

*Bombay City II v. Bhagwandas Amersey* (3); *Commissioner of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh v. Sheikhpura Transport Co., Ltd.* (4), and *Keshav Silk Mills v. Income-tax Appellate Tribunal* (5), that a return filed after the period of four years is, in fact, no return.

(4) That being so, the answer to the questions referred must be returned in the affirmative. There will be no order as to costs.

PREM CHAND JAIN, J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

*Before Mehar Singh, C.J., and B. R. Tuli, J.*

SIALKOT SILK STORES,—*Petitioner*

*versus*

CHIEF COMMISSIONER, UNION TERRITORY, CHANDIGARH,—*Respondent*.

**Civil Writ No. 2199 of 1968**

August 7, 1968

*Punjab General Sales Tax Act (XLVI of 1948)—S. 6(2) and Schedule B—Punjab Reorganisation Act (XXXI of 1966)—Section 2(g) and 88—Existing State of Punjab before 1st November, 1966 issuing notification under section 6(2) of Act XLVI of 1948 indicating intention to amend Schedule B of the Act—Such notification—Whether a ‘law’ as defined in 2(g) of Act XXXI of 1966—Union Territory of Chandigarh amending the Schedule of Act XLVI of 1948, without pre-requisite notification under section 6(2)—Such amendment—Whether valid—Section 88 of Act XXXI of 1966—Whether attracted.*

*Held*, that a notification issued by the “existing State of Punjab” before November 1st, 1966, under sub-section (2) of section 6 of Punjab General Sales-Tax Act, 46 of 1948, giving three months’ notice of its intention to amend item 30 in Schedule B to that Act is not “law” as defined in section 2(g) of Punjab Reorganisation Act, 31 of 1966, because Court could not have compelled the ‘existing State of Punjab’ to proceed to carry out its intention thus expressed in the notification. Having issued that notification, on representation or objections to it by the persons interested, the ‘existing State of Punjab’ had the right to change its intention. It had the option or choice to proceed to carry out its intention or not to do so. A Court of law could not have enforced or have occasion to recognise that notification through a judicial process so as to have

(3) 50 I.T.R. 239.

(4) 51 I.T.R. 336.

(5) 55 I.T.R. 29.

Sialkot Silk Stores v. Chief Commissioner, Union Territory, Chandigarh  
( Mehar Singh, C. J.)

compelled the 'existing State of Punjab' to carry out its intention under that notification and to proceed to amend item 30 in Schedule B to Act 46 of 1948. No doubt the notification was in pursuant to and under the statutory power as given to the State Government in sub-section (2) of section 6 of the Act 46 of 1948. It was thus a valid notification in itself. But to answer the definition of the term 'law' as in section 2(g) of Act 31 of 1966, it is not enough that notification should be valid, but what is necessary is that it should be enforceable through, or should an occasion arise for its recognition be recognised by a Court of law so as to be made effective.

(Para 5)

*Held*, that on and from November, 1st, 1966, when the Union Territory of Chandigarh came into existence, its Chief Commissioner is the competent authority who can proceed to act under sub-section (2) of section 6 of Punjab Act 46 of 1948 indicating its intention, with proper notice, of amending any part of Schedule B to that Act. An earlier notification of the existing State of Punjab issued before November 1st 1966 under sub-section (2) of section 6 of the Punjab Act, 46 of 1948, was not law before the date and has not been law after that date within the meaning and scope of the word 'law' as defined in section 2(g) of Act 31 of 1966, with the result that section 88 of the last-mentioned Act is not attracted to it, and thus that notification has not the force of law on the basis of which the final amendment as made by the Union Territory of Chandigarh could have been made in the terms of sub-section (2) of section 6 of Punjab Act, 46 of 1948.

(Paras 5 and 7)

*Petition under Articles 226/227 of the Constitution of India praying that any appropriate writ or order or direction be issued, quashing the notification, dated 4th January, 1968 issued by the Chief Commissioner, Union Territory, Chandigarh, amending item No. 30 of Schedule 'B' of the Punjab General Sales Tax Act.*

S. K. JAIN, R. K. CHHIBBER AND M. R. SHARMA, ADVOCATES, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, HARYANA AND S. S. DEWAN, ADVOCATE, with him for the Respondent.

#### JUDGMENT

Mehar Singh, C.J.—In the Punjab Reorganisation Act, 1966 (Act 31 of 1966), the appointed day is November, 1, 1966. Section 2 (f) of that Act says that the 'existing State of Punjab' means the State of Punjab as existing immediately before the appointed day, that is to say, before November 1, 1966. Union Territory of Chandigarh is one of the successor States, according to section 2(m) of that Act, to the 'existing State of Punjab'.

