

## CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

HARCHARAN PARKASH,—Petitioner.

versus

THE ASSESSING AUTHORITY,—Respondent.

Civil Writ No. 1564 of 1962,

1963  
 April, 9th.

*East Punjab General Sales Tax Act (XLVI of 1948)—S. 7—Central Sales Tax Act (LXIV of 1956)—S. 7—Certificates of registration—Power to cancel—Whether can be exercised by Assessing Authority—Grounds of cancellation—Whether confined to those mentioned in Ss. 7(6) and 16—No opportunity given before cancelling registration—Effect of.*

*Held*, that in view of the delegation of powers made by the Excise and Taxation Commissioner under section 15 of the East Punjab General Sales Tax Act, 1948, the Assessing Authority is competent to cancel the registration certificates of dealers. But the grounds of cancellation under the Punjab Act must be confined to those mentioned in sections 7(6) and 16 of the Act.

*Held*, that the registration certificate granted under the Central Sales Tax Act, 1956, can be cancelled for any other sufficient reason besides the reasons mentioned in clause (b) of sub-section (4) of section 7.

*Held*, that the cancellation of registration certificate under the Punjab Act or the Central Act is not justified if adequate opportunity had not been granted to the dealer to show cause against the proposed decision to cancel the certificate of registration.

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Prohibition, or any other appropriate writ, order to direction be issued quashing the notices dated 27th September, 1962, issued by the respondent and also restraining the respondent from taking any proceedings in pursuance of the said notices.*

BHAGIRATH DASS, and B. K. JHINGAN, ADVOCATES, for the Petitioner.

D. S. NEHRA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

## JUDGMENT

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MAHAJAN, J.—This petition under Articles 226 and 227 of the Constitution is directed against the order of the appropriate authorities cancelling the registration certificates of the petitioner. The petitioner is the sole proprietor of the firm Messrs Modern General Store, Mandi Road, Jullundur City, and is principally engaged in the business of vegetable ghee and oils. The petitioner is a registered dealer having been registered under the provisions of section 7 of the General Sales-tax Act. So far as the certificate under the Punjab Act is concerned, it is dated the 10th February, 1960, and is numbered Jul-III-9897 and the certificate under the Central Sales-tax Act is numbered JUL-CST-2188, dated the 12th February, 1960. The petitioner filed a return for the year ending 31st March, 1960, and was assessed to sales-tax by an order dated the 21st September, 1960. The petitioner, however, filed quarterly returns in accordance with section 10 of the Act and deposited tax in accordance with that section. On the 27th September, 1962, the assessing authority issued two notices to the petitioner which are appended to the petition as annexures B-1 and B-2 to show cause why certificates granted under the Punjab and the Central Acts be not cancelled. The reasons mentioned for cancelling the certificates in the notices are identical, namely, that the petitioner is not a *bona fide* dealer and is abusing the registration certificates for evasion of tax to the detriment of the State revenue. In response to these notices, the petitioner wrote to the assessing authority on the 29th September, 1962, requesting the assessing authority to furnish details of the material available in his possession justifying the proposed cancellation. This letter was received by the assessing authority on the 1st October, 1962, and without replying to the petitioner's letter, the assessing authority cancelled the certificates on

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that very date. In the return, the position taken up by the assessing authority is that the letter was brought to the notice of the assessing authority three days later, i. e., on the 3rd October, 1962. It is against this order of cancellation that the present writ petition is directed.

So far as the registration certificate under the Punjab Act is concerned, the contentions of the learned counsel for the petitioner are as follows:—

- (1) that it is the Excise & Taxation Commissioner alone who can cancel the certificate;
- (2) that even the Excise & Taxation Commissioner has no power to cancel the certificate on the ground, on which it has been cancelled in as much as the grounds on which the registration certificate can be cancelled are those as enumerated in section 16 of the Act; and
- (3) that no adequate opportunity was granted to the petitioner to show cause against the cancellation of the certificate.

As regards the Central Act, the only contention raised is that no adequate opportunity was granted to the petitioner to show cause against the proposed cancellation.

Learned counsel for the State on the other hand contends that by reason of certain notifications and an order, which will be hereinafter reproduced, the Commissioner, Excise and Taxation,—hereinafter called the Commissioner—had delegated his power of cancellation to the assessing authority and, therefore, the order of cancellation by the assessing authority is valid.

So far as the second contention of the learned counsel for the petitioner is concerned, the reply of the learned counsel for the State is that section 7(4) of the Act is wide enough to cover the power of cancellation apart from the provisions of section 7(6) and section 16; and that section 7(4) should be read in such a manner as to infer the power of cancellation on grounds other than those mentioned in section 7(6) and 16 and for that purpose it is permissible to construe the provisions of section 7(4) so as to modify the meaning of the words and even the structure of the sentence.

