and in the light of the observations made above. I may once again point out to the learned Magistrate that it is not only not necessary under the law to call an accused person for enquiry under section 202, Criminal Procedure Code, but such a procedure would appear to be clearly contrary to the spirit of the law and the purpose of such an enquiry ; more so after the recent amendment of the Criminal Procedure Code. The Court should also bear in mind that we in this Republic are governed by law and not by men, and that the Courts of law and justice, which are constituted for enforcing the rule of law, cannot, from the very nature of things, claim themselves to be above the law ; it would indeed be tragic if they were to conduct themselves in a manner which may even tend to give an impression that while exercising their power under the law and while administering and enforcing law, they consider themselves to be above the law.

For the reasons given above, I would accept the recommendation of the learned Sessions Judge, quash the order of the learned Magistrate, dated 30th April, 1959, and send the case back to the trial Magistrate for further proceedings in accordance with law and in the light of the observations contained in this order.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh and I. D. Dua, JJ.

THE PUNJAB WOOLLEN TEXTILE MILLS,—*Appellant*

versus

THE ASSESSING AUTHORITY, SALES TAX,—*Respondent.*

Civil Writ No. 1050 of 1958

1959

Dec. 8th

Constitution of India (1950)—Article 226—Alternative remedy—How far a bar to petition under Article 226—Scope of petition under Article 226 indicated—East Punjab

General Sales Tax Act (XLVI of 1948)—Section 5(2)(a)(ii)—Dyes and other material used for dyeing, bleaching and processing third parties' cloth—Whether exempt from payment of sales tax.

Held, that there is no hard and fast rule that the High Court must refuse to entertain a petition under Article 226 of the Constitution merely because there is an alternative remedy prescribed. It would certainly be a relevant factor to take into account as also would be the factor that violation of a fundamental right is alleged, in determining, whether or not to exercise the discretionary power vested in this Court under the above Article. It is also true that too much Court interference through extraordinary remedies in the sphere of taxation may adversely affect the efficiency of fiscal administration and may also prejudicially affect the State Revenue; such interference should, generally speaking, be confined to special circumstances in which violation of fundamental right or the illegality of the tax is apparent on the face of the record or of the law on which the taxing authority relies for the imposition. It is furthermore desirable to bear in mind that by mere assertion of alleged violation of some fundamental right, the party should not be permitted to by-pass and ignore proper procedure prescribed by the Legislature for the redress of grievances under the Sales Tax Act.

Held, that under Article 226 of the Constitution the High Court cannot act as a Court of appeal so as, after setting aside the impugned order, to remand the case for fresh decision. It can only either quash the impugned order as being defective or else dismiss the petition.

Held, that the dyes and other materials used in merely dyeing, bleaching and processing third parties' cloth can by no stretch be considered to have been used in the manufacture of any goods for sale. The goods brought to the assessee obviously remained the property of third parties and it is difficult to construe that merely by dyeing or bleaching or processing them, the assessee could be construed to have manufactured those goods for sale. Dyes, etc., can thus only be purchased by the assessee free of sales tax, if it is done for the purpose of manufacture. Once the assessee is dislodged on the argument that he used these goods for the purpose of manufacture of any

goods for sale, it is difficult to grant him any relief under any other head.

Petition under Articles 226 and 227 of the Constitution of India, praying that a Writ in the nature of Certiorari *be issued quashing the order of the respondent dated the 8th July, 1958, and further praying that the respondent be directed not to recover the tax levied under the said order.*

BHAGARCTH DASS AND S. S. MAHAJAN, for *Petitioner.*

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for Respondent.

ORDER

DUA, J.—This is a petition on behalf of the Punjab Woollen Textile Mills, Chheharta, district Amritsar, under Articles 226 and 227 of the Constitution of India for a writ in the nature of *certiorari,* for quashing the order of the Assessing Authority, Sales Tax, Amritsar District, dated 8th of July, 1958, whereby the assessee-petitioner was held liable to pay sales-tax on best judgment basis to the extent of Rs. 3,625.00 ; in fact, the liability was determined at Rs. 3,638-4-0, but, as Rs. 13-4-0 had already been paid by the dealer (assessee-petitioner), demand notice and challan for the balance of Rs. 3,625 alone were ordered to be issued. It is alleged in the petition that the petitioner is a partnership concern with Sarvshri Shiv Sahai Kapur, Ram Parkash Kapur, Sardari Lal Kapur, Nand Kishore Kapur and Om Parkash Kapur as partners carrying on the manufacturing business of woollen textiles at Chheharta, district Amritsar. The concern is said to be a registered partnership under the Indian Partnership Act. Within the premises of the mills, the petitioner is said to be having a department of bleaching, dyeing and finishing of textiles which, for purposes of account, is being

