CIVIL MISCELLANEOUS

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

MESSRS PUNJAB COPRA CRUSHING OIL MILLS,—*Petitioner.*

versus

THE STATE OF PUNJAB ETC,—*Respondents.*

Civil Writ No. 3897 *of* 1972.

April 4, 1973.

Punjab General Sales Tax (XLVI of 1948 *as amended by Punjab General Sales Tax (Amendment and Validation) Act (III of* 1973)—*Section* 10 *of the Amending Act—Whether violative of Article* 19(1)(*f*) *and* (*g*) *of the Constitution—Legislature by giving power to the State Government to impose sale tax retrospectively—Whether abdicates its functions to the State Government—Taxing statute—Whether can be retrospectively enacted—Section* 11(*aaa*), *directing the Assessing Authority to review the assessments in a particular manner—Whether* ultra vires *the Constitution.*

Held, that section 10 of the Punjab General Sales Tax (Amendment and Validation) Act, 1972 is not violative of Article 19(1)(f) and (g) of the Constitution of India. This legislation does not in any way interfere with the fundamental rights of the citizen to acquire, hold or dispose of property or to practise any profession or to carry on any occupation, trade or business.

Held, that the Amending Act by giving to the State Government power to impose sales-tax retrospectively for which it has competency, does not abdicate its functions in favour of the State Government. The Act has been passed by the State Legislature and a mere reference to the notification to be issued by the State Government does not lead to the inference of such abdication of functions by the Legislature, nor can it be said that the Legislature has failed to apply its mind while enacting the Act. The Legislature by passing the Act has only made its intention clear and the lacuna manifest about its intention in the Principal Act has been removed.

Held, that a taxing statute can be retrospectively enacted. The Legislature which has competence to enact law prospectively has also got the competence to enact the same retrospectively.

Held, that from the provisions of section 11 (*aaa*) of the Amending Act it appears that there is no direction given to any Court for deciding the assessments in a particular manner. The porvision only authorizes the Assessing Authority to review assessments or re-assessment made before the commencement of the Act which are not in conformity with it. This provision has been enacted to entitle the Assessing Authority to bring the assessments already made in conformity with the provisions of validating Act, which is clearly within the competence of the State Legislature. It is, in no manner, illegal or *ultra vires* the Constitution.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ of Certiorari or any other appropriate writ, order or direction be issued quashing the notice dated* 23*rd November*, 1972 (*Annexure A*) *issued by respondent No.* 2 *and the Amending Ordinance No.* 2 *of* 1972, *be declared* ultra vires *the Constitution.*

S. C. Goyal, Advocate with G. C. Garg, Advocate, *for the petitioner.*

J. S. Wasu, Advocate-General, Punjab with R. K. Chhibber, Advocate and S. K. Syal, Advocate, *for the respondents.*

JUDGMENT

DHILLON, J.—This judgment will dispose of Civil Writs Nos. 3897 of 1972, 3945 of 1972, 3993 of 1972, 3994 of 1972, 4022 of 1972, 4044 of 1972, 16 of 1973, 25 of 1973, 26 of 1973, 28 of 1973, 29 of 1973, 79 of 1973, 80 of 1973, 81 of 1973, 82 of 1973, 83 of 1973, 90 of 1973, 97 of 1973, 98 of 1973, 111 of 1973, 165 of 1973, 246 of 1973, 164 of 1973, 297 of 1973, 360 of 1973 and 429 of 1973. The petitioners, except in writ petitions Nos. 164, 297, 306 and 429 of 1973, are dealing in the sale of Oil Cakes, whereas the petitioners in writ petitions Nos. 164, 297, 306 and 429 of 1973 are dealers dealing in the sale of liquor. Section 4 of the Punjab General Sales Tax Act, 1948 (hereinafter called the Act) provides that every dealer, except one dealing exclusively in goods declared tax-free under Section 6, whose gross trunover during the year immediately preceding the commencement of the Act, exceeds the taxable quantum, shall be liable to pay tax, under this Act after coming into force of this Act. This came into force on 1st of May, 1949. Section 5 of the Act provides

the rate of sales tax to be paid by a dealer. This section further provides a higher rate of tax on the sale of luxury goods as specified in Schedule 'A' of this Act. This section makes a provision that the State Government after giving by notification not less then twenty days notice of its intention to do so, may by like notification add to or delete items from Schedule 'A'. Section 6 of the Act provides, that no tax shall be payable on the sale of goods specified in the first column of Schedule 'B' subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free from time to time under this section. Sub-section 2 of this section further provides that the State Government, after giving by notification not less than twenty days' notice of its intention to do so, may by like notification add or delete from Schedule 'B' and thereupon the Schedule deemed to have been amended accordingly. As regards the entries which are relevant for the purposes of disposing of the writ petitions filed by the dealers dealing in the sale of oil cakes in the original Act, reference may be made to Entries Nos. 43 and 44 of Schedule 'B' as prepared under section 6, which are as follows:—

SCHEDULE B

(See Section 6)

1	2
43.	Oil Cakes.
44.	Fertilisers.

Thus, it would be seen that on the date of the enforcement of the Act, Oil Cakes and the Fertilizers were exempted from the levy of the sales tax. By notification No. 2183 ET(CH)-54/533, dated 20th May, 1955, another entry at No. 54, which reads as under, was added:—

"Fodder of every type (dry or green)".

By Act No. 7 of 1958, entry No. 43, i.e., Oil Cakes was deleted from Schedule 'B'. Till the coming into force of Act No. 7 of 1958, there

was no dispute that the sale of oil cakes was not leviable to the sales tax, but when this entry was delected in the year 1958, the dealers claimed that Oil Cakes were covered under entry No. 44, as well as under Entry No. 54 of Schedule B, because according to the dealers, Oil Cakes are either used as fertilizers or they are being used as fodder, and there is no other third use of Oil Cakes, but the State Government, on the other hand, held the view that the Oil Cakes are not covered either by Entry No. 44—'Fertilizers' or entry No. 54—'Fodder' of Schedule 'B', and, therefore, the sale of the Oil Cakes was leviable to sales tax. In view of this dispute between the dealers and the State Government, the matter ultimately came up before this Court in *M/s. Punjab. Copra. Crushing Oil Mills, Jullundur* v. *State of Punjab and others* (1), decided by Tuli, J. It was held that oil cakes fall within the purview of fertilizers and fodder as well, and therefore, the sales tax on the sale of oil cakes was not leviable. In consequence of this judgment, the Punjab State Government issued Notification No. S.O. 51/P.A. 46/48/S. 6/Amd/71, dated 15th November, 1971, giving out its intention of excluding oil cakes from the tax-free goods and for that purpose called for objections or suggestions within a period of 20 days of the publication of the notification. The State Government,—*vide* its notification No. S.O. 3/P.A. 46/48/S. 6/Amd/72, dated 18th January, 1972, substituted entries of Items 44 and 54 of Schedule 'B', as under:—

"44. Fertilizer except oil cakes.

