

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Khosla, J.

MESSRS PREM NARAIN AND COMPANY,—*Petitioner-Appellant*

v.

THE EXCISE AND TAXATION COMMISSIONER, PUNJAB
AT JULLUNDUR, AND ETC.,—*Respondents*

Letters Patent Appeal No. 13 of 1954

The East Punjab General Sales Tax Act (XLVI of 1948) as amended by the East Punjab General Sales Tax (Second Amendment) Act (XIX of 1952)—Whether ultra vires the provisions of the Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act (LII of 1952).

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Interpretation of Statutes—Act amended retrospectively—Effect of.

Held, that the defect in the East Punjab General Sales Tax Act, 1948, if any existed, was removed with retrospective effect by the East Punjab General Sales Tax (Second Amendment) Act, 1952. The removal of the defect in the Act does not mean that the Act was enacted at the time the amendment was made. Therefore, it cannot be said that by virtue of the Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act, 1952, the East Punjab General Sales Tax Act, 1948, became invalid.

Held also, that when a defect in an Act is removed by an amending Act retrospectively, the amending Act does not re-enact the original Act from the time of the amendment, on the other hand, the amendment is deemed to have been included in the original Act from the very beginning.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice J. L. Kapur, dated the 23rd December, 1953, passed in C.W. No. 221 of 1953.

MAN MOHAN SINGH, for Appellant.

K. S. CHAWLA, for Respondents.

JUDGMENT.

Khosla, J. Khosla, J.—This is an appeal under clause 10 of the Letters Patent against the order of Kapur, J., dismissing the appellant's petition in which he challenged the levy of sales tax upon agricultural machinery in which he deals.

The petition was dismissed on the ground that the petitioner had not exhausted his remedy under the Sales Tax Act. Kapur, J., followed a decision of this Court in *Kandhari Oil Mills v. Excise and Taxation Commissioner* (1). Mr. Manmohan Singh Gujral has, however, brought to our notice certain decisions of the Supreme Court and argued that where the *vires* of a certain Act are being challenged it is not necessary for the aggrieved party to exhaust all the remedies under the Act before he moves the High Court by means of a petition under Article 226 of the Constitution. We have heard Mr. Manmohan Singh on the merits of the case and we have come to the conclusion that there is no force in the petition or in the appeal.

The petitioner deals in agricultural machinery and he was asked to pay sales tax under the Punjab Sales Tax Act on machinery sold by him. His contention is that agricultural machinery is one of the commodities which have been exempted from the levy of sales tax on the ground that this commodity is essential to the life of the community. He has drawn our attention to Central Act 52 of 1952 by means of which certain goods which are essential for the life of the community have been exempted from sales tax. Agricultural implements and agricultural machinery are among the commodities so exempted.

(1) 55 P.L.R. 413

The Act under which this tax is levied is Act 46 of 1948 (The East Punjab General Sales-Tax Act) as amended by Act 19 of 1952. The relevant section of the old Act read as follows:—

“5. Subject to the provisions of this Act, there shall be levied on the taxable turnover every year of a dealer a tax at such rates as the Provincial Government may by notification direct.

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Mr. Manmohan Singh argues that this Act gave the Provincial Government complete discretion in the matter of the rate of sales tax and the Act was therefore bad. An amendment was introduced by Punjab Act 19 of 1952. By this amendment some words were added to section 5 and an upper limit on the tax which could be levied by Government was fixed at two pice in the rupee. The words added were:—

“not exceeding two pice in a rupee”

and it was provided by the Act that these words “shall be deemed always to have been so inserted”. This Act was passed on the 20th November, 1952. In the meantime the Central Act 52 of 1952 had been passed and section 3 of this Act reads:—

“No law made after the commencement of this Act by the legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.”

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A Schedule to this Act contains a list of the goods essential for the life of the community and item 11 is—

“Fertilisers and manures, agricultural machinery and implements, including parts of such machinery and implements.”

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 Khosla, J.

The contention of Mr. Manmohan Singh therefore is that an Act which did not fix the exact rate of the sales tax nor fixed the upper limit was bad because it amounted to improper delegation of legislative powers. Central Act 52 of 1952 imposed an embargo on all Acts which taxed agricultural machinery. The defect in the original Act was removed too late by Punjab Act 19 of 1952 and therefore the old Act of 1948 must be deemed to have been enacted in 1952, that is after the embargo on such Acts had been placed by the Central Act 52 of 1952.

The amending Act (Punjab Act 19 of 1952), however, provided that the upper limit of two pice in the rupee shall be deemed to have been included in the original Act from the very beginning. The defect, if any existed, was, therefore, removed with retrospective effect. The removal of the defect does not mean that the Act was enacted at the time the amendment was made. The Act which sanctioned the imposition of sales tax had existed since 1948 and the policy of imposing sales tax had been declared and legalised in 1948. The tax had been levied from traders and had been paid by them regularly without protest. The validity of this Act was never challenged and when in 1952 the defect was removed, if there was any invalidity attaching to the Act it must be deemed to have been removed retrospectively. Therefore it can-

not be said that by virtue of Central Act 52 of 1952 the Punjab General Sales-tax Act of 1948 became invalid. The removal of a defect retrospectively does not render the Act invalid. I am, therefore, of the opinion that the Act is *intra vires* and that the levy of the tax from the appellants cannot be held to be illegal merely because of the provisions of the Central Act 52 of 1952. This appeal must fail and I would dismiss it with costs.

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Bhandari, C.J.—I agree.

Khosla, J.
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REVISIONAL CRIMINAL

Before Bishan Narain, J.

MAHAN SINGH AND ANOTHER,—*Petitioners*

v.

SHRI RANA PARTAP,—*Respondent*

Criminal Revision No. 1102 of 1955.

Code of Criminal Procedure (V of 1898)—Section 439—Whether applicable to proceedings before a Panchayat under the Punjab Gram Panchayat Act (IV of 1953)—Section 66—High Court, whether has inherent revisional jurisdiction over the subordinate courts—Constitution of India—Articles 226 and 227—Interference under, by High Court with an order of Panchayat, whether permissible—Punjab Gram Panchayat Act (IV of 1953)—Sections 42(1) and 41—Proviso—Panchayat taking cognizance of an offence against a person who becomes a public servant during the course of trial—Subsequent trial, whether vitiated—Section 41, Proviso—Phrase “competent jurisdiction”—meaning of—Transfer of case from one Panchayat to another—Whether can be made—Indian Penal Code (XLV of 1860)—Section 447—Offence under—Conviction for, when can be maintained—Interpretation of Statutes—Limited and restricted meaning of a term, when preferred to general construction.

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Held, that the revisional jurisdiction is entirely a creation of the statute and the High Court has no inherent power of revision over subordinate courts within its jurisdiction.