from the Sabha area in the context of section 4(2) of the Gram Panchayat Act.

(22) Another argument of the learned counsel for the petitioner is that the extension of the municipal area does not *per se* make the petitioner liable for payment of octroi and for this purpose it is necessary that the procedure prescribed under the Punjab Municipal Act for the levy of octroi is followed afresh for that area. Reliance has been placed on *The Atlas Cycle Industries Ltd.,* v. *The State of Haryana and another,* (5). When confronted with the amendment of sub-section (4) of section 5 of the Act by Punjab Act 24 of 1973, by insertion of a word 'notification' therein and the rule laid down in a Division Bench judgment of this Court in *Surindera Steel Rolling Mills* v. *The State of Punjab etc.,* (6), the learned counsel did not press this argument.

(23) The last contention of the learned counsel for the petitioner is that sections 61 and 62 of the Punjab Municipal Act are *ultra vires* the Constitution as they suffer from the vice of excessive delegation of legislative power. This argument was raised and repelled in a Division Bench judgment of this Court in Messers *Mohan Meakin Breweries Ltd., Solan* v. *Municipal Corporation of Jullundur City and others,* (7). In view of this Shri J. N. Kaushal, learned counsel for the petitioner, abandoned this contention as well.

(24) In the result, both the writs fail and are dismissed with costs.

H.S.B.

Before S. S. Sandhawalia C.J. and S. S. Dewan, J.

SHREE GANESH OIL AND RICE MILLS and others,—*Petitioners.*

versus

STATE OF HARYANA and another,—*Respondents.*

Civil Writ No. 1925 *of* 1975.

March 20, 1979.

Haryana General Sales Tax Act (20 *of* 1973) *as amended by the Haryana General Sales Tax (Second) Amendment Act* (34 of 1976)—*Sections* 6, 16-*A and* 24—*Retrospective operation of the amendment*

(5) A.I.R. 1972 S.C. 121.
(6) 1977 P.L.R. 718.
(7) 1979 Simla Law Journal 21.

Act—Whether ultra vires *the powers of the State Legislature—Amendments made by the said Act—Whether in the nature of 'small repairs'.*

Held, that the legislature is fully competent to amend an Act passed by it with a view to remove any infirmity or lacuna or to cure inadvertent defects therein which may come to its notice in the course of the working of the Act and do so retrospectively and that the amendments made for such purposes are within the concept and scope of what are called 'small repairs'. The amendments, therefore, made retrospectively in section 24 of the Haryana General Sales Tax Act, 1973 by the Haryana General Sales Tax (Second) Amendment Act, 1976 and by incorporating a new section in the form of section 16A in the said Act have done no more than to remove the lacuna in the original Act. The objects and reasons responsible for the amendments clearly show that the amendments have been necessitated to over-come certain lacunae experienced in the working of the Act. As such the amendments made retrospectively by the amending Act being in the nature of 'small repairs' are within the competence of the State Legislature. (Paras 9, 11 and 12).

Case referred by Division Bench consisting of Hon'ble Mr. Justice O. Chinnappa Reddy and Hon'ble Mr. Justice Gurnam Singh on 3rd August, 1977 to a Bench of Five Judges for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. S. Dewan finally decided the case on 20th March, 1979.

Amended writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court be pleased to issue:—

(a) *rule nisi ;*

(b) *a writ of Mandamus declaring that paddy being agricultural produce is exempted under Schedule 'B' and is not liable to purchase tax ;*

(c) *a writ of Mandamus further declaring the insertion of paddy on Schedule 'C' of the Act as* ultra vires *the Constitution of India and invalid and inoperative ;*

(d) *declaring no purchase tax is leviable under the Act on paddy ;*

(e) *petition be allowed with costs ; and*

(f) *any other writ, order or direction which this Hon'ble Court may deem fit and appropriate in the circumstances of the present case and to which the petitioners may be deemed entitled to.*

H. L. Sibal, Sr. Advocate with R. P. Sawhney Advocate.

S. C. Mohunta, A. G., Haryana.

JUDGMENT

S. S. Dewan, J.

(1) This judgment will dispose of four writ petitions Nos. 1925, 1967, 2162 and 2132 of 1975 which are constituted of similar facts and involve common questions of law.

(2) Material facts are not in dispute. The petitioner in each case is carrying on the business of sale and purchase of goods in the State of Haryana. Each one of them is a registered dealer and makes purchases of paddy and husks it into rice and is thus the last purchaser of paddy. The petitioners assert that they were not liable for the payment of purchase tax in respect of the purchases of paddy made by them under the Haryana General Sales Tax Act, 1973 as amended by Haryana General Sales Tax (Second Amendment) Act, 1976 (hereinafter called the Act and the amending Act respectively). The prayer consequently made is that the concerned assessing authorities be directed to desist from initiating proceedings or going on with a view to assess them to purchase tax.

(3) Before the contentions raised on behalf of the petitioners are noticed, it seems appropriate to set out here the relevant provisions of the Act and the amending Act.

