

the 3rd of March, 1965 (less than seven clear days before last date for filing the nomination papers) vitiated the holding of the election to the Market Committee, Kaithal.

Puran Singh
v.
State of Punjab
and others

Narula, J.

- (3) that seven clear days must intervene between the date of publication of the election programme and the last date for filing of the nomination papers (after excluding both the terminal days) according to proper interpretation of sub-rule (2) of rule 5 of the aforesaid rules.
- (4) that the publication of the election programme even on the 1st of March, 1965 did not, therefore, satisfy the mandatory requirements of rule 5(2) of the aforesaid rules.
- (5) that rule 5(2) falls in that class of rules, non-compliance with which cannot be overlooked.
- (6) that the supervening considerations on account of which grant of relief was declined by this Court in *I. M. Lall's case* in spite of the above interpretation of the rule do not find place in the instant case.

I, therefore, grant this writ petition, set aside the election programme issued by the Deputy Commissioner, Karnal, in so far as it related to the Market Committee, Kaithal and consequently the election of the producer members to the Market Committee, Kaithal, held on 4th of April, 1965 and direct that fresh elections to the Market Committee, Kaithal, may be held in accordance with law. Parties are left to bear their own costs.

K.S.K.

LETTERS PATENT APPEAL

Before D. Falshaw, Chief Justice and Mehar Singh, J.

M/S. MOHAN LAL GURDIAL DASS,—Appellant

versus

STATE OF PUNJAB AND OTHERS,—Respondents

Letters Patent Appeal No. 352 of 1964.

Punjab Passengers and Goods Taxation Act (XVI of 1952)—
Ss. 8 and 17—Goods-carrier registered in Rajasthan and transporting goods from Rajasthan to Delhi passing through some places in the Punjab without loading or unloading goods in the areas of Punjab—Permit countersigned by R.T.A., Ambala—Whether requires to be registered under S. 8—"Ply"—Meaning of.

1965

September, 16th.

Held, that under section 17 (1) (e) of the Punjab Passengers and Goods Taxation Act, 1952, a person can be prosecuted for loading or unloading of goods for carriage in the State of Punjab without being registered under section 8 of the Act. The word 'ply' in section 8 with regard to a goods-carrier means to load or unload goods for carriage for reward. If a goods-carrier is registered in Rajasthan and its permit is countersigned by the Regional Transport Authority, Ambala, and while transporting goods from Rajasthan to Delhi, it passes through some areas of the Punjab State without loading or unloading goods there, it cannot be said to ply in the State of Punjab and so its owner cannot be prosecuted under section 17(1) (e) of the Act for the offence of not being registered under section 8 of the Act in the State of Punjab.

Appeal under Clause 10 of the Letters Patent from the order and judgment of the Hon'ble Mr. Justice Shamsher Bahadur in Civil Writ No. 22 of 1964 on 27th July, 1964.

J. S. WASU, ADVOCATE, for the Appellant.

J. N. KAUSHAL, ADVOCATE GENERAL WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

JUDGMENT

Mehar Singh, J. **MEHAR SINGH, J.**—The appellant is firm Mohan Lal-Gurdial Das, truck-owners of Ganga Nagar in Rajasthan State. It has a permit for its vehicle for Bikaner Region of Rajasthan State, and that has been countersigned by the State Transport Authority of Delhi State and the Regional Transport Authority of Ambala Region in Punjab State. The appellant-firm transports goods from Rajasthan State to Delhi State passing through Hissar and Rohtak Districts of Punjab State. Its vehicle is registered at Ganga Nagar in Rajasthan State according to the provisions of the Motor Vehicles Act, 1939 (Act 4 of 1939), and the rules thereunder. The appellant-firm has averred in its petition under Article 226 of the Constitution that although under the terms of the permit it can transport goods from or to any place within the State of Punjab, it is only passing through the areas of Punjab State while transporting goods from Ganga Nagar to Delhi without loading or unloading in areas of Punjab State. This is not denied by the respondents in the return, but the position taken in the return is that the appellant-firm because of the counter signature of the Regional Transport Authority of Ambala on its permit, becomes entitled to carry goods to and from Punjab State. This is not denied by the appellant-firm. What is specifically stated by it in its petition is that it does not do so. To this last statement there is no reply in the return that it does so.

On October 10, 1963, a complaint was filed against the M/s Mohan Lal Gurdial Dass v. State of Punjab and others
Mahar Singh, J.