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maintained as a separate department and is being run under the name and style of Oriental Textile Finishing Mills; the partners, both of the petitioner-mills as well as of this department, being the same individuals. The concern, according to the petition, not only dyes, finishes and packs the produce of the petitioner-mills so as to make it marketable for sale, but it also, in addition, manufactures the unbleached, undyed and unfinished textile goods of other textile mills, so that the same may be made marketable and sold by the textile mills on whose behalf the goods are handled and manufactured. At this stage I may observe that the word 'concern' occurring in para 2 of the petition apparently refers to the department of bleaching, dyeing and finishing of textiles mentioned in the opening part of this para. The petition then proceeds that the petitioner-mills has got a Certificate of Registration as a dealer, and in clause 3 of the certificate it is, *inter alia,* provided that the sales of the following goods of the petitioner would be free of tax :

> "(a) for purposes of manufacturing :— Woollen, cotton and silken yarn, electric goods for the factory, packing paper and other material, machinery, its parts, dyes and its chemicals."

For the assessment year 1956-57 the Assessing Authority-respondent by means of an order dated 8th of July, 1958, took action under section 11-A of the East Punjab General Sales Tax Act, 1948, (XLVI of 1948), read with rule 63 of the East Punjab General Sales Tax Rules, 1949, and reopening the petitioner's assessment already made on 16th of January, 1958, assessed the petitioner on the raw material, which had been purchased by it under the Certificate of Registration and which raw

material had been utilised in the manufacture (bleaching, dyeing, finishing and wrapping) of the textile goods (woollen, silken and cotton) belonging to textile mills other than that of the petitioner. This assessment, so continues the petition, has been made on the basis that the raw material, which has been used by the petitioner for the bleaching, dyeing and fiinishing work of the goods of third parties, would be deemed to be a sale by the petitioner to himself. It is pleaded that this basis of the Assessing Authority is wholly misconceived inasmuch as the Certificate of Registration had exempted the petitioner from the levy of sales-tax for the raw material to be utilised by the petitioner for the manufacture of any goods for sale. It is further stated that all the goods, which were manufactured by the petitioner-mills, were for sale, and that no distinction could be drawn between the goods fabricated by the petitioner and the goods fabricated by others, though bleached, dyed and finished by the petitioner-mills, which is a department of the petitioner concern ; there was no sale of the raw material by the petitioner to himself within the meaning of the word 'sale' as given in section 2(h) of the Sales Tax Act, and the taxable turnover could under section 5(2)(a)(ii) of the Act, be determined only by excluding the sales, made to the petitioner, of goods, which were intended for resale, as given in the Certificate of Registration, or of goods specified in the said certificate for use by him in the manufacture of any goods for sale or in the execution of any contract. The goods (machinery parts and accessories, lubricants, dyes, chemicals, firewood and coal, etc.) which had been consumed by the petitioner, were used in the manufacture of "any goods for sale", or "in the execution of a contract" and the petitioner had only charged the labour charges pertaining to the sale, with the result that there was

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no sale of the raw material either to himself or to the customers for and on whose behalf the goods had been finished (i.e., manufactured). The petition then refers to a Supreme Court decision, holding that work done by a contractor could not be deemed to be a sale of the raw material which is utilized in building contracts. The impugned order dated 8th of July, 1958, has then been described as wholly arbitrary and in utter disregard of section 5(2)(a)(ii) of the Act and of the terms of the Registration Certificate. The word 'manufacture' is also alleged to include the work of processing by bleaching, dyeing, printing and finishing. The imposition of the tax is said to be without any legal authority, infringing the petitioner's fundamental right to carry on trade, thus violating Article 19(1)(g) of the Constitution. The alternative remedy provided by the statute is described as onerous because no appeal is entertainable unless the amount of tax is paid as a condition precedent, though it is also stated in the petition that the petitioner has already filed an appeal before the appellate authority under section 20 of the East Punjab Act No. XLVI of 1948, which appeal, according to the petition, will not be entertained unless the tax assessed is paid. The general rule that there will be no interference under Article 226 of the Constitution, when ordinary legal remedies are available, is claimed on this ground to be inapplicable to the present case ; it is urged that the imposition of the tax in question is an encroachment upon the fundamental rights of the petitioner, and also that the legal provisions have been wrongly construed.

