

## FULL BENCH

Before Dulat, Capoor and R. P. Khosla, JJ.

SHRI HARISH CHAND,—*Petitioner*

*versus*

THE COLLECTOR OF AMRITSAR AND ANOTHER,—

*Respondents*

Civil Writ No. 149 of 1955.

1958

Feb., 17th

*Punjab State Aid to Industries Act (V of 1935)—Section 35—Whether repugnant to Article 14 of the Constitution—Discretion given to the State Government under section 35—Whether arbitrary—Nature of the discretion—Whether abuse of power can be assumed.*

*Held*, that the provisions of section 35 of the Punjab State Aid to Industries Act, 1935, are not repugnant to the provisions of Article 14 of the Constitution. The Act does not prescribe different machinery for determining the liability of different individuals or classes of individuals. What the Act in substance provides is that after a declaration in respect of the amount due has been made under sections 23 and 24, the amount may be recovered through the agency of a Civil Court and, in addition to it, in a fit case, proved fit to the satisfaction of the State Government, the additional coercive machinery designed for realising arrears of land revenue, may also be resorted to. These provisions do not, in any sense, deny the equal protection of law to any person.

*Held*, that the discretion given to the State Government under section 35 of the said Act is, no doubt, wide but it is neither unguided nor arbitrary. It is not possible for the legislature to visualise every kind of contingency and it is, therefore, hardly practicable to enumerate various contingencies in which power to act one way or the other may be exercised. The guiding principle is to be found in the policy of the Act which, in the case of impugned Act, is to improve and regulate the giving of State aid for industrial purposes. The Act authorizes the State Government to advance loans to deserving industrialists but, at the same time, requires the prompt recovery of such loans and the

legislature has, therefore, taken pains to make provisions in the Act designed to avoid needless delay and obstruction in speedy recovery, and it is undoubtedly with that end in view that it has provided that in suitable cases the dues may be recovered as arrears of land revenue, the suitability of each case depending on the satisfaction of the State Government.

*Held*, that the mere fact that a certain matter is left to the decision of the State Government, the exercise of it cannot be said to be arbitrary. The power is vested not in minor officials but in top-ranking authorities. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in the State Government. There is, moreover, a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. The discretion under the Punjab State Aid to Industries Act, 1935, concerns only a minor matter of procedure not affecting the substantial liability of any individual but merely determining whether an additional mode of recovery shall be resorted to or not. There is nothing objectionable in this.

*Case referred by Hon'ble Mr. Justice Bishan Narain, on 10th January, 1956, to a Division Bench (consisting of Hon'ble the Chief Justice, A. N. Bhandari and Hon'ble Mr. Justice K. L. Gosain) for opinion on the legal point involved in the case and further referred by this Division Bench on 7th August, 1957, to a Full Bench consisting of Hon'ble Mr. Justice Dulat, Hon'ble Mr. Justice Capoor and Hon'ble Mr. Justice R. P. Khosla and later decided on 17th February, 1958.*

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of mandamus be issued directing respondent No. 1 to cancel the warrant of arrest and refraining from executing the declaration of respondent No. 2 issued under section 24(1) of the Punjab State Aid to Industries Act, 1935 and ordering the Respondent No. 2 to withdraw the declaration.*

BHAGIRATH DASS AND RAJINDAR SACHAR, for Petitioner.

KARTAR SINGH CHAWLA, ASSISTANT ADVOCATE-GENERAL,  
for Respondent.

## JUDGMENT

The judgment of the Court was delivered by—

Dulat, J.

DULAT, J.—We are asked to consider in this case whether the provisions contained in section 35 of the Punjab State Aid to Industries Act, 1935, are repugnant to the provisions of Article 14 of the Constitution.

The petitioner, at whose instance this question has been raised, was granted a loan of Rs. 5,000 in October, 1950, this being one of the forms in which State aid could be given by virtue of section 17 of the Act. To secure the loan, a bond, mortgaging a piece of land with Government, was obtained. The loan had to be repaid at a certain time, but the petitioner did not make any payment and, in consequence, the officer empowered under the Act issued a notice under section 23 of the Act, and, since this did not have any effect, the competent officer issued a declaration mentioning the amount due from the petitioner. Section 24 of the Act makes such a declaration conclusive evidence of its contents and permits the production of such a declaration in a civil Court as if it were a decree of a civil Court, and section 25 of the Act requires that on the production of such a declaration the civil Court will proceed to attach the property mentioned in the declaration and further proceed to realize the amount in the same manner as is done in the execution of a decree. It appears, however, that in the meantime the property, that had been mortgaged, had been sold in satisfaction of some other debt due from the petitioner. The department concerned, therefore, obtained the sanction of the State Government to recover the amount due from the petitioner as arrears of land revenue.

