In this case the contract was held to be a composite one because the demand notes prepared by the assessee had shown the costs of paper separately and from this fact it was inferred that the assessee treated the supply of paper separately and, therefore, the composite contract could be split up into contract for sale of paper and contract for work and labour. It was held that there could be no liability for sales tax in relation to printing charges.

(5) However, in the case before us the assessee is printing material accordingly to the specifications given by the clients and on their instructions and as found by the Tribunal printed material has no utility or use to any other person. The assessee is also charging a consolidated amount for the printed material which as such cannot be sold to any person in the market. From all these circumstances, it can be legitimately concluded that the intention of the parties was to get work done for remuneration and supply of paper was just incidental thereto. It has, therefore, to be held material was printed in the execution of a works contract and the entire turnover would be exempt from tax as there was no 'sale of goods' involved therein. In this view of the matter, the second question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

(6) In view of our finding on the second question referred to us, it is not necessary to decide the first question. The references accordingly stand answered as stated above leaving the parties to bear their own costs.

J.S.T.

Before N. C. Jain, V. K. Bali & Swatanter Kumar, JJ.

THE DISTRICT BAR ASSOCIATION, KURUKSHETRA AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA,—*Respondent.*

C.W.P. 13440 of 1989

8th August, 1996

Punjab Land Revenue Act, 1887—*S.* 5—*Registration Act*, 1908—*S.* 5—*Punjab Land Administration Manual*—*Paragraph* 834—*Jurisdiction of State Government to vary the limits of districts and form*

a new district, tehsil and sub tehsils is not open to judicial review under Article 226—Challenge to creation of districts in Haryana by questioning vires of S. 5 of the 1887 Act and S. 5 of the 1908 Act repelled—High Court cannot sit in appeal over the discretion of the State Government for the creation of districts.

Held, that the only interpretation which can be put on S. 5 of Punjab Land Revenue Act, 1887 and S. 5 of Registration Act. 1908 is that it is the discretion of the Government to create a new district and the Courts would not be justified in quashing the notification even if there was any breach of the guidelines although in the present cases, no violation was pointed out. The High Court in exercise of its jurisdiction under Article 226 cannot sit in appeal over the Government decision to create a district and evaluate the merits and demerits of such a decision. Although paragraph 834 of the Punjab Land Administration Manual, as reproduced in the earlier part of the judgment, does contemplate that the changes should be proposed when they are essentially necessary for the proper management of the estate or tract concerned yet it is ultimately for the State Government to take a final decision as to whether the proposed changes are necessary or not for the creation of a new district. The decision of the Government with regard to the altering the limits of a district is final and the Court cannot substitute its opinion.

(Para 19)

Further held, that law laid down in 'J. R. Raghupathy *v.* State of Andhra Pradesh (1988) 4 S.C.C. 364' and 'Sudarjas Kanyalal Bhatija *v.* Collector, Thane, (1989) 3 S.C.C. 396' and in view of the clear wording of the two sections of the Punjab Land Revenue Act and the Registration Act, it can safely be reiterated that power to vary the limits and alter the number of tehsils, districts and divisions, the State Government has got complete discretion. It is for the State to think as to how many districts should be created in a State for the purposes of better administration particularly when it is necessary to take the administration nearer to the people. If the Government is of the opinion that for better revenue administration and for serving the interests of the people in a more appropriate, effective and suitable manner, a particular district is to be divided into two districts, the Court cannot come to the rescue of one district bar or the other and opine that the creation of a district was bad in law. The creation of a new district sometimes becomes necessary in view of the increase in the population. It is a matter of experience that smaller states have been better governed.

(Para 22)

Further held, that we earnestly hope that the Government of Haryana would focus its attention towards the construction of judicial complexes so that the real purpose of adding more districts can be fulfiled.

(Para 23)

M. L. Sarin, Sr. Advocate with Hemat Sarin, Advocate, *for the* Petitioners.

P. K. Mutneja, Addl. A.G. Haryana, *for the Respondent.*

JUDGMENT

N. C. Jain, J.

(1) This judgement of ours shall dispose of Civil Writ Petition Nos. 13440, 13769, 13784, 13786 of 1989, 6174 of 1992 and 11515 of 1995 as the basic question of law involved in these petitions is common. In order to appreciate the question involved herein it is necessary for us to give some facts.

