

The State of Punjab v. Kirpal Singh and Harbans Lal Bhandari, C. J.

the findings of fact and the conclusions of law which are to provide the basis for the proposed punishment are made by a person other than the punishing authority, it would be difficult to escape the conclusion that the supply of a copy of the report of the Enquiring Officer would be an essential pre-requisite to provision of the reasonable opportunity which the law contemplates. In that event, the failure to supply the copy would not be a slight irregularity which can be easily cured but a vital defect which cuts at the root of the entire proceeding.

The evidence in the present case was recorded by the Prosecuting Inspector who submitted his report to the Assistant Inspector-General of Police. A copy of this report was not supplied to the respondents and they were deprived of the opportunity of showing that the findings of fact at which the Enquiring Officer arrived were not justified.

For these reasons, I would uphold the order of the learned Single Judge and dismiss the appeal. Ordered accordingly.

Gosain, J.

GOSAIN, J.—I agree.

D. K. M.

FULL BENCH.

Civil Miscellaneous.

Before Bhandari, C. J., Gurnam Singh and Tek Chand, JJ.

MESSRS. JAWAHAR SINGH AND OTHERS,—*Plaintiff-Appellants.*

versus

UNION OF INDIA, (2) PUNJAB STATE, (BHARAT),
(3) PROVINCE OF PUNJAB (PAKISTAN),—
Defendants-Respondents.

Civil Miscellaneous No. 353 of 1956.

in

Letters Patent Appeal No. 38 of 1952.

1957
August, 14th

Court Fees Act (VII of 1870)—Sections 10, 13, 14, 15 and 19A—Refund of Court Fee legally paid—Court, whether

has inherent power to order refund under section 151, Code of Civil procedure.

Civil Procedure Code (Act V of 1908)—Section 151—Inherent powers of Courts—Scope of.—

Practice and Procedure—Courts, whether have inherent powers irrespective of constitutional and statutory provisions.—

Interpretation of Statutes—Intention of legislature—Whether effect to be given to—Whether court can bring in its own notions and supply defects—Whether interpretation can be influenced by the ideas of injustice, unfairness, inconvenience, hardship or oppression.

Held, per Full Bench that the power of a court to remit or refund court fee is confined only to fees which have been illegally or erroneously assessed or collected and does not extend to fees which have been paid or collected in accordance with the provisions of the Court Fees Act.

Held, per Bhandari C.J.:—

(1) The power and authority of a court to hear and determine justiciable controversies and to deliver binding judgments thereon is derived from the Constitution and the laws; but quite apart from the power expressed by the constitutional and statutory provisions every Court has inherent power to do all things that are reasonably necessary for the administration of justice, for the maintenance of dignity and for the legitimate discharge of its functions. It does not spring from legislation but from the very nature and constitution of the tribunals themselves and is essential for the ordinary and efficient exercise of the jurisdiction conferred by the law of the land. This power is essentially a protective power and is necessary for the preservation of the existence of the Courts.

(2) If a statutory enactment provides a remedy for protection against administrative aggression in the form of the illegal or erroneous exaction of a tax, that remedy must

be regarded as exclusive and the Courts have no power to intervene. If, however, the statutory enactment is silent and the system of corrective justice is not complete, the inherent power of a Court to grant equitable relief will step in to fill the gap, for the inherent power of the Court is limited to the power of the Court to regulate and deal with such matters in the absence of legislation.

(3) It is the duty of the Court to ascertain the intention of the Legislature and to carry such intention into effect to the fullest degree even though such legislation appears to the Court to be unfair, inequitable or unjust. If the statute is ambiguous in its terms and fairly susceptible of two or more constructions, the Court will avoid a construction which would render the statute productive of injustice, unfairness, inconvenience, hardship or oppression and will adopt a construction in favour of an equitable operation of the law and which will best subserve the ends of justice. If, on the other hand, the language of the statute is plain and unambiguous and conveys a clear and definite meaning, the Courts have no power to give the statute a meaning to which its language is not susceptible merely to avoid that which the Court believes are objectionable, mischievous or injurious consequences. A Court has no power, inherent or otherwise to nullify, destroy or defeat the intention of the Legislature by adopting a wrong construction or to take shelter behind the comforting thought that Courts of law have been established and ordained for the purpose of promoting substantial justice between the parties and that a technicality should not be permitted to override justice. The Courts have no power to modify the provisions of law even if these provisions are not as convenient and reasonable as the Court themselves could have devised.

