

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

M/S AGGARWAL WOOL AND THREAD CO. AND ANOTHER,—
Petitioners

versus

SALES TAX OFFICER AND ASSESSING AUTHORITY AND
COMMISSIONER OF SALES-TAX, DELHI,—*Respondents.*

Civil Writ No. 1283-C of 1964

Bengal Finance (Sales Tax) Act (VI of 1941) as extended to Delhi—Ss. 11-A and 15—Delhi Sales Tax Rules (1951)—Rule 78—Chief Commissioner of Delhi—Whether can delegate his powers under S. 11-A to Sales-Tax Officer retrospectively—Re-assessment order made by Sales Tax Officer before the date of notification delegating powers to him—Whether can be validated by retrospective delegation of powers to him—Delegated powers—Whether can be exercised prospectively.

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Held, that in the exercise of rule-making power under the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, the Chief Commissioner could not promulgate a rule which, by having retrospective operation, could have the effect of validating quasi-judicial orders which were altogether null and void when made. It would require a very clear and explicit mandate or delegation by the Legislature to the executive to exercise such powers as would have the effect of validating judicial proceedings or orders which are wholly null and void when taken or made. The re-assessment orders made by the Sales Tax Officer prior to the date of the notification delegating powers of the Chief Commissioner under S. 11-A of the Act to him were, therefore, null and void.

Held, that the power conferred by the Legislature on a subsidiary body, e.g., the Government, to issue notifications, if couched in general language, could, unless it was expressly stated that the same could be exercised retrospectively, only be exercised prospectively.

Petition under Article 226 of the Constitution of India, praying that the notice, dated 7th March, 1963, re-opening re-assessment proceedings and the orders, dated 31st March, 1964, demanding deposit of a sum of Rs. 8,450.08 Paise, as additional tax and Rs. 1,000 as penalty be quashed by means of a writ of certiorari. The petitioner also prays for issue of any other suitable writ,

direction or order, which the Hon'ble Court may deem just and proper under the circumstances.

KESHAV DAYAL AND S. K. BHATIA, ADVOCATES, for the Petitioners.

S. N. SHANKAR, CENTRAL GOVERNMENT COUNSEL WITH N. SRINIVASA RAO, ADVOCATES, for the Respondents.

ORDER

Grover, J. GROVER, J.—This judgment shall dispose of Civil Writs Nos. 1283-D of 1964 and 300-D of 1965.

The orders, which have been assailed, relate to re-assessment for the periods 1st April, 1959, to 31st March, 1960 and 1st April, 1960 to 31st March, 1961 by which additional amount of sales tax was assessed in the sum of Rs. 8,450.08 P. and Rs. 12,000 and penalty was levied in the sum of Rs. 1,000 and Rs. 4,000, respectively.

Mr. Keshav Dayal for the petitioners has sought to raise the following three points:—

- (1) The re-assessment proceedings were started on account of *mala fides* on the part of the respondents.
- (2) The petitioner-firm was not in existence during the period for which the re-assessment had been made.
- (3) The re-assessment could be done only by the Commissioner and not by the Sales Tax Officer who had made the impugned orders which were wholly illegal and which had been made by an authority who had no jurisdiction whatsoever to make them.

In my opinion, the petitioners are entitled to succeed on the last point and, therefore, it is wholly unnecessary to go into the other points which involve questions of fact which it may or may not be possible to decide in these proceedings.

Section 11-A as added by the amending Act of 1956 to the Bengal Finance (Sales Tax) Act, 1941 as extended to

the Union Territory of Delhi (hereinafter called the Act) provides that if in consequence of definite information which has come into his possession, the Commissioner is satisfied that the turnover of the business of a dealer has escaped assessment or has been under-assessed in any year, the Commissioner may, at any time within the period of three years following the close of the year for which the turnover is proposed to be assessed or re-assessed as the case may be, send a notice to the dealer, and after hearing him and making such inquiry as he considers necessary may proceed to assess or re-assess, as the case may be, the tax payable on the turnover which has escaped assessment or has been under-assessed, and all the provisions of the Act, and the rules made thereunder shall, apply accordingly for the purpose of the assessment or re-assessment of the tax. According to section 15, the Commissioner may by order in writing delegate any of his powers under the Act except those under sub-section (2) of section 22 to any person appointed under section 3 to assist him but that is subject to such restrictions and conditions as may be prescribed. Section 26 confers powers on the Chief Commissioner to make rules for carrying out the purpose of the Act. Sub-section (2)(m) of that section specifically covers the matter of the restrictions and conditions subject to which the Commissioner may delegate his powers under section 15. Rule 78 of the Delhi Sales Tax Rules, 1951, provides that the Commissioner shall not delegate any powers other than those specified in columns 2 and 3 of the First Schedule, nor shall such powers be delegated to any officer below the rank of officers specified in the corresponding entries in column 4 of the said Schedules. It is common ground that in the First Schedule, section 11-A did not appear and was not included among the sections in respect of which delegation could be made by the Commissioner of his powers under section 15. Although before the impugned orders were made the Commissioner had purported to delegate his powers under section 11-A to the Sales Tax Officer but that delegation was indisputably illegal and altogether void because of the absence of section 11-A from the First Schedule. After the Writ petitions had been filed, the Chief Commissioner issued a notification, dated 19th July, 1965 by which an amendment was made in the First Schedule with retrospective effect from 1st December, 1956 by which against entry 6, section 11-A was added after section 11. The