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With regard to the third contention, it is more or less conceded that no opportunity could be held to have been afforded to the petitioner in the circumstances of the present case, particularly in view of the fact that the letter requiring particulars was received in the office of the authority on the 1st of October and for some reason or the other it was not brought to the notice of the authority before 3rd of October, 1962. I would, therefore, at this stage take up each one of the contentions of the learned counsel for the petitioner in the order in which they have been set out above.

So far as the first contention is concerned, the argument of the learned counsel for the State is sound and must prevail. Section 15 of the Act deals with the delegation of powers and is in these terms:—

“15. Subject to such restrictions and conditions as may be prescribed the Commissioner may by order in writing delegate any of his powers under this Act, except those under sub-section (1) of section 21 to any person appointed under section 3 to assist him.”

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In pursuance of this provision, two notifications have been placed before me. They are of the same date, namely, the 30th March, 1949, and are numbered 1344-E & T and 1346-E&T, and are reproduced hereunder:—

“No. 1344-E & T.—In exercise of the powers conferred by sub-section (2) of section 3 of the East Punjab General Sales Tax Act, 1948, the Governor of East Punjab is pleased to order that the persons appointed under sub-section (1) of section 3 of the aforesaid Act shall exercise the powers noted against each for carrying out the purposes of the Act:—

<i>Designation of Officer</i>	<i>Powers</i>	<i>Jurisdiction</i>
1. Deputy Excise and Taxation Commissioner, Jullundur Circle.	To act as appellate authority under section 20 of the Act	Jullundur Division
2. Deputy Excise and Taxation Commissioner Ambala Circle.	Ditto	Ambala Division
3. Excise and Taxation Officers and Assistant Excise and Taxation Officers in-charge of district.	To act as Assessing Authority under section 2 (a) of the Act in all cases.	In the District to which posted
4. Assistant Excise and Taxation Officers when appointed to assist Excise and Taxation Officers.	To act as Assessing Authority under section 2(a) of the Act in cases in which the annual gross turnover does not exceed Rs. 5,00,000	Ditto

(Sd).

30th March, 1949.

RAGHBIR SINGH,

Deputy Secretary to Government,  
East Punjab.

No. 1346-E&T.—In exercise of the powers conferred by Sub-section (2) of Section 3 of the East Punjab General Sales Tax Act, 1948, the Governor of East Punjab is pleased to appoint Shri Harivansh Lal Khanna as Excise & Taxation Commissioner for East Punjab and all Deputy Excise and Taxation Commissioners, Excise and Taxation Officers and Assistant Excise and Taxation Officers to assist the Excise and Taxation Commissioner for carrying out the purposes of the Act.

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(Sd).

30th March, 1949.

RAGHBIR SINGH,

Deputy Secretary to Government,  
Revenue Department.

The Commissioner has also passed an order under section 15 of the Act which is in these terms:—

“In exercise of the powers conferred upon me by section 15 of the Punjab General Sales Tax Act, 1948, and in supersession of any earlier order passed in this behalf, I hereby delegate the powers vested in me under section 7(4) *ibid* to amend or cancel any certificate of registration in accordance with information furnished under section 16 of the Act *ibid* or otherwise received:

- (i) to all Assessing Authorities in Punjab except in cases—

\* \* \* \* \*

The combined reading of these notifications and the order leaves no manner of doubt that the registration certificate can be cancelled by the Assessing Authority and this matter is not now seriously pressed by the learned counsel for the petitioner.

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So far as the second contention is concerned, the argument is that the Commissioner or his delegate could only cancel the certificate in accordance with the information furnished under section 16 or otherwise received, but the information which is otherwise received must be information pertaining to section 16. It is also not disputed that the registration certificate could be cancelled under section 7(6). So far as the present cancellation is concerned, it is common ground that neither the grounds mentioned in section 7(6) or section 16 are available. The cancellation has been made on the ground, "that some transactions entered into by the dealer are bogus transactions and that the dealer is making bogus and false sales to different registered dealers thereby evading tax at all stages of these transactions and thus devoiding the State exchequer of its legitimate revenue and is not a *bona fide* dealer." Unfortunately, there is no provision in the Act giving power of cancellation on the grounds on which the certificate has been cancelled. This ground is sought to be brought in under the provision of section 7(4). Section 7(4) reads thus:—

"7. (4) The Commissioner may from time to time amend or cancel any certificate of registration in accordance with information furnished under section 16 or otherwise received."