Held, per Tek Chand, J.:—

(1) Inherent power is an authority possessed without its being derived from any external source. It is a right, ability or faculty of doing a thing without receiving that right, ability or faculty from another. 'Jurisdiction' is conferred on Courts by Constitutions and Statutes whereas 'inherent' powers are those which are necessary to ordinary and efficient exercise of jurisdiction already conferred. Inherent

powers are inseparable powers which the Legislature did not confer and therefore cannot take away, without destroying, the very foundation of the Court affected. It is a power, which is necessary to preserve the Courts' existence and to fully protect it in the orderly administration of its business. Inherent power is from its very nature essentially a protective power necessary for the existence of the Courts and its due functioning. Its scope cannot be extended beyond its legitimate and circumscribed sphere. The inherent powers defy enumeration. They include powers necessary for the ordinary and efficient exercise of its jurisdiction; essential for its functioning, and imperative for the preservation of its existence.

(2) Where a statute enumerates, the subjects or things on which it is to operate, or the person affected, or forbids certain things, it is to be construed as excluding from its purview, what it has failed to specify. Every positive direction mentioned in an Act of Legislature carries an implication against everything contrary to it, the specification of one particular subject excludes all others and affirmation of one power implies the denial of the powers not mentioned. *Cassus omissus* is not to be created or supplied, and a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. It is not the function of the Court to supply a defect or an omission or make up a deficiency which the Legislature could easily have supplied or made.

Case referred by a Division Bench consisting of the Hon'ble Mr. Chief Justice A. N. Bhandari, and Hon'ble Mr. Justice Bishan Narain, on the 21st September, 1956, to a Full Bench.

Petition under Section 151 of Civil Procedure Code, praying that refund of court fee of Rs. 2,025 be ordered.

N. L. SALOOJA and K. L. KAPUR, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

ORDER OF REFERENCE.

BHANDARI, C.J.—This petition raises the question whether the petitioner is entitled to the refund of court-fee paid by him on certain plaint Bhandari, C. J.

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The petitioner in the present case brought a civil suit in the Court of a Subordinate Judge at Amritsar, but the Court came to the conclusion that the Courts in Amritsar had no jurisdiction to deal with the case and returned the plaint for presentation to the proper Court. This order was affirmed by a learned Single Judge and later by a Division Bench of this Court.

The petitioner has now presented an application under section 151 of the Code of Civil Procedure in which he prays that the court-fee of Rs. 2,025 paid by him be refunded as the Court is not entitled to the payment of any court-fee in respect of a suit which it has no jurisdiction to try.

Two sets of authorities have been cited before us at the bar. One set appears to propound the proposition that the Court has inherent power to refund a fee even though it has been paid in accordance with the provisions of the Court-fees Act. *The Anglo-French Drug Co., (Eastern) Ltd., v. The State of Bombay and another* (1). *S. Sohan Singh v. The Oriental Bank of Commerce* (2), *Jan Mohd. v. Amolak Ram and another* (3), *Mohammad Sadiq Ali Khan, Nawab Mirza v. Saiyed Ali Abbas* (4). The other set of authorities appears to take a contrary view and to hold that if the Court has any power to pay back a fee at all, this power extends only to refund the court-fee which have been illegally or erroneously assessed or collected and not to the refund of fees which have been collected in accordance with the provisions of law *Karfule, Ltd., v. Arical Daniel Varghese* (5), *Ranchhod Lal Manekhlal v. Kanekhl*

(1) A.I.R. 1951 Bom. 130.

(2) 1956 P.L.R. 355.

(3) A.I.R. 1936 Lah. 301.

(4) I.L.R. 7 Luck. 588.

(5) A.I.R. 1953 Bom. 73.

(1), *Prabhunath v. Mt. Khadijatul Kubra and others* (2), *Tara Chand-Ghansham Das v. State of West Bengal* (3), and *Discount Bank of India v. A. N. Mishra* (4).

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As two inconsistent and mutually contradictory views have been taken by different High Courts of the country and different Benches of this Court, I am of the opinion that the following question should be referred to a Full Bench of this Court:—

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Is the power of a Court to remit or refund court-fees confined only to fees illegally or erroneously assessed or collected or does it extend also to fees which have been paid or collected in accordance with the provisions of the Court-fees Act ?

BISHAN NARAIN, J.—I agree.

Bishan Narain, J.

JUDGMENT OF FULL BENCH

This reference to the Full Bench has arisen in the following circumstances.

The Court of the Subordinate Judge at Amritsar returned a plaint to the plaintiff for presentation to the proper Court and this order was affirmed by a learned Single Judge and later by a Division Bench of this Court. The plaintiff, thereafter applied to this Court for an order directing the refund of court-fee of Rs. 2,025 paid by him in respect of the appeal in the High Court. As the amount of court-fee payable on the memorandum of appeal was paid in accordance with the provisions of the court-fees Act and as the court-fee

(1) A.I.R. 1953 Bom. 436.
(2) A.I.R. 1953 All. 184.
(3) A.I.R. 1955 Cal. 258.
(4) A.I.R. 1955 Punjab 165.