54. Fodder of every type (dry or green) except oil cakes."

The State of Punjab then issued an ordinance (Punjab Ordinance No. 2 of 1972) called the Punjab General Sales Tax (Amendment and Validation) Ordinance of 1972, published in the Punjab Government Gazette (Extraordinary) dated November 15, 1972, and made an amendment in the provisions of the Punjab General Sales Tax Act through this Ordinance, giving retrospective effect to the amendment made by notification dated 18th January, 1972, in Item Nos. 44 and 54 in the matter of charging sales tax on the oil cakes. This ordinance was taken replaced by an Act, called the Punjab General Sales Tax (Amendment and Validation) Act, 1972, which act came

(1) C.W. No. 734 of 1970 decided on 4th August, 1971.

into operation as Act No. 3 of 1973, on 4th of January, 1973. Section 10 of this Act is in the following terms:—

"10(1) The amendments made in Schedules A and B of the principal Act by notifications No. S.O. 7/P.A. 46/48/S. 5/71, dated the 15th February, 1971, and No. S.O. 8/P.A. 46/48/S. 6/71, dated 15th February, 1971, respectively, shall be deemed to be in force during the period commencing on the 18th day of July, 1967, and ending on the 14th day of February, 1971, and amendment made in Schedule B by notification No. S.O. 3/P.A. 46/48/S. 6/Amd/72, dated the 18th January, 1972, shall be deemed to be in force from the date of commencement of the principal Act.

(2) Notwithstanding any judgment, decree or order of any Court or other authority, any tax levied or collected or purported to have been levied or collected on the sale of—

(i) foreign liquor as defined in sub-para (2) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, under the principal Act, in respect of the period commencing on the 18th day of July, 1967, and ending with the 14th day of February, 1971, shall for all purposes be deemed to be and to have always been levied or collected in accordance with law as if the notifications No. S.O. 7/P.A. 46/48/S. 5/71, dated 15th February, 1971, and No. S.O. 8/P.A. 46/48/S. 6/71, dated 15th February, 1971, were in force during the aforesaid period; and

(ii) oil cakes under the principal Act, at any time before the issue of notification No. S.O. 3/P.A. 46/48/S, 6/Amd/72, dated the 18th January, 1972, shall for all purposes be deemed to be and to have always been levied or collected in accordance with law as if the said notification had been in force when such tax was levied or collected;

and accordingly—

(a) no suit or other proceedings shall be maintained or continued in any court for the refund of any tax so paid;

(b) no court shall enforce any decree or order directing the refund of any tax so paid;

(c) any tax levied or purported to have been levied on foreign liquor in respect of period commencing on the 18th day of July, 1967, and ending with the 14th day of February, 1971, and on oil cakes in respect of any period after the commencement of the principal Act, but not collected, may be recovered in the manner provided in the principal Act; and

(d) any tax due on foreign liquor in respect of the period commencing on the 18th day of July, 1967, and ending with the 14th day of February, 1971, or on oil cakes in respect of any period after the commencement of the principal Act, but not assessed, may be assessed and collected in the matter provided in the principal Act, notwithstanding the period of limitation provided therein.

(3) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person—

(a) from questioning in accordance with the provisions of the principal Act and rules made thereunder, the assessment, re-assessment, levy or collection of such tax;

(b) from claiming refund of any tax paid by him in excess of the amount due from him under the principal Act as amended by the Punjab General Sales Tax (Amendment and Validation) Act, 1972."

In all the writ petitions the petitioners have challenged Ordinance No. 2 of 1972 and Punjab Act No. 3 of 1973, claiming that the said law is *ultra vires* of the Constitution and it violates Article 19(1) (f) &(g) of the Constitution of India and that the State Legislature abdicated its functions in favour of the State Government by not applying its own mind in amending the Punjab General Sales Tax Act, retrospectively.

(2) On the other hand, the stand taken by the State Government is that the sale of oil cakes was leviable to the sales-tax with effect from 19th April, 1958, when entry No. 43 regarding the oil cakes was deleted from Schedule 'B' of the Act. It is being pleaded that at all times the intention of the State Legislature was that the

oil cakes are not exempted from the payment of the sales tax and that they are neither fertilisers nor fodder and as such are not covered under entry No. 44 or entry No. 54 of Schedule 'B' of the Act. It is claimed that the State Government was legitimately levying and collecting the sales tax from the dealers dealing with the sale of the oil cakes and the Legislature has got power to enact law retrospectively and prospectively, thereby removing the effect of the judgment passed by this Court in *M/s. Punjab Corpa. Crushing Oil Mills case* (1) (*supra*), and, therefore, it is pleaded that neither the Amendment and Validation, Act, 1972, referred to above, infringes Article 19(1)(f)&(g) of the Constitution of India nor is there any merit in the contention that State Legislature abdicated its function in favour of the State Government. Therefore, it is contended that the Act cannot be quashed on the ground that the Legislature abdicated its functions in favour of the State Government and did not apply its own mind while passing the said Act.

(3) As regards the entries in Schedules A & B of the Act regarding the liquor, the brief history may be appropriately given here. Prior to 20th September, 1966, the entry at item No. 37 of Schedule 'B' of the Act exempted the Indian made foreign liquor from the levy of the sales tax. On 20th September, 1966, the Punjab Government issued two notifications amending Schedules 'A' and 'B' of the principal Act. The said notification No. S.O. 212-PA-46/48-S-6/66 and No. S.O. 213/PA/46/48-S-6/66, dated 30th September, 1966, were published in the Punjab Government Gazette (Extraordinary), dated 1st October, 1966, and the amendment in the Schedules was as follows:—

> "*Schedule 'A'*.—In the said Schedule after entry (23), the following new entry shall be added, namely:—
>
> (24) Liquor (foreign liquor and Indian made foreign liquor)".
>
> "*Schedule 'B'*.—In the said Schedule in item 37, in column I after the word "goods" the words "except Indian made foreign liquor" shall be inserted."

