candidate. In the words of Mr. Justice Ghulam Hasan speaking for the Court "the language is too clear for any speculation about possibilities". The court should be able to reach the conclusion in a positive manner that the result of the election has been materially affected. The words "the failure of justice has occurred" have to be read *ejusdem generis* and it must be found that the breach of the rules has either materially affected the election or that failure of justice has actually occurred. In *Pala Singh* v. *Nathi Singh and others* (2) a Division Bench of this Court in construing section 121 of the Act observed that the expression "failure of justice" though, if left by itself, is vague and indefinite expression, yet in view of section 115(2) (b) of the Act and rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, it gains definite meaning in that the failure of justice means failure of justice in the wake of the provisions of rule 3 and the commission of any of the corrupt practices as given in the schedule to the said rules. So read with rule 3 the effect of section 121 of the Act is that if an election is to be set aside for breach of rules it must be shown that failure of justice has occurred or the result of the election has been materially affected. There is no finding of the Prescribed Authority that the result has been materially affected. The halting nature of the finding that there may have been some injustice cannot be equated with a finding that failure of justice in fact has resulted. In this view of the matter the order of the prescribed Authority is unsustainable and must be quashed. This petition will, therefore, be allowed and the order of setting aside the election quashed. In the circumstances of the case I will make no order as to costs.

(2) I.L.R. (1963) 1 Punj. 49=1962 P.L.R. 1110.

K.S.K.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand Pandit, JJ.

M/S. SHREE BHIWANI COTTON MILLS, LTD.,—*Petitioner.*

versus

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

Civil Writ No. 231 of 1968

May 22, 1968.

Punjab General Sales Tax Rules (1949)—*Rules* 20 & 25 *and Forms S.T. VIII and S.T. VIII-A—Whether invalid and liable to be struck down.*

Held, that Rule 20 and 25 and the Forms St. VIII and VIII-A of Punjab General Sales Tax Rules 1949 cannot be said to be non-existent. The Forms are merely model forms and can be suitably modified or added to by the dealer in order to meet the requirements of the law in each case. A dealer has to file his return in the form suitably amended. There is no practical difficulty in compliance. Every registered dealer will know when he becomes liable to pay tax with regard to his purchases. He will include the same in the return for the quarter in which he has so become liable. It cannot be said that no return is liable to be filed before the expiry of six months from the close of the financial year in view of the amendments made in section 5 of the Punjab General Sales Tax Act by deleting the words "every year" from sub-section (1) and by the addition of sub-section (3). The rules 20 and 25 of the Rules are therefore not valid. [Para 8].

Petition under Articles 226/227 of the Constitution of India praying that a writ of prohibition or any other appropriate writ order or direction be issued directing and restraining the respondents not to compell the petitioner to file the returns before 30th October, 1968 as mentioned and deposit the tax before that period.

H. L. Sibal Senior Advocate with R. N. Narula, Advocate, for the Petitioners.

Bal Raj Tuli, Senior Advocate with S. S. Mahajan Advocate and G. R. Majithia, Deputy Advocate-General (Punjab) for the Respondents.

ORDER

Mahajan, J.—This order will dispose of Civil Writ Numbers 231, 231, 232, 233, 234, 235, 236, 237, 314, 317, 318, 319 and 321 of 1968 and Civil Writ Numbers 5 and 711 of 1968.

(2) In these petitions, the *vires* of rules 20 and 25 framed under the Punjab General Sales Tax Rules, 1949 (hereinafter referred to as the Punjab Rules) and the constitutional validity of sections 8(2), 8(2)(a) and 6 of the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act) are being challenged. The further question regarding the interpretation of sections 9(2) and 9(3) of the Central Act and rule 11(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957, has also been raised. It may be stated that at the hearing, all other contentions were dropped excepting the one relating to the *vires* of rules 20 and 25 of the Punjab Rules. We, therefore, only propose to deal with this matter alone.

(3) Before proceeding to deal with the contention raised, it will not be out of place to mention that the *vires* of these rules was debated in *Messrs Modi Spinning and Weaving Mills Company Ltd.* v. *The State of Punjab* (1) and a Division Bench of this Court held that these rules were in order and not open to attack. The same matter has been again agitated on the ground that this decision, though affirmed by this Court in *Bhawani Cotton Mills Case,* has been ultimately reversed by the Supreme Court, which has held the imposition of the Central Sales Tax as ***ultra vires,*** because no single stage for its levy had been fixed in the Punjab Act. Supreme Court decision is reported as *Shree Bhawani Cotton Mills Ltd.* v. *The State of Punjab and another* (2). It is in the wake of this decision that the controversy regarding rules 20 and 25 has been raised again.

(4) Before prceeding further, I may mention that the Union of India was not made a party to this petition and it was for this reason that the attack on the constitutional validity of sections 8(2), 8(2) (a) and 6 of the Central Act was dropped at the stage of the arguments.