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did not exceed the amount prescribed by law, the Court had no statutory power to accede to the request of the petitioner. A question then arose whether this Court has any inherent or implied powers, independently of the statute, to pay back a court-fee which has been correctly and lawfully assessed and collected. The attention of the Court was invited to two decisions of this Court in which two views, which were diametrically opposed to each other, were taken. In one case *Discount Bank of India v. A. N. Mishra* (1), decided by myself and Dulat, J., it was held that the power of a Court to order a refund of court-fees is limited only to three cases, namely, (1), when the refund is authorised by the Court-fees Act itself, (2), when excess court-fee was paid as the result of a mistake and (3) when the excess payment has been made as the result of a mistaken demand by the Court itself. In *S. Sohan Singh v. The Oriental Bank of Commerce* (2), another Bench (Kapur, J., and Bishan Narain, J.) took the view that a Court has full power to grant refunds of court-fees even when the fees have been collected in accordance with the provisions of law. As a considerable diversity of opinion has manifested itself between different High Courts and between different Benches of this Court, the Division Bench before which this petition came up for consideration has referred the following question to us for decision, namely—

“Is the power of a Court to remit or refund court-fees confined only to fees illegally or erroneously assessed or collected or does it extend also to fees which have been paid or collected in accordance with the provisions of the Court-fees Act?”

(1) A.I.R. 1955 Punjab 165.
(2) 1956 P.L.R. 355.

The statutory power of a Court of law to authorise refund of court-fees is embodied in four sections of the Court-fees Act. Section 13 provides for a refund of fee paid on memorandum of appeal in two cases, namely, (1) where a plaint or memorandum of appeal rejected by the lower Court on any of the grounds mentioned in the Civil Procedure Code is ordered by the appellate Court to be received and (2) where a suit is remanded in appeal on any of the grounds mentioned in Order 41, rule 23 of the Code of Civil Procedure. Section 14 deals with a refund of court-fee on an application for review of judgment. Section 15 provides for a refund where the Court reverses or modifies a former decision on grounds of mistake. Section 19A, provides for relief where too high a court-fee has been paid on applications for probate or for letters of administration. There can be no doubt that a Court has full power to order a refund of court-fees in any case which falls within the ambit of any of these sections. As the express mention of one thing implies the exclusion of another, the express mention of the circumstances in which refunds can be allowed implies that refunds cannot be allowed in any other circumstances. In other words a refund can be allowed in exercise of the statutory jurisdiction of the Court if and only if a case falls within the ambit of any one or more of these four sections. The statutory jurisdiction of the Court will carry us no further.

But what about the inherent jurisdiction of the Court? The power and authority of a Court to hear and determine justiciable controversies and to deliver binding judgments thereon is derived from the Constitution and the laws; but quite apart from the power expressed by the constitutional and statutory provisions every Court has inherent power to do all things that are reasonably

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necessary for the administration of justice, for the maintenance of dignity and for the legitimate discharge of its functions. It does not spring from legislation but from the very nature and constitution of the tribunals themselves and is essential for the ordinary and efficient exercise of the jurisdiction conferred by the law of the land. This power is essentially a protective power and is as necessary for the preservation of the existence of the Courts as is the natural right of self-defence to the preservation of human life (*Hulman v. State* (1)).

Now, that exactly is the meaning of the expression 'inherent powers of the Court' which have been preserved and safeguarded by the provisions of section 151 of the Code of Civil Procedure? The expression 'inherent powers of the Court' is not susceptible of a clear and precise definition and, so far as I am aware, no Court has endeavoured to give an all embracing statement of the essential nature of this extraordinary jurisdiction. The boundaries of inherent powers can best be determined by a process of inclusion and exclusion. Among the inherent powers of a Court of general jurisdiction most frequently expounded and exercised are—

- (a) the power to preserve order, decency and silence in the Court-room;
- (b) the power to protect itself from contempt, the power to punish unseemingly behaviour and the power to punish those who assume to treat it with contempt ;
- (c) the powers to maintain dignity and independence;

(1) 105 Ind. 513.

- (d) the power to correct their records so as to make them speak the truth; to pass upon the constitutionality of statutes, to prevent the abuse of their authority and to enforce obedience to their mandates;
- (e) the power of enforcing and effectuating its own judgments and mandates;
- (f) the power of holding its officers to a proper accountability for any default or misfeasance in the execution of its process; and
- (g) the power of vacating judgments entered by mistake and of relieving against judgments procured by fraud; etc.

