

(27) For the reasons stated, I hold that the Society could not be regarded as a local authority nor the petitioner as a whole-time salaried servant of a local authority within the meaning of clause (g) of sub-section (5) of section 6 of the Panchayat Act. The rejection of his nomination paper is vitiated by illegality and must be struck down. Accordingly the impugned order (Annexure "B" to the petition) is quashed along with the election which was found without the petitioner being given an opportunity of participating in it. In the circumstances of the case the parties are left to bear their own costs.

B. S. G.

CIVIL MISCELLANEOUS

Before R. S. Narula and Bal Raj Tuli, JJ.

NAZAR SINGH SARWAN SINGH,—Petitioner.

versus

THE STATE OF HARYANA, ETC.—Respondents.

Civil Writ No. 3336 of 1971.

November 29, 1971.

*Punjab Passengers and Goods Taxation Act (XVI of 1952 as amended by Act XXI of 1952)—First proviso to section 4—Punjab Passengers and Goods Taxation Rules (1952)—Rule 9—Punjab Motor Vehicles Taxation Act (IV of 1924)—Section 7(A) (b)—Constitution of India (1950)—Article 304—Amending Act adding first proviso to section 4 introduced in Legislature without the previous sanction of the President—Such proviso—Whether invalid on that score—Option conferred by the proviso—Whether converted into a compulsion in view of section 7(A) (b) and liable to be struck down.*

*Held*, that first proviso to section 4, Punjab Passengers and Goods Taxation Act, 1952 enacted by the Amendment Act 21 of 1952 without the previous sanction of the President is valid because no such sanction was necessary. The proviso does not in any manner interfere with inter-State trade or even intra-State, commerce and intercourse.

(Para 2)

*Held*, that clause (b) of Section 7A of Punjab Motor Vehicles Taxation Act, 1924 applies only to those cases which are covered by the proviso to section 4 of the Punjab Passengers and Goods Taxation Act, 1952 and by the

Nazar Singh Sarwan Singh v. The State of Haryana, etc. (Narula, J.)

first proviso to rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952 and not to cases covered by the purview of section 4 and the purview of rule 9. The result is that the truck operators or owners who have exercised the option of paying goods tax in a lump sum under the proviso to section 4 and want to pay the tax in a lump sum under the first proviso to rule 9, shall have to pay the tax in advance to obtain the clearance certificate from the goods tax authorities to produce the same before the authorities under the Motor Vehicles Taxation Act and to satisfy those authorities as required by section 7A(b) of the Act about the goods tax having been paid in respect of the quarter in question before being entitled to obtain a token for the payment of tax in that particular quarter. It is not necessary for a person who wants to pay tax under the purview of section 4 of the Passengers and Goods Taxation Act in the manner provided in the purview of rule 9 of the Rules to pay the advance goods tax as it would be impossible for him to do so. The authorities under the Motor Vehicles Taxation Act are not entitled to refuse to issue such a person the token for the payment of tax for any quarter on the ground that he has not paid advance goods tax for that quarter. Section 7A(b) of this Act is not intended to apply and does not apply to cases in which goods tax is not due on lump sum basis. Thus the option conferred by the proviso to section 4 of the Passengers and Goods Taxation Act is not converted into a compulsion by the introduction of the section 7A(b) of the Motor Vehicles Taxation Act and therefore is not liable to be struck down.

(Para 4)

*Case referred by Hon'ble Mr. Justice R. S. Narula to a larger Bench on 1st November, 1971, for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice Bal Raj Tuli on 29th November, 1971.*

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ order or direction be issued directing the respondents not to interfere with the operation of the petitioner's vehicle in the area included in the composite Punjab and also directing the respondents to charge same permit-fee, i.e. Rs. 333 only as was being charged prior to Reorganisation of Punjab and further quashing the levy of enhanced rate of goods-tax and further praying that during the pendency from interfering with the operation of the vehicle of the petitioner and from charging any goods-tax, toll, entrance fee or other similar charges.*

Harbans Lal, Advocate, for the Petitioner.

J. N. Kaushal, Advocate-General (Haryana), with Naubat Singh, District Attorney, for Respondent No. 1.

Mela Ram Sharma, Senior Deputy Advocate-General (Punjab), for Respondents Nos. 2 and 4.

