been correctly decided by the Courts below and dismiss both the landlord's appeal, but in the circumstances I leave the parties to bear their own costs.

B.R.T.

Falshaw, C. J.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

MESSRS GOPI NATH-MADAN GOPAL,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 1790 of 1960.

1962

March, 16th

Punjab Entertainment Duty Act (XVI of 1955)—Sections 12 and 20—Punjab Entertainment Duty Rules (1956)—Rule 36(3)(a)—Whether ultra vires *the Act.*

Held, that sub-rule (3)(a) of Rule 36 of Punjab Entertainment Duty Rules, 1956, is *ultra vires* the Punjab Entertainment Duty Act as it is not covered by sub-section (1) of section 20, of the Act, nor does section 12 of the Act contain any provision under which such a rule could be sustained. On the contrary, the legislature had placed no such limitation or restriction in the substantive provision itself, namely, section 12 and the right of revision was left wide and unfettered by any limitations. It may be that revision and appeal stand on somewhat different footing as in one case there is a substantive right to approach the Appellate Authority whereas in the case of revision it is for the Revisional Authority to satisfy itself as to the legality and propriety of the order. Nevertheless the sub-rule, as framed, purports to stand in the way of that power being exercised as provided by the statute and it must by struck down on that ground.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order, dated 28th October, 1960, passed by respondent No. 2, and directing him to

dispose of the revision Petitions Nos. 310, 311 and 312 filed by the petitioner on merits.

S. K. JAIN, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, for the Respondents.

ORDER.

Grover, J.

GROVER, J.—This is a petition under Articles 226 and 227 of the Constitution in which the facts may be first stated.

The petitioner firm is running a cinema within what is called Military Area, Pathankot, known as Sainik Kala Mandir. It is alleged in the petition that according to the arrangements between the Military authorities and the petitioner, the ownership of the building and the furniture vests in the Military authorities and the petitioner is only a licensee. According to the instructions of the Military authorities, only Military personnel are admitted to the show and the entry of civilian public is altogether prohibited. By virtue of a notification issued by the Punjab Government the entertainment duty on tickets issued to the Military personnel and their families is exempted and, therefore, the petitioner was not authorised to charge any entertainment duty on the tickets issued to the Military personnel and their families. For this reason no entertainment duty was collected by the petitioner. The assessing Authority under the Punjab Entertainments Duty Act, 1955, (hereinafter to be referred to as the Act) made an order on 30th June, 1960, imposing a duty in the sum of Rs. 13,734.12 nP., for the period 11th May, 1959 to 5th February, 1960, to be paid to the State in the form of entertainment duty which according to the Assessing Authority, the petitioner had collected. The petitioner preferred three revision petitions against the orders passed by the Assessing Authority to the Excise and Taxation Commissioner under section 12 of the Act on 30th August, 1960. The Revisional Authority was requested to decide the petitions without deposit of the entertainment duty but that Authority did not agree and passed an order on 28th October, 1960,

that the revisions could not be heard without the deposit of the entertainment duty as provided by rule 36 of the Punjab Entertainments Duty Rules, 1956. It was ordered that the amount be deposited within a month and a half, failing which the revision petitions would be dismissed *in limine*. The main attack of the petitioner is directed to the vires of rule 36 under which the Revisional Authority has ordered that the deposit be made before the revision petitions are decided.

The only point which requires determination is whether rule 36(3)a of the Punjab Entertainments Duty Rules, 1956, is *intra vires* the provisions of the Act in so far as it provides for deposit of the duty assessed before a revision is entertained and decided by the Revisional Authority. The substantive provision in the Act giving the powers of revision is section 12 which may be set out—

> "12. The Commissioner or such other officer, as the Government may, by notification, appoint in this behalf may of his own motion or on application made, call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in reference thereto as he may deem fit."

Sub-section (1) of section 20 empowers the State Government to make rules generally for carrying out the provisions of the Act. Sub-section (2) empowers the State Government to make rules particularly with regard to the matters given in clauses (a) to (l) of this sub-section. Rule 36 appears under Chapter VIII, headed Revision. It is necessary to reproduce it—

> "36. (1) A revision against an order passed under the Act or these rules by an authority subordinate to the Commissioner shall lie to the Commissioner. Every

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application for revision may be presented to the Commissioner by the proprietor or his agent or it may be sent to the said authority by registered post. Every application for revision shall be written on a standard water-marked judicial paper and it shall contain the following particulars—

(a) the date of the order sought to be revised;

(b) the name and designation of the officer who passed the order sought to be revised;

(c) the grounds of the revision briefly but clearly set out.

(2) it shall be accompanied by a certified copy of the order sought to be revised.

(3) It shall be endorsed by the proprietor or his agent as follows:—

(a) that the amount of duty imposed, if any, has been paid; and

(b) that to the best of his knowledge and belief the facts set out in the application are true.

(4) It shall be signed by the proprietor or his agent duly authorised."