(4) In view of these amendments, sales tax was payable on the sale of liquor (foreign liquor and Indian made foreign liquor) at the rate of 10 per cent, as this item having been included in

Schedule 'A' as luxury goods. On March 6, 1967, the State Government again issued two notifications Nos. S.O. 20/PA-46/48/S-5/67 and S.O. 21/PA-46/48/S-5/67, exhibiting its intention to propose amendment in Schedules 'A' and 'B' of the Act regarding the aforementioned items. The proposal was to substitute Item No. 24 in Schedule 'A' of the Act, as under:—

> "Foreign liquor as defined in sub-para (2) of paragraph 2 of the Punjab Excise Definitions, 1954".

The proposal to amend entry 37 in Schedule 'B' was as under:—

> "All goods, except foreign liquor as defined in sub-para (2) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878"

(5) It may be pointed out that the said notifications were published by the State Government under Sections 5 and 6 of the principal Act, so as to give notice to all concerned of Government's intention to make an amendment in the said Schedules. The State Government after the expiry of a period of three months, then issued final notifications on July 18, 1967, amending item No. 24 in Schedule 'A' and item No. 37 in Schedule 'B'. In Schedule 'A' for item No. 24, the following item was ordered to be substituted:—

> "24. Foreign liquor as defined in sub-para (2) (a) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954."

(6) In Schedule 'B', for item No. 37, following was substituted:—

> "37. All goods, except foreign liquor as defined in sub-para (2) (a) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878."

(7) It may be pointed out here that 'foreign liquor' is defined in Punjab Liquor Definitions, 1954, which runs as under:—

> "(2) 'foreign liquor', means—
>
> (a) all liquor imported by sea into India (other than rectified spirit, denatured spirit and perfumed spirit) on which custom duty is leviable under the Indian Tariff Act (VIII of 1894) or the Sea Customs Act, 1878.

(b) all liquor manufactured in India (other than rectified spirit, denatured spirit and perfumed spirit) on which duty at a rate higher than that levied on country liquor is leviable;

(c) all beer (including ale pure and) manufactured in India or abroad; and

(d) all sacramental wine prepared from pure dried grapes by a process of fermentation only without the addition of alcohol or any other ingredient."

(8) From the entries as made on 18th July, 1967, in the amended Schedules 'A' and 'B' referred to above, it would appear that the sales tax was leviable only on foreign liquors imported by sea into India, other than rectified spirit, denatured spirit and perfumed spirit, on which custom duty is leviable under the Indian Tariff Act (VIII of 1894) or the Sea Customs Act, 1878. Indian made foreign liquor as well as beer and all sacramental wines as defined in sub-clauses (b), (c) and (d) of sub-para (2) of paragraph 2 of the Punjab Liquor Definitions, 1954, were not leviable to sales tax, as it appears from the reading of the above mentioned notifications. According, to the State Government, while issuing notifications, dated 18th July, 1967, a clerical mistake crept in whereby instead of printing sub-para (2) of paragraph 2 of the Punjab Liquor Definitions, 1954, in the above-mentioned amendments to Schedules A and B, inadvertantly it was mentioned 2(a) of paragraph 2 of the Punjab Liquor Definitions, 1954. It is contended by the State Government that the word (a) printed along with sub-para (2) of para 2 of the Punjab Excise Liquor Definitions, 1954, as printed in the Amended Schedules A and B, referred to above, was in fact, superfluous and the intention of the Government was to levy sales tax on the sale of foreign liquor as defined in sub-para (2) of paragraph 2 of the Punjab Liquor Definitions, 1954. In order to achieve this end, the State Government issued two Notifications, dated 11th August, 1967, purporting to be a corrigendum to correct a typographical mistake which had crept in the notifications, dated 18th July, 1967. The said notifications were to the following effect:—

"Omit the letter and brackets '(a)' in the first line of item (24) as substituted by that notification" and "omit the letter and brackets '(a)' in the second line of item 37 as substituted by that notification".

However, since according to the State Government, these notifications were being issued in order to rectify a typographical mistake, therefore, the procedure as prescribed under sections 5 and 6 of the principal Act for amending Schedules 'A' and 'B' was not followed. The effect of the notifications, dated 18th July, 1967 was that that all types of foreign liquors as defined in sub-para (2) of paragraph 2 of the Punjab Liquor Definitions 1954, was leviable to sales tax. This action of the State Government was challenged by the licensees in a number of writ petitions, one of them being reported in *M/s. Krishan Lal Bajaj and Co. Ludhiana and others* v. *The Assessing Authority and others* (2), and the learned Single Judge of this Court held that notifications, dated August 11, 1967, are illegal as no procedure under sections 5 and 6 of the principal Act was followed for including the foreign liquor as defined in sub-para (2) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, and, therefore, the notifications in question were quashed. The effect of this quashing was that Item No. 24 in Schedule 'A' and Item No. 37 in Schedule 'B' were deemed to have been remained inserted by notifications, dated 18th July, 1967 and it was held that the petitioners were not liable to pay any sales-tax on the Indian made foreign liquor. This decision was given on 9th of September, 1970. The State Government filed a Letters Patent Appeal No. 734 of 1970, which was dismissed by a Division Bench of this Court on 16th November, 1970, in limine. The State Government then moved an application for leave to appeal to the Supreme Court, registered as S.C.A. No. 506 of 1970, which was also dismissed on 21st December, 1970.

(9) After the State Government failed in getting the judgment of the learned Single Judge set aside, the State Government then issued two notifications on 15th February, 1971, whereby item No. 24 of Schedule 'A' and item No. 37 of Schedule 'B' to the Act were amended, which read as follows:—

Schedule 'A'.—"(24) Foreign liquor as defined in sub-paragraph (2) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954".

Schedule 'B'.—"(37) All goods, except foreign liquor as defined in sub-paragraph (2) of paragraph 2 of the Punjab

(2) 1970 Rev. L.R. 831.

Excise Liquor Definitions, 1954 on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878".