(2) In the Punjab General Sales Tax Act, 1948 (Punjab Act 46 of 1948), sub-section (2) of section 6 provides that the State Government, after giving by notification not less than three months' notice of its intention so to do, may by like notification add or delete from Schedule B and thereupon Schedule B shall be deemed to be amended accordingly. Schedule B to this Act enumerates items on which no tax is payable in the terms and subject to the conditions of sub-section (1) of section 6 of the same Act. The 'existing State of Punjab' on August 24, 1966, published a notification under sub-section (2) of section 6 of Punjab Act 46 of 1948 giving notice of its intention to amend item 30 in Schedule B to that Act. The notice obviously had to be of three months and, therefore, the date on which it had to expire was November 24, 1966. So the 'existing State of Punjab' could not fulfil its intention under that notification because in the meantime on and from November 1, 1966, the 'existing State of Punjab' was reorganised and one of the successor States to it has been the Union Territory of Chandigarh. Thus the time of three months requisite for the notice under sub-section (2) of section 6 of Punjab Act 46 of 1948 expired after the coming into existence of the Union Territory of Chandigarh as one of the successor States to the 'existing State of Punjab'.

(3) On January 5, 1968, the Chief Commissioner of the Union Territory of Chandigarh published a notification, in the Chandigarh Administration Gazette (Extraordinary), of January, 4, 1968, amending item 30 in Schedule B to Punjab Act 46 of 1948 pursuant to the notice already issued under sub-section (2) of section 6 of that Act by the 'existing State of Punjab'. The Chief Commissioner of the Union Territory of Chandigarh did not issue a fresh notification giving three months' notice in the terms of sub-section (2) of section 6 of that Act of the intention of the Chandigarh Administration to amend item 30 in Schedule B to that Act. It is the legality and constitutional vires of this last-mentioned notification issued by the Chief Commissioner of the Union Territory of Chandigarh that is the subject of challenge in this petition under Articles 226 and 227 of the Constitution by the petitioner, Sialkot Silk Stores of Chandigarh. In the Union Territory of Chandigarh, in view of section 88 of the Reorganisation Act, Punjab Act 46 of 1948 continues to be the law in force. It has been one of the contentions on the side of the petitioner that in view of that provision it was the Central Government which could proceed to issue notification under sub-section (2) of section 6 of Punjab Act 46

Sialkot Silk Stores v. Chief Commissioner, Union Territory, Chandigarh  
( Mehar Singh, C. J.)

of 1948 and not the Chief Commissioner of the Union Territory of Chandigarh, but to that the complete reply in the return of the respondent is that by notification No. S.O. 3269 of November, 1, 1966, the Central Government has delegated its powers to the Chief Commissioner of the Union Territory of Chandigarh. So this contention obviously cannot prevail.

(4) In Act 31 of 1966, Part II deals with the re-organisation of the 'existing State of Punjab', and section 88 of this Act lays down that "the provisions of Part II shall not be deemed to have effected any change in the territories to which law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day." Consequently, as said already, Punjab Act 46 of 1948 continues to be the law in force in the Union Territory of Chandigarh. In section 2(g) of Act 31 of 1966 the term 'law' has been defined to include 'any enactment, ordinance, regulation, order, by law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Punjab'. There is no manner of doubt that Punjab Act 46 of 1948 answers to this definition of the term 'law', but the question is, does the notification of the 'existing State of Punjab' published on August 24, 1966, indicating its intention to amend Schedule B, item 30, of that Act, come within the scope of that term? In this respect the learned counsel for the parties have made reference to *Edward Mills Co. Ltd., Beawara v. State of Ajmer* (1), *Bhikusa Yamasa Kshatriva v. Sangamner Akola Taluka Bidi Kamgar Union* (2), *Jayantilal Amratlal Shodhan v. F. N. Rana*, (3), and *Raj Kumar Narsingh Pratap Singh Deo v. The State of Orissa*, (4), in which case the meaning of the term 'law' did come for consideration of the learned Judge, but those cases are not of assistance because if the argument here was whether the final notification issued by the Chief Commissioner of the Union

(1) A.I.R. 1955 S.C. 25.

(2) A.I.R. 1960 Bom. 299.

(3) A.I.R. 1964 S.C. 648.

(4) A.I.R. 1964 S.C. 1793.

Territory of Chandigarh under sub-section (2) of section 6 of Punjab Act 46 of 1948 was or was not law, then those cases could have been of some assistance, but not one of those cases, on facts, has anything near consideration the question that arise in the present petition, that is, whether a notification in the shape of a condition precedent requisite for the amendment of a statute is or is not law. So, in any opinion, none of those cases is of any help in the present case. The learned counsel for the parties have accepted as much and they have further said that there is no reported case which is directly in point on the question that arises in the present petition.