Anand Sarup, Senior Advocate (for 29th November, 1971 only), and I. S. Balhara, Advocate, for Respondent No. 3.

#### JUDGMENT

The judgment of this Court was delivered by:—

NARULA, J.—(1) Nazar Singh, Sarwan Singh, petitioners (hereinafter referred to as the petitioner in the singular), owners of heavy transport vehicle (truck) No. P.U.C. 9314, have filed this petition under Articles 226 and 227 of the Constitution for the issuance of an appropriate writ or order to restrain the State of Haryana, the State of Punjab, the Union Territory of Chandigarh, and the Excise and Taxation Officer, Sangrur (respondents 1 to 4 respectively) from interfering with the operation of their truck in the area included in the erstwhile composite Punjab and from charging permit-fee of more than Rs. 333, as was being charged prior to the reorganisation of the State of Punjab in 1966. He has also prayed for quashing the levy of the enhanced rate of goods tax. No arguments were, however, advanced at the hearing of the petition regarding the claim in respect of the permit-fee and the grievance about the enhanced rate of goods tax. Only two grounds were pressed before me in Single Bench and the same have again been pressed before us in Division Bench. Both the grounds relate to the validity and enforceability of the first proviso to section 4 of the Punjab Passengers and Goods Taxation Act (16 of 1952) (hereinafter called the principal Act), which was introduced into the principal Act on October 15, 1952, by Punjab Ordinance 2 of 1952, which Ordinance was subsequently replaced by the Punjab Passengers and Goods Taxation (Amendment) Act (21 of 1952). The first ground on which the validity of the proviso has been attacked is that the bill of the amending Act was introduced or moved in the Punjab Legislature “without the previous sanction of the President” requisite under the proviso to Article 304 of the Constitution. It was frankly conceded by Mr. Harbans Lal, that the principal Act having received the assent of the President of India on August 30, 1952, was valid in spite of the Act having come into force on August 1, 1952, because of the provisions of Article 255(c) of the Constitution, though the principal Act was likely to interfere with the freedom of inter-State trade or

Nazar Singh Sarwan Singh v. The State of Haryana, etc. (Narula, J.)

commerce. Though Mr. Harbans Lal had contended on the first day of arguments before us on the authority of the judgment of the Supreme Court in *Saghir Ahmad and another v. State of U.P. and others* (1), that subsequent assent cannot validate an Act which requires previous sanction of the President he gave up that point today in view of the direct judgment of the Supreme Court in *Jawaharmal v. The State of Rajasthan and others* (2). In view of what is stated in paragraph 30 of the judgment of the Supreme Court in *Saghir Ahmad's case* (1), it appears that the statement in the last lines of paragraph 31 merely contain a reproduction of one of the possible views put up before their Lordships by the counsel appearing for the parties. In any event, the provisions of law with which their Lordships of the Supreme Court were dealing in *Jawaharmal's case* (2), being almost the same as the subject-matter of petitioner's attack before us, it cannot be denied that Article 255 applies to this case.

(2) Section 4 of the principal Act provided that the passengers and goods tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner. Clause 2 of the Punjab Passengers and Goods Taxation (Amendment) Ordinance (2 of 1952) added the following as the first proviso to section 4:—

“Provided that in case of public carriers the Government may accept a lump sum in lieu of the tax chargeable on freight, in the manner prescribed.”

The Ordinance was repealed by section 3 of the Punjab Passengers and Goods Taxation (Amendment) Act (21 of 1952), which came into force on November 26, 1952. By section 2 of the amending Act, the same proviso as reproduced above was added to section 4. In the official statement of objects and reasons for making the abovementioned amendment it is stated that the truck owners represented to the Government that they being illiterate, it would be difficult for them to maintain proper accounts and issue receipts, etc. under the provisions of the principal Act, and it was in order to meet their demands that the Government decided to amend the principal Act so as to recover the tax from truck operators on a lump sum basis. The Ordinance had been promulgated with that object, and the

(1) A.I.R. 1954, S.C. 728 (Paragraph 31).

(2) A.I.R. 1966, S.C. 764.