By issuing the abovementioned two Notifications, under sections 5 and 6 of the Principal Act, the State Government levied sales tax on the Indian made foreign liquor prospectively. Subsequently, in order to cover the assessments and the recovery of the sales tax on the sale of liquor from 18th July, 1967 to 14th February, 1971, which according to the State Government was to be levied in keeping with the intention of the Legislature, but could not be levied in view of the judgment of the learned Single Judge of this Court, reported in *M/s. Krishan Lal Bajaj & Co's case* (2), (*Supra*), the State of Punjab issued Ordinance No. 2 of 1972 on 15th November, 1972, which Ordinance has now been replaced by Act No. 3 of 1973, published in the Punjab Government Gazette (Extra.), of January 4, 1973. Section 10 of the said Act, which is relevant for the present purposes also has already been reproduced in the earlier part of the judgment. This section validates the levy and collection of the sales tax retrospectively on the oil cakes as well as on the Indian made foreign liquor, as is apparant from the provisions of the Act. Since the attack on the impugned enactment is on the common grounds by the petitioners who are dealing with the sale of oil cakes or the liquor, therefore all these writ petitions are disposed of by a common judgment.

(10) The writ petitions relating to the sale of oil cakes have been argued at length by Mr. S. C. Goyal and by Shri S. P. Goyal, whereas writ petitions concerning Indian made foreign liquor have been argued by Mr. Tirath Singh Munjral and Mr. R. N. Narula at a considerable length. The arguments on the first two points as advanced by Shri S. C. Goyal have been adopted by Mr. Tirath Singh Munjral and Mr. R. N. Narula. These first two contentions may be first dealt with.

(11) The main two contentions advanced by Shri S. C. Goyal are that section 10 of the impugned Act violates Article 19(1)(f) &(g) of the Constitution, inasmuch as it interferes with the right of the petitioners to acquire, hold and dispose of property and to carry on business. It is being contended that the State Legislature in enacting the impugned Act, did not apply its mind and abdicated its functions in favour of the State Government.

(12) As regards the question whether a taxing statute can be retrospectively enacted, it is well settled by now that a Legislature which has got competence to enact law prospectively, has also got competence to enact the same retrospectively. It is not being challenged by the petitioners that the State Legislature had no competence to add or delete the items in Schedule 'A' or 'B' of the Punjab General Sales Act. "Therefore, if the State Legislature is competent to amend the Schedules prospectively, it has also the power to do so retrospectively. In this view of the matter, no valid objection can be taken to the amending Act, having been legislated with retrospective effect. Reference in this connection may be made to the latest authority of the Supreme Court in *Hira Lal Rattan Lal* v. *Sales Tax Officer, Section III, Kanpur and another* (3). It is also equally well settled that though an Act passed by the Legislature, prospectively or retrospectively, may be competent but it can be challenged on the grounds of its having infringed the fundamental rights, including under Article 19(1)(f)&(g) of the Constitution." It can also not be denied that it is always open to the Legislature to remove a particular defect in an enactment because of which a particular law was declared invalid by a Court of law, and by doing so to nullify the effect of the judgments of the Courts. Reference in this connection may be appropriately made to Supreme Court decisions in *M/s. Krishnamurthi & Co., etc.* v. *State of Madras and another* (4), and in *Rai Ramkrishna and others, etc.* v. *State of Bihar* (5).

(13) I fail to understand how the petitioners can successfully contend that the amending Act has violated Article 19(1)(f)&(g) of the Constitution of India. The State Government throughout interpreted the intention of the State Legislature that the sales tax is leviable on the sales of oil cakes and foreign liquor as defined in Punjab Liquor Definitions, 1954, as from 19th April, 1958, onwards when item No. 43 was deleted from Schedule 'B' of the Act in the

(3) (1973) 31 S.T.C. 178.

(4) A.I.R. 1972 S.C. 2455.

(5) A.I.R. 1963 S.C. 1667.

case of oil cakes and with effect from 18th July, 1967 in case of Indian made foreign liquor. "The State Government throughout held the view that sales tax was chargeable on these goods. It is averred in the writ petitions by the petitioners that they have been paying sales tax to the State Government and the only plea taken is that because of the judgment of this Court, reported in *M/s. Punjab Corpra Crushing Mill's case* (1) (*supra*), they are entitled to receive back the tax paid by them, which according to the decision of this Court referred to above was illegally charged from them. It is also not denied by the petitioners that they have been charging the quantum of the sales tax in the sale price of the oil cakes and foreign liquor. Thus, they cannot successfully take the plea that they are not liable to pay to the State Government. "Even otherwise, it is clear that the sales tax is payable by a dealer to the Government and the Government is not concerned as to on what price the dealer sold the commodity in question to a customer. The petitioners, in fact, claimed the refund of the tax paid by them. By amending Schedule 'B' by the amending Act, the entries Nos. 37, 44 and 54 have been amended retrospectively and if the said entries are read as now they stand, it is quite clear that the sales tax is leviable and chargeable on the sale of oil cakes and foreign liquor, and this provision in the Act could legitimately be made by the Legislature. I fail to understand how this legislation interferes with the fundamental right of the petitioners to acquire, hold or dispose of property or to practise any profession or to carry on any occupation, trade or business. Therefore, there is absolutely no merit in the first contention of Mr. Siri Chand Goyal and the same is hereby rejected. The Bench decision of this Court also took the similar view in *Bhagwan Hotel* v. *The Assessing Authority, Rohtak and another* (6). Similarly, reference may also be made to the authority of the Supreme Court in *Hira Lal Rattan Lal's* case (Supra). The contention that since the date of the pronouncement of the judgment of this Court in *M/s. Punjab Copra Crushing Oil Mill's* case (*Supra*) and till the date of the issuance of the impugned Ordinance, the dealers were not charging the sales tax from the customers, and, therefore, they are not liable to pay sales tax, is without any merit and on this ground alone, the amending Act cannot be held to be *ultra vires* of Article 19(1)(f) & (g) of the Constitution. As I have already pointed out, the dealer is liable to pay the sales tax and he cannot take the plea that he had not charged

(6) 1965 S.T.C. 319.

the appropriate price from the customer so as to enable him to pay the sales tax out of his margin of profit.

