

exercise powers in a haphazard way. It was held in that case that there are three checks provided by law for assuring the licensee that the administrative power is exercised in public interest, for the purpose given in the law and under control. Firstly, the reasons should be recorded, secondly they should be relatable to the security of public peace, and thirdly, they are subject to further examination in appeal by the administrative authority immediately superior. In the instant case I find that the solitary reason for which the renewal of the petitioner's gun licence was refused is not in any manner relatable to the security of public peace. The order of the District Magistrate, Sangrur, declining to renew the petitioner's gun licence and the order of the appellate authority cannot be sustained and are, therefore, set aside. As a result this writ petition is allowed without any order as to costs.

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CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

PIYARE LALL KHANNA,—Petitioner.

versus

THE STATE BANK OF PATIALA AND OTHERS,—Respondents.

Civil Writ No. 2522 of 1964.

State Bank of India (Subsidiary Banks) Act (XXXVIII of 1959)—S. 56—Patiala Recovery of State Dues (Repealing) Act (XXXVII of 1960)—S. 2—Effect of, on determination and mode of recovery of debts due to the Bank of Patiala prior to 1st April, 1960—Limitation Act (XXXVI of 1963)—Art. 19 or Art. 112—Recovery of debts due to the Bank of Patiala—Article applicable—Whether Art. 19 or Art. 112.

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Held, that by enacting section 56 of the State Bank of India (Subsidiary Banks) Act, 1959, the Legislature intended that so far as the old debts due to the Bank of Patiala before 1st April, 1960 were concerned, the provisions of the Patiala Recovery of State Dues Act should apply, while the new procedure should be applicable only to the debts or loans given by the State Bank of Patiala after 1st April, 1960. There could be no valid reason that even *qua* the old debts the Legislature should make a distinction in the procedure to be applied, namely, that if the amount had been determined before 1st April, 1960, then its recovery could be made as arrears of land revenue under the Patiala Recovery of State Dues Act, while in cases where the debt was not so determined, then the State Bank of Patiala be directed to file regular

suits in the civil Courts. Such a construction could not be imputed to the Legislature for obvious reasons that under the Patiala Recovery of State Dues Act different period of limitation was provided, that is, 30 years under Article 112 of the Limitation Act, 1963, whereas the suit could only be filed within three years under Article 19. In case the old debts were to be recovered by means of suits, then many debts would not be recovered being barred by limitation. The preamble of the Patiala Recovery of State Dues Act clearly shows that it was an Act to consolidate and amend the law relating to the recovery of State dues. The provisions contained in Chapter II of this Act dealt with both the determination of the State Dues and the modes of recovery thereof. This indicates that the Legislature made no distinction between the word "determination" and "recovery", because otherwise they would have clearly mentioned in the preamble that it was an Act to consolidate and amend the law relating to the determination and recovery of State dues. The words "Recovery of State Dues", according to the Legislature, thus included their "determination" as well. The Act also is called the "Patiala Recovery of State Dues Act", but not the "Patiala Determination and Recovery of State Dues Act". The opening words of section 2 of the Patiala Recovery of State Dues (Repealing) Act, 1960, by which the Patiala Recovery of State Dues Act was repealed, clearly indicate that this repeal was subject to the provisions of section 56 of Act 38 of 1959. It means that the provisions of section 56 were not affected and would remain in force, even if the Patiala Recovery of State Dues Act was no more on the Statute book. Thus it would be seen that the scope of section 56 is not limited to the mode of recovery of State dues already determined in respect of the loans and advances made before 1st April, 1960, but to their determination as well. Further amount by way of future interest could, therefore, be added to the amount of principal and interest already determined upto 25th January, 1963, in order to determine the amount due from the debtor to the Bank upto the date of recovery.

Held, that the provisions of the Patiala Recovery of State Dues Act would be applicable to the determination and recovery of the old debts advanced prior to 1st April, 1960 and the period of limitation will be 30 years under Article 112 of the Indian Limitation Act, 1963. Article 19 of the Limitation Act, 1963, will apply only in those cases in which State Bank of Patiala seeks to recover the State Dues in respect of the loans and advances made after 1st April, 1960 by filing regular civil suits as a statutory corporation and this Article cannot apply to the loans and advances made by the Bank of Patiala prior to 1st April, 1960.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued calling for the records of the case from the respondents with a view to enabling this Hon'ble Court to quash the proceedings against the petitioner, and further praying that the respondents be prohibited

and restrained from taking any further steps in the matter of the proceedings pending the disposal of the writ petition.