Act was intended to replace the Ordinance (*vide* statement of objects and reasons published in the Punjab Gazette, Extraordinary, dated October 21, 1952). A mere reading of the proviso shows that no part of it can possibly interfere with or act as a restriction on inter-State trade or commerce. Their Lordships of the Supreme Court have already held in *Messrs Sainik Motors, Jodhpur and others v. State of Rajasthan* (3), that an exactly similar provision in the Rajasthan Passengers and Goods Taxation Act (18 of 1959), read with the relevant rules framed thereunder, was not mandatory, but afforded an option to the tax-payer. In reply to the petitioner's attack on the proviso on the ground of the said provision having been enacted without the previous sanction of the President, it has been stated by the respondents that no such previous sanction was necessary. We agree with the respondents in this respect as the relevant proviso does not, in our opinion, interfere in any manner with inter-State trade or even intra-State trade, commerce and intercourse. The first ground urged by Mr. Harbans Lal, therefore, fails.

(3) The second attack on the provision starts from the point where the first finishes. It is contended that whereas in the original Punjab Passengers and Goods Taxation Rules, 1952 (hereinafter called the 1952 Rules), framed under the principal Act, it was provided that lump sum goods tax could be paid within fifteen days of the close of each quarter, the second proviso to rule 9 containing that provision has been amended in 1964 to provide that the lump sum shall be payable in equal quarterly instalments within thirty days of the commencement of the quarter. Rule 9 as in force in Punjab is reproduced below for facility of reference:—

*“Method of payment of tax.*—Tax shall be paid in one of the following manners:—

- (i) By stamping the ticket or receipt with an impressed, embossed, engraved or adhesive stamp (not already used) issued by the State Government for the purposes of the Act and denoting that the tax due has been paid.
- (ii) Where the impressed, embossed, engraved or adhesive stamps are not available or the Commissioner so directs, the amounts of tax payable shall be deposited

by the owner in cash into the Government Treasury at such interval and in such manner as laid down in rules 17, 18, 19, 20 and 22:—

Provided that the owner of a public carrier may pay to the State Government the following lump sum in lieu of the tax chargeable on freight:—

- (a) Rs. 1,215 per annum per vehicle other than one plying on hill routes or under countersignatures of the authorities in the adjoining States under the Motor Vehicles Act, 1939.
- (b) Rs. 1,820 per annum per vehicle, plying on hill routes or under countersignatures of the authorities in the adjoining States under the Motor Vehicles Act, 1939.
- (c) Rs. 200 per annum per vehicle plying on Pathankot-Jammu-Srinagar route only.
- (d) Rs. 450 per annum per tractor plying with public carrier permit.
- (e) Rs. 610 per annum per tempo rickshaw plying with a public carrier permit.

Provided further that the said sum shall be deposited in cash by the owner into the Government Treasury or paid by crossed cheque in favour of the appropriate Assessing Authority with due regard to the provisions of Note 4 under rule 25 of the subsidiary Treasury Rules. The said sum shall be payable in equal quarterly instalments within thirty days of the commencement of the quarter to which the payment relates and the Assessing Authority shall grant a clearance certificate in Form P.T.T. 5-A in token of having received the tax under his signatures. The payment of these quarterly instalments will be subject to the following conditions:—

- (a) For September, 1952, tax shall be paid for a single month and thereafter it shall be paid quarterly beginning from 1st October, 1952.
- (b) Where the owner of a public carrier has not plied his vehicle for a complete calendar quarter and produces an order from the competent authority under the

Punjab Motor Vehicles Taxation Act, 1924, that he has been exempted from the payment of the tax for the said quarter, no tax shall be leviable for that quarter.

- (c) The owner of a public carrier shall inform the Assessing Authority concerned as soon as his vehicle goes out of use. In case the vehicle is put on the road within the course of the quarter an intimation to that effect shall be sent to the Assessing Authority concerned immediately.
- (d) If a permit is countersigned for plying a vehicle temporarily in an adjoining State, the owner of a public carrier holding the permit shall intimate this fact to the Assessing Authority of the district in which the vehicle is registered.
- (e) When the tax is deposited in a district other than the district of registration, the owner of the public carrier holding the permit shall intimate, within a week of such deposit, particulars, etc., of the deposit made in another district to the Assessing Authority of the district in which vehicle is registered.