(14) There is no merit in the second contention of Mr. Siri Chand Goyal also. No doubt while issuing Notification, dated 18th January, 1972, the State Government could levy sales tax on the sale of oil cakes provisionally as the power given to the State Government under sub-section (2) of section 6 is to that effect, but it is equally clear that the State Legislature can amend the Act retrospectively for which it has legislative competency. It is by an Act of the Legislature by section 10 of the Amending Act that entries 44 and 54 are being given to the State Government under sub-section 2 of section 6 cannot be confused with the Legislative competence to overhaul and make minor repairs to the Act itself. The plea that section 10 of the Amending Act gives retrospective effect to the notification, dated 18th of January, 1972, issued by State Government and, therefore, the Legislature abdicated its functions in favour of the State Government is also without any merit. It is only the form of making provisions in the Act that reference has been made to the notification issued by the State Government. No doubt the Act could be drafted in another way, whereby substituting the original entries by the substituted entries but that is only a question of form and from this inference cannot be raised that the Legislature abdicated its functions in favour of the State Government. The Act has been passed by the State Legislature and a mere reference to the notification issued by the State Government would not substantiate the plea that the Legislature has abdicated its functions in favour of the State Government. In this connection, reference may be made to a decision of the Supreme Court in *Jaora Sugar Mills (P) Ltd.* v. *the State of Madhya Pradesh and others*, (7). It was held by their Lordships of the Supreme Court, as follows :—

> "Parliament, however, decided that rather than make elaborate and long provisions in respect of the recovery of cess, it would be more convenient to make a compendious provision such as is contained in Section 3. The plain meaning of Section 3 is that the material and relevant portions of the State Acts as well as the provisions of notifications, orders and rules issued or made thereunder are included in section 3 and shall be deemed to have

(7) A.I.R. 1966 S.C. 416.

been included at all material times in it. In other words, what section 3 provides is that by its order and force, the respective cesses will be deemed to have been recovered, because the provisions in relation to the recovery of the said cesses have been incorporated in the Act itself. The command under which the cesses would be deemed to have been recovered would, therefore, be the command of Parliament, because all the relevant sections, notifications, orders and rules have been adopted by the Parliamentary Statute itself."

(15) It would thus be seen from the facts of the above-mentioned case that in the impugned Act, instead of making fresh provisions in the Act itself, reference in the Act was made to notifications and orders which were already issued. And such an enactment was held to be valid one.

(16) The next contention that if the provision as made by Section 10 by the amending Act is incorporated in the original Act, as enacted in 1948, the different entries are conflicting, is again without any merit. When the provisions of Section 10 of the amending Act are given effect to, the entries in the original Act, Schedule 'B' as entered in 1948 would become as follows :—

"43—Oil cakes;

44—Fertilizers;

54—Fodder every type (dry or green)".

If these entries are read as they are, there is no conflict in the entries. It is clear that under entry No. 43, the oil cakes will not be subjected to the sales tax and oil cakes will not be covered either by Fertilisers—entry No. 44 or entry No. 54, i.e., Fodder. This position will continue till 18th April, 1958, when entry No. 43 was deleted from Schedule 'B'. From 19th April, 1958, the entries in the Schedule 'B' will read as follows :—

"44—Fertilisers, except oil cakes.

54—Fodder of every type (dry or green) except oil cakes."

From these entries as they are in the amending Act, it would be clear that the sales tax on the sale of the oil cakes will be leviable from 19th April, 1958. To similar effect are my observations regarding the entries relating to liquor and there does not appear to be any conflict in the entries of Schedule B if full effect is given

to the provisions of Section 10 of the impugned Act. Therefore, it is idle to contend that there does come into existence conflict in the entries of Schedule B, referred to above, if effect is given to Section 10 of the amending and Validation Act.

(17) The only contention in this connection raised is that since entry No. 54 regarding 'Fodder' was not there in the original Schedule 'B' to Act No. 46 of 1948 and the same only came into the Schedule in 1955, therefore, by the amending and Validation Act, this entry will be read in Schedule B from 1st of May, 1949, Therefore, there will come into existence contradictory entries in the Schedule of the Act, is again without any merit. Firstly, even if this entry which was not there in 1948 Act, be read to be deemed to have been from 1st May, 1949, that would mean that the sale of fodder is not chargeable to sales tax which does not prejudicially affect the petitioners. Secondly, if the notification, dated 18th January, 1972 issued by the State Government is validly prospectively issued and the validity of which is not disputed by the learned counsel for the petitioners, the said notificaiton could be given retrospective effect by the Legislature and the same has been given. This entry, even if read in the original Act, will not lead to any contradiction whatsoever. Therefore, on all these grounds referred to above, it cannot be said that the Legislature failed to apply its mind while enacting the Act. The Legislature by passing the impugned Act, only made its intention clear that at all times past the Legislature intended to levy sales tax on the sales of oil cakes and foreign liquor and the lacuna manifest in the said intention in the Principal Act has been removed by the amending and Validation Act by making the intention of the State Legislature clear.

(18) The authorities relied upon by Mr. S. C. Goyal, learned counsel for the petitioners, in *B. Shama Rao* v. *The Union Territory of Pondicherry*, (8), is not of much help to him. That is a case decided on its own facts and the principal ground on which the amending Act was struck down was that the Pondicherry Assembly had abdicated its functions in favour of Madras Legislature when the Pondicherry Legislature adopted Madras General Sales Tax Act, 1959, in the following terms :—

> "The Madras General Sales Tax Act, 1959 (No. 1 of 1959), (hereinafter referred to as the Act), as in force in the

(8) (1967) XX. S.T.C. 215.

State of Madras, immediately before the commencement of this Act extend to and come into force in the Union Territory of Pondicherry subject to the following modifications and adaptations——————————".

(19) There was a provision made in the Pondicherry Act that Pondicherry Government will issue a notification specifying the date of the enforcement of the Act. As provided in Section 1, subsection 2, the Pondicherry Government issued a notification, dated March 1, 1966, bringing into force Madras Act, as extended by the Act of Pondicherry from April 1, 1966. In the meantime the Madras Legislature has amended the Madras Act and consequently it was Madras Act, as amended up to April 1, 1966, which was brought into force under the said Notification. The Act passed by the Pondicherry Assembly was quashed by the Supreme Court, on the ground that the Pondicherry Legislature not only adopted Madras Act as it stood on the date when it passed the principal Act but also enacted as if Madras Legislature were to amend its act prior to the date when the Pondicherry Government would issue its notification, it would be the amended Act which would apply. It was held by their Lordships that the Pondicherry Legislature could not at that time anticipate as to what amendment would be effected by the Madras Legislature in the Act and that clearly showed that the Pondicherry Legislature abdicated its functions in favour of the Madras Legislature without even knowing as to what was being enacted by the Madras Legislature, the same was adopted and made applicable to Pondicherry. It was on these facts that it was held that the Pondicherry Act was void as it was still born and that the Pondicherry Government abdicated its functions in favour of the Madras Legislature. This authority clearly has no application to the facts of the present case. Similarly, the two decisions of the Madras High Court in the *State of Madras* v. *M. Angappa Chettiar and sons* (9), and in *K. A. Ramudu Chettiar and Company* v. *The State of Madras* (10), relied upon by Mr. S. C. Goyal, are of no relevancy to the facts of the present case. A bare reading of the said decisions shows that they are absolutely of no relevancy to the determination of the points involved in the present case.