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In addition to these powers, a Court of general jurisdiction has inherent power to correct that which has been wrongfully done by virtue of its process, for it is one of the highest duties of all Courts to take care that the act of the Court does no injury to any of the suitors (*Roger v. Comptoir d' Escompts de Paris*, (1). It has power to undo what it had no authority to do originally, to restore the amounts which a person had been wrongfully compelled to pay under the orders of the Court, and to restore, as far as possible, the parties to their original position. Again a Court has power to act rightly and fairly towards all parties, to prevent abuse, oppression and injustice, and to order a refund of the money which ought in good conscience to be repaid to the person from whom it has been illegally or erroneously exacted. If therefore, a litigant pays a court-fee which has been unjustly assessed or is excessive in amount

(1) 1871 L.R. 3 P.C. 465, 475.

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or has been wrongly collected, the Courts will give him relief *ex debito justitiae*, for the State has impliedly agreed to pay back the money received by a Court but which the law had not authorised the Court to exact. Beyond this the inherent powers will not take us.

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It will be seen from the above, that quite apart from authority and purely on the basis of legal principles, a Court of law has power to order a refund of court-fees (1) where the Court-fees Act applies (2), where there is an excess payment by mistake and (3) where on account of mistake of the Court a party has been compelled to pay court-fee either wholly or in part. This proposition is so well established that I consider it entirely unnecessary to again enter upon the field of argument and authority to maintain the power of this Court to pay back the court-fee where excess fee has been paid through oversight, mistake or inadvertence. I need cite only a few authorities which have been relied upon by the Courts which have entertained the view that a Court has inherent power to authorise refund of court-fee not only in the three types of cases mentioned above but also in cases where the law expressly declares that fees shall be charged, levied and collected.

In the matter of Grant (1), the High Court ordered a refund of excess duty paid by inadvertence on an appeal. In *Harihar Guru v. Ananda Mahanti* (2), the appellants' agent having by inadvertence overpaid the court-fee on the memorandum of appeal, the High Court directed the Taxing Officer to issue a certificate to enable an appellant to obtain a refund of the excess court-fee paid by him. *In the matter of Chaube Munna*

(1) (1870) 14 Weekly Reports 47.

(2) (1912) I.L.R. 40 Cal. 365.

Lal (1), the Allahabad High Court held that subordinate Courts have power to issue certificates directing the refund of court-fees paid in excess by inadvertence. These authorities appear to propound the proposition that Court has inherent power to order refund of court-fees paid in excess when obvious injustice would be done if this were not repaid. In *Prabhakar Bhat v. Vishwambhar Pandit* (2), a Full Bench of the Bombay High Court held that where after a trial has begun or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court and no additional court-fees are payable. This case does not support the proposition that Court has inherent power to authorise refunds even in cases which do not fall within sections 13, 14 or 15 and when court-fees have been paid or collected in accordance with the provisions of the Court-fees Act.

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Our attention has been invited to certain decisions which appear to propound the proposition that Court has inherent or implied power not only to remit, refund or pay back court-fee which have been erroneously or illegally assessed or collected but also to refund court-fees which have been collected in accordance with the provisions of law. These decisions appear to proceed on the assumption that Courts of law possess some mysterious or hidden power to modify the provisions of a statute of some strictness or vigour when it considers that some possible inconvenience may grow from a strict observance of it. The earliest case in which this view was taken is reported as *Sadiq Ali Khan v. Ali Abbas* (3), In this case an applicant who presented an appeal to the Chief Court

(1) I.L.R. 52 All. 546.

(2) I.L.R. 8 Bom. 313.

(3) I.L.R. Luck. 588.

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of Oudh withdrew the appeal after admission as he was of the opinion that it was wholly unnecessary and applied for a refund of court-fee which had been paid thereon. A Division Bench of the Chief Court of Oudh before whom the application came up for consideration held that a Court has jurisdiction to order refund of court-fees in cases which do not fall within sections 13, 14 or 15. This order errs on the side of brevity and contains no reasons for the decision. The Court relied upon certain cases such as *In the matter of Grant* (1); *Harihar Guru v. Ananda Mahanti* (2), *C. T., A.M. Chattyar Firm v. Koyin Gyi and another* (3), *In Prabhakar Bhat v. Vishwa Mbhar Pandit* (4), *S. Visweswara Sarma v. T. M. Nair and anothers* (5), and *(Raja Seth) Swami Dayal and others v. Mahammed Sher Khan* (6), but these authorities do not appear to support the broad general proposition which the Judges endeavoured to propound.