In the written statement it is denied that the petitioner is entitled to make tax-free purchases, on the basis of the Registration Certificate, of goods for use in the manufacture of articles for

sale, which do not belong to him. It is also controverted that the petitioner could purchase raw material free of tax dyeing, bleaching and finishing other dealers' products under section 5(2)(a)(ii). It is asserted that, under this provision of law, the raw material could only be purchased free of tax, on the strength of the Registration Certificate, by the petitioner, for the manufacture of goods for sale by him, or in the execution of any contract ; the work of bleaching, dyeing, etc., done by the petitioner is contended not to fall within the purview of the term 'contract' as defined in clause (c) of section 2 of the Act, and the goods, which were dyed or bleached or finished, did not belong to him, and there was no sale thereof by him. He could not, therefore, utilise the raw material purchased tax-free for this purpose ; the said material having been consumed by him, the Assessing Authority rightly assessed the price, thereof, in his hands. It has also been pleaded that the petitioner, having filed an appeal before the Deputy Excise and Taxation Commissioner, Jullundur, against the impugned order of assessment, should have awaited t he result of his appeal and should not have approached this Court for relief by way of a writ under Article 226 of the Constitution.

I may here state that this petition initially came up for hearing before Grover, J., but in view of the general importance of the point involved the matter has now been placed before us for disposal.

The learned Additional Advocate-General has raised a preliminary objection on the ground that the assessee has a right of appeal and then a right of revision and also a right to have a reference made to this Court on a question of law ; therefore, this Court should refuse to entertain the

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present petition under Articles 226 and 227 of the Constitution. Mr. Bhagirath Dass has tried to meet this objection by relying on *Kailash Nath and another* v. *State of U.P. and others* (1), where an objection raised on behalf of the State Government, that the petitioners in the reported case must have resort to remedies available under the ordinary law or proceed under Article 226 of the Constitution and not invoke Article 32, was negatived by the Supreme Court in view of the decision in *Bengal Immunity Co., Ltd.* v. *State of Bihar* (2).

The following quotation at page 618 of the last cited case was reproduced :—

> "We are unable to agree with the above conclusion. In reaching that conclusion the High Court appears to have overlooked the fact that the main contention of the appellant company, as set forth in its petition, is that the Act, in so far as it purports to tax a non-resident dealer in respect of an inter-State sale or purchase of goods, is *ultra vires* the Constitution and wholly illegal. In the impugned Act there are various provisions laying down conditions which dealers must comply with or submit to, namely, to give only a few instances, compulsory registration of dealers (section 10), filing of returns (section 12), attendance and production of evidence in support of the return (section 13), production, inspection and seizure of books of account or documents and search of premises (section 17). Section 26 prescribes penalties for contravention of the provisions of the Act. These and other like

(1) A.I.R. 1957 S.C. 790
(2) (1955) 2 S.C.R. 603

provisions in the Act undoubtedly constitute restrictions on the fundamental right to carry on business which is guaranteed to every citizen of India by Article 19(1)(g) of the Constitution. If, as contended, the Act is *ultra vires* the Constitution and consequently void these onerous conditions can never be justified as reasonable restrictions within the meaning of clause (6) of that Article as this Court held in the case of *Mohammad Yasin* v. *Town Area Committee, Jalalabad* (1). The same view was also expressed in *State of Bombay* v. *United Motors (India), Ltd.* (2), and again only recently in *Himatlal Harilal Mehta* v. *State of Madhya Pradesh* (3)."

The counsel submits that in the present case no appeal can be entertained by the appellate authority unless the amount of tax assessed on the dealer has been paid with the result that the appeal is not an equally efficacious and adequate remedy. Mr. Doabia has, on the other hand, contended that the second proviso to section 20, subsection (1) of East Punjab Act No. XLVI of 1948 empowers the appellate authority to entertain an appeal without the tax having been paid, if it is satisfied that the dealer is unable to pay the tax assessed. He has also, in this connection, emphasized the fact that the sum assessed is only Rs. 3,625 and that if the dealer is able to pay the amount there would be no unreasonable hardship on him if the amount assessed is actually paid to enable him, like all other aggrieved persons, to prosecute his appeal. He has also distinguished the Supreme Court decisions on the ground that