Learned counsel for the State would like me to read this section like this: "The Commissioner may from time to time \* \* \* cancel any certificate of registration in accordance with information furnished under section 16 \* \* \*; or "the Commissioner may from time to time \* \* \* cancel any certificate of registration in accordance with information \* \* \* otherwise received," and he contends that if the section is read this way, the words 'otherwise received' would cover all types of information and the basis on which

the present registration certificate has been cancelled would be amply covered by this provision. I am, however unable to agree with this construction. The cancellation has to be in accordance with the information furnished under section 16 or otherwise received. If one refers to section 16, it provides that the dealer, when any one of the eventualities specified in that section has taken place, will furnish the information to the prescribed authority, and as soon as the information is received under section 16, the cancellation may follow, but the grounds furnished by section 16 may exist without the information being conveyed and it is for that reason that it was provided that the information with regard to the grounds in section 16 may be otherwise received, that is, the Commissioner could, on the basis of those grounds in section 16, without the information having been supplied to him under section 16, cancel the registration certificate. In either eventuality, the information has got to do something with section 16 and not wholly divorced from section 16. If I accept the contention of the learned counsel for the State, I will have to add a ground of cancellation not provided for either in the Act or the Rules made thereunder. As I have already said, the grounds of cancellation are only those mentioned in section 7(6) and section 16. If any further grounds of cancellation had to be provided for, the Legislature would have done so, either by a separate provision or by inserting them either in section 7(6) or in section 16. Moreover, if section 7(4) is read as contended for by the learned counsel for the State no criteria is laid down on the basis of which the registration certificate may be cancelled. The Commissioner may for any reason however, fanciful or wholly extraneous may cancel the certificate. If this contention is accepted the result will be to wholly redraft section 7(4) and this is a course which is not permissible on any accepted principle as to the construction

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of statutes. That being so, the contention of the learned counsel for the State must be repelled and it must be held that the cancellation which has taken place in this case being not in accordance with any provision in the Act is wholly illegal.

With regard to the last contention, it has been fairly conceded by the learned counsel for the State that no adequate opportunity has been granted to the petitioner and, therefore, on the facts and circumstances of this case the order of cancellation cannot be justified. But he contends that if it is held that the Commissioner had the power to cancel the registration certificate, the department is prepared to further examine the matter after giving a proper opportunity to the petitioner to show cause against the proposed cancellation of the registration certificate. Therefore, the petitioner is also entitled to the writ on the basis of the third contention, even if it be held that my decision on the second contention is erroneous.

The position, however, is different in so far as the Central Act is concerned. The registration certificate granted under that Act can be cancelled for any other sufficient reason besides the reasons mentioned in clause (b) of sub-section (4) of section 7. Section 7(4) reads thus:—

“7(4) A certificate of registration granted under this section may,—

- (a) either on the application of the dealer to whom it has been granted. or where no such application has been made, after due notice to the dealer be amended by the authority granting it if he is satisfied that by reason of the registered dealer having changed name, place or nature of his business or the class or

classes of goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended; or

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- (b) be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business or has ceased to exist, or in the case of a dealer registered under sub-section (2) has ceased to be liable to pay tax under the sales-tax law of the appropriate State or for any other sufficient reason.

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\* \* \* \* \*

Therefore, the cancellation of the registration certificate granted under the Central Act is in order for the grounds on which it has been cancelled do fall within the ambit of the phrase "or for any other sufficient reasons". The learned counsel for the petitioner did not contend that the cancellation of the same was not justified. His only contention was that the cancellation was not justified for the reason that no adequate opportunity had been granted to the petitioner to show cause against the proposed decision to cancel the certificate of registration. So far this ground is concerned, the same reasons must prevail as have prevailed with regard to the certificate under the State Act, i.e., the reasons for accepting the third contention against the order of cancellation of the certificate of registration granted under the State Act. Therefore, the cancellation of the registration certificate granted under the Central Act must be quashed with the direction that the certificate be only cancelled after the petitioner has been given a proper opportunity of showing cause why it should not be cancelled.

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For the reasons given above, this petition is allowed, the orders of the assessing authority cancelling both the registration certificates granted under the State and the Central Act are quashed. In view of the difficult nature of the matter involved, there will be no order as to costs.

R.S.

FULL BENCH

*Before Mehar Singh, Inder Dev Dua and Daya Krishan Mahajan, JJ.*

DR. ANUP SINGH,—*Appellant.*

*versus*

ABDUL GHANI AND OTHERS,—*Respondents.*

**First Appeal From Order No. 3-E of 1962.**

1963  
May., 30th,

*Representation of the People Act (XLIII of 1951)—Ss. 81 and 90—Election petition not complying with S. 81(3)—Whether to be dismissed—Provisions of S. 81(3)—Whether mandatory or directory—Conduct of Election Rules, 1961—Rules 71(4) and 73(2)—Mark or writing on the ballot-paper in addition to the mark required to signify intention to vote—Whether invalidates the vote.*

*Held*, that the mandatory provisions of a statute must be complied with exactly, whereas in the case of a directory provision substantial compliance is enough. In considering whether or not a provision is mandatory or directory, the object of the provision is a guiding factor. The object of sub-section (3) of section 81 of the Representation of the People Act, 1951, is that a respondent to an election petition should have a true copy of the petition so as to enable him to make his defence and the further object is that the Election Commission should be in a position to proceed with the election petition expeditiously avoiding delay in preparing copies as it had to do previous to the introduction of this provision. Now, in this case correct copies of requisite number have been