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question that has arisen is whether such an amendment could be made with retrospective effect conferring jurisdiction on the Sales Tax Officer retrospectively having the effect of validating the impugned orders made by him which admittedly at the time he made them were null and void for want of inherent jurisdiction.

In a Full Bench decision of this Court in *General S. Shiv Dev Singh and another v. The State of Punjab and others* (1), it was held that the State Government could not delegate its powers which it exercised under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act to the Additional Director, Consolidation, with effect from a prior date and that the notification, dated 12th February, 1958 was *ultra vires* and illegal to the extent that it purported to delegate powers of the State Government to the Additional Director, with retrospective effect, i.e., from 17th June, 1957. There had been some conflict of opinion on the question whether rule could be made with retrospective effect between two Division Benches but the Full Bench was of the view that the delegation of powers with retrospective effect was not exercise of a rule-making power and that the notification of 12th February, 1958, by which powers were delegated by the State Government to the Additional Director did not fall within the category of a rule or regulation. However, certain observations were made in the Full Bench judgment, which, even if in the nature of obiter, have a good deal of bearing on the question which has arisen in the present case. Reference was made at page 518 to the statement in Cooley's Constitutional Law that it is a well-settled principle that the legislature can never, by retrospective proceedings, cure a defect of jurisdiction in the proceedings of Courts, the reason being manifest that such proceedings being utterly void, they would acquire vitality as judicial acts, if at all, by the legislative act exclusively, and the curative act must, therefore, be in its nature a judgment. According to Cooley, mere irregularities in judicial proceedings may always be cured retrospectively. It was, however, observed by the Full Bench that even if Cooley's view was not strictly applicable in this country and it was possible to

(1) I.L.R. 1959 Punj. 1445=1959 P.L.R. 514.

validate judicial proceedings which were without jurisdiction by legislative enactment, such a power inhered in the legislature alone and could not be attributed to the executive unless it had been unequivocally and expressly conferred. Griffith, C.J. in *Federated Engine Drivers and Firemen's Association of Australasia v. The Broken Hill Proprietary Company Limited* (2) at Page 259, said that it would require very clear and explicit words to validate retrospectively supposed judicial proceedings which were wholly null and void when taken.

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Mr. Shanker contends that the present cases are distinguishable from the Full Bench case because the amendment in the First Schedule, which has been made by the Chief Commissioner by means of the notification, dated 19th July, 1965, did not stand on the same footing as a notification issued under section 41 of the Punjab Consolidation Act in respect of delegation of powers. According to Mr. Shanker, the Chief Commissioner has promulgated a rule in exercise of his rule-making power under section 26(2) (m) of the Act and it was perfectly within his competence while exercising powers of delegated legislation to direct that the amendment should have retrospective operation. Mr. Shanker has relied on what was said in *Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh* (3), that it was not unconstitutional for the Legislature to leave it to the Executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, etc., and the power conferred on the State Government by section 6(2) of the C.P. and Berar Sales Tax Act of 1947 to amend the Schedule relating to exemption was in consonance with the accepted legislative practice relating to the topic and was not unconstitutional. I cannot see how the decision of their Lordships can support Mr. Shanker's contention in the present cases that by exercise of rule-making power which is delegated legislation which is perfectly constitutional, the executive authority can make a rule by which orders, which are of judicial or quasi-judicial nature and which are invalid and void *ab initio*, can be validated. The principle

(2) (1913) 16 C.L.R. 245.

(3) A.I.R. 1958 S.C. 909.

