CIVIL MISCELLANEOUS

Before D. K. Mahajan and P. C. Pandit, JJ.

M/S. SHRI LAXMI COTTON TRADERS PVT. LTD.—*Petitioner.*

versus

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

Civil Writ No. 311 of 1968

May 17, 1968.

Punjab Re-organisation Act (XXXI of 1966)—Ss. 88 and 89—Constitution of India, 1950—Article 14 and 301(a)—Haryana State Legislature—Whether has the power to legislate retrospectively for a period prior to 1st November, 1966—Such legislation not being uniform on the same subject with the law in new State of Punjab, Union Territory of Chandigarh and transferred territories—Whether suffers from vice of discrimination and hit by Article 14—Punjab General Sales Tax (Haryana Amendment and Validation) Act (VII of 1967) Amending Act—Whether envisages double taxation on declared goods and hence bad—Amending Act fixing a stage for a single levy—Second levy possible—Act—Whether to be struck down on that score—Schedule 'D' to the Act—Whether makes any discrimination between imported and local cotton and whether hit by Article 304(a) of the Constitution.

Held, that a State Legislature is free to enact laws which would have retrospective operation. Its competence to make a law for a certain past period, depends on its present legislative power and not on what it possessed at the period of time when its enactment is to have operation. Sections 88 and 89 of the Punjab Reorganisation Act do not imply that the inherent power in a State Legislature to enact retrospective laws for its territories was negatived and the power was only given to the new State of Haryana and Punjab to enact law prospectively from their birth. Section 88 merely deals with the territorial extent of laws and makes the old Punjab law as the law of the new States or Territories till it is otherwise altered by the competent Legislatures. Section 89 merely gives the power of adaptation and does not forbid the passing of laws retrospectively by any of the States for its territories. Hence the Haryana State Legislature has power to legislate rertospectively regarding its territories for period prior to 1st November, 1966 when it came into existence.

(Para 9, 12 & 17).

Held, that under Punjab Re-organisation Act, 1966, the old State of Punjab has been dismembered into four bits, that is Haryana, The Union Territory of Chandigarh, the Transferred Territories that have gone to Himachal Pradesh and

the new State of Punjab, with effect from 1st November, 1966. The law passed by the Haryana State Legislature regarding its territories for a period to 1st November, 1966, does not suffer from vice of discrimination even if there is no provision similar to it in the territories of old Punjab which have gone over to Himachal Pradesh and Union Territory of Chandigarh, and of new State of Punjab, so long as the law is uniform in the territory of Haryana.

(Para 15).

Held, that the Punjab General Sales Tax (Haryana Amendment & Validation) Act, 1967 does not for its territories, say that the same commodity be taxed twice. Its object is merely to levy the tax once. But if by reason of the reorgainsation of Punjab, such a result may follow, it is not because the Act is bad, but it is because a certain event has intervened, namely, the partition of Punjab; and if the same commodity, before the 1st of November, 1966, is taxed twice and this fact is proved, relief will be granted when the assessment is made. The mere fact that the same commodity can be taxed twice does not lead to the conclusion that the Act is bad.

(Para 18).

Held, that all that the law requires is that a stage must be fixed for the levy of the tax, the reason being that the tax should be levied at one point. The Amending Act does fix the point. But in human affairs, it is next to impossible to make a law which will conceive of all possible and imaginable possibilities and it will be too much to strike down a law because it has not taken into account all such imaginable possibilities. In a business transaction, in spite of fixing a stage, there can occur cases where the stage may be repeated a second time; for instance, by the intervention of a non-registered dealer. In such cases, the second levy can always be struck down. From the mere fact, that a second illegal levy is struck down or is not justified, a conclusion does not necessarily follow that the Act is bad.

(Para 23).

Held, that it is true that in Schedule 'D' to the Amending Act, which deals with declared goods and cotton being one of them, it is mentioned that if the cotton was imported by a dealer from outside the State of Haryana or otherwise received by him in the State of Haryana for sale, the tax had to be levied on the first sale within the State of Haryana by a dealer liable to pay the tax under the Act and if the cotton was purchased in the State of Haryana, the tax was levied on the first purchase within the State of Haryana by a dealer liable to pay the tax under the Act. What is required under Article 304(a) of the Constitution of India is that there should be no discrimination between the imported and the local cotton. That means that when the imported cotton reaches the State of Haryana, it should be treated as if it had been produced in the State of Haryana. The importer of the outside cotton should also be

treated at par with the producer of the local cotton. When the imported cotton is sodd in the State of Haryana, the tax would be levied on the sale price, thereof. Similarly, when the local goods are purchased for the first time in the State of Haryana, the tax would be levied on the purchase price which obviously is the first sale price. That being so, in both types of goods, tax has to be levied on the first sale price of the goods in the State of Haryana. There is thus no discrimination whatsoever between the two types of cotton and there cannot be any difference in the quantum of tax imposed on them. Hence Schedule 'D' to the Amending Act is not hit by Article 304(a) of the Constitution.

(Paras 25 and 26).

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued restraining the respondents to give effect in any manner to the Punjab General Sales Tax (Haryana Amendment and Validation) Act No. 14, 1967 and also to the Punjab General Sales Tax Act 46 of 1948 as amended by Act No. 14 of 1967 and the Central Sales Tax Act 74 of 1956 and further directing the respondents not to make any assessment and enforce payments of tax under Act No. 46 of 1948 as amended and not to start the assessment proceedings under State and Central Sales Tax Act.

H. L. Sibal, Senior Advocate, with R. N. Narula and C. D. Garg, Advocates, for the Petitioner.

Anand Swarup, Advocate-General, (Haryana), with J. C. Verma, Advocate and C. D. Dewan, Deputy Advocate-General (Haryana), for the Respondents:

JUDGMENT

Mahajan, J.—This is a petition under Articles 226 and 227 of the constitution of India. In this petition, the validity of certain provisions of the Punjab General Sales Tax Act, 1948 (hereinafter called the Act), as amended by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967 (hereinafter called the amending Act) is called in question.