Provided further that the owner of a contract carriage detailed below may pay the State Government the lump sum as specified against each in lieu of the tax chargeable on fare:—

*Rs.*

(a) Scooter Rickshaw (two seater) ...	272 per annum
(b) Motor Cycle Rickshaw (four seater) ...	340 per annum
(c) Tempo Rickshaw (six seater) ...	610 per annum
(d) Taxi car except that plying on Kalka-Simla, Pathankot Dalhousie, Kulu-Manali, Hoshiarpur-Bharwain and Bharwain-Nangal routes ...	408 per annum
(e) Taxi State Wagons except that plying on routes mentioned above ...	544 per annum.

Nazar Singh Sarwan Singh v. The State of Haryana, etc. (Narula, J.)

The lump sum shall be payable in equal quarterly instalments from the quarter beginning from the 1st April, 1966.

The provisions of second proviso except condition (a) relating to public carriers shall apply mutatis mutandis to the contract carriages."

(4) It is not disputed by the learned counsel for the petitioner that even up to this stage there would not have been any trouble, as there is nothing wrong in an operator, who has, either by so stating or by conduct, opted for payment of lump sum tax, being merely asked to pay the tax within thirty days of the commencement of each quarter instead of being required to pay it within fifteen days of the close of the quarter. The grievance of the petitioner is that by amendment of the Punjab Motor Vehicles Taxation Act (4 of 1924) (hereinafter called the Taxation Act) by introduction of the following provision as section 7-A(b) therein, the option conferred on the operators by the proviso to section 4 of the 1952, Act has been converted into a compulsion:—

"Notwithstanding anything contained in this Act or the rules made thereunder,—

- (a) no licence under section 7 in respect of a motor vehicle, as defined in clause (i) of section 2 of the Punjab Passengers and Goods Taxation Act, 1952, shall be granted by the licensing officer to any person to whom a registration certificate in respect of such motor vehicle under that Act has not been granted, and if the registration certificate under that Act is cancelled or suspended, the licence under this Act shall be deemed to be cancelled or suspended, as the case may be ; and
- (b) no token for the payment of tax for any quarterly period under this Act shall be issued to any person in respect of a motor vehicle as referred to in clause (a) unless the authority issuing the token is satisfied that such person has paid the tax under that Act in respect of such motor vehicle for such quarterly period."

Section 3(1) of the Taxation Act provides for the levy of a tax on every motor vehicle. Sub-section (2) enjoins the duty to pay that



tax on the person, who keeps the motor vehicle for use. Sub-section (2) of section 4 provides for payment of quarterly motor tax. Section 7 states that every licensing officer shall grant and deliver to every person, who pays to him the first instalment of tax due, a licence in which shall be specified the particulars of the tax paid and any other prescribed particulars. Clause (b) of section 9 provides that whoever neglects or refuses to pay any amount of tax to which he is liable within one month from the expiration of the period fixed for such payment, shall be liable to pay, in addition to any arrear of tax that may be due from him, a penalty which may extend to twice the amount of tax to which he is liable. The tax under the Taxation Act has to be paid in advance for every quarter. No vehicle can lawfully be plied unless the said tax has been paid in respect thereof and a token showing payment of tax is displayed on the windscreen or other prominent part of the vehicle. The argument of Mr. Harbans Lal, is that even if a truck operator pays the tax under the Taxation Act in advance for any quarter, section 7A(b) of the Taxation Act would stand in the way of the authorities to issue to him a token for payment of that tax, unless he produces before such authority a certificate from the authorities under the principal Act showing that he has already paid the lump sum goods tax. The tax token under the Taxation Act is necessary for all vehicles and has to be obtained by all operators irrespective of whether they want to pay freight tax according to the purview of section 4 read with the purview of rule 9, or they want to pay the same under the proviso to section 4 read with the first proviso to rule 9. According to Mr. Harbans Lal, an operator, who wants to pay tax on the basis of goods and distance, and does not want to pay lump sum shall not be permitted to operate at all as he would not be able to obtain a token for the payment of tax under the Taxation Act as he would not be in a position to satisfy the authorities under the Taxation Act that he has paid the tax under the principal Act in respect of the motor vehicle in question before the end of the quarter. In this manner, contends Mr. Harbans Lal, the payment of goods tax on lump sum basis has ceased to be optional with the operator but has become compulsory. It is contended that the validity of the proviso was upheld by the Supreme Court in the case of *Messrs Sainik Motors, Jodhpur and others* (3) (supra), on the finding that it was optional for the tax-payer to take advantage of the proviso and as soon as that situation has changed, the proviso to section 4 is liable to be struck down. This argument of Mr. Harbans Lal has no merit. This point was also raised before a Full Bench of

