LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Prem Chand Jain, J.

M/S. GANESH TRADING CO., KARNAL,—*Appellant*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondent.*

Letters Patent Appeal No. 37 of 1970

October 15, 1970.

The Punjab General Sales Tax (XLVI of 1948)—Section 5(2)(a)(vi) and Schedule B, Item 15—Rice and Paddy—Whether two different 'goods'—Paddy not sold as paddy but rice extracted therefrom sold—Deduction from gross turnover—Whether allowable to the extent of turnover on the purchase of paddy—Word "chokar"—Whether included in the word "husk"—Interpretation of statutes—Words in a statute—How to be interpreted.

Held, that there is no manner of doubt that paddy and rice are two different commodities and are not considered to be one and the same by any person whether he happens to be a purchaser, a member of the commercial community or a consumer. The use of both these items is also different. Paddy is used as a seed for growing the crop while rice is a staple food used all over the world by human beings. The process by which paddy is husked for the extraction of rice, certainly involves manufacturing process and results in producing a commodity different from 'paddy' popularly known to the trade and the consumers as 'rice'. Hence no deduction can be allowed to a dealer under section 5(2)(a) of Punjab General Sales Tax Act, 1948, as applicable both to Punjab and Haryana, if paddy is not sold as paddy but rice extracted out of it is sold to a registered dealer or in the course of export out of the country. (Paras 5 and 6)

Held, that the word "chokar" is included in the word 'husk' as used in item 15 of Schedule B of the Act. (Para 7)

Held, that the words of an Act which are not applied to any particular science or art, are to be construed as they are understood in the popular sense. The word must be construed not in any technical sense nor from the mechanical point of view, but as understood in common parlance. If the word is not defined in the Act then it must be construed in its popular sense which the subject-matter, with which the statute is dealing would attribute to it. (Para 4)

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Bal Raj Tuli, dated 9th January, 1970, passed in Civil Writ No. 3688 of 1968.

ANAND SWAROOP, ADVOCATE, WITH S. M. ASHRI, ADVOCATE, for the appellant.

R. N. MITTAL, ADVOCATE, FOR ADVOCATE-GENERAL, (HARYANA), for the respondent.

JUDGMENT

The judgment of this Court was delivered by :—

P. C. JAIN, J.—(1) This judgment and order, as is agreed to by the learned counsel for the parties, will dispose of L.P.A. No. 37 as well as L.P.A. Nos. 59, 61, 62, 75, 76, 81, 82, 83, 84 and 145 of 1970 and Civil Writs 2816, 2772, 2478 and 3085 of 1969, against the State of Haryana and L.P.A. No. 77 of 1970 and Civil Writs Nos. 293, 313, 356, 622, 1196, 1267 and 1362 of 1970 against the State of Punjab as common question of law arises in all these cases. The Letters Patent Appeal No. 37 of 1970 was argued by Mr. Anand Swarup, Senior Advocate, and his arguments were adopted by the learned counsel in other cases.

(2) The appellants or the petitioners, as the case may be, in all these cases carry on the business of buying paddy and after getting it husked either in their own mills or in the mills of others, sell the rice to Government and other registered dealers. On the purchase of paddy they pay purchase tax; their claim is that while determining their taxable turn over, they should be allowed reduction to the extent of the purchase price of paddy under section 5(2)(a) of the Punjab General Sales Tax Act, as applicable to the States of Punjab and Haryana (hereinafter referred to as Punjab Act and Haryana Act). Thus the specific question that arises for consideration in all these cases is whether paddy and rice are one and the same 'goods' or two different 'goods' and whether deduction from the gross turn over for any period is allowable to the extent of turn over on the purchase of paddy even when paddy as such is not sold but rice which is extracted after husking is sold within the time prescribed in section 5 (2) (a) (vi) of the Act. The specific provisions of the Act, with which we are concerned, read as under :—

Haryana Act.