(2) *Vide* notification Annexure P/4. the Government of Haryana varied the limits of the area of Kurukshetra district so as to exclude the areas comprising Kaithal and Guhla Sub Divisions and Radaur Sub Tehsil therefrom with effect from 1st November, 1989 in pursuance of Section 5 of the Punjab Land Revenue Act, 1887 and Section 5 of the Registration Act, 1908. On the same day, i.e. October 16, 1989 another notification was issued altering the limits of Kurukshetra and Jind district in order to form a new district Kaithal which comprised of Kaithal and Guhla Sub Divisions of Kurukshetra district Kalayat Sub Tehsil and six revenue estates of Jind district as mentioned in the schedule given in the notification, Annexure P/5. with effect from 1st November, 1989. The District Bar Association, Kurukshetra through its President, The Kurukshetra Sangharash Samiti through its Convenor and the President, District Bar Association, Kurukshetra challenged the notification Annexures P/4 and P/5 by way of filing Civil Writ Petition No. 13440 of 1989 on several grounds. It has been stated in the petition that the State of Haryana came into existence on 1st November, 1966 in pursuance of the enactment of the State Re-organisation Act, 1966 and that the original districts were re-organised and new districts were carved out in the year 1973 when Kurukshetra district came into existence for the first time. The total area and population has also been stated in the petition. It has been averred that the State has not been able to provide accomodation for the offices of Deputy Commissioner, the Sub Divisional Magistrate, the Superintendent of Police and most other officers at the district level and that the judicial complex meant for the Courts was being used by the Deputy Commissioner and S.D.M. etc. A committee according to the petitioners set up by the State consisting of four Ministers recommended not to create new district and not to re-organise the existing ones. With reference to paragraph

834 of the Punjab Land Administration Manual compiled by Sir James Douie, it was so stated in the petition that the creation of new districts should be taken and done only if the same is necessary. The case of the petitioners further is that the noitfications have been issued creating as many as four districts i.e. Kaithal, Panipat, Yamunanagar and Rewari while keeping political gains in mind.

(3) The creation of Panipat district has been urged by the District Bar Association, Karnal and others in Civil Writ Petition No. 13784 of 1989 such like grounds as have been mentioned above.

(4) In C.W.P. No. 13769 of 1989, the District Bar Association, Ambala City and another has challenged the creation of another new district 'Yamunanagar' by and large on the same grounds which were taken in C.W.P. No. 13440 of 1989.

(5) In C.W.P. No. 13786 of 1989, the District Bar Association, Sonepat and others challenged the issuance of two notifications Annexures P/6 and P/7 by which the limits of the area of Sonepat district were altered so as to add the area of Gohana Sub Division to the area of Rohtak Sub Division.

(6) On April 13, 1992, the Government of Punjab,—*vide* notification No. 2/3/92/REVI(1)/4727 dated 9th April, 1992 excluded certain revenue estates from the district of Patiala, Ludhiana and Hoshiarpur in order to include the excluded areas in district Ropar. The excluded areas have been so mentioned in the afore-mentioned notification. Certain persons i.e. Mansa Singh and others in Civil Writ Petition No. 6174 of 1992 challenged the afore-mentioned notification.

(7) In the year 1995, the State of Haryana created another district Panchkula giving rise to the filing of C.W.P. No. 11515 of 1995 on behalf of District Bar Association, Ambala. The matter came up before the Division Bench of this Court. The Hon'ble Division Bench while admitting the afore-mentioned petition recorded the following order :

> "The District Bar Association, Ambala, has challenged the vires of the notification (Annexure P-1) dated 21st July, 1995 issued by the Government of Haryana, for excluding the areas of Tehsils Panchkula and Kalka and the revenue estates of Naraingarh (Raipur Rani Sub-tehsil) and Naraingarh from the Ambala district and including the same in

Panchkula Tehsil so as to form a new district to be called Panchkula with effect from 15th August, 1995. The petitioner has also challenged the constitutional validity of Section 5 of the Punjab Land Revenue Act and Section 5 of the Registration Act, 1908."

(8) Principal contention of the learned counsel for the petitioner is that the impugned notification has been issued for creation of new district of Panchkula with *mala fide* intention. Learned counsel submitted that the whole object of the constitution of the new district is to favour respondent No. 3, who happens to be the son of the present Chief Minister of Haryana (respondent No. 2). Learned counsel further submitted that respondent No. 2 made announcement regarding the creation of the new district even before the Council of Ministers took a decision to this effect and this by itself is indicative of the *mala fide* intention. Learned counsel argued that the provisions contained in Section 5 of the Punjab Land Revenue Act as well as Section 5 of the Registration Act confer unbriddled powers on the Government to constitute, re-constitute/create district and the very fact that no guidelines have been laid down for the exercise of the power makes them unconstitutional.