D. N. AWASTHY, ADVOCATE, for the Petitioner.

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

ORDER

PANDIT, J.—On 26th April, 1951, Pyare Lal Khanna was allowed a cash credit limit of Rs. 50,000 in the Bank of Patiala on personal security by executing a pronote for this amount and this loan carried interest at 6 per cent per annum. In those days, this Bank was merely a Department of the State and the special provisions of the Patiala Recovery of State Dues Act, 2002 Bk. (hereinafter referred to as the Act) were applicable to the debts due to it. They empowered the Bank authorities to determine the dues of a debtor and recover the same through the Collector of the District as arrears of land revenue. Since Pyare Lal Khanna did not adjust the account, a notice was issued to him on 17th September, 1952 under Rule 3(2) of the Rules framed under the Act, stating that a particular amount was due to the Bank from him. On 20th November, 1952, he filed his objections and after considering the same, the Bank determined a sum of Rs. 51,857-0-9, inclusive of interest up to 25th January, 1953, as due from him. Accordingly, a notice was served on him on 24th February, 1953, under Rule 7(1) demanding the payment of the amount so determined. As he did not pay this amount, the Bank issued a certificate on 17th March, 1953 to the Collector of Patiala for the recovery of this amount as arrears of land revenue. In the proceedings that followed before the Collector, Patiala, Pyare Lal Khanna objected to the legality and validity of the recovery proceedings on various grounds, but these objections were rejected on 19th March, 1956. This was followed by a civil suit, which was filed by him for a declaration that the recovery certificate issued by the Bank of Patiala was illegal. An injunction was also claimed in the suit, prohibiting the Bank and the Collector from making this illegal recovery from him. This suit was dismissed by the Subordinate Judge, 1st Class, Patiala, on 31st July, 1957. Pyare Lal Khanna, challenged this decree right up to the Supreme Court, where finally his appeal was dismissed on

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4th March, 1964. During the pendency of his appeal before the Supreme Court, the recovery proceeding before the Collector, Patiala, remained stayed on his furnishing security for the payment of the amount of the certificate, viz., Rs. 51,857-0-9. It may be mentioned that the Bank of Patiala became a statutory corporation constituted under the State Bank of India (Subsidiary Banks) Act, 38 of 1959 with effect from 1st April, 1960 and was, thereafter, called the State Bank of Patiala. It may also be stated that the Patiala Recovery of State Dues Act was also repealed with effect from 1st December, 1960 by the enforcement of Punjab Act, 37 of 1960. On 7th March, 1964 a fresh notice was issued under Rule 3(2) of the Rules framed under the Act for a fresh determination of the Bank dues. Pyare Lal Khanna filed objections but the same were rejected by the General Manager of the Bank on 15th April, 1964. He then filed an appeal against the same under Rule 8 to the Board of Directors, which was rejected by them,—*vide* their order dated 19th June, 1964. This order, according to him, was communicated to him towards the end of September, 1964, with the result that he filed the present writ petition in this Court on 24th November, 1964.

Learned counsel for the petitioner has raised two contentions before me—

- (1) That there could be no fresh determination of the dues after the Bank of Patiala became a statutory corporation under Act, 38 of 1959 and especially after the repeal of the Patiala Recovery of State Dues Act by Act 37 of 1960. A determination having already been made with regard to the amount of principal and interest up to 25th January, 1953, no further amount could be added to it by way of future interest; and
- (2) that, in any case, the Bank could recover future interest for a period of only three years under Article 19 of the Indian Limitation Act, 1963. Its claim regarding the balance had become clearly time-barred. The Board of Directors erred in law in holding that a period of 30 years under Article 112 of the Limitation Act, 1963, was applicable to a suit by the Bank for the recovery of such dues.