"Section 2(ff). 'Purchase' with all its grammatical variation or cognate expressions means the acquisition of goods specified in Schedule 'C' for cash or deferred payment or other

valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge.

* * * * *

* * * * *

"2(i) 'turnover' includes—the aggregate of the amounts of Sales and purchases and parts of sales purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before delivery thereof.

Explanation—(1) The proceeds of any sale made outside the Punjab by a dealer, who carries on business both inside and outside Punjab, shall not be included in the turnover.

Explanation—(2) The turnover of any dealer in respect of transactions of forward contracts, in which goods are actually not delivered, shall not be included in the turnover.

Explanation—(3) The proceeds of sale of any goods on the purchase of which tax is leviable under this Act, or the purchase value of any goods on the sale of which tax is leviable under this Act, shall not be included in the turnover."

* * * * *

* * * * *

4. (2A) Notwithstanding anything contained in sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act.

* * * * *

* * * * *

5(2) In this Act the expression 'taxable turnover' means the part of a dealer's gross turnover during any period which remains after deducting therefrom.

(a) his turnover during that period on—

* * * * *

* * * * *

(i) the purchase of goods—

(A) in any year during the period commencing on the 1st day of April, 1960, and ending with the commencement

of the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, which were or are sold not later than six months after the close of that year, to a registered dealer, or in the course of inter-State trade or commerce or in the course of export out of the territory of India;

(B) at any time after the commencement of the Punjab General Sales Tax (Harayna Amendment and Validation, Act, 1967.

(i) which are specified in Schedule C and are sold during the year to a registered dealer, or in the course of inter-State trade or commerce or in the course of export out of the territory of India :

Provided that in the case of a sale referred to in paragraph (A) or in sub-paragraph (i) of paragraph (B) to a registered dealer, a declaration in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold is furnished by the dealer claiming deduction :

Provided further that purchase of goods referred to in paragraph (A) or in sub-paragraph (ii) of paragraph (B) remaining unsold within the period specified in those paragraphs shall be deemed to be the purchase of the dealer claiming deduction during the year following."

Schedule 'C' as constituted by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, enumerates the following goods :—

(1) Resin (crude pine-gum).

(2) Peddy.

(3) Groundnut.

Schedule 'B' to the Act enumerates tax free goods i.e. goods on the sale of which no tax is payable. The State Government can amend this Schedule by adding or deleting therefrom entries relating to goods after giving, by notification, not less than 30 days notice of its intention to do so. In this Schedule 'rice' when husked from paddy, in respect of which a certificate to the effect that purchase tax has

been paid is furnished in the prescribed form by the "Assessing Authority", was added by Haryana Government notification No. SO. LIL/PA. 46/48/S. 6/67, dated the 21st November, 1967 and later on substituted by notification No. S. O. 31/P.A. 47/48/S. 6/67, dated the 26th December, 1967.

(3) The corresponding provisions of the Punjab Act are as under :—

"2(ff) 'Purchase' with all its grammatical variation or cognate expressions, means the acquisition of goods specified in Schedule 'C' for cash or deferred payment or other valuable consideration otherwise under a mortgage, hypothecation, charge or pledge ;

* * * * *

2(i) 'turnover' includes—

the aggregate of the amounts of Sales and purchases and parts of sales purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before delivery thereof.

Explanation—(1) The proceeds of any sale made outside the Punjab by a dealer, who carries on business both inside and outside Punjab, shall not be included in the turnover.

Explanation—(2) The turnover of any dealer in respect of transactions of forward contracts, in which goods are actually not delivered, shall not be included in the turnover.

* * * * *

* * * * *

4. (2A) Notwithstanding anything contained in sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act.

* * * * *

* * * * *

5(2) In this Act the expression 'taxable turnover' means the part of a dealer's gross turnover during any period which remains after deducting therefrom.

