

be granted to a person and he can be turned an approver only in the case of offences triable exclusively by the High Court or Court of Sessions or offences punishable with imprisonment which may extend to seven years or some specified offences with which we are not concerned in the present cases. As the petitioners are alleged to have committed offences the punishment of which does not extend beyond three years and which are not triable exclusively by the High Court or Court of Session, the question of tendering pardon to Jaggu Ram and turning him an approver did not arise.

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I, accordingly, accept the recommendations of the learned Additional Sessions Judge and direct Jaggu Ram be not treated an approver for the purpose of these cases and that the learned Magistrate should proceed with the trial of these cases in accordance with law.

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CIVIL MISCELLANEOUS

Before Shamsheer Bahadur, J.

THE DELHI MOTOR TRUCKS OWNERS UNION

AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No: 225 of 1961.

*Punjab Gram Panchayat Act, 1952 (V of 1953)—S. 82—
Levy of tax by Gram Panchayat on each truck-owner using
the strip of land falling within its jurisdiction—Whether
valid—Such a tax—Whether a tax on profession or discrimi-
natory or invalid because no mode of collection has been
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Held, that under section 82(1) of the Punjab Gram Panchayat Act, 1952, the Gram Panchayat has a right to levy a tax on each truck-owner for the use of the land or road falling within its jurisdiction. Such a tax cannot be said to be invalid on the ground that it has been levied on a profession or that it is discriminatory as it has not been levied on other transporters employing means of transport other than trucks or that it offends Article 265 of the Constitution on the ground that no mode of its collection has been prescribed. What is taxed is the use of the road which is subject to wear and tear and not a profession as the truck-owners cannot be said to form a profession.

Petition under Article 226 of the Constitution of India praying that an appropriate Writ, Order or direction be issued quashing the order of respondent No. 1, dated 21st December, 1960, authorising the imposition of tax on the trucks and further praying that the respondents be restrained from recovering the said tax.

H. S. GUJRAL, ADVOCATE, for the Petitioners.

D. R. MANCHANDA AND M. R. SHARMA, ADVOCATES, for the Respondents.

ORDER

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SHAMSHER BAHADUR, J.—This is a petition under Article 226 of Constitution of the Delhi Motor Trucks Owners Union on behalf of its members and two others. Petitioners Nos. 2 and 3 are Harnam Singh and Lal Singh, two of the members of the Union which is petitioner No. 1.

The petitioners complain that the second respondent, which is the Gram Panchayat of village Anangpur, has levied a tax on them which is void being in excess of its authority, besides being discriminatory in nature. The members of the Union mainly operate between Delhi and Anangpur from where they bring *badarpur* sand for the work of construction. In the village of Anangpur, from where they bring the *badarpur* sand, the truck owners use a strip of road about two miles long

which falls within the jurisdiction of the second respondent, viz., the Gram Panchayat of the village. One mile later this road joins Mathura road from where the *badarpur* sand is taken to different parts of Delhi for the work of construction. Latterly the second respondent with the sanction of the State of Punjab (respondent No. 1) have levied a tax of one rupee per trip on each truck owner using the strip of land falling within the jurisdiction of the second respondent.

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It is contended by Mr. Gujral, the learned counsel for the petitioners, that the tax could not be levied under sub-section (2) of section 82 of the Punjab Gram Panchayat Act, 1952. It is true that the tax purports to have been levied under sub-section (2) of section 82 which authorises the Gram Panchayat to levy certain fees and admittedly the tax imposed on the petitioners is not of that character. Concededly, the tax falls under clause (d) of sub-section (1) of section 82 which authorises a Gram Panchayat to impose "if so authorised by the Government, any other tax, duty or cess which the Legislature of the State has power to impose." It is not disputed that the tax has been imposed with the authority of the first respondent. Though the plea has not been specifically taken in the answer filed by the respondents, a communication has been sent from the Financial Commissioner to this Court that the Governor of Punjab has authorised the levy of the tax under section 82(1) and not section 82(2) which has been inserted by inadvertence. It appears that before the latest amendment the relevant provision for imposing the tax was section 82(2) and the mistake must therefore, be treated as *bona fide*. Besides, it is well settled that it is the substance of the Act which is material and not merely the form or outward appearance. It was held by their Lordships of the Supreme Court in *K.C. Gajapati Narayan Deo and others v.*

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State of Orissa (1), that if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. An inquiry must always be made as to the true nature and character of the challenged legislation and it is the result of such investigation and not form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority. As the second respondent admittedly has authority to levy the impugned tax under sub-section (1) of section 82 of the Punjab Gram Panchayat Act, there can be no manner of doubt that it was acting within its competence and power.