(2) The petitioner is a Private Limited Company and carries on business of purchase and sale of cotton at Hansi. Prior to the 1st of November, 1966, Hansi was part of Punjab State (Hereinafter referred to as the Old Punjab). After the reorganisation of the

Punjab by the Punjab Reorganisation Act, 1966 (Act No. 31 of 1966) from the appointed day, that is the 1st of November, 1966, the territory of the Old Punjab was divided to form the State of Haryana, the Union Territory of Chadigarh, the State of Punjab (New Punjab) and part of the territories were transferred to Himachal Pradesh.

(3) The Reorganisation Act, in Section 2, defines 'Old Punjab' as existing State of Punjab, namely the State of Punjab as it existed immediately before the appointed day. The new State of Punjab is defined in section 2(1) as the State with the same name, comprising the territories referred to in sub-section (1) of section 6. 'Successor State, in section 2(m), in relation to the existing State of Punjab, means the State of Punjab or Haryana, and includes also the Union in relation to the Union Territory of Chandigarh and the transferred territory. Section 2(n) defines 'transferred territory' as the territory which, on the appointed day, is transferred from the existing State of Punjab to the Union territory of Himachal Pradesh.

(4) Right up to the appointed date, the petitioner was governed by the parent Act (Punjab General Sales Tax Act, 1948, as amended up to date). He was and even now is a registered dealer. Before the Reorganisation Act, the petitioner was liable to pay tax on his turnover under the parent Act. It may be mentioned that in the present petition, we are only concerned with the sale or purchase of declared goods within the meaning of section 2(c) of the Central Sales Tax Act, 1956 (Act No. 74 of 1956). These goods are specified in schedule 'C' to the parent Act. In the instant case, we are only concerned with the sale or purchase of cotton which is a declared good and on this, there is no dispute. The main provisions relating to the purchase of declared goods under the principal Act were sections 2(ff), 2(i), 5(1) and 5(2). The Supreme Court in *Bhawani Cotton Mills Ltd.* v. *The State of Punjab and another* (1), declared the levy of tax on the purchase of cotton to be *ultra vires* for want of prescribing a single stage for the levy of such a tax. By reason of this decision, all levies and collection of tax on the purchase of cotton from 1st April, 1960 became unlawful. For facility of reference, I have taken the liberty of quoting from the

(1) 20 S.T.C. 290.

High Court decision the brief history of the legislation which led to the dispute which was settled by the Supreme Court in the aforesaid case :—

> " * * * In the Schedule attached to the principal Act, as it stood before 1958, which exempted certain commodities from sales tax, ginned or unginned cotton was included as item No. 29. In the year 1958 by the East Punjab General Sales Tax (Amendment) Act, 1958, (Punjab Act 7 of 1958), item No. 29 was deleted from the Schedule with the result that cotton (ginned or unginned became liable to the levy of sales tax. The definition of the word 'purchase' was introduced for the first time by Punjab Act 7 of 1958 in section 2 of the principal Act. According to this definition—
>
> '2(ff) 'Purchase', with all its grammatical or cognate expressions, means the acquisition of goods other than sugarcane, foodgrains and pulses for use in the manufacture of goods for sale or cash or deferred payment valuable consideration otherwise than under a mortage, hypothecation; charge or pledge:
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> * * * * *

(5) By Punjab Act 1959, the words 'other than sugarcane foodgrains and pulses' were omitted. "After the amendment made by Punjab Act 24 of 1959, clause (ff) stood as follows:—

> '(ff) 'Purchase' with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge.

(6) The rate of tax as provided by the Punjab Act 7 of 1958 was 4 per cent on the sales or purchases of the commodities. The Central Sales Tax Act, 1956, was enacted in December, 1956. Section 14 of that Act declared a number of goods to be of special importance in inter-State trade or commerce. One of these was 'cotton', that is to say, all kinds of cotton (indigenous or imported) in

its manufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste. Section 15, as amended by the Central Act 31 of 1958, provides—

> "15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of, a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:—
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

As Punjab Act 7 of 1958 levied both purchase and sales tax on the same commodity at the rate of four per cent and at more than one stage in the State its *vires* was assailed by means of a writ petition which was decided by a Bench of this Court, the decision being reported as *Messrs Raghbir Chand-Som Chand* v. *Excise & Taxation Officer* (2).

It was held, *inter alia*, that the dealers in cotton were only liable to pay tax not exceeding two per cent on sales effected inside the State and they were not liable to pay any tax at all when they exported their goods and effected sales outside the State. The State Legislature then enacted the Punjab General Sales Tax (Amendment and Validation) Act, 1960 (Punjab Act 17 of 1960). It is unnecessary to mention the amendments made by this Act because it was repealed and replaced by the Punjab General Sales Tax (Amendment and Validation) Repealing Act, 1961 (Punjab Act 28

(2) (1960) 11 S.T.C. 149.

of 1961). Yet another Act, the Punjab General Sales Tax (Amendment) Act, 1960 (Punjab Act 18 of 1960), was enacted which changed the definition of the word 'purchase'. The definition as altered reads as follows:—

> "2 (ff) 'Purchase' with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge."

By the same Act, the second proviso to section 5(1) of the principal Act was inserted to the effect that 'the rate of tax shall not exceed two naye paise in a rupee in respect of any declared goods as defined in clause (c) of section 2 of the Central Sales Tax Act, 1956, and such tax shall not be levied on the purchase or sale of such goods at more than one stage.'