(5) The question here is whether the first notification issued and published by the 'existing State of Punjab' on August, 24, under sub-section (2) of section 6 of Punjab Act 46 of 1948 indicating its intention to amend item 30 in Schedule B to that Act is within the scope of the term 'law' as defined in section 2(g) of Act 31 of 1966? No doubt that definition is inclusive, but the argument on the side of the parties has only been confined to what is included in that definition, and nothing beyond that has been urged. Then what is to be seen is whether that notification is a 'notification having the force of law?' What has the force of law, is what may be enforced in or through a Court of law, and this is proceeding upon the very language used in section 2(g) of Act 31 of 1966 that a 'notification having the force of law' is within the meaning and scope of the term 'law', or what is, if challenged, bound to be recognised by Courts (*Jayantilal Amratlal Shodhan's case* pending 659). The next question then obviously posed is, could the first notification by the 'existing State of Punjab' under sub-section (2) of section 6 of Punjab Act 46 of 1948, giving three months' notice of its intention to amend item 30 in Schedule B to that Act, have been enforced in or recognised by a Court of law? The answer is immediately and obviously in the negative, because Court could not have compelled the 'existing State of Punjab' to proceed to carry out its intention thus expressed in the notification. Having issued that notification, on representation or objections to it by the persons interested, the 'existing State of Punjab' had the right to change its intention. It had the option or choice to proceed to carry out its intention or not to do so. A Court of law could not have enforced or have had occasion to recognise that notification through a judicial process so as to have compelled the 'existing State of Punjab' to carry out its intention under that notification and to proceed to amend item 30 in Schedule B to that Act. Apparently then that notification could

Sialkot Silk Stores v. Chief Commissioner, Union Territory, Chandigarh  
( Mehar Singh, C. J.)

neither be enforced through, nor at that stage could arise an occasion for its recognition by a Court of law. No doubt, it was a notification pursuant to and under the statutory powers as given to the State Government in sub-section (2) of section 6 of Punjab Act 46 of 1948. It was thus a valid notification in itself. Its validity as such could not possibly be questioned. However, that is not enough. To answer the definition of the term 'law as in section 2(g) of Act 31 of 1966, it is not enough that that notification should be valid, but what is necessary is that it should be enforceable through, or should an occasion arise for its recognition be recognised by a Court of law so as to be made effective. This, as I have explained could not be done, it being a matter of option or discretion with the 'existing State of Punjab' to proceed or not to proceed to carry out its intention as given or expressed in the notification. So while that notification is otherwise valid, it is not a notification which can be enforced through a judicial process in a Court of law, nor can the question of its recognition by a Court of law arise at the stage at which the matter is under consideration. The result then is that before November 1, 1966, in the days of the 'existing State of Punjab' that notification, though valid, was not 'law' as that term is defined in section 2(g) of Act 31 of 1966. It is only the applicability of the laws which were already in force in the 'existing State of Punjab' that has been continued in the successor States, including the Union Territory of Chandigarh, by virtue of section 88 of Act 31 of 1966. The notification under consideration not being 'law', does not come within the purview of section 88 of that Act. On November 1, 1966, when the Union Territory of Chandigarh came into existence, that notification was not law which continued to apply to it under section 88 of Act 31 of 1966. On and from that date it was the competent authority, in this case the Chief Commissioner, Union Territory of Chandigarh, who could proceed to act under sub-section (2) of section 6 of Punjab Act 46 of 1948 indicating its intention, with proper notice, of amending any part of Schedule B to that Act. This obviously has not been done.

(6) There is another aspect of the matter that may be considered. After the second notification was issued by the Chief Commissioner, Union Territory of Chandigarh, under sub-section (2) of section 6 of Punjab Act 46 of 1948, amending item 30 in Schedule B to that Act, in the matter of consideration of the validity and legality or otherwise of this last-mentioned notification, the earlier notification

by the 'existing State of Punjab' giving its intention to amend item 30 of Schedule B to that Act, comes in for consideration. If the second notification of the respondent is held valid and within law, that is in a way a manner of giving effect in or recognition by a Court of law to the first notification by the 'existing State of Punjab' issued and published on August 24, 1966, giving notice of its intention to carry out that amendment. But this situation can only arise by something done by the successor State of the Union Territory of Chandigarh after its coming into existence on November 1, 1966, for the conclusion is that as on that date the first notification did not answer the definition of the term 'law' as in section 2(g) of Act 31 of 1966, it cannot be given effect to by this Court even after the second notification has been issued by the respondent amending item 30 of Schedule B to Punjab Act 46 of 1948. In the facts of this case the earlier notification of the 'existing State of Punjab', not being law, has not been available to the respondent to carry out the amendment as has been done. Any amendment, without satisfying the condition precedent as in sub-section (2) of section 6 of Punjab Act 46 of 1948, cannot be held valid. So even this consideration does not advance the argument on the side of the respondent.

(7) The consequence is that the notification of August 24, 1966, of the 'existing State of Punjab' under sub-section (2) of section 6 of Punjab Act 46 of 1948 was not law before November 1, 1966, and has not been law after that date within the meaning and scope of the word 'law' as defined in section 2(g) of Act 31 of 1966, with the result that section 88 of the last-mentioned Act is not attracted to it, and thus that notification has not the force of law on the basis of which the final amendment as made by the respondent could have been made in the terms of sub-section (2) of section 6 of Punjab Act 46 of 1948. This petition is, therefore, accepted, declaring the impugned amendment of item 30 in Schedule B to Punjab Act 46 of 1948, invalid and not an amendment according to law. There is no order in regard to costs in this petition.

Bal Raj Tuli, J.—I agree.