(1) (1952) 3 S.C.R. 572
(2) 1953 S.C.R. 1069 at P. 1077
(3) 1954 S.C.R. 1122

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those cases relate to petitions under Article 32 of the Constitution which deals with the enforcement of the fundamental rights and which imposes a duty on the Supreme Court to enforce such rights. In my opinion, there is no hard and fast rule that this Court must refuse to entertain a petition under Aricle 226 of the Constitution merely because there is an alternative remedy prescribed. It would certainly be a relevant factor to take into account as also would be the factor that violation of a fundamental right is alleged, in determining, whether or not to exercise the discretionary power vested in this Court under the above Article. In *K. S. Rashid and Son* v. *The Income-tax Investigation Commission, etc.* (1), the Supreme Court dealing with an appeal from an order of this Court dismissing an application under Article 226 of the Constitution made the following observations :—

> "For purposes of this case it is enough to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. So far as the present case is concerned, it has been brought to our notice that the appellants before us have already availed themselves of the remedy provided for in section 8(5) of the Investigation Commission Act and that a reference has been made to the High Court of Allahabad in terms of that provision which is awaiting decision. In these circumstances, we think that it would not be proper to allow the appellants to

(1) 1954 S.C.R. 738

invoke the discretionary jurisdiction under Article 226 of the Constitution at the present stage, and on this ground alone, we would refuse to interfere with the orders made by the High Court. Dr. Tek Chand argues that the Income-tax authorities have not referred all the matters to the High Court which the appellants wanted them to do. But for this there is a remedy provided in the Act itself and in case a proceeding occasions a gross miscarriage of justice, there is always the jurisdiction in this Court to interfere by way of special leave."

These observations were made by the Supreme Court after leaving open the question whether or not the provisions contained in section 8(5) of the Investigation Commission Act provided the only remedy available to the aggrieved party, and they, in my opinion, do lend support to the view that if steps have been taken to avail of the alternative remedy, then this Court should in its discretion refuse to proceed under Article 226 of the Constitution. I am also aware of two Division Bench decisions of this Court under Punjab Sales Tax Act where it was held that the petitioners should avail themselves of the ordinary remedy provided by the Sales Tax Act itself and that they could not invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution—*Indian Iron and Steel Company, Limited* v. *The Officer on Special Duty (Central Circle), Punjab* (1), (A. N. Bhandari, C.J., and Dulat J.), and *F. Mangat Ram Hazari Mal Kuthiala* v. *The State of Punjab and* another (2), (G. D. Khosla A.C.J. and Dulat J.). I am also not unaware of the rule that too much

(1) (1959) X S.T.C. 150
(2) (1959) X S.T.C. 194

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Court interference through extraordinary remedies in the sphere of taxation may adversely affect the efficiency of fiscal administration and may also prejudicially affect the State Revenue : such interference should, generally speaking, be confined to special circumstances in which violation of fundamental right or the illegality of the tax is apparent on the face of the record or of the law on which the taxing authority relies for the imposition. It is furthermore desirable to bear in mind that by mere assertion of alleged violation of some fundamental right, the party should not be permitted to by-pass and ignore proper procedure prescribed by the Legislature for the redress of grievances under the Sales Tax Act. In the circumstances of the present case, however, the matter having been placed before a Division Bench for disposal on account of importance of the question and because the petitioner asserts that his fundamental right has been infringed, we decided to hear this petition on the merits.

Mr. Bhagirath Dass has contended that there is no dispute as to facts which according to him are—(1) that the Punjab Woollen Textile Mills is a registered dealer under the Punjab Sales Tax Act, (2) that goods purchased as tax-free have been manufactured for sale and (3) that goods fabricated and finished are exempt from sales-tax but goods belonging to third parties are not exempt according to the order of the assessing authority. The counsel submits that the assessing authority has wrongly interpreted the provisions of section 5(2)(a)(ii) and that the articles purchased by the petitioner should be held to have been utilised by it either for manufacturing purposes or in the execution of contract. The assessing authority, according to him, is wrong in holding that the transaction can be considered to be a sale to himself of

the goods purchased by the assessee. It has been admitted by the counsel that third parties bring their cloth to the assessee and they dye it, bleach it, and process it, or do one or more of the three things, for the owners as desired by them. This, the counsel submits, amounts to manufacturing goods within the contemplation of the Act. In support of his contention he has referred us to section 5(2)(a)(ii) which is in the following terms :—

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

(a) his turnover during that period on—

(i).....

(ii) sales to a registered dealer of goods declared by him in a prescribed form as being intended for resale or of goods specified in his certificate of registration for use by him in the manufacture of any goods for sale or in the execution of any contract and on sales to a registered dealer of containers or other materials for the packing of such goods ;

Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold, and containing prescribed particulars on a prescribed form is furnished by the dealer who sells the goods."