Sub-clause (vi) of section 5(2) (a) of the principal Act, as substituted by Punjab Act 18 of 1960, stands thus—

> "(vi) the purchase of goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course inter-State trade or commerce, or in the course of export out of the territory of India:
>
> Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction.
>
> * * * * *"

(7) The relevant provisions of the Act noticed above along with their subsequent amendments have been made an appendix to this decision for facility of reference and for the proper understanding of our decision. The Supreme Court on the 10th of April, 1967, decided *Bhawani Cotton Mills' Case*; and by then dismemberment of the old State of Punjab had come about. In order to get over this decision, the Legislatures of Haryana and Punjab took steps to validate the old levies of tax which had been declared illegal by the

Supreme Court. In Haryana the first step in this direction was by an Ordinance entitled as the Punjab General Sales Tax (Haryana Amendment and Validation) Ordinance, 1967. This Ordinance was replaced by the Amending Act which was passed by the Central Parliament acting for the Legislative Body for the State of Haryana because, in the meantime, the President's rule had intervened and the Legislature of Haryana was not functioning. It is the vires of this Amending Act which has been called in question in the present petition on various grounds which will be enumerated hereinafter. We only propose to mention those grounds out of the grounds taken in the petition which have been actually agitated before us. It is not necessary for the purposes of this petition to advert to the stand taken by the State in its return because the questions canvassed before us are purely those of law. Mr. Anand Swarup, the learned Advocate-General for Haryana, also sought to raise certain technical pleas regarding the frame of the writ petition. But, in our opinion those objections have no relevance so far as the questions canvassed before us are concerned. The questions agitated are of a purely legal nature. However, in order to avoid all controversy, we directed the counsel for the petitioner to file a better affidavit pleading certain facts which, according to Mr. Anand Swarup, are essential for the determination of the legal issues raised. That affidavit has been filed and so its reply.

(8) The various points, that have been agitated before us, may now be stated:—

(1) That the Haryana State has no power to legislate retrospectively for the area which was not Haryana prior to its creation on the 1st of November, 1966. It is not disputed that after the 1st of November, 1966, the State of Haryana can legislate both prospectively and retrospectively. But it has no power to legislate retrospectively for a period prior to the 1st of November, 1966, because prior to that period, there was no State of Haryana;

(2) That the impugned law is discriminatory and thus offends Article 14 of the Constitution. It is argued that up to the 1st of November, 1966, Punjab was one State out of which, after the 1st of November, 1966, the State of Haryana, the

new State of Punjab, the Union Territory of Chandigarh and the transferred territories, that is those which have gone to Himachal Pradesh, emerged. There is no similar provision as in the Amending Act so far as the Union Territory of Chandigarh and the transferred territories are concerned. The only areas to which the impugned Act applies, is the territory of Old Punjab, which is now part of Haryana. With regard to the territory of Old Punjab, which is now New Punjab, a somewhat similar provision has been made; but it is not *pari materia* with the Haryana law. Therefore, it is maintained that regarding the territory of Old Punjab, out of which the new States and Territories have been created, there is no uniform law on the same subject for the same persons similarly situate. The retrospective operation of the Amending Act goes back to a period when there was Old Punjab, and that is why, parallel enactments for its area now in Haryana and Punjab have been enacted and there being no similar enactment for the Union Territory of Chandigarh or for the transferred Territories there will be clear violation of Article 14;

and (3) That in spite of the Amending Act, the illegality, on the basis of which the Supreme Court quashed the previous assessments, still persists and the proceedings taken under the Amending Act are claimed to be suffering from the same vice from which they suffered when the matter went to the Supreme Court in *Bhawani Cotton Mills' Case.* It is further emphasized:—

(i) that in spite of the retrospective operation given by the Amending Act to legalise what was invalid earlier, the Rules under the Act have not been altered. There is no machinery provided by which it can be ascertained whether the declared goods have or have not been taxed at an earlier stage;

and (ii) that the Act has made the reopening of assessments as optional; and, therefore, the Act is not in consonance with section 15 of the Central Sales Tax Act. Moreover, the assessments, that can be reopened, are

only those of Haryana. It cannot be ascertained whether the commodities sought to be assessed to sales tax had already been subjected to it in the Old Punjab minus the territory of Old Punjab which is now the State of Haryana.

and (4) That the Central Act (Central Sales Tax Act, 1956) is *ultra vires* the Constitution of India. Reliance is placed upon the decision of the Madras High Court in *Larsen and Toubro Ltd., Madras-2, and others* v. *Joint Commercial Tax Officer and others* (3). It may be mentioned that a contrary view has been taken by the Andhra Pradesh High Court in *East India Sandal Oil Distilleries Ltd. and others* v. *The State of Andhra Pradesh* (4).

CONTENTION No. (1):

(9) So far as this contention is concerned, it is common ground that the State Legislature of Haryana has the power to enact laws prospectively as well as retrospectively. However, it is maintained by the learned counsel for the petitioner that Legislature has no power to enact laws which have a retrospective effect prior to the date when it came into existence. In other words, the State of Haryana came into being on the 1st of November, 1966. There was no such State prior to this date. The territory of Haryana was the territory of Old Punjab. Old Punjab had a Legislature which could enact laws and it enacted laws for that territory. Therefore, any law enacted by the State Legislature of Haryana which would take a retrospective effect earlier to the 1st of November, 1966, would not be within its competence and thus the Amending Act, in so far as it makes a law for recovery of sales tax for the period prior to 1st November, 1966, is *ultra vires* its powers and must be struck down. In support of this contention, the learned counsel placed reliance on Articles 1, 2, 3 and 4 of the Constitution of India read with Articles 245 and 246. He also placed reliance on the provisions of the States Reorganisation Act and particularly on section 2(f), (l), (m), and (n). Sections 3, 6, 7, 50, 55, 63, 64, 65, 88, 89, 90 and

(3) 20 S.T.C. 150.
(4) 13 S.T.C. 79.

96. In addition to this, the learned counsel relied upon the following decisions:—

(1) *H. H. Bhairao Rao Maloji Rao Bhorpade v. Agricultural Income-tax Officer and another* (5).

(2) *N. N. Ananthananayana Iyer and others v. Agricultural Income-Tax and Sales Tax Officer and others* (6).

(3) *Union of India* v. *Madan Gopal Kabra* (7).

(4) *State of Bombay* v. *R. M. D. Chanarbaugwala and another* (8).

(5) *Tata Iron and Steel Company Limited* v. *State of Bihar* (9). and

(6) *Khandige Sham Bhat and K. Krishna Bhatta* v. *Agricultural Income-tax Officer, Kasaragod and another* (10).