It is next canvassed by Mr. Gujral that the petitioners have been singled out as a profession for imposition of the tax. It is argued that if as a profession the petitioners are taxed the limit set is that of Rs. 250 per annum and therefore, the whole tax suffers from the infirmity of being void on account of unconstitutionality. This argument, in my view, is fallacious. The truck owners who are the carriers of *badarpur* sand cannot be treated as a profession. What is taxed is the use of the road which is subject to wear and tear and the ground of attack levelled by Mr. Gujral is clearly untenable. The Single Bench authority of Mahajan, J., in *Lachhman Singh and others v. The State of Punjab and others* (2), cited in his aid by the learned counsel for the petitioners does not support the proposition he is contending for. Mahajan J. held that the tax on commission agents at 5 per cent on their income derived from their business as commission agents was a tax on their profession in fact and being in excess of Rs. 250 per annum was hit by Article 276

(1) A.I.R. 1953 S.C. 375.
(2) 1960 P.L.R. 170.

of the Constitution. The facts in the present case are not at all comparable with those in *Lachhman Singh's Case* (2). The users of the road carrying badarpur sand for a distance of about two miles within the jurisdiction of Anangpur Panchayat cannot be said to form a profession or class and the limit of Rs. 250 per annum cannot be made applicable in their case.

Mr. Gujral has further urged that under Article 265 of the Constitution, a tax has to be levied and collected under the authority of law. In his submission no provision having been made for the collection of the tax it cannot be said to have been made by the "authority of law". In support of this argument he has cited a Division Bench ruling of the Nagpur High Court in *Chhotabhai Jethabhai Patel and Co. v. The Union of India and others* (3). The charging section in that case laid down that "there shall be levied and 'collected in such manner as may be prescribed' duties of excise". No rules having been prescribed for the collection of the imposition it was held by the Nagpur Court that the levy was not justifiable under Article 265 of the Constitution. Now, in the present case no method has been prescribed for the collection of the tax. All that is said is that the Governor of Punjab has accorded sanction to Anangpur Panchayat under section 82 of the Punjab Gram Panchayat Act to impose a tax in its area at the rate of one rupee per truck per trip. It cannot be inferred from this that the collection of the tax has been made without the authority of law. If the argument of the learned counsel for the petitioners is accepted a method of collection will have to be indicated before a tax can be realised at all. In my opinion, there is no warrant for such an extreme proposition.

Lastly, it is urged that the tax imposed on the petitioners is discriminatory in nature. It is said

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that *badarpur* sand is carried not only by truck owners but by cart-men, tongas, tractor-trolleys and other transporters. Why should there be a tax on truck owners alone? Now, there can always be a reasonable classification. The tax has been imposed on the users of the road and it may have been thought that the truck owners caused the maximum wear and tear by the many trips made by them to Anangpur during the day. This point in any event was not specifically pleaded and on the face of it I cannot see that any case of discrimination has been made out.

In my opinion, there is no force in this petition which fails and is dismissed. In view of the decision on merits it is not necessary for me to deal with the preliminary objection raised on behalf of the respondents that the petition in its present form is not maintainable having been made by several aggrieved parties and based on the recent Bench decision of this Court in *Revenue Patwaris Union Punjab and others v. State of Punjab through the Chief Secretary, Chandigarh and others*, (4).

There would be no order as to costs

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APPELLATE CIVIL

Before Shamsher Bahadur, J.

CHOPRA WEAVING MILLS AND OTHERS.—Appellant

versus

PYARE LAL.—Respondent.

Regular Second Appeal No. 1162 of 1962.

Tort—Noise caused by a factory—Whether constitutes actionable nuisance—Injunction to restrict the working of the factory—Whether can be granted.

Held, that the noise caused by the working of a factory is an actionable nuisance if it causes disturbance to the

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(4) A.I.R. 1962 Punj. 55.