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The counsel has also placed reliance on *Kapur Textile Finishing Mills, Amritsar* v. *The Regional Provident Fund Commissioner, Punjab, Ambala Cantt.* (1), where after noticing the definition of the word "manufacture" *inter alia* in Law Dictionary by Ballentine and some decided cases it was observed as follows :—

> "I cannot see any reason for holding that the word "manufacture" would include only that process which would turn cotton into a woven cloth, howsoever coarse it may be, or in whatever colour it may be, without undergoing the process of bleaching, dyeing or printing."

From this observation the counsel seeks to deduce that mere dyeing, bleaching or printing would also constitute manufacture, and therefore, if some third parties bring their cloth to the petitioner for carrying out only these processes, without more, then the petitioner would be using the material purchased by it in the process of manufacture and therefore, exempt from sales-tax. At this stage it may be noticed that the assessee had raised only two objections before the assessing authority : (1) that the finishing work on labour basis was done on behalf of the registered dealers in Punjab and as such it was covered by section 5(2)(a)(ii) of the Act, and (2) that, at any rate, the assessee should have purchased the material in finishing work on labour basis on payment of sales-tax, and not on the strength of the dealer's registration certificate, with the result that he may have infringed the provisions of section 23(1)(c) of the Act entailing his prosecution, but that it was not a fit case for assessment. On the first objection, the assessing authority held that the assessee

(1) 1955 P.L.R. 159

never manufactured any goods for sale but on the other hand derived some benefit in the form of wages. The assessing authority also observed that the provisions of section 5(2)(a)(ii) came into play only if the goods are sold to registered dealers for resale. At this stage it would be helpful to refer to the certificate of registration for dealer, which the petitioner has secured, and which is attached as Annexure 'A' to the petition. In this certificate the dealer's business is stated to be manufacturing of woollen, cotton and silk textile, and it is stated that it is, "wholly purchases/sale of shawls woollen; and mainly : silk cotton yarn of all kind and types". The sale of the following goods was exempted from tax as specified in the certificate:—

"For purposes of manufacture :—

Woollen, cotton and silken yarn, electric goods for the factory, packing paper and other material, machinery and its parts, dyes and its chemicals.

For resale :—

Woollen, cotton and silken cloth and woollen, cotton and silken yarn."

From what the learned counsel has stated to be his case, it appears to me obvious that the dyes, etc., used in merely dyeing, bleaching and processing third parties' cloth can by no stretch, on the material existing on the present record, be considered to have been used by him in the manufacture of any goods for sale. The goods brought to him obviously remained the property of third parties and it is difficult to construe that merely by dyeing or bleaching or processing them, the assessee could be construed to have manufactured those goods for sale. No material is forth-coming on the present record as to the details of the figures of the business done by the assessee for

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which exemption is claimed, but Mr. Bhagirath Dass argues that we should give a direction to the assessing authority to interpret the word "manufacture" as laid down in the ruling cited by him, and for that purpose to remand the case. I am afraid this argument is based on an erroneous conception of the true scope of petitions under Article 226 of the Constitution. Under this Article this Court cannot act as a Court of appeal so as, after setting aside the impugned order, to remand the case for fresh decision. It can only either quash the impugned order as being defective or else dismiss the petition (*see Bachitar Singh, etc.* v. *S. B. Captain Sant Singh etc.*) (1). The counsel has not cited any precedent taking a contrary view. It was next contended that the goods purchased by the petitioner were intended to be used in the execution of contracts and as such were exempt from sales-tax. This argument can be disposed of on the short ground that in the registration certificate, there is no exemption granted for the purposes of execution of any contract. Under section 5(2)(a)(ii) such goods as are meant for use by him in the execution of any contract, etc., have to be specified in the certificate of registration of the assessee for this purpose, if he chooses to claim exemption by deducting his turnover in this respect from his gross turnover. The counsel then faintly made a passing reference to the Seventh Schedule of the Constitution and submitted that the definition of "sale" as contained in the East Punjab Act No. XLVI of 1948, is in conflict with entry No. 54 of the Second List, but, when his attention was drawn to the fact, that this ground was not contained in his writ petition, and that the opposite party had obviously no notice of it, the counsel did not press or pursue this point. Lastly it was contended that it is not the purchase