After considering all the relevant provisions and the decisions cited before us, we are of the view that this contention must fail in view of the clear pronouncement of the Supreme Court in *A. Hajee Abdul Shukoor and Co.* v. *The State of Madras* (11) The following observations, at page 1735 of the report, clinch the matter:—

"The State legislature is free to enact laws which would have retrospective operation. Its competence to make a law for a certain past period, depends on its present legislative power and not on what it possessed at the period of time when its enactment is to have operation. * * * *"

(5) 1962 (46) I.T.R. 568.
(6) A.I.R. 1959 Kerala 182.
(7) A.I.R. 1954 S.C. 158.
(8) A.I.R. 1957 S.C. 699.
(9) A.I.R. 1958 S.C. 452.
(10) A.I.R. 1963 S.C. 591.
(11) A.I.R. 1964 S.C. 1729.

(10) To similar effect are the observations of Varadachariar, J. in *United Provinces* v. *Mt. Atiqa Begum and others*, (12). At page 43 of the report, the learned Judge observed as follows:—

"* * * * * *"

Proceeding now to the question of the invalidity of the impugned Act, it will be convenient to take up first the ground on which all the learned Judges of the Full Bench of the High Court agreed, namely, the objection based on section 292, Constitution Act. As I understand the argument, this objection interprets Section 292 not merely as enacting that the law in force in British India immediately before the commencement of Part III, Constitution Act, shall continue in force notwithstanding the repeal of the earlier Government of India Act, but as also fixing a time-limit up to which the operation of such law should not be disturbed by anything contained in any enactment that may come to be passed by any of the Legislatures in British India. It was conceded before us and it was recognized before the High Court that a provision like Section 292 is usually inserted in similar Acts, to indicate that the repeal of the parent Act, shall not be deemed to have repealed all the laws passed under that Act (Compare Section 108, Commonwealth of Australia Constitution Act, Section 129, British North America Act and Section 135, Union of South Africa Act). But laying special stress on the words 'until altered or repealed or amended' the learned counsel for the plaintiffs desired to read Section 292 as containing a direction by Parliament that the law then in force must in any event continue up to a specified date, namely, the date of its alteration, repeal or amendment by a later Act of the Legislatures in India; and it was sought to be inferred therefrom that no later Act of such Legislatures can by words of retrospective operation ante-date its effect so as to affect rights acquired under a previous law down to the date of the new legislation. *At one stage, the learned counsel for the plaintiffs even went so far as to suggest that the Legislatures in India had been deprived by this provision of the power of enacting at any time*

(12) A.I.R. 1941 F.C. 16.

laws with retrospective effect, or they were at least incompetent to extend the retrospective operation of their enactments to a period anterior to 1st April, 1937, when the Constitution Act came into operation in the provinces. These arguments were, however, not persisted in, when it was pointed out that the Indian Legislatures were, within the statutory limits assigned to them, bodies possessing plenary powers: see *Reg* v. *Burah* (13) *Archibald G. Hodge* v. *Reg.* (14) and *Croft* v. *Dunphy* (15), and that whatever might be the objection on grounds of reasonableness or expediency to retrospective legislation, there was nothing in Section 292 to deprive the Indian Legislatures of this particular incident of plenary legislative power. [Compare *Phillips* v. *Eype* (16), at pp. 23, 27 relating to an Act of Jamaica Legislature; and *The King* v. *Kidman* (17), relating to an Act of the Commonwealth Parliament in Australia]. The objection was then limited to the power of the Legislature to give retrospective operation to an enactment when, by so doing, it would prevent a law in existence at the date of the commencement of Part III, Constitution Act, from having its full effect up to the date of the repealing or amending Act. It was pointed out that the language employed in Section 292, Constitution Act, was not identical with that to be found in the corresponding provisions in the British North America Act or in the Commonwealth of Australia Act. But, it would appear that this language is so similar to that found in Section 135, Union of South Africa Act, as to suggest that it might have been taken from it. The reason for a provision like that contained in Section 292 being the one already stated, it does not seem to me necessary or proper to lay undue stress on the word 'until' used in Section 292 nad hold that the policy of this provision is

(13) (1878) 3 A.C. 889.
(14) (1883) 9 A.C. 117 at P. 132.
(15) (1933) A.C. 156.
(16) (1870) 6 Q.B. 1.
(17))1915) 20 Com. L.R. 425.

different from that underlying similar provisions in the other Constitution Acts above referred to. I see no justification for drawing a distinction between the statement that the previous law shall continue in force subject to appeal or amendment by later legislation and the statement that it shall continue in force until repealed or amended by later legislation. The Parliament might have had some reason or motive for denying to the Indian Legislatures the power of retrospective Legislation with pre-existing laws seems to me to rest on mere speculation and is not a fair inference from the language used in the section.

In the judgments delivered by the learned Judges of the full bench of the Allahabad High Court, I find it stated in some places that Section 2 of the impugned Act in effect repealed Section 73 of the Act of 1926, with retrospective effect or that the provisions of the two Acts were diametrically opposed to each other. With all respect, I find some difficulty in following this view. It is true that the remission which the impugned Act sought to regularise was not one made in conformity with the provisions of Section 73 of the Act of 1926. But such regularisation would only mean the addition of a new head of remission; it may amount to an alteration or amendment of the old Act, but will not necessarily involve a repeal of Section 73 of that Act. The co-existence of two kinds of remission given for different reasons is not inconceivable or impossible. *It can of course be said that the impugned Act retrospectively deprived landlords of a share of the rent to which they had already acquired a right. But if on general principles of Legislature has ordinarily power for reasons which it is not open to the Court to investigate to enact measures which present case as standing on any special footing.* In this view, it will follow that there is no reason for saying (as Bajbai J. has said) that 'the impugned Act has attempted to do something indirectly which it could not do directly."