(9) XXII S.T.C. 226.

(10) XXII S.T.C. 283.

(20) The only other point which needs be mentioned is that Mr. Satya Prakash Goyal, learned counsel, for the petitioner in Civil Writ No. 3994 of 1972, in addition to the arguments advanced by Shri S. C. Goyal, which have already been disposed of, contended that the amending Act violates Article 14 of the Constitution, on the ground that all other types of dry and green fodder are exempt from the levy of sales tax but it is only the oil fodder on which the sales tax has been levied. In order to bring the case under Article 14, specific averments have to be made in the writ petition, drawing parallel comparison in order to show inequality or discrimination. Mere assertion in the writ petition that Article 14 has been violated, would not invalidate the Act. Moreover, it is not denied that the State Legislature is competent to grant exemptions from the payment of sales tax to certain items and not to grant to others. This argument was, in fact, half-heartedly advanced by the learned counsel and he did not pursue any further. Therefore, this contention is without any merit and need not be gone into any further.

(21) It was contended by the learned counsel for the petitioners in the four liquor cases referred to above, that from 9th of September, 1970, 'till 15th February, 1971, i.e., from the date of the decision of the learned Single Judge of this Court, quashing the notifications of the State Government, dated 11th August, 1967 and till the notifications issued by the State Government under section 5 and 6 of the principal Act on 15th February, 1971, the dealers could not charge sales tax from their customers, and, therefore, for this period atleast they could not pass on the levy of the sales tax to the purchasers which they would have ordinarily done if it was known that the sales tax was leviable for that period also. It is, therefore, contended that the profit earned by the petitioners during this period had become their property and the levy of the sales tax for this period by the amending Act is not justified and is *ultra vires* of Article 19(1)(f) & (g) of the Constitution. In my opinion, this contention of the learned counsel for the petitioners cannot prevail. A similar argument was raised before their Lordships of the Supreme Court in *M/s. Krishnamurthi and Co., etc.* v. *State of Madras and another* (4), which was repelled in the following terms :—

> "Mr. Setalvad has referred to the fact that the appellants did not realise the sales tax on the sale of furnace oil at

the rate of 6 per cent during at least some part of the period for which retrospective operation had been given to the amending Act. It is contended that this fact should weigh with this Court in striking down the provisions of the amending Act. There is, in our opinion, no force in this contention. The fact that a dealer is not in a position to pass on the sales tax to others does not affect the competence of the legislature to enact a law imposing sales tax retrospectively because that is a matter of legislative policy. A similar argument was advanced in the case of *M/s. J. K. Jute Mills Co. Ltd.* v. *State of U.P. and others* (11) and repelled in the following words.

'And then it is argued that a sales tax being an indirect tax, the seller who pays that tax has the right to pass it on to the consumer, that a law which imposes a sales tax long after the sales had taken place deprives him of that right, that retrospective operation is, in consequence, an incident inconsistent with the true character of a sales tax law, and that the Validation Act, is, therefore, not a law in respect of tax on the sale of goods, as recognised, and it is *ultra vires* entry 54. We see no force in this contention. It is no doubt true that a sales tax is, according to accepted notions, intended to be passed on to the buyer, and provisions authorising and regulating the collection of sales tax by the seller from the purchaser are a usual feature of sales tax legislation. But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the legislature to impose a tax on sales conditional on its making a provision for sellers to collect the tax from the purchasers. Whether a law should be enacted, imposing a sales tax, or validating the imposition of sales tax, when the seller is not in a position to pass it on to the consumer, is a matter of policy and does not affect the competence of the Legislature. This question is concluded by the decision of this Court in the *Tata Iron and Steel Co. Ltd.* v. *State of Bihar* (12)."

(12) (1958) S.C.R. 133 (133 S.C. 452).
(11) A.I.R. 1961 S.C. 1534=(1962) 2 S.C.R. 1.

(22) Reference in this connection may also be made to *Hira Lal Rattan Lal's case* (supra). Moreover, there is no specific averment in the writ petition that after the judgment of the learned Single Judge of this Court reported in *M/s. Krishan Lal Bajaj & Co's case,* (supra) was pronounced, declaring that no sales tax was leviable on the sale of Indian made foreign liquor and between the issuance of the notification under Sections and 6 of the principal Act, in the month of February, 1971, the petitioners did not pass on the sales tax to the customers. Para No. 9 of the Civil Writ No. 429 of 1973, which has been referred to by the learned counsel for the petitioners, is a general averment and no specific averment regarding this period has been made. There is no allegation to the effect that because of the judgment of this Court reported in *M/s. Krishan Lal Bajaj & Co's case* (supra), the petitioners could not pass on the sales tax to the customers. It has further to be seen that when a particular section is struck down by the Court, it naturally takes some time to pass the validating law. In the nature of things, sometimes bound to lapse between the striking down of a particular section and the validating law being passed. It would be observed that the State Government continued pursuing its remedies by filing Letters Patent Appeal and moving a Supreme Court application after the judgment was announced striking down the notifications of August 11, 1967 and when it failed in getting the judgment of the learned Single Judge in *M/s. Krishan Lal Bajaj & Co's case*, supra, set aside, then the State Government issued notifications in February, 1971. In the nature of things this period cannot be said to be unreasonable period for the State Government to have taken action in validating the levy of the sales tax

(23) Mr. Tirath Singh Munjral, learned counsel then relied in *Kantilal Babulal and Bros.* v. *H. C. Patel & others* (13), contending that in view of the judgment of the learned Single Judge, reported in *M/s. Krishan Lal Bajaj & Co's case supra*, the petitioners are entitled to receive back the tax which has already been paid by them. The learned counsel relies on *R. Abdual Quader and Co.* v. *Sales Tax Officer, 2nd Circle, Hyderabad* (14), and contends that the sales tax paid by the petitioners under the notifications which were ultimately struck down by the learned Single Judge of this

(13) A.I.R. 1968 S.C. 445.
(14) A.I.R. 1964 S.C. 922.