(a) his turnover during that period on—

* * * * *

* * * * *

(vi) the purchase of goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course of inter-State trade or commerce or in the course of export out of the territory of India:

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction."

Schedule 'C' as in force in Punjab State enumerates the following goods (only relevant items are reproduced) :—

"* * * * *

* * * * *

(8) Paddy

(9) Rice

* * * * *

* * * * *

(4) The contention in all these cases has been that paddy and rice are one and the same goods and in support of this proposition reference was made to meanings of these words in the various dictionaries, but it is not necessary to reproduce the dictionary meanings of these words as certain guiding principles have been laid down in various decisions as well in the 'Treatise on Statute Law' by Craies as to how a particular word occurring in a statute has to be construed. This first case is *Ramavatar Budhaiprasad* v. *The Assistant Sales Tax Officer, Akola and another* (1). In that case the question involved was whether betel leaves were taxable under section 6 read with Schedule II of the C.P. and Berar Sales Tax Act, 1947. The plea of the assessee petitioner in that case was that betel leaves fell within the

(1) (1961) 12 S.T.C. 286.

definition of vegetables as defined in the Shorter Oxford Dictionary and, as such, would be exempt from sales tax but this plea was rejected and their Lordships of the Supreme Court observed thus :—

> "But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it'."

The next case of the Supreme Court on this aspect of the matter is reported in *Commissioner of Sales Tax, Madhya Pradesh, Indore* v. *Jaswant Singh Charan Singh,* (2). The point which was involved in that case was whether 'charcoal' would be included in the word 'coal' and, therefore, entry I of Part III of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, would apply and the tax was chargeable at 2 per cent only. The High Court held that 'charcoal' would be covered by entry I of Part III of Schedule II and was taxable at 2 per cent. On appeal by special leave, their Lordships upheld the decision of the High Court and on the matter of interpretation observed thus :—

> "Now, there can be no dispute that while coal is technically understand as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense."

After noticing various decisions, it was further held :

> "The result emerging from these decisions is that while construing the word 'coal' in entry I of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according

(2) (1967) 19 S.T.C. 469.

to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include 'charcoal' in the term 'coal'. It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal."

The next case that needs mention is reported in *State of Punjab and others* v. *Chandu Lal Kishori Lal etc.* (3). In that case, the question involved was whether on the sale of ginned cotton and cotton-seeds after ginning, the taxable turn-over was to be determined after deducting the purchase price of the goods sold from the gross turnover. The Court has taken a view as is evident from the decision reported in *Patel Cotton Company Private Ltd.* v. *The State of Punjab and others* (4), that no manufacturing process is involved in ginning cotton and the process of ginning does not create anything new or distinctive, that where a dealer purchased a certain quantity of unginned cotton and after ginning sold the entire quantity of ginned cotton and cotton seeds, he must be held to have sold the entire unginned cotton which he had purchased and if the sale was within the specified time to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India full deduction of the purchase price of unginned cotton must be allowed under section 5(2) (vi) of the Punjab General Sales Tax Act, 1948, that where only a part of the proceeds of ginning had been disposed of, a corresponding deduction must be permitted and that in such a case the Assessing Authority had to fix the purchase price of the ginned cotton or the cotton seeds that had been actually disposed of according to section 5(2) (vi) by calling and considering evidence bearing on that matter. Their Lordships did not agree with the view of this Court and set aside the same in *Chandulal Kishori Lal's case* (3) (supra) and held :—

"It is true that cotton in its unginned state contains cotton-seeds. But it is by a manufacturing process that the

(3) A.I.R. 1969 S.C. 1073.
(4) (1964) 15 S.T.C. 865.

cotton and the seed are separated and it is not correct to say that the seeds so separated is cotton itself or part of the cotton. They are two distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. There is hence no warrant for the contention that cotton-seed is not different from cotton. It follows that the respondent is not entitled to deduct the sale price of the cotton-seeds from the purchase turnover under Section 5(2)(a) (vi) of the Act. In our opinion, the assessing authority was right in holding that the respondent was not entitled to deduction in respect of cotton-seeds sold by it to registered dealers."