(1) L.P.A. 46 of 1955

by the petitioner which is being taxed but the sale, and he submitted that as held by the Supreme Court in *The State of Madras* v. *Messrs Gannon Dunkerley and Co., Madras, Ltd.* (1), and in *Firm of Messrs Peare Lal Hari Singh* v. *The State of Punjab and another* (2), no tax should be levied on such sales because it is not a resale of those goods. It is difficult to understand how these two decisions can be of any help to the counsel. As I have already observed, the only two heads, on which exemptions have been allowed to the petitioner in his certificate, are for the purpose of manufacture and for the purpose of resale. Dyes, etc., can thus only be purchased by the assessee free of sales tax, if it is done for the purpose of manufacture. Once the petitioner is dislodged on the argument that he used these goods for the purpose of manufacture of any goods for sale, it is difficult to grant him any relief under any other head. In any case, the two decisions, on which reliance has been placed, merely lay down that if the consideration for the transfer of property was not money but other available considerations, it may then be an 'exchange' or 'barter' but not 'sale', and these observations were made when dealing with the case of building contractors where it was held that no sale as such of the material used in a building contract could be spelled out and that the Provincial Legislature was not competent to impose a tax thereon under entry 48. In my opinion, no real assistance can be derived by the petitioner from these decisions, as the facts and circumstances of the case before us are not identical.

The counsel, at one stage, half-heartedly suggested that the assessee merely made a gift of the dyes, etc., used by him while dyeing, bleaching or processing the goods, belonging to third parties, and that he merely charged for his labour ; may be

(1) A.I.R. 1958 S.C. 560
(2) A.I.R. 1958 S.C. 664

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at a very high rate. Here again it is not possible for me to appreciate how this argument can help the learned counsel. If the goods are not manufactured for sale, then it is not understood how exemption can be claimed by the petitioner, whatever be the use to which he puts the dyes or the other material purchased by him. When pressed as to why his client should make such a gift, the counsel had to concede that his labour charges also included the cost of the goods used. The counsel also threw a suggestion in the course of arguments that the petitioner's purchases were as dealers and, therefore, he could not be made to pay sales-tax. In the first place, this point is again not contained in the petition and, therefore, cannot be allowed to be raised (*see Bhikaji Narain Dhakras and others* v *State of Madhya Pradesh and another*) (1), but in any case it is a point which might well be raised before the appellate authority in accordance with the law governing appeals and is not an abstract proposition of law on which any fundamental right of the petitioner depends. In this connection, it is interesting to observe that the counsel also agreed that he was taking up this matter in his appeal which had already been filed by him. The contention that taxing statute should be strictly construed in favour of the citizens and against Taxing Authority also need not detain us because it would be open to the petitioner to support his appeal on these and other grounds on which he wants to place reliance ; it may be contended, on the other hand, that though what the petitioner really claims is an exemption, it will have to be considered as to whether or not exemptions attract strict and rigid interpretation against the assertions of the assessee. It is equally unnecessary to deal with the authorities on which Mr. Doabia placed reliance in support of his contention that the word "manufacture"

(1) A.I.R. 1955 S.C. 781 at P. 786

does not cover the dyeing, bleaching and processing of third parties' cloth. To mention those authorities, these are *G. R. Kalkarni* v. *The State* (1), and *D. Ramaswami Proprietor, The Court Press Job Branch Salem* v. *State of Madras* (2). It may incidentally be observed that in *Messrs Hira Lal Jitmal* v. *Commissioner of Sales-Tax* (3), another Bench of the same High Court took a view which may seem, at first sight, to be slightly at variance with the view taken by the Bench which decided *G. R. Kalkarni* v. *The State* (1). But as already stated, this matter need not be pursued any further.

It appears to me that this petition is wholly misconceived and the proper course for the petitioner to adopt was to pursue the remedy given to him by the East Punjab Sales-Tax Act by way of appeal and, if possible, revision and/or reference to this Court. On the existing record it is not possible for us to give any relief to the petitioner and we have no option but to disallow this petition.

For the reasons given above, this petition fails and is hereby dismised with costs.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

APPELLATE CIVIL.

Before A. N. Grover, J.

AMULYA KUMAR TALUKDAR,—*Appellant.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 342-D 1958.

1959

Dec., 9th

Indian Institute of Technology (Kharagpur) Act (LI of 1956)—Section 5—Whether offends against Article 14 of the Constitution of India—Constitution of India (1950)—Articles 309 and 310—Whether bar legislature to regulate the

(1) A.I.R. 1957 M.P. 45
(2) A.I.R. 1954 Mad. 980
(3) A.I.R. 1957 M.P. 37