Court in *M/s. Krishan Lal Bajaj & Co's case supra*, cannot be retained by the State and the same has to be returned to the petitioners. This contention is wholly without any force. It would be seen that in the present case if the amending Act is held to be *intra vires* of the Constitution as is being held to be, the petitioners have no right to demand back the amount of sales tax paid by them to the State Government. The validating Act has removed the lacuna in the Act and has validated the levy and collection of the sales tax retrospectively. The authorities, referred to above, relied upon by the learned counsel for the petitioners are not applicable to the facts of the present case at all. In *R. Abdul Quader and Co's case supra* the dealers had collected tax which according to the Hyderabad General Sales Tax Act they were not entitled to. Section 11(2) of the said Act provided, that the amount collected by way of tax, though not exigible as tax under the Act, shall be made over to the Government and if not made over, such tax shall be recovered from such person as if they were arrears of land revenue. In that situation, it was held by their Lordships of the Supreme Court that section 11(2), as it stood, provided for recovery of an amount collected by way of tax as arrears of land revenue though the amount was not due as tax under the Act. It was held that Section 11(2) has nothing to do with the trade and commerce under Entry 26 of List II, and, therefore, the State Legislature was incompetent to enact a provision like Section 11(2) and thus the action of the authorities in recovering the tax, which was not exigible under the Act, which was sought to be recovered under Section 11(2) of the Amending Act, was struck down. To the similar effect are my observations regarding the decision of the Supreme Court in *Kanti Lal Babulal's case* relied upon by Shri Tirath Singh. In that case also with provisions of section 12(a)(4) of the Bombay Sales Tax Act, 1946, which authorised the authorities to recover the tax as arrears of land revenue from the assessee who had charged the tax from the customers in contravention of the provisions of sub-section (1) or (2) of the said section, which prohibits the charging of the sales tax by the dealers on the goods declared tax free, were struck down by the Supreme Court and in this view of the matter, the amount realised as arrears of land revenue under these provisions was held to be payable back to the dealers. Therefore, none of the decisions relied upon by the learned counsel for the petitioners is of any assistance to him. It is clear that in view of the amending Act having been passed by the Constitution, the petitioners are not entitled to receive back

any amount paid by them as sales tax as the same has been legally charged from them as sales tax.

(24) Mr. Tirath Singh Munjral, learned counsel for the petitioners next contended that section 11(AAA) of the Act, No. 3 of 1973, is *ultra vires* of the Constitution, as it directs the Courts and the Assessing Authority to review the assessment in a particular manner, i.e., in keeping with the provisions of the amending Act. For this purpose, the learned counsel relies on *M/s. Adarsh Bhandar, Aligarh* v. *Sales Tax Officer, Aligarh,* (15). Section 11 (AAA) of Act No. 3 of 1973, is in the following terms:—

> "Notwithstanding anything contained in this Act, the Assessing Authority shall review such assessments or re-assessments made before the commencement of the Punjab General Sales Tax (Amendment and Validation) Act, 1972, as are not in conformity with the provisions of this Act as amended by the aforesaid Act and make such order varying or revising the order previously made as may be necessary for bringing the order previously made into conformity with the provisions of this Act as amended by the aforesaid Act:
>
> Provided that no order shall be made under this section against any dealer without giving him an opportunity of being heard".

It would be seen from the provisions of Section 11(AAA) that there is no direction given to any Court for deciding the assessment in a particular manner. This provision only authorises the Assessing Authority to review assessments or re-assessments made before the commencement of the Punjab General Sales Tax (Amendment and Validation) Act, 1972, which are not in conformity with the provisions of this Act and authorises the authorities to make such orders so as to bring the previous orders made in conformity with the provisions of the Act, as amended by the aforesaid Act. This provision has been enacted to entitle the Assessing Authority to bring the assessments already made in conformity with the provisions of the validating Act, which is clearly within the competence of the State Legislature. I do not find any reason to hold that this

(15) A.I.R. 1959 All. 557.

provision, is, in any manner, illegal. The authority relied upon by the learned counsel for the petitioners is not of any assistance to him in this connection. In that case the direction given in the Act was to the Courts, which included the High Courts. In this view of the matter, it was held that since the Legislature derives its power to legislate from Article 245 of the Constitution and that Article specifically makes the power subject to the provisions of the Constitution which include Article 226, therefore, it is not open to the Legislature to enact any law which either directly or indirectly, affects the powers conferred by Article 226 of the Constitution, on the High Court. It was on this ground that the provision of the amending Act was set aside as it encroached upon the powers of the High Court under Article 226 of the Constitution. In the present case, I have already pointed out that there is no direction given to the Courts at all. The impugned section only gives jurisdiction to the Assessing Authority to bring the Assessments and re-assessments in conformity with the Amendment and Validation Act, 1972. No other point has been pressed by Mr. Munjral in support of his petitions.

(25) The only other argument which needs to be noted is that of Mr. R. N. Narula, learned counsel for the petitioner in Civil Writ No. 429 of 1973, to the effect that his client was a licensee for the year 1970-71 and during this period he could not collect the sales tax from 9th of September, 1970, the date of the judgment in *M/s. Krishan Lal Bajaj & Co's case* (*supra*), up to 15th of February, 1971, the date of the issuance of the notifications under sections 5 and 6 of the Principal Act, and therefore, he could not be asked to pay the tax which he could not pass over to the customers. The learned counsel relies on *Kannathat Thathunni Moopil Nair etc.* v. *State of Kearla and another* (16), and contends that *qua* the petitioner in Civil Writ No. 429 of 1973, the amending Act may be declared *ultra vires* as it works great hardship to him. This argument is wholly fallacious. As I have already said that the argument that since the dealers could not pass over the sales tax to the customer and, therefore, retrospective taxation enactment cannot be passed, is wholly

(16) A.I.R. 1961 S.C. 552.