In *Mst. Gendo v. Radha Mohan* (7), the plaintiff instituted a suit for recovery of arrears of rent and for ejectment from certain plots of land and obtained a decree for ejectment on payment of a certain sum of money. On appeal the learned District Judge remanded the case to the trial Court but omitted to mention the provision of law under which the order of remand was made. On further appeal, to the High Court, Tek Chand, J., held that although the order of remand was not passed under order 41, rule 23, and was probably an order of remand under section 151 of the Code of Civil Procedure, a Court remanding

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- (1) (1870) 14 Weekly Reports 47.
 - (2) I.L.R. 40 Cal. 365.
 - (3) A.I.R. 1929 Rang. 158.
 - (4) I.L.R. 8 Bom. 313.
 - (5) I.L.R. 35 Mad. 567.
 - (6) A.I.R. 1925 Oudh. 39.
 - (7) A.I.R. 1932 Lah. 219.

a case under section 151 is competent to order a refund of court-fee paid on the memorandum of appeal. No reasons have been given for the decision which appears to be contrary to the accepted legal principle that provisions of law cannot be extended by analogy. The view taken by Tek Chand, J., was later confirmed by Tapp, J., in *Central Bank of India Ltd., v. Thakur Das-Tulsi Ram* (1), and again by Kapur and Bishan Narain, JJ., in *Sohan Singh v. The Oriental Bank of Commerce* (2).

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The next important case is reported as *Galstaun v. Jankinath Rai* (3). In this case the applicant applied for a return of a memorandum of appeal which was not registered on the ground that it was filed out of time with a certificate authorising the petitioner to receive back from the Collector the amount of court-fee paid on the memorandum. Delay in filing the memorandum of the appeal was not due to any negligence on the part of appellant but due to gross negligence on the part of his legal advisor. The Court admitted that the application did not come within the purview of section 13 of the Court-fees Act which is a rule on the subject of refund of court-fees paid on a memorandum of appeal, but observed that section 13 is not exhaustive and that the High Court is at liberty in suitable cases to exercise inherent powers vested in it by section 151 of the Code of Civil Procedure and to order refund of court-fees paid. No reasons have been given for the decision.

In *Jan Mohammad v. Amolak Ram and another* (4), the petitioner preferred an appeal in a case in which an appeal was not competent. This

(1) A.I.R. 19 Lah. 135
(2) (1956) 58 P.L.R. 365.
(3) A.I.R. 1934 Cal. 615.
(4) A.I.R. 1936 Lah. 301.

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appeal was later converted into a revision. Agha Haider, J., allowed a refund of the court-fee paid on the memorandum of appeal on the ground that an appeal did not lie. I am, extremely doubtful in regard to the correctness of this decision, for when court-fee is paid voluntarily and there is no mistake computation, the party which has asked for a relief which it was not bound under the law to ask and has paid court-fee thereon cannot invoke the inherent power of Court for refund *Shri Om Parkash Gupta v. The United Provinces* (1), *S. Sohan Singh v. The Oriental Bank of Commence* (2).

The next decision on which reliance has been placed is that of *Hari Ram and Sons v. H. O. Hay*, (3). In this case Abdul Rashid, J., held that where there has been no real trial of the main issues involved in the case in both the Courts below, the appellant is entitled to a refund of court-fee paid by him in the lower appellate Court on the memorandum of appeal. It was held further that the Court has inherent jurisdiction to order refund of court-fee even in cases which do not fall within sections 13, 14 and 15 of the Court-fees Act. Reliance was placed solely on the decision in *Sadiq Ali Khan v. Ali Abbas* (4).

In *The Anglo French Drug Co. (Eastern) Ltd., v. The State of Bombay and another* (5), the plaintiff instituted a civil suit in the City Civil Court at Bombay. The Principal Judge took the view that the Court had no jurisdiction to try the suit and made an order under order 7, rule 10, for the return of the plaint for presentation in the proper Court. After the order had been made, the plaintiff applied for a refund of

(1) A.I.R. 1951 All. 205.
(2) A.I.R. 1955 Pb. 165.
(3) A.I.R. 1939 Lah. 257.
(4) I.L.R. Luck. 588.
(5) A.I.R. 1951 Bom. 130.

the court-fees which had been paid by him, but the Principal Judge took the view that he had no power under the Court-fees Act or under the rules framed by Government to order any refund. The plaintiff preferred a revision to the High Court in Bombay. Mr. Datar, who appeared for the State did not contest the proposition that the plaintiff would be entitled to a refund of the court-fees, but he contended that the order cannot be made by the City Civil Court but should be made by the Court to which the plaint is presented. The learned Chief Justice held that in the interests of justice an order for refund of court-fee should be made by the Court which returned the plaint under Order 7, rule 10, and that the Bombay City Civil Court had jurisdiction under section 151 to make an order for refund of court-fee when it returned a plaint under order 7, rule 10, of the Code of Civil Procedure. The learned Judge does not appear to have examined the question as to whether the High Court had inherent jurisdiction to order refund of court-fees in a case where the court-fee was duly levied and collected because the learned counsel for the State admitted that the plaintiff was entitled to a refund of the court-fee.