(11) Reference may also be made to the decision of the Supreme Court in *Union of India* v. *Madan Gopal Kabra* (7). At page 162, the following observations occur:—

> "Even so, it was contended, the Finance Act, 1950, in so far as it purports to authories such levy is '*ultra vires*' and void as Parliament was not competent under the Constitution to make such a law. The argument was put in two ways. In the first place, it was said broadly that as the Constitution could not operate retrospectively as held by this Court in—'*Keshavan* v. *States of Bombay* (18), the power of legislation conferred by the Constitution upon Parliament could not extend so as to charge retrospectively the income occurring prior to the commencement of the Constitution. This is a fallacy.
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> While it is true that the Constitution has no retrospective operation, except where a different intention clearly appears, it is not correct to say that in brining into existence new Legislatures and conferring on them certain powers of legislation, the Constitution operated retrospectively. The legislative powers conferred upon Parliament under Art. 245 and Art. 246 read with List I of the Seventh Schedule could obviously be exercised only after the Constitution came into force and no retrospective operation of the Constitution is involved in the conferment of those powers. But it is a different thing to say that Parliament in exercising the powers thus acquired is precluded from making a retrospective law. The question must depend upon the scope of the powers conferred, and that must be determined with reference to the 'terms of the instrument by which affirmatively, the legislative powers were created and by which, negatively, they were restricted. (*Queen* v. *Burah* (19)".

(12) It is not necessary to multiply authorities. Mr. Anand Swarup, the learned Advocate-General, drew our attention, by way of instances, to a large number of cases, where retrospective

(18) A.I.R. 1951 S.C. 128.
(19) 5 Ind. App. 178 (PC).

operation of the law prior to the existence of the State Legislature was not struck down on the ground that such a Legislature had no powers to make a retrospective law for a period when it never existed. So far as the decisions relied upon by the learned counsel for the petitioner are concerned, they are clearly distinguishable. For instance, the decision of the Mysore High Court in *H. H. Bhairao Rao Maloji Rao Ghorpade* v. *Agricultural Income-tax Officer and another* (20) is analogus to the decision of the Kerala High Court in *N. N. Ananthanarayana Iyer and others* v. *Agricultural Income-tax and Sales Tax Officer and others* (21). As a matter of fact, the Mysore decison follows the Kerala decision. The Kerala decision has been explained by P. Govindan Nair J. in *Chacko Chacko Kaithakuttu Veedu and others* v. *Board of Revenue, State of Kerala and others* (22), and the same reason will cover the Mysore decision. While dealing with the Full Bench decision of his own Court already referred to the learned Judge made the following observations:—

> "* * * * There are no doubt certain passages in that judgment which may indicate that there is no power in the State Legislature to enact a law for a period with reference to a territory, which during that period was not part of the State. But the real decision in that case as well as in the case reported in *Biswambar Singh* v. *Collector of Agricultural Income-tax* (23), and the one in *Madangopal Kebra* v. *Union of India* (24), turned on the wording of the Section of the Statute which related to the imposition of agricultural income-tax. The relevant sections provide that the agricultural income must be: income derived from lands situated inside the State. This necessarily meant that at the time of the accrual of the income, the land should have been inside the State. The decisions in the above cases have to be rested purely on the interpretation of the Section and certainly cannot be authorities for holding

(20) 46 I.T.R. 568.
(21) A.I.R. 1959 Kerala 182 (F.B.).
(22) A.I.R. 1966 Kerala 46.
(23) (1955)—28 I.T.R. 386 (Orissa).
(24) (1951)—20 I.T.R. 214=A.I.R. 1951 Raj. 94.

that the State legislature has no power to legislate with retrospective effect. * * *"

We are in respectful agreement with the above observations.

(13) This leaves the decisions of the Supreme Court in *Union* of India v. Madan Gopal Kabra (7). State of Bombay v. R. M. D. *Chamarbaugwala and another,* (8). *Tata Iron & Steel Co. Ltd.* v. *State of Bihar,* (9), and *Khandige Sham Bhat and* K. *Krishna Bhatta* v. *Agricutural Income-tax Officer, Kasaragod and another,* (10). I have already dealt with *Madan Gopal Kabra's case.* That decision does not, in any way, support the petitioner's contention. It really negatives his first contention . The other decisions do not afford any assistance to the learned counsel, and have no real bearing on the matter in dispute.

(14) For the reasons recorded above, the first contention of the learned counsel for the petitioners must fail and is accordingly repelled.

CONTENTION No. (2) :

(15) So far as the second contention is concerned, it really comes in conflict with the established rule that a State can retrospectively legislate regarding its territories even prior to the point of time, it came into existance. The argument of the learned counsel is that prior to the 1st of November, 1966, there was no State of Haryana. What is now State of Haryana was part of State of Punjab. The old State of Punjab has been dismembered into four bits, that is Haryana; the Union Territory of Chandigarh; the Transferred Territories that have gone to Himachal Pradesh and the new State of Punjab. In the Union Territory of Chandigarh and in the Transferred Territories, no steps have been taken to validate the levy that was struck down by the Supreme Court in *Bhawani Cotton Mills' case.* Therefore, the Haryana law suffers from the vice of discrimination, as from the period prior to 1st of November, 1966, it enacts for its territories a provision, similar to which there is no provision in the territories of Old Punjab which have gone over to Himachal Pradesh and the Union Territory of Chandigarh. As already said, if effect is given to this argument, it will totally negative the rule laid down by the Supreme Court in *Hajee Abdul Shunkoor's case.* So far as the Territory of Haryana is concerned,

it is not disputed that the law is uniform. As a matter of fact, this argument can only succeed if the first contention of the learned counsel had substance. If a State Legislature can make a valid law prospectively, surely it can make a valid law retrospectively. It is, therefore, not necessary to examine the further contention that the law in the New Punjab is also different from the Haryana law.

(16) The learned counsel for the petitioner has drawn our attention to Sections 88 and 89 of the Punjab Reorganization Act, (Act No. 31 of 1966). These provisions are quoted below for facility of reference:—

"88.—TERRITORIAL EXTENT OF LAWS:—

The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

89.—POWER TO ADAPT LAWS:—

For the purposes of facilitating the application in relation to the State of Punjab or Haryana or to the Union territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

EXPLANATION:—In this section, the expression 'appropriate Government' means—

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law,—

(i) in its application to a State, the State Government, and

(ii) in its application to a Union territory, the Central Government."