fallacious, as has been held by their Lordships of the Supreme Court in a chain of authorities and in this connection, I may only like to refer to a decision, reported in *M/s. J. K. Jute Mills Co. Ltd.* v. *State of Uttar Pradesh and another* (11), in which their Lordships held that a sales tax intended to be passed on to the buyer and provisions authorising and regulating the collection of the sales tax by the seller from the purchaser are a usual feature of sales tax legislation. But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the owner of the Legislature to impose a tax on sales conditional on its making a provision for sellers to collect the tax from the purchasers. It was further held whether a law should be enacted, imposing a sales tax, or validating the imposition of sales tax, when the seller is not in a position to pass it on to the consumer, is a matter of policy and does not affect the competence of the Legislature. Reference in this connection may also be made to a recent decision of the Supreme Court in *Hira Lal Rattan Lal's case (Supra)*. As regards the authority reported in *Kunnathat Thathunni Moopil Nair, etc.* v. *State of Kerala and another* (16), suffice it to say that in that case, the petitioner in Petition No. 42 of 1958, before their Lordships of the Supreme Court, was owner of forest which before the re-organisation of the State, was situated in the State of Madras. After the re-organisation of the State, this area was transferred to the State of Kerala. The said area was governed by the Madras Preservation of Private Forests Act, 1949. Under the provisions of this Act, no owner of the Forest could remove the wood from the forest except with the permission of the District Collector. The petitioner in that case was allowed by the Collector to cut certain trees from the forest and the petitioner derived an income of Rs. 3,100 per year from the sale of the said trees. The case of the petitioner was that even though he earned a sum of Rs. 3,100 per year, a tax to the tune of Rs. 50,000 per year was being claimed. On these facts it was held that the impugned Act being discriminatory, imposes unreasonable restriction on the fundamental right of the petitioner. This decision has nothing to do with the facts of the present case. No other argument has been advanced by Mr. R. N. Narula.

(26) For the reasons recorded above, there is no merit in all these petitions and the same are dismissed with costs.

P. C. PANDIT, J.—(27) The conclusions arrived at by my learned brother find full support from a recent decision of the Supreme Court in *Hira Lal Rattan Lal* v. *Sales Tax Officer, Section III, Kanpur, and another* (3), where it was laid down:—

> "Section 3 of the U.P. Sales Tax Act, 1948, provides for the multi-point sales tax. Section 3-D provided for a single point tax at the stage of first purchase by a dealer in respect of foodgrains and certain other goods and enabled the State Government to notify such goods. By Notification No. S.T. 7122/X, dated October 1, 1964, "foodgrains" were specified under section 3-D for single point tax at the stage of first purchase. The sales tax authorities sought to bring to tax, on the basis of section 3-D and the notification, the first purchases of processed or split foodgrains including dal on the ground that they constituted a separate item quite independent of the unprocessed or unsplit foodgrains. The Allahabad High Court, however, in *Tilok Chand Prasan Kumar* v. *Sales Tax Officer, Hathras, District Aligarh* (17), held that such a levy was invalid. After that decision the U.P. Sales Tax (Amendment and Validation) Act, 1970, replacing an Ordinance, was passed, and Explanation II was added to section 3-D(1) providing that "split or processed foodgrains shall be deemed to be different from unsplit or unprocessed foodgrains" and that nothing in sub-section (1) "shall be construed to prevent the imposition, levy or collection of the tax in respect of the first purchases of split or processed foodgrains merely because tax had been imposed, levied or collected earlier in respect of the first purchases of these foodgrains in their unsplit or unprocessed form". Section 7 of the amending Act also validated earlier levies and declared notifications issued under section 3-D to be deemed to have been issued under the Act as so amended. The appellants filed writ petitions in the High Court challenging the validity of Explanation II to section 3-D(I) of the Act of 1948 and section 7 of the amending Act of 1970. The High Court dismissed the writ petitions. On appeal to the Supreme Court:

(17) (1970) 25 S.T.C. 118.

Held, affirming the decision of the High Court, (i) that a fresh levy of tax could be imposed retrospectively;

(ii) that the Legislature was competent to separate processed or split foodgrains from unsplit or unprocessed foodgrains and treat them as two separate and independent goods;

(iii) that by enacting the amending Act, the Legislature had not usurped legislative power but had only made its legislative intent clear;

(iv) that Explanation II to section 3-D(1) did not violate article 14 of the Constitution of India;

(v) that the retrospective levy was not violative of article 19(1)(f) or (g); the amendment was necessitated because of the Legislature's failure to bring out clearly in the principal Act its intention to separate processed or split foodgrains from unprocessed or unsplit foodgrains and the retrospective amendment became necessary as otherwise the State would have had to refund large sums of money;

(vi) that the fact that the retrospective levy did not afford an opportunity to the dealers to pass on the tax to the consumers had no relevance in considering the legislative competence of the levy;

(vii) that Explanation II clearly brought to tax with retrospective effect split or processed foodgrains as well;

(viii) that no fresh notification was necessary to tax split or processed foodgrains; because of Explanation II, the expression "foodgrains" in the notification already issued had to be read as containing two different items, processed or split foodgrains and unprocessed or unsplit foodgrains;

(ix) that section 3-D had not made any excessive delegation of legislative function to the executive.

Legislative power to impose tax also includes within itself the power to tax retrospectively.

The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put.

There is no doubt that a taxing provision has to be strictly interpreted. If a Legislature intended to impose any tax, that intention must be made clear by the language employed in the statute, but that does not mean that the provision in a taxing statute should not be read reasonable.

It is true that the Legislature cannot delegate its legislative functions to any other body. But subject to that qualification it is permissible for the Legislature to delegate the power to select the persons on whom the tax is to be levied. In the very nature of things, it is impossible for the Legislature to enumerate the goods, on dealings in which sales tax or purchase tax should be imposed. It is also impossible for the Legislature to select the goods, which should be subjected to a single point sales or purchase tax. Before making such selections several aspects, such as the impact of the levy on the society, economic consequences and the administrative convenience will have to be considered. These factors may change from time to time. Hence in the very nature of things, these details have got to be left to the executive."

I agree that these writ petitions be dismissed with costs.

K.S.K.

FULL BENCH

Before Bal Raj Tuli, A. D. Koshal, S. S. Sandhawalia, Prem Chand Jain and Man Mohan Singh Gujral, JJ.

B. R. *GULIANI,—Petitioner.*

versus

PUNJAB AND HARYANA HIGH COURT, ETC.,—*Respondents.*

Civil Writ No. 2586 of 1971

March 13, 1975.

Constitution of India (1950)—*Articles* 233, 235 *and* 320—*State Government passing order of removal, dismissal or re-instatement of a Judicial Officer on the advice of Public Service Commission—Such order—Whether* ultra vires *Article* 235 *of the Constitution—Punishment of removal of a Judicial Officer—Recommendation of*