In *Sohan Singh v. The Oriental Bank of Commerce* (1), Kapur and Bishan Narain, JJ., held that even in cases which are not covered by section 13, 14 and 15 of the Court-fees Act, the High Court can under its inherent jurisdiction under section 151 of the Civil Procedure Code order refund of court-fee paid in such cases as obvious injustice would be done if it were not paid.

But these decisions appear to have ignored certain fundamental legal principles. They have not taken

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(1) (1956) 58 P.L.R. 355.

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account of the fact that all Governments in all countries, civilized or otherwise, have found it necessary to enact measures for the imposition, assessment and collection of taxes and to provide safeguards of their own against mistake, injustice and oppression in the administration of its revenue laws. The Legislature has power to prescribe the manner and the circumstances in which taxes should be refunded regardless of the legality or illegality of the assessment or collection or recovery thereof. If a statutory enactment provides a remedy for protection against administrative aggression in the form of the illegal or erroneous exaction of a tax, that remedy must be regarded as exclusive and the Courts have no power to intervene. If however, the statutory enactment is silent and the system of corrective justice is not complete the inherent power of a Court to grant equitable relief will step in to fill the gap, for the inherent power of the Court is limited to the power of the Court to regulate and deal with such matters in the absence of legislation. The Court has no power to refund taxes as a matter of gratuity when they have been collected in accordance with the provisions of law, *S. Sohan Singh v. The Oriental Bank of Commerce* (1).

Secondly it has failed to take into consideration the fact that it is the duty of the Court to ascertain the intention of the Legislature and to carry such intention into effect to the fullest degree even though such legislation appears to the Courts to be unfair, inequitable or unjust. If the statute is ambiguous in its terms and fairly susceptible of two or more constructions, the Court will avoid a construction which would render the statute productive of injustice, unfairness, inconvenience, hardship or oppression and will adopt a construction in favour of an equitable operation of law and which will best subserve the ends of justice. If, on the other hand, the language of the

(1) A.I.R. 1955 Punjab 165.

statute is plain and unambiguous and conveys a clear and definite meaning, the Courts have no power to give the statute a meaning to which its language is not susceptible merely to avoid that which the Court believes are objectionable, mischievous or injurious consequences. A Court has no power, inherent or otherwise, to nullify, destroy or defeat the intention of the Legislature by adopting a wrong construction or to take shelter behind the comforting thought that Courts of law have been established and ordained for the purpose of promoting substantial justice between the parties and that a technicality should not be permitted to override justice. The Courts have no power to modify the provisions of law even if those provisions are not as convenient and reasonable as the Courts themselves could have devised. If there is a general hardship affecting a general class of cases, the hardship can be avoided by a change of the law itself and not by judicial action in the guise of interpretation. If there is a particular hardship from the particular circumstances of the case, it would be extremely dangerous to relieve it by departing from the provisions of the statute. In any case a Court has no power to circumvent the provisions of a statute, for whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance.

Thirdly, the Courts have failed to recognise the basic fact that although a Court possesses all the inherent or implied powers necessary to discharge the onerous duties imposed upon it by the Legislature, and although it is the duty of every Court to maintain its inherent jurisdiction vigorously, a Court is not wholly independent of the Legislature and cannot disregard the mandate issued by it in the form of a statute. All inherent

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and others
v.

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(2) Punjab State
(Bharat), (3)
Province of
Punjab
(Pakistan)

Bhandari, C. J.

Messrs Jawahar Singh and others v. Union of India, (2) Punjab State (Bharat), (3) Province of Punjab (Pakistan) Bhandari, C. J. and implied powers must yield to the power of statutory enactments (*Brydonjack v. State Bar* (1), for no Court of Law possesses inherent power to dispense with the provisions of a statute (*Maqbul Ahmad v. Onkar Partap* (2)). Jurisdiction is not a matter of sympathy or favour (63 Lawyers Edition 313, 315) and it is not open to a Court by the exercise of inherent power to exonerate a litigant from an obligation imposed upon him by law *Alexander Branet v. Indrakishna Kaul* (3), *Karfule Ltd. v. Arical Daniel Varghese* (4).