(9) Learned counsel submitted that Civil Writ Petition Nos. 13769 of 1989 and 13440 of 1989 have already been admitted and are pending decision before this Court in which similar issues have been raised regarding the creation of districts of Kaithal and Yamunanagar.

(10) After going through the averments made in the writ petitions to which reference has been made by the learned counsel, we find that while entertaining those writ petitions, this Court had stayed the operation of the impugned notification but on appeal, the Supreme Court has reversed those orders on 3rd November, 1989 on the ground that the notifications issued by the Government of Haryana are legislative in character and the High Court was not justified in interfering with the said notifications.

(11) We have carefully gone through the judgment of the Supreme Court in *J. R. Raghupathy* v. *State of Andhra Pradesh* (1), and *Sudarjas Kanyalal Bhatija* v. *Collector, Thane* (2). In the first case, the challenge was to the location of Mandal Headquarters. The

(1) (1988) 4 S.C.C. 364.
(2) (1989) 3 S.C.C. 396.

High Court had quashed the notification issued by the Government for changing the Mandal Headquarters. While reversing the decision of the High Court, their Lordships held that in such like matters the confirmation of the discretion on the Government in the matter of formation of a revenue Mandal or location of its Headquarter necessarily leaves the Government with a choice in the use of discretion conferred on it and, therefore, the High Court should not interfere with that decision of the Government. In *Sundarjas Kanyalal Bhatija's case* (supra), formation of Municipal Corporations for Kalyan, Ambarnath, Dombhiwal and Ulhasnagar was challenged. The High Court issued a writ directing the Government to reconsider the proposal regarding formation of the Corporations. The Supreme Court reversed the decision of the High Court and held that there was no justification for interference with the exercise of discretion by the Government.

(12) In view of the order passed by the Supreme Court on 3rd November, 1989 and the two judgements of the apex Court, we do not find any merit in the contentions of the learned counsel for the petitioner.

(13) However, keeping in mind the judicial propriety, we are of the opinion that when the co-ordinate Bench of this Court has referred the matter to a larger Bench and the matter is pending adjudication before the larger Bench, it would be just and proper to admit the petition and place it before the same Bench which is considering Civil Writ Petition Nos. 13440 of 1989. 13769 of 1989, 13784 of 1989 and 13786 of 1989.

(14) Hence the writ petition is admitted and is directed to be placed before the Bench hearing the C.W.P. Nos. 13440 of 1989, 13769 of 1989, 13784 of 1989 and 13786 of 1989.

(15) In so far as the request of the petitioner for stay of the operation of the notification dated 21st July. 1995 is concerned, in view of the fact that we have expressed our opinion against the entertaining of the petition, we do not find any ground to stay the operation of the impugned notification. Hence, the prayer for stay is rejected.

It deserves to be noticed at this stage that in no other case except the one which has been referred to above, we did not find any detailed reference order referring the matter to the Full Bench. In the first

case i.e. C.W.P. 13440 of 1989, the Hon'ble Division Bench while admitting the writ petition to a Full Bench observed that considering the importance of the issues raised and the urgency of the matter involved, the writ petition is admitted to be heard by Full Bench.

(16) The basic question involved in all these writ petitions is what is the true interpretation of Section 5 of the Punjab Land Revenue Act, 1887, Section 5 of the Registration Act and Paragraph 834 of the Punjab Land Administration Manual compiled by Sir James Douie and whether the State Government is entitled to vary the limits of the districts and form a new district, tehsil and sub tehsils and if an action is taken by the Government, can it be challenged before the High Court under Article 226/227 of the Constitution of India. In order to determine the precise questions, it is necessary to have a look at the bare provisions in the first instance which are reproduced below :—

> "Punjab Land Revenue Act, 1887.
>
> Section 5. Power to vary limits and alter number of tehsils, districts and divisions.—The State Government may, by notification, vary the limits and alter the number of tehsils, districts and divisions into which the State is divided."