This is permitted under section 35 of the Act which is directly in question. The section runs—

“Notwithstanding anything contained in sections 23, 24 and 25, any amount payable to the State Government under this Act or by virtue of a contract entered into under this Act including interest and costs, if any, may with the previous sanction of the State Government, be recoverable as arrears of land revenue.”

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The petitioner objects to recourse being had to section 35 of the Act, and the contention raised on his behalf is that this provision of law is in conflict with Article 14 of the Constitution and for that reason invalid.

Mr. Bhagirath Dass for the petitioner conceded at the very outset that, if section 35 had stood by itself, he could not have objected, and that his objection is not to the particular mode of recovery authorised by section 35, namely, the recovery of the dues as arrears of land revenue, but that, since this provision stands side by side with the other provisions of the Act contained in sections 23, 24 and 25, which clearly lay down another kind of procedure for recovery of dues, there have come to exist two different methods of proceeding against persons similarly placed resulting in the possibility of arbitrary discrimination by the State Government between one individual and another which, counsel maintains, is wholly contrary to the substance of Article 14 of the Constitution. Before proceeding with the argument as raised on behalf of the petitioner, it is useful to see what precisely Article 14 of the Constitution says. This runs—

“The State shall not deny to any person equality before the law or the equal

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protection of the laws within the territory of India.”

There is nothing in this Article concerning discrimination and, in fact, this matter of discrimination is mentioned by the Constitution itself in the next Article 15, and the specific grounds on which discrimination is forbidden are enumerated. Article 14 merely guarantees that under a particular law two or more persons shall not be differently treated.

It is conceded that it is in the nature of things impossible that all laws should have universal application, and that the legislature has to be constantly engaged in devising laws to suit various classes of persons and to meet differing circumstances. Classification is, therefore, a necessary part of legislation and does not as such imply any discrimination intended to be prohibited by our Constitution. Mr. Bhagirath Das accepts the correctness of this view, but contends that classification or the task of placing different individuals in different categories must proceed on a rational basis, and that if it is made arbitrarily either by the legislature directly or is left by the legislature to be made arbitrarily by a subordinate authority, then at once a situation arises denying the equal protection of law guaranteed by Article 14 of the Constitution. This is a fair representation of the matter and what we have to consider, therefore, is whether the Act impugned before us does in any manner make any arbitrary or unjust classification of persons affected by it. This is substantially a question of fact to be answered in the context of each enactment in consideration of all its provisions and its broad policy. Mr Bhagirath Dass has taken us through several decisions of the Supreme Court bearing on Article 14 of the

Constitution and has sought assistance from general observations made in some of the decisions. It is, however, perfectly clear from those decisions that the validity of each statute was judged in the light of its peculiar provisions and the decisions themselves, therefore, cannot give a clear cut answer to the questions that arises before us. The earliest case brought to our notice is *The State of West Bengal v. Anwar Ali Sarkar* (1). The impugned statute in that case had provided for the trial of certain cases in connection with certain offences by certain special Courts and it was left to the State Government to decide which particular case or cases would be tried by such special Courts. The Supreme Court came to the conclusion that the impugned Act denied the equal protection of law to certain persons and was, therefore, unconstitutional. Mr. Bhagirath Dass very strongly relies on this decision and, in particular, on these observations of Mahajan, J.—

“The Act has laid down no yardstick or measure for the grouping either of persons or of cases or of offences by which measure these groups could be distinguished from those who are outside the purview of this special Act. The Act has left this matter entirely to the unregulated discretion of the provincial Government.”

This was in January, 1952. About a month later the Supreme Court had to consider a very similar statute concerning the State of Saurashtra in *Kathi Raning Rawat v. The State of Saurashtra*. (2). By that statute, also, special Courts had been set up and the impugned section of that Act was in terms identical with the section of the West

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(1) 1952 S.C.R. 284  
(2) 1952 S.C.R. 435

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Bengal Special Courts Act, which had previously been struck down. Yet, in view of the other circumstances, the majority of the Judges decided to uphold the Saurashtra Act. These two decisions clearly illustrate the proposition that each statute has to be viewed in the light of its own circumstances and that general tests formulated in general terms are not helpful. As Patanjali Sastri, C. J., put it in *Anwar Ali's* (1) case, "the wordy formulation of so-called tests in solving problems presented by concrete cases" is futile.

The third case, again, concerning the formation of special Courts in West Bengal arose in *Kedar Nath Bajoria v. The State of West Bengal* (2), and the Supreme Court once again upheld the provision authorizing the State Government to send special cases to special Courts on the view that the power given to the State Government to choose cases was not arbitrary but regulated by the general policy to be achieved by the Act.