(4) Omitting what is not relevant to the controversy, section 6 of the Act providing for the incidence of taxation runs thus—

"6. (1) Subject to other provisions of this Act, every dealer whose gross turnover during the year immediately proceeding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales and purchases effected after the coming into force of this Act:'

Provided that this sub-section shall not apply to a dealer who deals exclusively in goods specified in Schedule B.

(2) * * * *

Explanation.—For the purposes of sub-sections (1) and (2) "purchase" shall mean the purchase of declared goods, goods specified in Schedule C and goods falling under section 9."

Schedule C appended to the Act included paddy as an item of goods subject to the levy of purchase tax. Stage of its levy was then left undetermined.

Section 24 of the Act relates to the rights of a registered dealer. Sub-section (i) of the section reads:—

"24. Every dealer registered under this Act shall be entitled to purchase, without payment of tax, the following goods within the State, on the authority of his certificate of registration by giving to the dealer, from whom the goods are purchased, a declaration, duly filled and signed by him, containing such particulars, on such form, obtained from such authority, as may be prescribed, and in case such form is not available with such authority, in such manner as may be prescribed,—

(a) * * * *

(i) resale in the State; or"

By section 2 of the amending Act, a new section 16A was inserted in the Act which is in these terms:—

"16A. *Tax on goods specified in Schedule C.*—Tax in case of goods specified in Schedule C shall be leviable and payable on the purchase thereof at the stage indicated in the said Schedule."

(5) By section 3 of the amending Act for the words "without payment of tax" occurring in section 24 of the Act, the words "without payment of sales tax" were substituted.

(6) By section 5 of the same Act, Schedule C to the Act was substituted. While retaining the goods as they were before the amendment, the schedule as substituted indicated the stage of levy of the purchase tax on them, the same being the last purchase within the State by a dealer as far as the purchase of paddy was concerned.

(7) By sub-section (2) of section 1, sections 2, 3 and 5 of the amending Act were given retrospective operation from 5th May, 1973, the date when the Act came to be enforced.

(8) It follows from the amendments made that the petitioners were beyond any doubt exposed thereby to the liability for the payment of purchase tax on the paddy purchased by them and retrospectively from the date of the enforcement of the Act.

(9) The learned counsel appearing for the petitioners contended that the State Legislature was not competent to amend the Act in the manner and extent it did so as to burden the petitioners with the liability for the purchase tax on the paddy purchased by them during the period anterior to the date of the amendments. Elaborating, the learned counsel submitted that the power to amend an existing Act could not extend beyond making "small repairs" therein and that the amendments as made in the Act far exceeded such limits. In support of the contention, the learned counsel relied upon the judgment of the Supreme Court in the case of *Krishnamurti and Co.* v. *State of Madras and another* (1).

(10) In order to judge the merit of the contention it appears necessary to state shortly the facts of the case before the Supreme Court. Accordingly to entry 47 in the first schedule to the Madras General Sales Tax Act, 1956, the Sale of "lubricating oils, all kinds of mineral oils (not otherwise provided for in the Act), quenching oils and greases" was liable to sales tax. Under the impression that the entry included "furnace oil", the authorities of the State proceeded to levy tax on its sales. This was challenged by the assessee before the High Court of Madras through a writ petition. The High Court upheld the challenge holding that entry 47 in the schedule could not be read to cover "Furnace oil". The State Legislature thereafter amended the entry so as to split it up and introduced a new entry 47A to include "Furnace oil" and gave to the amendment retrospective operation and afforded to the collection of tax made in

(1) 31 Sales Tax Cases 190.

the past protection against refund by a usual validating section. The amendments so made were questioned by a writ petition which was turned down by the High Court. In the appeal against the judgment of the High Court, two-fold attack on the amenaments was levelled in the Supreme Court, one of them being similar to the one made before us on the amending Act and the other based upon the violation of Article 19(1)(g) of the Constitution, the contention being that the retrospective operation of the amendment imposed unreasonable restrictions on the fundamental right of the appellant to engage in trade and business. The Supreme Court rejected both the contentions. After referring to the objects and reasons underlying the amendments, the Supreme Court repelled the contention against the competence of the Legislature to make retrospective amendment with these observations at page 197 of the Report—