Section 5 of the Registration Act is as follows :—

> "5. District and sub-districts. (1) For the purposes of this Act, the State Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.
>
> (2) The districts and sub-districts formed under this Section, together with the limits thereof, and every alteration of such limits, shall be notified in the Official Gazette.
>
> (3) Every such alteration shall take effect on such day after the date the notification as is therein mentioned."

Paragraph 834 of the Punjab Land Administration Manual compiled by Sir James Douie reads as under :—

> "834. Changes in limits and number of tehsils, district and divisions.—An increase in the number of divisions into which a province is divided can only be made with the sanction of the Governor-General in Council. But the local Government may add to the number of tehsils and

districts, and may vary their limits and those of divisions. Such changes are generally unpopular with the people, and can hardly fail to produce some confusion in administration. They make the comparison of past and present statistics difficult, and are apt to be embarrasing when the time for a general re-assessment comes round. They should, therefore, only be proposed when they are essentially necessary for the proper management of the estate or tract concerned."

(17) Before determining the questions involved herein, this Court would like to observe at the very outset that when the cases were called for hearing no interest was envinced by any of the counsel for the petitioners to argue the matter and this Court had to ask the counsel for the State to read the petition and quote the relevant case law. Shri P. K. Mutneja, learned Additional Advocate General, Haryana, defended the action of the Haryana State by submitting that it is the absolute discretion of the State Government to create, exclude certain areas from one district and include the same to another district. It was argued that Section 5 of the Punjab Land Revenue Act and Section 5 of the Registration Act vest absolute discretion in the State Government to create any district. Shri P. K. Mutneja has drawn our pointed attention to *'J. R. Raqhupathy* v. *State* of *Andhra Pradesh* (3) and *Sudarajas Kanyalal Bhatija* v. *Collector, Thane* (4).

(18) Before discussing the case law, it is necessary to bear in mind that Section 5 of the Punjab Land Revenue Act authorises, in clear terms, the State Government to vary the limits and alter the number of Tehsils, districts and divisions into which the State is divided, by issuing a notification. Section 5 of the Registration Act also empowers the State Government to form districts and sub-districts and further authorises it to prescribe and alter the limits of such districts and sub-districts. The districts and sub-districts which are formed under sub-section (1) of Section 5 of the Registration Act, 1908 have to be notified in the official gazette. Sub Section (3) lays down that every alteration would take effect on such date as is mentioned in the notification.

(19) The only interpretation which can be put on the aforementioned provisions is that it is the discretion of the Government to create a new district and the Courts would not be justified in

(3) (1988)4 S.C.C. 364.
(4) (1989)3 S.C.C. 396.

quashing the notification even if there was any breach of the guidelines although in the present cases, no violation was pointed out. The High Court in exercise of its jurisdiction under Article 226 cannot sit in appeal over the government decision to create a district and evaluate the merits and demerits of such a decision. Although paragraph 834 of the Punjab Land Administration Manual, as reproduced in the earlier part of the judgment, does contemplate that the changes should be proposed when they are essentially necessary for the proper management of the estate or tract concerned yet it is ultimately for the State Government to take a final decision as to whether the proposed changes are necessary or not for the creation of a new district. The decision of the Government with regard to the altering the limits of a district is final and the Court cannot substitute its opinion.

(20) Adverting to the observations of the Hon'ble Supreme Court in the two cases cited by Shri P. K. Mutneja it can straightway be observed by us that the ratio of law laid down by the Hon'ble Supreme Court is applicable on all fours upon the facts of the instant case. The Apex Court in *J. R. Raghupathy's case* (supra) was dealing with the Andhra Pradesh Districts (Formation) Act, 1974, as amended by Act No. 14 of 1985, which is virtually similar with the provisions of the Punjab Land Revenue Act and the Registration Act. While dealing with the location of Mandal Headquarters which was notified under the aforementioned Act it was held that it was not open to the High Court to interfere under Article 226 on the ground of breach of guidelines framed by the Government by GOMS dated 25th July, 1985 as they were in the nature of executive instructions. It was further observed that even if the Court considers to quash the notification, it could not issue a writ in the nature of mandamus to enforce the guidelines directing the Government to shift the location of the Mandal Headquarters to other specified place. The Apex Court went on to observe that the High Court in exercise of jurisdiction under Article 226 could not sit in appeal over the Government's decision and proceed to evaluate the merits and demerits of a particular place as against the other for location of the Mandal Headquarters. While discussing the scope of judicial review, the Apex Court observed that the exercise of discretionary power conferred by a Statute on the Government was not justiciable merely on the ground of violation of the guidelines framed by the Government in the absence of *mala fides*. The law laid down in *J. R. Raghupathy's case* (supra) applies with greater force upon the facts of the present case as no breach even in administrative instructions which has got otherwise no force of law could be pointed out by the petitioners.