The legal principles set out in the preceding paragraphs have been adopted and applied in a very large number of cases and Judges have taken the view that the power of a Court to grant refunds must be confined within the limits of statutory provisions. Refunds may also be granted when court-fee has been paid in excess by inadvertence or by a mistake of the Court. Thus it has no power to order a refund of court-fees when the suit or appeal has been dismissed on the ground that a deficit in the court-fee ordered to be paid has not been paid *Jamak Prasad v. Askaran Prasad* (5), or when remand order is passed on any ground other than a ground mentioned under order 41, rule 23 *Umar Din and others v. Umar Hayat* (6), *V.K.P. Chockkalingam Aurbalam v. Maung Tin and others* (7), memorandum of appeal not numbered as appeal owing to reluctance to pay court-fee is filed and is withdrawn by the party before numbering. *In re Rachakonda Nagurathnam* (8), or when an appeal which was preferred to the High Court was withdrawn as having been settled out of Court. *In re*

(1) 66 American Law Reports 1507, 1509

(2) A.I.R. 1935 P.C. 85

(3) A.I.R. 1933 Cal. 706

(4) A.I.R. 1953 Bom. 73

(5) A.I.R. 1928 Pat. 29

(6) A.I.R. 1927 Lah. 886

(7) A.I.R. 1938 Rang. 208

(8) A.I.R. 1950 Mad. 629

v. *Arical Daniel Varghese* (1), or when an appeal presented by a bank to one High Court could not be proceeded with as another High Court ordered the bank to be wound up *Discount Bank of India v. A. N. Mishra* (2), or when the petitioner sought a certain relief in the plaint or in the memorandum of appeal but later had it deleted, *Om Prakash Gupta v. State of Uttar Pradesh* (3), *Shri Om Parkash Gupta v. The United Provinces* (4), when an appeal which was competent when filed had to be dismissed in view of the provisions of a new Act which came into force while the appeal was pending in Court *Prabhunath v. Mt. Khadijatul Kubra and others* (5), or when the plaintiff was entitled to file the suit in the District Munsiff's Court at the time the suit was filed but where this power was taken away during the pendency of the litigation, *Secretary of State v. A. Veerayya Vandayar* (6). The Courts have resolutely refused to depart from the provisions of the Statute even in cases of manifest hardship and oppression for it is well-known that hard cases make bad law.

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For these reasons I am of the opinion that the power of a Court to remit or refund court-fees is confined only to fees which have been illegally or erroneously assessed or collected, and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act.

Let an appropriate answer be returned to the question which has been referred to us.

GURNAM SINGH, J.—I agree.

Gurnam Singh, J.

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- (1) A.I.R. 1938 Mad. 67.
(2) A.I.R. 1955 Punjab 165.
(3) A.I.R. 1955 S.C. 600.
(4) A.I.R. 1951 All. 205.
(5) A.I.R. 1953 All. 184.
(6) A.I.R. 1940 Mad. 451.

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TEK CHAND, J.—I have had the advantage of reading the judgment of my Lord the Chief Justice and I agree with the answer proposed. I, however, wish to add a few observations regarding the nature and the extent of the powers of a Court of law in a matter that has arisen in this case without reiterating the facts leading to this reference. The following question has been referred for decision of the Full Bench—

“Is the power of a Court to remit or refund court-fees confined only to fees illegally or erroneously assessed or collected or does it extend also to fees which have been paid or collected in accordance with the provisions of the Court-fees Act?”

The framers of the Court-fees Act made express provisions for its refund under certain contingencies. Under section 13 of that Act court-fees is refunded firstly, where a plaint or memorandum of appeal rejected by the lower Court on any one of the grounds mentioned in the Code of Civil Procedure is ordered by the appellate Court to be received, and secondly, where a suit is remanded in appeal on any of the grounds mentioned in Order 41, rule 23, of that Code. In both cases the appellate Court is required to issue a certificate authorising the appellant to receive back from the revenue authorities the court-fee paid on the memorandum of appeal. This section does not authorise the refund of court-fee in cases where it is paid other than on memorandum of appeal or plaint.

Refund of court-fees is also contemplated by section 10(i). Where the Court finds that the plaintiff has over-estimated the value of the property, it has a discretion to refund the excess fee

which has been paid by the plaintiff. Section 14 contains a provision for refund of court-fee paid on an application for review of a judgment. Section 15 makes the grant of refund of court-fee obligatory on the Court; where the Court reverses or modifies its former decision on the ground of mistake in law or fact. In such a case the applicant is entitled to a certificate from the Court authorising him to receive back from the Collector so much of the fee paid on the application for review of the judgment as exceeds the fee payable on any other application to such Court under the Second Schedule. Section 19-A, grants relief by way of refund of court-fee where a person applies for probate of a will or letters of administration estimating the property of the deceased to be of greater value than it subsequently proves to be and in consequence thereof he has paid excess court-fee. The difference in court-fee actually paid and which should have been paid is refundable.

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Thus the statute has expressly specified the instances when, and the occasions on which an applicant may obtain relief by way of refund of court-fee paid by him in excess.