It may be stated that though the petitionre had raised the following contention in Paragraph 16(viii) of the writ petition, but the same was not pressed by his learned counsel at the time of arguments:—

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“That by the inclusion of the amount due under the previous certificate in the new proceedings, even the previous certificate stands cancelled and no recovery can proceed even under that. Any action taken by respondent No. 4, hereafter will, therefore, be void.”

As regards the first contention, it is necessary to give below the relevant provisions of Act 38 of 1959 and Act 37 of 1960:—

Act 38 of 1959.—

“S. 56. *Continuance of special provisions respecting recovery of loans and advances made by the Bank of Patiala and the State Bank of Saurashtra.*

The State Bank of Patiala and the Saurashtra Bank shall be entitled to recover in the same manner as an arrear of land revenue any moneys due in respect of loans or advances made before the appointed day by the Bank of Patiala or the Saurashtra Bank, as the case may be, and the provisions of any law, relating to such recovery as were applicable to that bank before the appointed day shall continue to apply to the State Bank of Patiala or the Saurashtra Bank, as the case may be; in respect of such recovery after the appointed day.”

“Act 37 of 1960,—S. 2 *Repeal of Patiala Act IV of 2002 Bk.* Subject to the provisions of section 56 of the State Bank of India (Subsidiary Banks) Act, 1959; the Patiala Recovery of State Dues Act, 2002 Bk. is hereby repealed:—

Provided that such repeal shall not—

- (a) * * * *
- (b) * * * *

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(c) affect any right, privilege; obligation or liability acquired; accrued or incurred under the Act so repealed; or

* * *

(e) affect any investigation, legal proceeding or remedy in respect of any such right; privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid:

and any such investigation, legal proceeding or remedy may be instituted; continued or enforced and any such penalty; forfeiture or punishment may be imposed, as if that Act had not been repealed."

Learned counsel for the petitioner submitted that section 56, referred to above; related only to those cases where the moneys due in respect of loans or advances had already been determined before the appointed day, that is, 1st April, 1960, and it was only their recovery as arrears of land revenue under the provisions of the Patiala Recovery of State Dues Act, 2002 Bk., that had been saved. If the moneys due in respect of these loans or advances had not been so determined, then the provisions of section 56 could not be availed of by the Bank. For this submission, he laid emphasis on the fact that only the word "recovery" had been used therein by the Legislature and in case it was intended that the Bank could also determine the amounts due in respect of loans and advances, then they would have inserted the word "determination" also along with the word "recovery" in this section. The absence of the word "determination" clearly showed that the Legislature only intended that the moneys in respect of loans and advances, which had already been determined, could be recovered as arrears of land revenue after the enforcement of Act 38 of 1959. He also argued that the word "such" used before the word "recovery" in this section also indicated that only the provisions relating to the recovery of the State Dues, that is, Sections 5 to 9 of the Patiala Recovery of State Dues Act, had to be applied and the provisions of section 4, which dealt with the determination of the State Dues, were outside the scope of section 56. This argument, in my opinion, has no force. It is clear that the Legislature

intended that so far as the old debts due to the Bank of Patiala before 1st April, 1960, were concerned, the provisions of the Patiala Recovery of State Dues Act should apply, while the new procedure should be applicable only to the debts or loans given by the State Bank of Patiala after 1st April, 1960. There could be no valid reason that even *qua* the old debts the Legislature should make a distinction in the procedure to be applied, namely, that if the amount had been determined before 1st April, 1960, then its recovery could be made as arrears of land revenue under the Patiala Recovery of State Dues Act, while in cases where the debt was not so determined, then the State Bank of Patiala be directed to file regular suits in the Civil Courts. Such a construction could not be imputed to the Legislature for obvious reasons that under the Patiala Recovery of State Dues Act different period of limitation was provided, that is, 30 years under Article 112 of the Limitation Act, 1963, whereas the suit could only be filed within three years under Article 19. In case the old debts were to be recovered by means of suits, then many debts would not be recovered being barred by limitation. The preamble of the Patiala Recovery of State Dues Act clearly shows that it was an Act to consolidate and amend the law relating to the recovery of State dues. The provisions contained in Chapter II of this Act dealt with both the determination of the State Dues and the modes of recovery thereof. This indicates that the Legislature made no distinction between the words "determination" and "recovery", because otherwise they would have clearly mentioned in the preamble that it was an Act to consolidate and amend the law relating to the determination and recovery of State dues. The words "Recovery of State Dues", according to the Legislature, thus included their "determination" as well. The Act also is called the "Patiala Recovery of State Dues Act", but not the "Patiala Determination and Recovery of State Dues Act." The opening words of section 2 of Act 37 of 1960, by which the Patiala Recovery of State Dues Act was repealed, referred to above, clearly indicate that this repeal was subject to the provisions of section 56 of Act 38 of 1959. It means that the provisions of section 56 were not affected and would remain in force, even if the Patiala Recovery of State Dues Act was no more on the statute book. Thus it would be seen that the scope of section 56 is not limited to the mode of recovery of State

