tax at the rate it thinks best. The counsel contends that the entire Act became invalid and its provisions could not be invoked for levying sales tax till the defect was remedied by the amendment which was introduced by Punjab Act No. 19 of 1952. On behalf of the State, it is argued that Section 5 alone was invalid till 1952, but notifications could still be issued under Section 6 which as an existing law was still capable of enforcement. It is submitted that the prohibition placed by Section 3 of Act No. 52 of 1952 had formed part. of the Constitution as Clause (3) of Article 286 of the Constitution of India at the relevant time and was to this effect:- No law made by the Legislature of a State imposing or authorizing the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

11. Such a law was not enacted till 1952 and consequently Section 6 of the Act on account of its continuing validity justified the impugned notification which was made by the State Government on 5th of August, 1954. The decision of their Lordships of the Supreme Court in *Sardar Soma Singh and Ors. v. State of Pepsu and Union of India*<sup>10</sup>, has been relied upon. It was held in this case that "Clause (3) of Article 286 contemplates a post-Constitution law, for it must be a law made by a 'Legislature of a State' which must refer to a Legislature of a State created by the Constitution." Mr. Chetan Das argued that the Act, having come into force before the Constitution, continued to remain valid, at any rate those provisions of it which did not become invalid in pursuance of the ruling given by the Supreme Court in Delhi Laws Act case A.I.R. 1951 S.C. 332).

12. The point for decision really turns on the question whether Section 5 of the Act can be severed from its other provisions. Section 5, as would be seen, is the charging section and if the tax itself is void or unconstitutional the other provisions of the Act which are merely ancillary to it cannot stand. *In R. M. D. Chamarbaugwalla v. Union of India*<sup>11</sup> their Lordships of the Supreme

Court laid down certain tests for determining whether the impugned provisions are severable in their application from the valid parts. The first three of these tests at pages 950 and 951 of the Report may be usefully reproduced:-

(1) In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the Legislature that is the determining factor. The test to be applied is whether the Legislature would have enacted the valid part if it had known that the rest of the statute was invalid.

(2) If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable.

(3) Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.

13. The contents of the Act may be analysed very briefly to see whether its other provisions are severable from those of Section 5. Section 2 embodies the various definitions. In Section 3 the taxing authorities are specified. Section 4 deals with the incidence of taxation. Section 5 as said before, is the charging section and defines the taxable turnover. Section 6 provides for a Schedule of tax-free goods which the State Government has the power from time to time to add to or delete from. Section 7 deals with registration of dealers and Section 8 with voluntary registration of dealers. Section 9 has now been deleted. Section 10 deals with the mode of payment of tax and the furnishing of returns. Sections 11, 12 and 13 deal with the methods of assessment, refunds and accounts, and Section 14 with the production and inspection of accounts and documents. Section 15 authorizes the Commissioner under certain conditions to delegate his powers. Sections 16 and 17 deal with information to be furnished regarding change of business, transfer of business and allied matters. The remaining provisions deal with appeals, revisions and other allied matters. It would be seen that if Section 5 is taken out of the Act there really is nothing which can be done independently of it. If no tax at all can be levied there would be no point in having a Schedule of tax-free goods and likewise there would be no tax-free goods or the registration of firms or indeed any other matter which is dealt with in the other provisions of the Act. The charging section is the kernel of the entire enactment and without it the remaining provisions would become inchoate or ineffective. It was held by their Lordships of the Supreme Court in *Kunnathat Thathunni Moopil Nair etc. v. State of Kerala and Anr*<sup>12</sup>. that no question of

severability arises where the provisions of the taxing section itself cannot be sustained on the ground of constitutionality. The remaining sections of the enactment cannot survive the invalidity of the main provision. It seems to us, therefore, that no notification could issue under Section 6 when the shadow of invalidity had been cast on the main taxing provision, namely Section 5 of the Act. In a recent decision of the Supreme Court in *Indore Iron and Steel Registered Stockholders' Association (P.) Ltd. v. State of Madhya Pradesh and Ors*<sup>13</sup>. it was observed by of the Constitution of India, as it stood in the year 1950, could be successfully invoked if three conditions are satisfied, namely :-

(1) that the impugned law must be one which is made by the Legislature of a State which came into existence under and after the Constitution ;

(2) that the impugned law must impose or authorise the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law .to be essential for the life of the community ; and (3) that the impugned law must have been passed subsequent to the Constitution in the sense that the office of the President must have come into existence.

14. The validity of the impugned law can be successfully challenged only if these three conditions are present. In that case a notification had been issued under the Madhya Bharat Sales Tax Act, 1950, imposing tax in the territory of Madhya Bharat on the sale of goods manufactured from iron and steel with effect from 1st of May, 1950. It was held that as the enactment of Parliament had followed the impugned legislation it would not affect retrospectively the validity of the said enactment. In the present instance, Punjab Act No. 19 of 1952 had been passed after the interdict had been placed by Parliament. It matters not that the impugned notification purports to have been issued under Section 6 of the Act which was passed in 1948. In truth and substance the Act did not become valid till the amendment of 1952 which gave life and limbs to it. We are not impressed by the argument that the notification is not a law which has been made by the Legislature of the State and, therefore, the assent of the President could be dispensed with. The Act which can sustain the notification is the amending enactment of 1952 and this having been passed after the Central Act No. 52 of 1952 the impugned notification cannot be justified.

15. The answer to the questions formulated by the Financial Commissioner in both sets of cases must, therefore, be in the negative.

Mehar Singh, J.

16. I agree.

Cases Referred.

1S.T.R. No. 5 of 1961  
2S.T.R. No. 7 of 1961  
3S.T.R. No. 8 of 1961  
4S.T.R. No. 9 of 1961  
5S.T.R. No. 10 of 1961  
6S.T.R. NO. 14 of 1961  
7S.T.R. No. 15 of 1961  
8 S.T.R. NO. 16 of 1961  
9[1949] 2 F.C.R. 595  
10[1954] S.C.R. 955  
11[1957] S.C.R. 930  
12A.I.R. 1961 S.C. 552  
13[1962] S.C. 191