In Craies on Statute Law, 5th edition, page 153, reference is made to the judgment of Lord Tenterden in *Att'y-Gen'l* v. *Winstanley* (5), in which it is said that "words of an Act of Parliament which are not applied to any particular science or art" are to be construed "as they are understood in common language". The Author further states that critical refinements and subtle distinctions are to be avoided, and the obvious and popular meanings of the language should, as a general rule, be followed. Reference is also made to a decision in *Cargo ex Schiller* (6), where James, L.J., expressed the same ideas in these words :—

"I base my decision on the words of the statute as they would be understood by plain men who know nothing of the technical rule of the Court of Admiralty, or of flotsam, lagan and jetsam."

From the various decisions, referred to above, the guiding principle deducible is that the words of an Act which are not applied to any particular science or art, are to be construed as they are understood in the popular sense. In other words the word must be construed not in any technical sense nor from the mechanical point of view, but as understood in common parlance. It is also clear that if a word is not defined in the Act but is a word of every day use, then it must be construed in its popular sense which the subject-matter, with which the statute is dealing, would attribute to it.

(5) Applying the aforesaid principle to the question involved in these cases, we have no manner of doubt that paddy and rice are two different commodities and are not considered to be one and the

(5) (1931) 2 Dow and C.I. 302 (6 E.R. 740).
(6) (1877) 2 P.D. 145, Page 161.

same by any person whether he happens to be a purchaser, a member of the commercial community or a consumer. The use of the both the items is different. Paddy is used as a seed for growing the crop while rice is a staple food used all over the world by human beings. Paddy in its original raw form cannot be used for human consumption. If a person goes to the market to purchase rice and asks for it then he will not be given paddy nor will he accept it in place of rice and *vice versa*. The process by which paddy is husked for the extraction of rice, certainly involves manufacturing process. In view of the latest decision of their Lordships of the Supreme Court in *Chandulal Kishori Lal's case* (3) (supra) there is no manner of doubt that this process results in producing a commodity different from 'paddy popularly known to the trade and the consumers as 'rice' different from paddy.

(6) Moreover, the legislature has treated these two items as independent and separate. In the Punjab, by notification No. S. O. 7/PA. 46/48/S. 31/68, dated January 15, 1968, paddy and rice are shown in Schedule 'C' separately at items Nos. 8 and 9. In the Haryana Act, only paddy is shown at item No. 2 in Schedule 'C' while rice has been shown at item No. 76 in Schedule 'B' indicating that the two items are distinct. Thus it is clear that the legislature has treated these two items as distinct and independent. There is absolutely no ambiguity in the statute and considered from any angle, we are of the view that paddy and rice are two different commodities and that no deduction can be allowed to a dealer under section 5(2)(a) of the Act of Punjab and Haryana, if paddy is not sold as paddy but rice extracted out of it is sold to be a registered dealer or in the course of export out of the country. All aspects of this contention have been fully considered by the learned Single Judge and we do not find any ground to take a different view.

(7) An additional ground has been taken in Civil Writ No. 1362 of 1970 (*M/s Thakar Dass Mool Chand* v. *The Assessing Authority Excise & Taxation Department*) which reads thus :—

> "That the Assessing Authority has erred in disallowing the claim of Rs. 14,307.72 P. in respect of sale of Chokar out of the tax-free claim. Chokar is covered by item 15 of Schedule 'B' of the Punjab General Sales Tax Act, 1948. The claim of Rs. 14,307.72 P. should have been allowed under section 5(2)'a) (vi) of the Act and a refund of Rs. 858.42 P. should have been allowed on this score."