(17) On the basis of these provisions, it is argued that the Reorganisation Act does not confer any power on the Legislatures of new States to pass laws with retrospective effect to cover a period prior to their birth. It may be mentioned that there is no provision in the Act which specifically prohibits the inherent power in a State Legislature to enact laws retrospectively for its territories. But from the provisions of sections 88 and 89, it is sought to be implied that the inherent power in a State Legislature to enact retrospective laws for its territories was negatived and the power was only given to the new States to enact laws prospectively from their birth. We are unable to agree with this contention. Section 88 meerly deals with the territorial extent of laws. It, in other words, makes the Old Punjab law as the law of the New States or Territories till it is otherwise altered by the competent Legislatures. Section 89 merely gives the power of adaptation and does not forbid the passing of laws retrospectively by any of the States or its territories. The second contention also, therefore, has no merit and must fail.

CONTENTION No. (3):

(18) Various contentions have been advanced under this head; and they will be examined one by one:—

The first condition is that the Amending Act is not in conformity wth sections 14 and of the Central Act inasmuch as no definite stage has been indicated for single point levy of tax. It is maintained that in Haryana, tax will be levied once on the last purchase or sale and so also in Punjab; and, therefore, each State, before the 1st of November, 1969, will have the right to levy such a tax for its territories. The effect may be that in the Old Punjab Territory, tax may be levied on cotton which is a declared goods. There is no provision in either the Punjab or the Haryana Acts to the effect that if the same commodity had been taxed in the Punjab before division, it will not be taxed in Haryana after division and vice versa. It is maintained that this course will lead to double taxation on the same commodity for a period when the State of

Punjab was one. It is no doubt true that under the Central Act, only one levy is permissible within the State on the declared goods either at the point of sale or at the point of purchase; and if the result, that is envisaged, does follow, a second levy would be invalid. That will only held the counsel if the same commodity is, in fact, taxed twice. So far as the present case is concerned, there is no avertment that the same commodity has been taxed twice. The mere fact; that the same commodity can be taxed; will not lead to the conclusion that the Act is bad. The Act does not, for its territories, say, that the same commodity be taxed twice. Its object is merely to levy the tax once. But if by reason of the reorganisation of Punjab, such a result may follow, it is not because the Act is bad, but it is because a certain event has intervened, namely, the partition of Punjab: and if the same commodity, before the 1st of November, 1966, is taxed twice and this fact is proved, there is no manner of doubt that the petitioner would be entitled to a relief. But that contigenecy will only arise when an assessment has been made. So far as the present case is concerned, there is no such allegation.

(19) It is then mantained that if there is a possibility of double taxation, the law must be struck down. This argument loses sight of the fact that there is no possibility of double taxation under the Haryana Act. The possibility only occurs when the operation of the Punjab and the Haryana Acts is considered side by side; and that too in a class of cases, where both Punjab and Haryana are taxing the same commodity twice where either the sale or the purchase took place prior to the 1st of November, 1956. As already said, that cannot make the Punjab or the Haryana law bad. It will only make the second levy bad; and whenever such a case occurs, the second levy can always be struck down.

(20) The next ontention is that the Amending Act does not fix the stage of levy of tax as envisaged in *Bhawani Cotton Mills Case*. As a matter of fact, the Amending Act has divided the transactions into three categories, that is :—

(a) From 1st of October, 1958 to 31st of March, 1960;

(b) From 1st of April; 1960; to 13th of November; 1967; and

(c) From 14th November, 1967 and thereafter.

So far as the first period is concerned, the rate of tax is two Paise in a rupee and is leviable and payable—

(a) where such goods were purchased for use in the manufacture of goods for sale, on the purchase, thereof at the stage at which they were so purchased by the dealer liable to pay tax under this Act; and

(b) where such goods were not purchased for use in the manufacture of goods for sale, on the sale, thereof at the stage of sale by the last dealer liable to pay tax under this Act.

(21) For the second period; the tax is leviable and payable in respect of declared goods specified in clauses (ii) and (vi) of section 14 of the Central Sales Tax Act, 1956, at the stage of purchase by the last dealer liable to pay tax under this Act. For the third period, in respect of all declared goods, the tax is three Paise in a rupee and is leviable and payable at the stage of sale or purchase, as the case may be, and under the circumstances specified against such goods in Schedule 'D'. Provided further, that in the case of goods specified in Schedule 'C', the tax shall be leviable and payable only on the purchase thereof.

(22) For purposes of facility and by way of illustration, the relevant part of Schedule 'D', dealing with cotton is reproduced below :—

"SCHEDULE 'D'

Serial No.	Name of declared goods	Circumstances under which tax to be levied	Stage of levy
1	Cotton, that is to say all kinds of cotton (indigenous or imported in its manufactured state whether ginned or unginned, baled, pressed or otherwise bu not including cotton waste.	(i) If imported by a dealer from outside the State of Haryana or otherwise received by him in the State of Haryana, for sale. (ii) If purchased in the State of Haryana	(i) First sale within the State of Haryana by a dealer liable to pay tax under this Act. (ii) First purchase within the State of Haryana by a dealer liable to pay tax under this Ac

As we are not concerned with Schedule 'G', it is not necessary to reproduce the same.