(5) The petitioner is a Company registered under the Indian Companies Act. Its registered office is at Calcutta. It carries on business at Abohar (Punjab). The Company is a registered dealer under the Punjab Act as well as the Central Act. The petitioner, according to his allegations in the petition, is a purchaser of goods specified in Schedule 'C' of the Punjab General Sales Tax Act (hereinafter referred to as the Punjab Act). It has to pay tax on the purchase of such goods. According to section 10(3) of the Punjab Act, every such dealers is required to file returns to the Prescribed Authority in the prescribed manner. He has also to pay the full amount of tax due from him under the Act according to the return submitted by him. The manner of filing the return is precribed in rules 17 to 25 of the Punjab Rules. It is common ground that the petitioner is not governed by rules 17 to 19, but is governed by rule 20. Under this rule, a return has to be filed quarterly within thirty days from the expiry of each quarter. Under rule 25, all returns have to be furnished in Form ST. VIII or ST. VIIIA along with a Treasury or Bank receipt showing the payment of the tax due.

(1) I.L.R. (1965) 1 Pb. 695=1965 P.L.R. 584.
(2) 20 S.T.C. 290.

(6) The petitioner's grievance is that under section 5(2) (a) (vi) of the Punjab Act, the Company is entitled to deduction of all sales on declared goods which are effected within a period of six months from the expiry of the financial year. By filing returns quarterly, it is argued, the Company cannot avail of the said deductions; and, therefore, its taxable turnover cannot be determined. Since the taxable turnover cannot be determined, no tax can be as certained; and, therefore, rules 20 and 25 and Forms ST. VIII and ST. VIII A are liable to be struck down. It is not disputed that after the Supreme Court decision in *Bhawani Cotton Mills Case*, the Punjab Act has been amended and a single stage for the levy of purchase tax has been fixed by the Punjab General Sales Tax (Amendment & Validation) Act, 1967. But it is pointed out that the rules and the forms have not been amended. The result is that there are no prescribed forms in existence and, therefore, the petitioner cannot be forced to file any return.

(7) These contentions have been controverted by Mr. Tuli, who appears for the State of Punjab. According to the learned counsel, the matter stands concluded by the decision of this Court in *Messers Modi Spinning and Weaving Company's case* (1). The infirmity, from which this judgement suffered and which was pointed out by their Lordships of the Supreme Court in *Bhawani Cotton Mills Case* has been done away with by the Punjab Amendment and validation Act of 1967, inasmuch as a definite stage for the levy of purchase tax at a single stage on declared goods has been fixed by section 5(3)(a) (ii). This provision has been considered in Civil Writ No. 311 of 1968; and has been held to be valid. Thus the petitioner can always know when he becomes liable to pay the purchase tax. After hearing the learned counsel for the parties, we are of the view that the contentions of Mr. Tuli are sound and must prevail. Section 5(3) (b), which has been enacted by the Amendment and Validation Act of 1967, provides that:—

> "Notwithstanding anything contained in this Act, the taxable turnover of any dealer for any period shall not include his turnover during the period of any sale or purchase of declared goods at any stage other than the stage referred to in sub-clause (i) or as the case may be, sub-clause (ii) of clause (a)."

(8) From this provision, it is apparent that a dealer is to include in his taxable turnover the purchase of only those declared goods in respect of which he becomes liable to pay the tax during the period

for which the return is filed. As long as the goods remain in his stock, he need not include their purchase in his turnover. The deduction allowed by section 5(2) (a) (vi) of the Punjab Act is a limited one, while the scope of section 5(3) (b) is much wider and includes the deductions allowed by section 5(2) (a) (vi). Moreover, the words "every year" have been omitted from sub-section (1) of section 5 of the Punjab Act by Punjab Act No. 28 of 1965, so that the period of assessment now is not the financial years but the one prescribed by rules 17 to 20 read with section 10(3) of the Punjab Act. The Forms earlier referred to are merely model forms which can be suitable modified or added to by the dealer in order to meet the requirements of the law in each case. Therefore, rules 20 and 25 and the impugned forms cannot be said to be non-existent. A dealer has to file his return in the form suitably amended. There is no practical difficulty in compliance. Every registered dealer will know when he becomes liable to pay tax with regard to his purchases. He will include the same in the return for the quarter in which he has so become liable. It cannot be said that no return is liable to be filed before the expiry of six months from the close of the financial year in view of the amendment made in section 5 of the Punjab Act by deleting the word "every year" from sub-section (1) and by the addition of sub-section (3).

(9) In this view of the matter, the contention of Mr. Sibal, that rules 20 and 25 are invalid, must be negatived.

(10) Before parting with this judgement, it may be mentioned that at the fag end of the arguments, Mr. Sibal agreed that in view of the interpretation placed by the learned counsel for the State and accepted by us on clause (b) of sub-section (3) of section 5, there would be no difficulty in determining the taxable turnover and filing returns and paying the tax on their basis. The very interpretation, which Mr. Tuli has placed on clause 5(3) (b) was, in fact, placed by Mr. Sibal in clause (d) of para 17 of the Writ Petition.

(11) In our opinion, these petitions have no merit and must fail. We accordingly dismiss the same; but will make no order as to costs.

May 22nd, 1968.

Prem Chand Pandit, J.— I agree that these petitions be dismissed, but with no order as to costs.

K. S. K.