(21) In *Sundarajas Kanyalal Bhatija's case* (supra), the Apex Court while upholding the notification forming a Municipal Corporation under Section 3 of the Bombay Provincial Municipal Corporation Act, 1949, observed that the Court would not interfere with such legislative process of forming a Corporation and that the principles of natural justice are not attracted to a decision taken in legislative process. Such a decision, it was held was not amenable to judicial review.

(22) In view of the law laid down in the aforesaid two authoratitative judicial pronouncements and in view of the clear wording of the two sections of the Punjab Land Revenue Act and the Registration Act, it can safely be reiterated that power to vary the limits and alter the number of Tehsils. Districts and Divisions, the State Government has got complete discretion. It is for the State to think as to how many districts should be created in a State for the purposes of better administration particularly when it is necessary to take the administration nearer to the people. If the Government is of the opinion that for better revenue administration and for serving the interests of the people in a more appropriate, effective and suitable manner, a particular district is to be divided into two districts, the Court cannot come to the rescue of one district bar or the other and opine that the creation of a district was bad in law. The creation of a new district sometimes becomes necessary in view of the increase in the population. It is a matter of experience that smaller States have been better governed. It would not be out of place to observe that after the formation of State of Haryana into a separate State in the year 1966, there has been tremendous progress. After the birth of the Haryana State, prosperity has been seen throughout the State. Without dilating the matter further, this Court would unhestitatingly like to observe that it is for the Government to take into consideration all relevant facts and alter the limits of one district or the other, bifurcate one district into two or create more districts.

(23) Before parting with the judgment, it is necessary to take into consideration the grievances of the District Bar Associations regarding the inaction of the State Government to construct judicial complexes. It has been averred in the writ petitions filed by the District Bar Association, Ambala and District Bar Association, Karnal that judicial compexes although sanctioned have not been constructed on account of paucity of funds and therefore there was no justification to carve out new districts. Although the creation of a new district cannot be challenged on the ground that the Government has failed to construct the judicial complexes yet it cannot be

lost sight of that no judicial complex has been constructed in districts like Ambala, Karnal, Rohtak out of which new districts were carved out at one stage or the other. No judicial complexes have been constructed at Yamunanagar, Kaithal, Rewari, Panipat etc. It is interesting to note that judicial complexes have been constructed at new district headquarters which have come into being in the recent years whereas in the old towns which were districts even during the British regime, no judicial complexes have been constructed. The inaction on the part of the successive governments whether ruled by one Chief Minister or the other since the creation of Haryana is writ large. We can take judicial notice of the fact that the Court accommodation for District and Sessions Judges and Additional District and Sessions Judges in at least three district headquarters namely Ambala, Karnal and Rohtak are situated at some distance than the location of the Court Rooms meant for Subordinate Judges. The Members of the Bar as well as litigants have to run from one place to other causing inconvenience, wastage of time and money which can be avoided if judicial complexes are constructed at all the district headquarters. It is never too late to get it done. We earnestly hope that the Government of Haryana would focus its attention towards the construction of judicial complexes so that the real purpose of adding more districts can be fulfilled.

(24) It deserves to be noted at the end, that a Division Bench of this Court in Civil Writ Petition No. 10428 of 1995 decided on March 27, 1996 *'Punjab and Haryana High Court Bar Association* v. *Union of India and others'* also issued directions for providing new and suitable Court complexes at Ambala, Karnal, Rohtak, Yamuna Nagar, Panipat, Rewari, Kaithal and Panchkula without any avoidable delay.

R.N.R.

Before Amarjeet Chaudhary and M. L. Koul, JJ.

SUKHWINDER SINGH @ SUKHA AND OTHERS,—*Appellants.*

versus

STATE OF PUNJAB ,—*Respondent.*

Crl. A. No. 378-DB of 94.

January 28, 1997.

Indian Penal Code, 1860—Ss. 34, 302 & 304(1) read with S. 149—Appeal against conviction under section 302 IPC—Case of multiple accused—Multiple injuries sustained by the deceased—Medical