(23) It is not disputed by the learned counsel for the petitioner that the Amending Act does not suffer from any vice so far as it deals with the period, 1st of October, 1958, to 31st of March, 1960. So far as the second stage is concerned; the Act is *pari materia*, with the Mysore, Andhra Pradesh, United Provinces and Madras Act. These Acts were noticed by their Lordships of the Supreme Court in *Bhawani Cotton Mills' case*, while dealing with the contention that no stage in the impugned Punjab Act was fixed unlike the stage fixed in these Acts. That defect has been removed by the Amending Act and it has brought the parent Act in line with the Acts noticed by their Lordships of the Supreme Court. In a business transaction, in spite of fixing a stage, there can occur cases where the stage may be repeated a second time; for instance, by the intervention of a non-registered dealer. In such cases, the second levy can always be struck down. From the mere fact, that a second illegal levy is struck down or is not justified, a conclusion does not necessarily follow that the Act is bad. All that the Central law requires is that a stage must be fixed for the levy of the tax, the reason being that the tax should be levied at one point. The State law does fix the point. But in human affairs, it is next to impossible to make a law which will conceive of all possible and imaginable possibilities and it will be too much to strike down a law because it has not taken into account all such imaginable possibilities. Moreover, no doubt was cast by their Lordships on the validity of the Madras and other allied Acts, to which a reference was made, and as the impugned State Act is in line with those Acts, we are not prepared to accept the contention that the Act is bad because it has failed to fix a specific point of taxation regarding declared goods. If a case occurs, where a double levy has been made, the Court will readily strike it down. We have also no doubt that if a double levy is brought to the notice of the Sales Tax authorities, they will also strike it down. Moreover, the tax is only levied on registered dealer; and if a dealer, who deals in goods and has, under the law, to get himself registered: does not do so and by violating the provisions of the Statute renders the goods liable to double taxation, that will not make the law void. It is fundamental that a breach of the Statute cannot be taken notice of to declare it void. Therefore we are not prepared to hold that there is no stage fixed for the second period, 1st April, 1960 to 13th of November; 1967. Moreover, there is a presumption of constitutionality of a Statute and the

burden, that a certain Statute is unconstitutional, is on the person who wants it to be declared void (See the decision in *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar and others* (25). The burden has not been discharged in the present case.

(24) So far as the third period is concerned; the learned counsel for the petitioner submitted that Schedule 'D' to the Act had discriminated between the imported and the locally produced cotton inasmuch as if the cotton was imported by a dealer from outside the State of Haryana or otherwise received by him in the State of Haryana for sale, the stage, of levy of the tax has been fixed on the first sale within the State of Haryana by a dealer liable to pay tax under the Act. If, on the other hand, cotton was purchased in the State of Haryana, the tax had to be levied on the first purchase within the State of Haryana by a dealer liable to pay tax under the Act. The sale price, according to the learned counsel, was obviously more than the purchase price and, therefore, the quantum of tax on imported cotton would naturally be more than on the locally produced goods. In that way, the imported goods were discriminated against and this legislation was hit by Article 304(a) of the Constitution. It was also contended that the very fact that two stages had been fixed for the levy of the tax, one on the sale price and the other on the purchase price on the imported and the locally produced goods shows that the former goods had been discriminated against.

(25) It is true that in Schedule 'D' which deals with declared goods and cotton being one of them, it is mentioned that if the cotton was imported by a dealer from outside the State of Haryana or otherwise received by him in the State of Haryana for sale, the tax had to be levied on the first sale within the State of Haryana by a dealer liable to pay the tax udder the Act and if the cotton was purchased in the State of Haryana, the tax was levied on the first purchase within the State of Haryana by a dealer liable to pay the tax under the Act. The question, however, arises that by making this legislation, has any discrimination been made between the imported and the local goods and whether this legislation was his

(25) A.I.R. 1958 S.C. 538.

by Article 304(a) of the Constitution ? The relevant part of Article 304(a) says—

> "304. Notwithstanding anything in article 301 or Article 303, the Legislature of a State may by law—
>
> (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
>
> (b) * * * *".

(26) All that it means is that the imported and the local goods should be treated on the same basis and no discrimination should be made between them. Article 304(a) figures in Part XIII of the Constitution which deals with trade ; commerce and intercourse within the territories of India. Article 301 provides that trade, commerce and intercourse within the territory of India would be free, but it would be subject to the other provisions of Part XIII. It is by virtue of Article 304 that the State legislature is authorised to impose on goods imported from other States a tax to which similar goods in that State were subject and the only limitation imposed on this power of the State legislature is that by imposing the tax, it should not make any discrimination between the imported and the locally produced goods. It is undisputed that tax has been imposed on the cotton produced in the State of Haryana. That being so, the State legislature was well within its rights to tax the imported cotton as well. Now the point for consideration is whether by the imposition of the tax on the imported goods has it resulted in any discrimination between those and the local goods. It is common ground that the rate of purchase tax and the sale tax is the same, that is 3 per cent. When the rate is the same, *prima facie*, there seems to be no discrimination. Article 304 does not require that similar or same tax should be imposed on the imported and the local goods. In other words, if purchase tax had been levied on the local goods, it is not necessary that only purchase tax could be imposed on the imported cotton. According to Schedule 'D', on the imported cotton, the tax has to be levied on the first sale of those goods in the State of Haryana and on the local cotton, the tax has to be levied on the first purchase in the State of Haryana As we have said, what is required under Article 304(3) is that

there should be no discrimination between the imported and the local cotton. That means that when the imported cotton reaches the State of Haryana, it should be treated as if it had been produced in the State of Haryana. It is only then that it would be said that they were being treated alike. The importer of the outside cotton should be treated at par with the producer of the local cotton. When the imported cotton is sold in the State of Haryana, the tax would be levied on the sale price thereof. Similarly when the local goods are purchased for the first time in the State of Haryana, the tax would be levied on the purchase price which obviously is the first sale price. That being so, in both types of goods, tax has to be levied on the first sale price of the goods in the State of Haryana. There is thus no discrimination whatsoever between the two types of cotton and there cannot be any difference in the quantum of tax imposed on them. There is no merit in the contention of the learned counsel for the petitioner that the levy of tax on imported and local goods at two different stages, one on the first sale price and the other on the first purchase price results in discrimination. As we have already mentioned, there are no two stages in the instant case. In both the cases, as already pointed out above, the tax has to be imposed on the *first sale price* of the two types of cotton. It was suggested by the learned counsel for the petitioner that the sale price of the imported goods would obviously be more than their purchase price, and consequently the quantum of tax would be more on the sale price than on the purchase price. There is a clear fallacy in this argument. When the learned counsel says that the sale price would obviously be more than the purchase price, a question immediately arises more than whose purchases price ? If the suggestion was that it would be more than the purchase price of the importer himself, then obviously there was no question of any discrimination between the imported cotton and the local cotton as the comparison has to be only between these two types of cotton and on the same date. On one date, the sale price of both types of cotton should naturally be the same, otherwise there would be no market for the higher price goods. In Schedule 'D', tax has been levied on this sale price in both the goods.