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dues already determined in respect of the loans and advances made before 1st April, 1960, but to their determination as well.

The argument that the determination with regard to the amount of principal and interest upto 25th January, 1953 having already been made under the Patiala Recovery of State Dues Act, no further amount could be added to it by way of future interest under this Act, is also without any substance. It has been decided in a number of cases of this Court that such a fresh determination can be made (*see in this connection Madan Lal and another v. The State of Punjab and others*, Civil Writ No. 1343 of 1959, decided by Dulat, J., on 2nd January, 1961, *Firm Hari Chand-Ajudhia Parshad v. The State of Punjab and others*, Civil Writ No. 1526 of 1960, decided by Dua, J., on 21st August, 1961, and *Messrs Shiv Lal and Sons v. The Managing Director, State Bank of Patiala and others*, Civil Writ No. 224 of 1961, decided by Shamsheer Bahadur, J., on 20th November, 1962).

Coming to the second contention, I have already held above that regarding the old debts before 1st April, 1960 the provisions as laid down in the Patiala Recovery of State Dues Act would be applicable. The State Bank of Patiala would be recovering these debts in its old capacity, that is, as the Bank of Patiala which was, admittedly, a Department of the State. In that position, it could recover the debts within 30 years as provided in Article 112 of the Indian Limitation Act, 1963. Article 19 would apply only in those cases, when the State Bank of Patiala would be recovering the State dues in respect of the loans and advances made after 1st April, 1960, by filing regular civil suits as a statutory corporation and this Article cannot apply to the loans and advances made by the Bank of Patiala before 1st April, 1960. The Board of Directors were, in my opinion, therefore, right in applying Article 112 of the Limitation Act to the instant case.

Both the contentions raised by the learned counsel for the petitioner, therefore, fail.

This apart, the present is not a case in which interference under Article 226 of the Constitution is called for. In my opinion, the impugned order of the Board of

Directors does not suffer from any error of law apparent on the face of the record, and which had resulted in manifest injustice to the petitioner.

In view of what I have said above, this petition fails and is dismissed. There will, however, be no order as to costs.

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APPELLATE CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

THE NORTHERN INDIA TRANSPORTERS INSURANCE CO.,
LTD.,—Appellant.

versus

AMRA WATI AND ANOTHER,—Respondents.

First Appeal From Order No. 145 of 1965.

Motor Vehicles Act (IV of 1939)—S. 110-A—Parties to the applications—Negligent driver—Whether necessary party—All the heirs of the deceased—Whether must join the application.

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Held, that it is not necessary for a claimant for compensation to implead every person guilty of a tort so long as the party, against whom the claim is pressed, is joined in the claim and that party of course is the transport company. The mere circumstances that the transport company may have some claim against the driver, is of no consequence and really of no concern to the claimants.

Held, that a claim for compensation as a result of the death of a person in the accident arises out of the Fatal Accidents Act, 1855, and is to be made on behalf of the heirs mentioned in that Act, namely, the wife, husband, parent and child, and, although the claim can be made by an executor or an administrator or a representative of the deceased, it is essentially a claim on behalf of all of them. There was, therefore, no justification for excluding the compensation payable to the daughters merely because their names were brought into the proceedings at a later stage. Apart from this even a late claim can be admitted by the Tribunal and in the present case it certainly should have been admitted.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 5th March, 1962, to a larger Bench for decision owing to an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P. C. Pandit, on 11th March, 1964, further referred the case to the Full Bench for decision. The Full Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, the Hon'ble