Nazar Singh Sarwan Singh v. The State of Haryana, etc. (Narula, J.)

this Court in *Amar Singh v. The State of Haryana and others* (4), but was left open as it was not necessary to decide it there. If it was not possible to read section 7A(b) of the Taxation Act in any manner other than that contended by Mr. Harbans Lal, the argument would certainly have needed a deeper probe. But it appears to us that that provision can be reconciled with the principal Act and the 1952 Rules framed thereunder, and both the provisions can be read in a harmonious manner. In *Tirath Singh v. Bachittar Singh and others* (5), it was held by their Lordships of the Supreme Court that where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumably not intended a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. Applying that principle and in order to harmonise the requirements of section 7A(b) of the Taxation Act on the one hand and the second proviso to rule 9 of the 1952 Rules framed under the principal Act on the other, and in order to avoid an absurdity, we hold that clause (b) of section 7A of the Taxation Act applies only to those cases which are covered by the proviso to section 4 and by the first proviso to rule 9, and not to cases covered by the purview of section 4 and the purview of rule 9. The result is that the truck operators or owners who have exercised the option of paying goods tax in a lump sum under the first proviso to section 4 and want to pay the tax in a lump sum under the first proviso to rule 9, shall have to pay the tax in advance to obtain the clearance certificate from the goods tax authorities to produce the same before the authorities under the Taxation Act and to satisfy those authorities as required by section 7A(b) of the Taxation Act about the goods tax having been paid in respect of the quarter in question before being entitled to obtain a token for the payment of tax in that particular quarter. At the same time it would not be necessary for a person who wants to pay tax under the purview of section 4 of the principal Act in the manner provided in the purview of rule 9 of the 1952 Rules to pay the advance goods tax as it would be impossible for him to do so. The authorities under the Taxation Act would not be entitled to refuse to issue to such a person the token for the payment of tax for any quarter on the ground that he has not paid advance goods tax for that quarter. The learned counsel appearing for the States of Punjab and Haryana,

(4) I.L.R. (1971)1 Pb. Hr. 720.

(5) A.I.R. 1955 S.C. 830.

and for the Union Territory of Chandigarh, have taken up the same position and have asked us to interpret section 7A(b) of the Taxation Act in this very fashion. Mr. Naubat Singh, learned counsel, who appears for the State of Haryana, has further given us to understand that his Government is already taking steps to amend section 7A(b) of the Taxation Act so as to expressly confine its application to cases for payment of goods tax in lump sum. So long as such an amendment is not made section 7A(b) shall be read in that manner. In order to make it workable; the authorities may prescribe a form of declaration to be given by a motor vehicle operator or owner to the taxation authorities about his not having opted for payment of goods tax on lump sum basis. On such a declaration being given, section 7A(b) will not apply to such an operator. The authorities may also, if so advised, obtain the option of truck operators or truck owners in advance about their choosing to pay tax under the principal Act on lump sum basis or otherwise. Detailed requirements in this connection will have to be worked out by the respective States. So far as we are concerned, we are clear that section 7A(b) of the Taxation Act is not intended to apply and does not apply to cases in which goods tax is not due on lump sum basis.

(5) Though various other contentions had been raised in the petition none of those has been pressed at the hearing. Both the grounds of attack directed against the impugned provision having failed, this writ petition cannot succeed, and is accordingly dismissed with costs.

N. K. S.

FULL BENCH

*Before R. S. Narula, Bal Raj Tuli, and Gurnam Singh, JJ.*

PARKASH CHAND,—*Petitioner.*

*versus*

S. S. GREWAL, CHIEF SECRETARY, PUNJAB, ETC.,—*Respondents.*

**Criminal Original No. 212 of 1970.**

February 13, 1974.

*Contempt of Courts Act (LXX of 1971)—Section 2—Specific Relief Act (XLVII of 1963)—Section 34—Decree of a Civil Court declaring the dismissal of a Government servant as void and treating him to be still in service—Whether can be construed as enjoining upon the Government to*