Rule 37 provides for summary rejection of the application if the applicant fails to comply with any of the requirements of rule 36. Rule 38 then lays down the manner in which the revision petition is to be heard and disposed of. The contention that has been advanced on behalf of the petitioner is that section 12 contains no provision with regard to the deposit of the amount of duty imposed before a revision petition is heard and disposed of whereas sub-rule (3)a of rule 36 is so worded that it becomes imperative for a petitioner to deposit the amount of duty which has been imposed as he has to make that endorsement in the absence of which the application is liable to be summarily

rejected. The rule is stated to go beyond the substantive provision, namely, section 12 and it is submitted that if a deposit is made of the duty beforehand which may be of a substantial amount as in the present case, then it becomes a highly onerous obligation which would defeat the object of giving a power of revision under section 12 over the proceedings or orders made by the Assessing authorities. It is also contended that rule 36(3)a cannot be said to fall under sub-section (1) of section 20 which empowers the State Government to make rules generally for carrying out the provisions of the Act. It is pointed out that since section 12 does not contain any provision relating to making of deposit of the duty imposed before a revision is heard, it cannot be said that the intention of the rule making authority was to carry out that provision of the Act. As regards sub-section (2) of section 20, there is no clause under which such a rule can be said to fall.

In support of the above submission it is maintained on behalf of the petitioner that section 12 appears to contain a deliberate omission with regard to making of such a deposit because only one remedy is provided against an order of assessment made by the Assessing Authority or against imposition of duty and it could not have been intended that the exercise of that power should be so restricted and made burdensome that a party may never be able to avail of that remedy. My attention has been invited to the general pattern of Taxation Laws in the Punjab State which illustrates that in every case the Legislature has made a specific provision in the Act itself that the appeal or revision would not be entertained without a deposit of the amount assessed having been made beforehand. In the Punjab General Sales Tax Act, 1948, section 20 provides that no appeal shall be entertained unless the amount of tax assessed on the dealer has been paid. Section 9 of the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956, lays down that an aggrieved person can appeal against an order fixing liability on a person to pay the tax under that Act

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but the amount of tax must be paid before the appeal is entertained. Similar provisions are contained in section 15 of the Punjab Passengers and Goods Taxation Act, 1952, and section 14 of the Punjab Textiles and Sugar (Existing Stocks) Purchase Tax and Miscellaneous Provisions Act, 1958. Thus the general pattern of the legislation of this nature in the Punjab is that a provision is made in the statute itself with regard to the amount assessed being deposited before any appeal or revision is entertained by the Appellate or Revisional Authority. Since there is no mention of this under section 12 of the Act, it is legitimate to infer, so says the learned counsel for the petitioner, that the Legislature never intended to make deposit of the duty imposed a condition precedent to the exercise of revisional powers under section 12. In *The Queen* v. *Bird and others* (1), the question which came up for consideration was whether certain rules framed by the court of quarter sessions under section 43 of the Licensing Act, 1872, were *intra vires* and authorised by the statute. By section 37 of that Act a grant of a new licence in counties by licensing justices was not valid unless confirmed by the county licensing committee. By section 43 any person who opposed before licensing justices the grant of a new licence could oppose the confirmation of the grant by the confirming authority and no other person could do it. By the same section power was given in counties to the justices in quarter sessions to make rules as to the proceedings to be adopted for confirmation of new licences. A court of quarter sessions, acting under that section, made a rule that every person intending to oppose the confirmation of any provisional licence before the county licensing committee must, within seven days after the grant of the provisional licence, give notice to the applicant and to the clerk of the peace of his intention to oppose the confirmation. Wills, J. was of the view that since the Parliament had given in so many words to the person opposing the grant of a licence power to appear and to be heard before the county licensing committee in opposition to the confirmation of

(1) (1898) 2 Q.B.D. 340.

the grant, the right of the justices to make rules could not affect that privilege. But the rule which had been framed was beyond the statutory power to make rules and imposed a condition, not warranted by the statute. The following observations made by him at page 345 are noteworthy:—

> "I desire in my judgment to adopt a broad principle which is too clear to need cases to be cited for its justification—the principle that where a power to make regulations is given to a public body by statute, no regulations made under it can abridge a right conferred by the statute itself."

Kennedy, J., laid down in unequivocal terms that to make an absolute rule which has the effect of debarring a man from the exercise of an absolute statutory right unless he complies with a number of requirements is clearly *ultra vires*. In *R. & W. Paul, Limited* v. *The Wheat Commission* (2), the Wheat Commission was empowered under the Wheat Act, 1932, to make bye-laws for giving effect to the provisions of the Act. The bye-laws could be made *inter alia* for the final determination by arbitration of disputes arising as to such matters as may be specified in the bye-laws. The Wheat Commission made a bye-law providing that any dispute arising between the Wheat Commission and any other person as to whether any substance was flour was to be referred to arbitration but Arbitration Act of 1889 was not to apply. The following observations of Lord Macmillan at page 154 deserve particular notice:—

> "I next find that the bye-law in question not only specifies as a matter to be determined by arbitration 'any dispute..... as to whether any substance is flour', but goes on to provide that to such arbitration the Arbitration Act, 1889, shall not apply. The Arbitration Act is a statute

(2) 1937 A.C. 139.