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laid down by Griffith, C.J., in the case mentioned above is firmly entrenched in constitutional law and I have little doubt that it would require a very clear and explicit mandate or delegation by the Legislature to the executive to exercise such powers as would have the effect of validating judicial proceedings or orders which are wholly null and void when taken or made. There is a volume of judicial pronouncements in favour of the view which I am expressing. In *M. L. Bagga v. C. Murhar Rao* (4), it was held that the rule-making authority did not possess plenary power to give the subordinate delegated legislation retrospective operation unless and until that power was expressly conferred by the parent enactment and, therefore, the added clause (b) to sub-rule (3) of rule 11-E of the Evacuee Interest (Separation) Rules, 1951, could not operate retrospectively so as to affect pending proceedings. According to a Bench decision in *Modi Food Products Ltd. v. Commissioner of Sales Tax, U.P.* (5), a Legislature can certainly give retrospective effect to a piece of legislation passed by it but an executive Government exercising subordinate and delegated legislative powers cannot make legislation retrospective in effect unless that power is expressly conferred. These cases were followed by Veradaraja Iyengar, J., in *Calicut-Wynad Motor Service (Private) Ltd. v. State of Kerala* (6), who also referred to *Strawboard Manufacturing Co. Ltd. v. G. Mill Workers' Union* (7), where the question was as to the validity of an order of the Government extending the time for the passing of an award after it had been actually made and it was laid down that the State Government did not have the power to extend time *ex post facto*, i.e., after the time limit originally fixed therefor had expired. The learned Kerala Judge was considering the effect of the notification which had been made with retrospective effect by the executive Government and he regarded the rule as well-settled that the executive Government while acting as a delegate of a legislative authority did not have plenary power to provide for retrospective operation unless and until that power had been expressly conferred by the parent enactment on it. A Division Bench of the Mysore Court in *India Sugars and*

(4) A.I.R. 1956 Hyd. 35.

(5) A.I.R. 1956 All. 35.

(6) A.I.R. 1959 Kerala 347.

(7) A.I.R. 1953 S.C. 95.

Refineries Ltd. v. State of Mysore (8), examined a number of authoritative decisions on the point and expressed the firm view that unless the power to legislate, conferred on an executive body by the Legislature, expressly mentioned that such power could be exercised retrospectively, it could only be exercised prospectively. Therefore, the power conferred by the Legislature on a subsidiary body, e.g., the Government, to issue notifications, if couched in general language, could, unless it was expressly stated that the same could be exercised retrospectively, only be exercised prospectively. As against this array of authorities, Mr. Shankar has been able to cite only a Bench decision of the Madras Court in *Poornachenna Basavayya Sons v. The State of Andhra Pradesh* (9), in which the question was whether rule 4-A of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, framed under the power conferred on the Government by clause 2(a) of section 19 of the Madras General Sales Tax Act, 1939, was not *ultra vires* the Government on the ground that it was retrospective in operation. The Madras Court held that the Government had the power to make such a rule operative with retrospective effect. The Allahabad and the Hyderabad cases, which were cited before the Court were distinguished on the ground that the observations made therein were more or less obiter. The reasoning given by the learned Madras Judges in favour of the view expressed by them was that the rules framed under section 19 of the Madras General Sales Tax Act upon publication were to have the same effect as if enacted in the principal Act. As rule 4-A in that case had been framed under the power conferred by clause 2(a) of section 19, it was held that the State Government had the power to make that rule in such a way as to give it retrospective operation. Firstly, it is not possible, with respect, to agree that the observations in the Hyderabad and Allahabad decisions were obiter. Even if they were obiter, they embodied a principle which was not only well settled but which also was all the more applicable to a case of the present kind where judicial or quasi-judicial orders which were null and void are sought to be validated by the executive in exercise of its rule-making power. Moreover, there is no such provision in the Act similar to section 19

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(8) A.I.R. 1960 Mysore 326.

(9) (1961) 12 S.T.C. 634.

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of the Madras General Sales Tax Act according to which upon publication of the rules they would have the same effect as if enacted in the Act. It is true that a statutory rule, if validly promulgated, has the same force as the provisions of the principal Act under which it has been made but all that is being pointed out by me is that there are points of distinction between the Madras case and the present cases. I would, therefore, hold that even in exercise of rule-making power, the Chief Commissioner in the present cases could not promulgate a rule which by having retrospective operation could have the effect of validating quasi-judicial orders which were altogether null and void when made.

For these reasons, the petitions are allowed and the impugned orders are hereby quashed. It would be open to the respondents to initiate or take fresh proceedings for re-assessment in accordance with law. In the circumstances I make no order as to costs.

B. R. T.

APPELLATE CIVIL

Before Hans Raj Khanna, J.

SURAJ PRAKASH SAWHNEY,—*Appellant*

versus

BHAGAT RAM AND ANOTHER,—*Respondents*.

S.A.O. 328-D of 1964

1966
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Delhi Rent Control Act (LIX of 1958)—S. 14(1) Proviso, clause (f)—“Substantial damage”—Meaning of—Demolition of wall separating two shops and supporting the roof—Whether amounts to substantial damage—S. 14(10)—Rent Controller—Whether bound to give option to the tenant to repair the damage or pay the compensation.

Held, that damage in its ordinary sense conveys the idea of an act which has the effect of diminishing or impairing the utility and value of something or endangering its safety or shortening the period of its utility and where the damage is considerable and not of a minor or paltry nature, the damage would be considered to be substantial.