The question that calls for decision is, whether outside the confines of the provisions of the Court-fees Act relating to refund, the Court has the jurisdiction or the power to grant relief. Jurisdiction of a Court emanates directly from the law and if such a power has not been conferred by law, it cannot be exercised except in the circumstances to which reference will shortly be made, as where such a power inheres in Court. Except in cases where power to refund court-fee is constitutionally conferred under a Legislative sanction it will not be *intra vires* of a Court to grant

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relief even if it otherwise considers it to be in consonance with dictates of justice. The maxims *expressum facit cessare tacitum* (what is expressed makes what is silent to cease) and *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another) are principles of logic and common sense which are applicable both in the construction of written instruments as well as in the interpretation of statutes. The Courts presume that when a statute has expressly dealt with some situations, conditions or requirements all that it had intended to convey, it has communicated in express language and there is no further power given, or duty cast, to add to it. In other words where a statute enumerates, the subjects or things on which it is to operate, or the persons affected, or forbids certain things, it is to be construed as excluding from its purview, what it has failed to specify. Every positive direction mentioned in an Act of Legislature carries an implication against everything contrary to it, the specification of one particular subject excludes all others and affirmation of one power implies the denial of the powers not mentioned. *Cassus omissus* is not to be created or supplied, and a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. It is not the function of the Court to supply a defect or an omission or make up a deficiency which the Legislature could easily have supplied or made,—*vide Crawford v. Spooner* (1), *Gwynne v. Burnell* (2), and Craies on Statute Law Fifth Edition page 67. In the language of Lord Dunedin “express enactment shuts the door to further implication”,—*vide Whiteman v. Sadler* (3).

(1) (1846) 6 Moore P.C. 1.
(2) (1840) 7 Cl. and F. 572.
(3) (1910) A.C. 514, 527.

The next question, that calls for examination is whether it is open to the Courts to fill the lacuna from the reserve of the powers that inhere in them. Inherent power is an authority possessed without its being derived from any external source. It is a right, ability or faculty of doing a thing without receiving that right, ability or faculty from another,—*vide* 43, C.J.S. page 393. 'Jurisdiction' is conferred on Courts by Constitutions and Statutes whereas 'inherent' powers are those which are necessary to ordinary and efficient exercise of jurisdiction already conferred,—*vide State v. Superior Court of Maricopa County* (Ariz.) 5 P. (2d) 192, 194. The word 'inherent' means "existing in something as a permanent attribute or quality, a characteristic or essential element of something, in dwelling, intrinsic, essential" (Oxford English Dictionary). They spring not from legislation, but from the nature and constitution of the tribunals themselves. These are inseparable powers which the Legislature did not confer and therefore cannot take away, without destroying, the very foundation of the Court affected. It is a power, which is necessary to preserve the Court's existence and to fully protect it in the orderly administration of its business. Inherent power is from its very nature essentially a protective power necessary for the existence of the Court and its due functioning. Its scope cannot be extended beyond its legitimate and circumscribed sphere. The inherent powers defy enumeration. They include powers necessary for the ordinary and efficient exercise of its jurisdiction; essential for its functioning, and imperative for the preservation of its existence. Previous to the enactment of the statute relating to Law of Contempt, the inherent power included the right to protect itself from contempt. These powers were not conferred by Legislation but they

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resided in the Court for its preservation, for the maintenance of its dignity, for securing obedience to its process and for protecting its officers engaged in executing its orders. But this inherent power cannot be stretched to cover a wider field. In the disguise of exercising their inherent powers Courts cannot proceed to arrogate the functions of Legislature. It is true that occasionally Courts may fell tempted on grounds of hardship or in the interest of justice or fair-play to invoke these powers, but vague and nebulous considerations of hardship or injustice are snares into which Courts should not permit themselves to be drawn. These considerations are apt to introduce uncertainty and obscurity in the interpretation of statutes where exactness and precision should be the objective.

Guided by the principles mentioned above I am in entire agreement with the view expressed by my Lord the Chief Justice that the power of a Court to remit or refund court-fees is confined only to fees which have been illegally erroneously assessed or collected, and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act.

D. K. M.

CIVIL ORIGINAL.

Before Tek Chand, J.

FIRST NATIONAL BANK, LTD.,—*Applicant.*

versus

THE MANDI (STATE), INDUSTRIES, LTD., JOGINDER NAGAR,—*Respondent.*

Case No. 5 in Civil Original No. 40 of 1954.

1957
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Limitation Act (IX of 1908)—Section 19 and Articles 57 and 120—Entries of liability in a balance-sheet, whether amount to acknowledgement—Pledge—Suit to enforce a pledge—Limitation.