In substance, the contention of Mr. N. L. Dhingra, learned counsel for the petitioners, was that 'Chokar' was covered by item No. 15 of Schedule 'B' of Punjab Act which reads "husk of all foodgrains and pulses" and thus its sale was to be treated as tax-free. According to the learned counsel, 'Chokar' is included in the word 'husk'. In our view, there is considerable force in the contention of the learned counsel for the petitioners. The word 'husk' has not been defined in the Act. However, its dictionary meaning as given in the Shorter Oxford English Dictionary reads thus:—

> "The dry outer integument of certain fruits and seeds; a glume or rind; the outer covering of an ear of maize or Indian corn."

Now we have to see whether 'Chokar' is included in the word 'husk'. For that purpose we have to look to the definition of the word 'Chokar' which is available in Hindi-Punjabi Kosh, published by the Department of Punjabi, Patiala, in its edition 1953, where it is defined to mean, *"Atte da chhanas, kanak, jaon adi da chhilka, chhan, bura"*. In the Anglo-Hindi-Punjabi Glossary of Administrative and General Terms, published by the Department of Languages, Punjab, edition 1962, the Hindi meaning of the word 'Bran' is *"Chokar, bhusi"*. The definition of word 'Bran' as given in the Shorter Oxford English Dictionary, coverss 'Chokar' also. The definition reads thus :—

> "The husk of wheat, barley, oats, etc., separated from the flour after grinding; techn. the coarest portion of this".

Thus from these definitions it is clear that the word 'Chokar' is included in the word 'husk' as used in item No. 15 in Schedule 'B'. Mr. M. R. Sharma, learned Deputy Advocate General could not advance any argument in support of the impugned order of the Assessing Authority in this respect. In this view of the matter, we have no hesitation in holding that the word 'Chokar' is included in item No. 15 and that Assessing Authority should have allowed the claim of the petitioners in respect of sale of 'Chokar'.

(8) No other point was urged on either side:

(9) For the reasons recorded above L.P.A. Nos. 37, 59, 61, 62, 75, 76, 77, 81, 82, 83, 84 and 145 of 1970, Civil Writs Nos. 2478, 2772, 2816 and 3085 of 1969 and Civil Writs Nos. 293, 313, 356, 622, 1196 and 1267 of 1970 are dismissed, but in the circumstances of the case we

make no order as to costs. Civil Writ No. 1362 of 1970 is allowed to the extent that the order of the Assessing Authority dated March 16, 1970 (copy Annexure 'A' to the petition), disallowing the claim of Rs. 14,307.72 P. in respect of the sale of 'Chokar' out of the tax free claim, is quashed while in all other respects the writ petition stands dismissed with no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

WATAN SINGH GIANI,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1204 of 1970

October 20, 1970.

Punjab Co-operative Societies Act (XXV of 1961 as amended by XXVI of 1969)—Section 26-A—Disqualification for re-election to the Managing Committee of a Co-operative Society—Period of six years of service thereon and a gap of three years therefrom—Whether to be continuous.

Held, that section 26-A of the Punjab Co-operative Societies Act, 1961, laying down restrictions on membership of a Managing Committee of a Co-operative Society, has been introduced by the Punjab Co-operative Societies (Amendment) Act, 1969, to discourage creation of vested interests in the matter of management of the Co-operative Societies and for that purpose a person who has already served on the committee of a Co-operative Society for a continuous period of six years cannot seek election again unless a period of not less than 3 years has expired since he last so served on the committee. A plain and natural reading of sub-section (2) of the Section leaves no room for doubt that a period of six years and the gap of three years must be continuous. The use of the words "whether before or after or partly before or partly after" in the sub-section furnishes a key and a guide to the object of this provision. The disqualification is not intended to be imposed on a person who has ever continued as a member for six years followed by discontinuity in membership of three years. Any such interpretation would defeat the very purpose of the Act and would work hardship. The use of the words "last so served" is also not without significance and is again a pointer to the conclusion that the period of three years for which a person cannot seek election will commence on the expiry of the period of continuous membership for six years. (Para 6)