> "It would thus appear that the amending Act was intended to cure an infirmity as revealed by the judgment of the High Court and to validate the past levy and collection of tax in respect of all kinds of non-lubricating mineral oils, including furance oil, with effect from April 1, 1964. The legislature for this purpose split the original entry 47 into two entries, 47 and 47-A. The new entry 47 related to lubricating oils (not otherwise provided for in the Act), quenching oils and greases, while entry 47-A covered all kinds of mineral oils (other than those falling under item. 47 and not otherwise provided for in the Act) including funance oil. The tax levied by entry 47-A, in our opinion was not a fresh tax. It seems, as mentioned earlier, that the legislature had intended as a result of the change made in entry 47 by Act 7 of 1964 to levy tax on sale of mineral oils of all kinds, including non-lubricants, at the rate mentioned in that entry. As the language used by the legislature in that entry was found by the High Court to be not appropriate for levying tax on sale of non-lubricant mineral oils, the amending Act was passed by the legislature to rectify and remove the defect in the language found by the High Court, so that the tax on sale of non-lubricant mineral oils might be levied at the rate specified in entry 47 from April 1, 1964 when Act 7 of 1964 came into force. It is axiomatic that the Government needs revenue to carry on the administration and fulfil its

obligation to the citizens. For that purpose it resorts to taxation. The total amount needed is apportioned under different heads. The fiscal enactments brought on the statute book in that connection are sometimes challenged by the tax payer in Courts of law. The Courts then scrutinise the legal provision to decide whether the levy of tax is legally valid or suffers from some infirmity. In case the Court comes to the conclusion that the levy of tax is not valid as the legal provision enacted for this purpose does not warrant the levy of tax imposed because of some defect in phraseology or other infirmity, the legislature quite often passes an amending and validating Act. The object of such an enactment is to remove and rectify the defect in phraseology or lacuna of other nature and also to validate the proceedings, including realisation of tax, which have taken place in pursuance of the earlier enactment which has been found by the Court to be vitiated by an infirmity. Such an amending and validating Act in the very nature of things has a retrospective operation. Its aim is to effectuate and carry out the object for which the earlier principal Act had been enacted. Such an amending and validating Act to make "small repairs" is a permissible mode of legislation and is frequently restored to in fiscal enactments. As observed in 73 Harvard Law Review 692 at page 705: —

"It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect...... The Court has been extermely reluctant to override the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a

penalty or a contractual obligation but rather a means of apportioning the costs of government among those who benefit from it."

The above passage was quoted with approval by the Constitution Bench of this Court in the case of *Assistant Commissioner of Urban Land Tax* v. *The Buckingham and Carnatic Co. Ltd.* (2)."

(11) It is abundantly clear from these observations that the Legislature is fully competent to amend an Act passed by it with a view to remove any infirmity or lacuna or to cure inadvertent defects therein which may come to its notice in the course of the working of the Act and do so retrospectively and that the amendments made for such purposes are within the concept and scope of what are called "small repairs".

(12) By the impugned amendments, extracted above, the Haryana Legislature did no more than to remove the lacuna in the Act. This is evident from the objects and reasons responsible for the amendments and the financial memorandum appended to the Bill termed 'The Haryana General Sales Tax (Second Amendment) Bill, 1976 which are reproduced below:—

"STATEMENT OF OBJECTS AND REASONS

The amendments and provisions have been necessitated to overcome certain lacuna experienced in the working of the Act and also to remove certain difficulties experienced by the Trading Community.

FINANCIAL MEMORANDUM

For carrying out the purposes of this Bill there will be no additional financial burden on the State exchequer. In order to clarify the existing position and remove certain difficulties being experienced in the administration of the Haryana General Sales Tax Act, 1973, a new section 16-A is being added and amendments in sections 24, 37(4) and Schedule 'C' of the Act are being made. It is not likely

(2) (1970)1 S.C.R. 268 = (A.I.R. 1970 S.C. 169).

to affect the State revenues. The work of tax assessment/ collection will be done by the same staff which has already been employed for the purpose."

(13) As a result of the foregoing discussion, we find no merit in the contentions raised by the learned counsel for the petitioners and hold that the impugned amendments are not assailable on the ground that Haryana Legislature was not competent to make them or that retrospective operation could not be given to the amendments.

(14) It was next contended by the learned counsel that the paddy purchased by the petitioners being an agricultural produce was exempt from the payment of the purchase tax by virtue of entry 25 of Schedule B to the Act. The contention is baseless and obviously misconceived. The said entry reads thus—

"25. Agricultural or horticultural produce sold by a person or a member of his family grown by himself or grown on any land in which he has an interest whether as owner or usufructurary mortgagee, tenant of otherwise.	When sold in the State.

(15) There can be no dispute that paddy is an agricultural produce. But on its plain language, the entry is intended to grant exemption in respect of sales tax to the person who grows paddy and sells it. The petitioners do not grow paddy. They purchase it. The purchases made by them are sought to be taxed to purchase tax. The petitioners do not evidently qualify for the exemption.

(16) In the result, all the petitions are dismissed, but without any order as to costs.

S. S. Sandhawalia, C.J.—*I agree.*

H.S.B.

Before R. N. Mittal, J.

MANAK CHAND,—*Petitioner.*

versus

SURESH CHAND JAIN,—*Respondent.*

Civil Revision No. 324 *of* 1979.

March 28, 1979.

Code of Civil Procedure (V of 1908)*—Section* 35B*—Costs awarded against a party not paid on the next date of hearing—Factum of non-payment not brought to the notice of the Court and case adjourned to a subsequent date—Such party—Whether debarred from prosecuting the case on the subsequent date.*