Mr. Bhagirath Dass has then referred to *Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri and another* (3), in which a provision of the Taxation on Income (Investigation Commission) Act (XXX of 1947) was struck down on the ground that it gave unregulated and arbitrary powers to certain executive authority to try cases of certain individuals in one manner and certain others in another manner, but the decision there like the decisions in the three cases already mentioned turned on the peculiar provision contained in the impugned Act. One fact, however, may be noted in connection with all these cases, and that is that in each of them the inequality claimed to exist was in respect of the machinery to determine certain

(1) 1952 S.C.R. 284  
(2) 1954 S.C.R. 30  
(3) (1955) S.C.R. 448

liabilities to be fastened on certain persons, in the first three cases criminal liability in respect of offences committed and in the fourth case liability to pay certain taxes. It seems to me impossible to argue that the present case has any resemblance to those cases. The Punjab State Aid to Industries Act, 1935, does not prescribe different machinery for determining the liability of different individuals or classes of individuals. The objection here put at its highest is this that, after liability has been determined, it is left to an executive officer, with the assistance of the State Government, to decide whether the coercive machinery to be used for recovery of the amount due should be of one type only or also of another type. What the Act in substance provides is that after a declaration in respect of the amount due has been made under sections 23 and 24, the amount may be recovered through the agency of a civil Court and, in addition to it, in a fit case, proved fit to the satisfaction of the State Government, the additional coercive machinery designed for realizing arrears of land revenue, may also be resorted to. It is difficult to see in what sense these provisions deny the equal protection of law to any person.

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The facts most closely resembling the present were involved in a case relied upon by the Assistant Advocate-General reported as *Purshottam Govindji Halai v. Shree B. M. Desai, Additional Collector of Bombay and others* (1). The impugned provision in that case was contained in section 46(2) of the Income-tax Act which empowers the Income-tax Officer to forward to the Collector a certificate specifying the amount of arrears due from an assessee, and thereupon the Collector is authorized to recover the amount as

(1) A.I.R. 1956 S.C. 20



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if it were an arrear of land revenue, and further provides that, apart from this power, the Collector shall also have the power which a civil Court has for the purpose of recovering the amount under a decree. The contention raised was that these provisions had the effect of setting up two different machineries prescribing two alternative and different methods of recovery and it was left to the arbitrary choice of the Collector whether he will proceed to recover the amount as arrears of land revenue or to recover it as a Civil Court executing a decree. This contention was repelled by the Supreme Court on the view that these provisions were not alternative methods of recovery but one method was in addition to the other and that the two taken together did not have the effect of arbitrary discrimination between individuals and did not offend Article 14 of the Constitution. This view was later confirmed by the Supreme Court in *Collector of Malabar and another v. Erimmal Ebrahim Hajee* (1). There seems to me hardly any material difference between the two modes of recovery provided in section 46(2) of the Income-tax Act and the two modes in the present Act, and, on the view adopted by the Supreme Court, there ought to be no grievance in respect of the present Act.

Mr. Bhagirath Dass's main contention is that section 35 of the Punjab State Aid to Industries Act, 1935, gives very wide powers to the State Government to decide against whom the more coercive process of recovery as arrears of land revenue, should be resorted to and that the power is arbitrary and unregulated, because the Act does not give any indication of the grounds on which one category of persons, namely, those to be proceeded against

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(1) A.I.R. 1957 S.C. 688

under section 35, should be differentiated from the other. I agree that the discretion given to the State Government under section 35 of the impugned Act is wide but I cannot agree that it is either unguided or arbitrary. It has to be remembered that it is not possible for the legislature to visualize every kind of contingency and it is, therefore, hardly practicable to enumerate the various contingencies in which power to act one way, or the other may be exercised. The guiding principle is to be found in the policy of the Act and that policy is in connection with the impugned statute unmistakable. As the preamble of the Act mentions, it is designed to improve and regulate the giving of State aid for industrial purposes. The Act authorizes the State Government to advance loans to deserving industrialists but, at the same time, requires the prompt recovery of such loans and the legislature has, therefore, taken pains to make provisions in the Act designed to avoid needless delay and obstruction in speedy recovery, and it is undoubtedly with that end in view that it has provided that in suitable cases the dues may be recovered as arrears of land revenue, the suitability of each case depending on the satisfaction of the State Government. Mr. Bhagirath Dass's objection is that, inasmuch as this matter is left to the decision of the State Government, the exercise of it tends to become arbitrary. The answer to that objection is given by Bhagwati, J., in a recent decision of the Supreme Court in *Messrs Pannalal Binjraj and others v. Union of India and others* (1).

"It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the

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(1) A.I.R. 1957 S.C. 397 at p. 408

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information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. There is moreover, a presumption that public officials will discharge their duties honestly and in accordance with the rules of law."

I need only add that the discretion under the present Act concerns only a minor matter of procedure not affecting the substantial liability of any individual but merely determining whether an additional mode of recovery shall be resorted to or not. To my mind there is nothing objectionable in this. I am, therefore, wholly unable to agree that section 35 of the Punjab State Aid to Industries Act, 1935, in any manner, offends Article 14 of the Constitution.

*B.R.T.*