(27) The whole confusion seems to have arisen, because as regards the local cotton, it has been mentioned that the tax would be imposed on the first purchase price and not on the first sale price

as in the case of imported cotton. But one cannot lose sight of the fact that in the case of local cotton, obviously, the first purchase price of the dealer is the same as the first sale price of the producer. Consequently in both the cases the tax would be on the first sale price. The reason why the first purchase price was mentioned regarding the local cotton was that the legislature did not want to tax the local producer, namely, the farmer. If the tax had been levied on the sale price in his case also, then he would have been required to keep regular accounts and deposit the tax in the treasury and this, it appears, they wanted to avoid.

(28) The learned counsel for the petitioner contends that the decision of the Supreme Court in *Firm A. T. B. Mehtab Majid and Company's case* is fully applicable to the facts of the present case, and, therefore, he must succeed on that basis. His argument is, substitute 'imported cotton' for 'imported hides and skins' and 'local cotton' for 'local hides and skins'. If this is done, he maintains, the result would be the same as in *Firm A. T. B. Mehtab Majid and Company's case.* This argument, though attractive, cannot bear scrutiny. In *A. Hajee Abdul Shukoor and Company's case,* their Lordships of the Supreme Court decided that the 'raw hides and skins' and 'tanned hides and skins' are two different commodities. The discrimination, that is prohibited by Article 304(a) is only between similar goods and not between different types of goods. It is axiomatic that in view of Article 304(a) of the Constitution of India, similar goods must be meted similar treatment irrespective of the fact whether they are locally produced or are imported. The tax burden must be the same. In *Firm A. T. B. Mehtab Majid and Company's case,* similar goods were discriminated, that is 'tanned hides and skins locally produced' and 'tanned hides and skins were imported'; and that is why, the Supreme Court struck down the rule. In order to understand the implication of the Supreme Court decision, it will be proper to quote the Madras rule :—

> "16. (1) In the case of untanned hides and/or skins the tax under section 3(1) shall be levied from the dealer who is the last purchaser in the State not exempt from taxation under section 3(3) on the amount for which they are bought by him.
>
> (2) (i) In the case of hides or skins which have been tanned outside the States the Tax under section 3(1) shall be

levied from the dealer who in the State is the first dealer, in such hides or skins not exempt from taxation under section 3(3) on the amount for which they are sold by him.

(ii) In the case of tanned hides or skins which have been tanned within the State, the tax under section 3(1) shall be levied from a person who is the first dealer in such hides or skins not exempt from taxation under section 3 (3) on the amount for which they are sold by him:

Provided that, if he proves that the tax has already been levied under sub-rule (1) on the untanned hides and skins out of which the tanned hides and skins had been produced, he shall not be so liable.

(3) The burden of proving that a transaction is not liable to taxation under this rule shall be on the dealer."

(29) Under this rule, in the case of raw hides or skins, the last purchaser is liable to pay tax on the purchase price. According to sub-rule (2), on the imported as well as local tanned hides and skins, tax on first sale is levied. If the rule had stood minus the proviso, no trouble would have arisen, as there seems to be no discrimination between imported and local tanned hides and skins. But the proviso to this rule brings in the vice of discrimination. If the hides and skins are tanned within the State and they are taxed under sub-rule (1), no tax could be levied on the tanned hides and skins in the State. It is thus that a discrimination resulted between the 'imported tanned hides and skins' and 'tanned hides and skins processed within the State'. If a person deals in imported tanned hides and skins, he has to pay sales-tax. If he also purchases raw hides and skins and then gets them tanned for sale, he would only be liable to pay purchase-tax on the purchase price of raw hides and skins and no tax on the tanned hides and skins. It was this discrimination, that was brought about by the proviso, which was struck down by the Supreme Court. No such discrimination exists in the Haryana Act, so far as 'cotton' is concerned. Under the Haryana Act, a tax is levied on the first sale price in the State on both the imported and local cotton. Therefore, it is clear that the attack on the vires of the impugned provision is not justified.

(30) The only other contention, that has so far remained undisposed, is whether the option given to the assessee to get those assessments re-opened which were hit by the Supreme Court decision being not in consonance with section 15 of the Central Sales Tax Act is bad. In the first instance, this is an enabling provision. There is no option with the Department not to re-open each and every assessment which is contrary to the Supreme Court decision. They will, under the law, re-open the assessment. The option is only to the assessee and totally for his benefit. He may forbid the re-opening of the assessment, moment a notice in that behalf is served on him, by saying that he does not wish it to be re-opened. Such a provision, which merely favours the assessee; cannot be said to be, in any manner; illegal. We see no force whatever in this contention and the same is repelled.

(31) The net result, therefore, is that the third contention has no force and must fail.

Contention No. (4):

(32) This contention now stands concluded by the decision of the Supreme Court in *State of Madras* v. *N. K. Natraja Mudaliar* (26), The Supreme Court has reversed the decision of the Madras High Court in *Larsen and Toubro Ltd.* v. *Joint Commercial Tax Officer* (3). The contrary view taken by the Andhra Pradesh High Court to the Madras decision in *East India Sandal Oil Distilleries Ltd.* v. *The State of Andhra Pradesh* (4), has been approved.

(33) In this view of the matter, this contention also fails.

(34) For the reasons recorded above, this petition fails and is dismissed; but there will be no order as to costs.

PREM CHAND PANDIT, J.—I agree.

R. N. M.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

JASWANT SINGH BASUR,—*Petitioner*

versus

THE PUNJAB STATE,—*Respondent*

May 21, 1968

Civil Writ No. 2568 of 1966

The Punjab Public Service Commission (Conditions of Service) Regulations 1958—*Regulation* 5—*Government official appointed as Chairman of a Public*

(26) C.A. No. 763 of 1967 decided on 18th April, 1968.