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of general application and it confers a valuable and important right of resort to the Courts of law. To exclude its operation from an arbitration is to deprive the parties to the arbitration of the rights which the Act confers. When a public general statute provides for the reference of disputes to arbitration it is to be presumed that it intends them to be referred to arbitration in accordance with the general law as to arbitrations, with all the attendant rights which the general law confers. I do not think that when Parliament enacts by one statute that disputes under it are to be referred to arbitration it can be presumed to have empowered by implication the abrogation of another statute which it has enacted for the conduct of arbitrations. If this is intended, express words to that effect are in my opinion essential, and there are here no such express words. I am accordingly of opinion that the Wheat Commission exceeded their powers when they made a bye-law that every dispute as to whether any substance is flour should be determined by an arbitration to which the Arbitration Act should not apply."

In *The Adarsh Textile Mills* v. *The Collector of Central Excise* (3), Bishan Narain, J., has held that the liability to deposit the full amount of the duty levied before the appeal is heard in some cases makes it impossible for the aggrieved party to exercise his right of appeal. Therefore, rule 215 of the Central Excise Rules, 1944, is repugnant to section 35 of the Central Excise and Salt Act, 1944, and goes beyond the scope of section 37 of the Act. In coming to that conclusion he placed reliance on *Himmatlal Harilal Mehta* v. *State of Madhya Pradesh* (4), and *The Queen* v. *Bird and others* (supra) as also certain other decisions. This judgment was set aside in an appeal under clause 10 of

(3) 1958 P.L.R. 205.
(4) A.I.R. 1954 S.C. 403.

the Letters Patent (L.P.A. 70 of 1958) decided by Bhandari, C.J., and Falshaw, J., (as he then was) on 3rd September, 1959, but the validity of the impugned rule was upheld by the Bench on the ground that section 12 of the Central Excise and Salt Act had empowered the Central Government to apply the provisions of the Sea Customs Act, 1878, to Central excise duties and as section 37 of the former Act had empowered the Central Government to make rules to carry into effect the purpose of the Act, the Central Government was fully justified in issuing the notification by virtue of which the Central Excise Rules were promulgated. It may be mentioned that section 189 of the Sea Customs Act contains a provision that where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall deposit the amount demanded by the officer making that order. The Bench, therefore, proceeded on the reasoning that there was a statutory provision to that effect and the validity of the rules was sustained for that reason.

After giving the matter due consideration, I am of the view that in the present case in the absence of any statutory provision sub-rule (3)(a) of rule 36 would be *ultra vires* the Act as it cannot be said to be covered by sub-section (1) of section 20, nor does section 12 contain any provision under which such a rule could be sustained. On the contrary, it would appear that the Legislature had placed no such limitation or restriction in the substantive provision itself, namely, section 12 and the right of revision was left wide and unfettered by any limitations. By making the aforesaid rule what has been done can legitimately be brought within the inhibition laid down by Wills, J., with regard to the general principle that no regulations can be made by which a right conferred by the statute itself can be abridged.

The learned Advocate-General has relied on the general scheme of the Act itself and has pointed out that duty has to be colected and, therefore,

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it should be taken to be intended by the Legislature that the rule-making authority would have the power to make provisions for collection of the duty before any revision is entertained against an order imposing that duty. I am unable to accede to that contention because the Legislature would have made an express provision in section 12 itself, if it had been intended that the party filing a petition for revision should deposit the amount of duty imposed before the revision is entertained. There seems to be a good deal of substance in the argument of the learned counsel for the petitioner that the omission in section 12 is deliberate as is clear from other legislation of the same type in which specific provisions exist to that effect. It may be that revision and appeal stand on somewhat different footing as in one case there is a substantive right to approach the Appellate Authority, whereas in the case of revision it is for the Revisional Authority to satisfy itself as to the legality and propriety of the order. Nevertheless the sub-rule, as framed, purports to stand in the way of that power being exercised as provided by the statute and it must be struck down on that ground.

In the result, I allow this petition and quash the impugned order of the Excise and Taxation Commissioner, dated 28th October, 1960. I further direct the respondents to treat sub-rule (3)(a) of rule 36 as illegal and *ultra vires* and to decide the revision or revisions of the petitioner without insisting on compliance with that sub-rule. In the circumstances I leave the parties to bear their own costs.

K.S.K.

REVISIONAL CRIMINAL

Before P. D. Sharma, J.

DALIP SINGH,—*Petitioner*

versus

MAHLA RAM AND OTHERS,—*Respondents.*

Criminal Revision No. 1004 of 1961.

1962

March, 20th

Code of Criminal Procedure (Act V of 1898)—Sections 195, 476 and 479-A(6)—Whether Court can make