appellant-firm under section 8 of the Punjab Passengers and Goods Taxation Act, 1952 (Punjab Act 16 of 1952), hereinafter to be referred as 'the Act', on the ground that the permit of the appellant-firm was countersigned for Ambala Region with effect from December 13, 1961, up to November 14, 1966, but its vehicle was not found registered for goods tax under the Act. Section 8 of the Act says that "No owner shall ply his motor vehicle in the State unless he is in possession of a valid registration certificate as provided hereinafter;" and section 17(1)(e) of the Act provides for punishment for the offence of wilfully failing to apply for registration. It is evident that under section 8, registration certificate is requisite when owner of a motor vehicle plies it in Punjab State. If he plies his motor vehicle without such registration, he is punishable under section 17(1)(e). Registration under section 8, as is clear from sub-section (3) of section 9 of the Act, is apart from registration of the motor vehicle under Act 4 of 1939, so that registration under section 8 is only for the purposes of the Act. The preamble of the Act says that it is an Act to provide for levying a tax on passengers and goods carried by road in certain motor vehicles. The Act is, therefore, for levy of tax on carriage of passengers and goods in certain motor vehicles. Registration under section 8 of the Act is also of such motor vehicles, that is to say, motor vehicles used for carriage of passengers and goods. The present case is only concerned with the motor vehicle of the appellant-firm which is a goods carrier. The question then is what is the meaning of the word 'ply' in section 8. In *The Queen v. The Justices of Ipswich* (1) Lord Coleridge, C.J., said—"plying" . . . certainly seemed to imply plying for hire. Such was the example given by Jhonson in his definition, and, though the word might sometimes be used in other senses, that was its first and natural meaning." In *Berry Mahapatra v. Emperor* (2), Courtney-Terrell, C.J., observed that "the word 'ply' . . . has exactly the same meaning as to ply for hire, that is to say it means that the person driving a vehicle stops to take up or put down passengers for reward. A person merely driving his vehicle cannot be said to be plying the vehicle." A carriage out to pick up passengers plies for hire: *Clarke and Goodge v. Stanford* (3)

(1) (1888-89) 5 Times Law Reports 405.

(2) A.I.R. 1936 Patna 321 (1).

(3) (1871) 6 Q.B. 357.

M/s Mohan Lal and Allen v. Tunbridge (4). This is with regard to
Gurdial Dass motor vehicles or carriages for passengers and where a
v. motor vehicle is for carriage of goods and the word used
State of Punjab is 'ply' with regard to it as in section 8 of the Act, it
and others obviously means when the motor vehicle is out to load or
Mehar Singh, J. unload goods for carriage for reward. It is in this manner
that the meaning of the word 'ply' is to be taken as used
in section 8 of the Act.

The appellant-firm is, therefore, when it is prosecuted under section 17(1)(e) of the Act, being prosecuted for loading or unloading of goods for carriage in this State. But the complaint, of which copy is Annexure 'A' with the petition of the appellant-firm, makes no such allegation against the appellant-firm that its motor vehicle, not having registration under section 8 of the Act, has been plying in this State in the sense that it has been loading or unloading goods for reward in this State. The complaint does not disclose the essential allegation of fact which is the basis of the alleged offence said to have been committed by the appellant-firm and on this ground it must be quashed, for, on the face of it, it does not disclose the offence in regard to which the appellant-firm is being prosecuted.

The learned Single Judge dismissed the petition of the appellant-firm being of the view that under section 3(3) of the Act, even though the appellant-firm's goods carrier vehicle merely passes through the territory of the Punjab State bringing goods from one State and carrying it out to another State, it still is liable to tax under that provision. That view has been overruled by a Division Bench, of which the judgment was delivered by my Lord, the Chief Justice, in *Basant Singh v. State of Punjab and others* (5). So the basis upon which the learned Single Judge proceeded to dismiss the writ petition of the appellant-firm no longer subsists. It has already been shown that the complaint against the appellant-firm on the face of it discloses no offence under section 17(1)(e), read with section 8, of the Act.

In consequence, this appeal is accepted, the order of the learned Judge is reversed, and allowing the writ petition of the appellant-firm, the complaint, of which the copy is

(4) (1871) 6 Common Pleas 481.

(5) I.L.R. (1965) 1 Punj. 540=1965 P.L.R. 208.

Annexure 'A', against it, under sections 8 and 17(1)(e) of M/s Mohan Lal-
the Act, is quashed. There is no order in regard to costs, **Gurdial Dass**
because at the time the learned Judge gave decision in the **v.**
writ petition of the appellant-firm the prevailing view was **State of Punjab**
that approved by the learned Judge, which has since been **and others**
overruled by the decision in *Basant Singh's case*. **Mehar Singh, J.**

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

B.R.T.

APPELLATE CIVIL

Before Harbans Singh, J.

MANGAT RAM,—Appellant

versus

OM PARKASH,—Respondent

Execution Second Appeal No. 643 of 1965

East Punjab Urban Rent Restriction Act (III of 1949)—
Section 15(5) order of ejectment passed on revision by High
Court—Whether executable—Section 17—Whether applies.

1965

September 16th.

Held, that sub-section (5) of section 15 of the East Punjab Urban Rent Restriction Act, 1949, gives supervisory jurisdiction to the High Court, and for lack of any other name petitions made under this sub-section are categorised under the heading of revision petitions and thus all that High Court does is to correct mistake, if any, in the order of the appellate authority, and the order passed by the appellate authority as modified is the final order and, therefore, is to be treated as an order passed on appeal under section 15.

Held, that the words "every order passed on appeal under section 15" as used in section 17 of the Act are comprehensive enough to include every order passed by the High Court under sub-section (5) of section 15 of the Act and is executable as such.

Execution Second Appeal from the decree of the Court of Shri Sarup Chand Goyal, Additional District Judge, Gurdaspur; dated the 10th February, 1965, reversing that of Shri B. S. Teji, Sub-Judge 1st Class, Batala, dated 26th September, 1964, dismissing the execution petition of the decree-holder and leaving the parties to bear their own costs.

H. L. SARIN AND MISS ASHA KOHLI, ADVOCATES, for the Appellant.

S. L. PURI, ADVOCATE, for the Respondent.