(1974) 11 CAL CK 0003

In the Calcutta High Court

Case No : A.O.D. No. 187 of 1966

Asst. Commissioner of Commercial Taxes — APPELLANT

Vs

ITCO (P) Ltd. — RESPONDENT

Date of Decision : 28-11-1974

Acts Referred:
Constitution of India, 1950 — Article 226(1)

Citation : 79 CWN 562

Hon'ble Judges : S.K. Datta, J;B.C. Roy, J

Bench : Division Bench

Advocate : P.K. Sengupta and S.N. Dutta, for the Appellant;N.C. Chakravarti and Paritosh K. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Salil Kumar Datta, J.—This is an appeal against judgment and order of D. Basu, J. dated March 1. 1966 in Civil Rule No. 693W of 1962 whereby the rule was made absolute. The facts as stated in the petition in brief are as follows: The petitioner a private limited company at the material time had been carrying on the business of dealer m tea and was registered as a dealer Under the Bengal Finance Sales Tax Act, 1941 (hereinafter referred to as the said Act), holding certificate of registration bearing No. CR/2343A. The petitioner was registered in the Canning Street charge which was renamed in 1958 as the Chinabazar Charge. The petitioner duly filed its returns and its assessments upto and including four quarters ending on last day of Chaitra 1367 B.S. (April 13, 1961) were made and completed by the Commercial Tax Officer China Bazar Charge. The assessment for four quarters ending on last day of Chaitra 1364 B.S. (April 13, 1958) was heard on October 13, 1958 when the petitioner produced all his books of account. The petitioner''s taxable turnover was computed on November 26 1958- at Rs. 1,31,931.00 P. and tax was determined at Rs. 6423.21 P. and a penalty of Rs. 50]-.

2. In the end of October 1962, the petitioner received a letter dated October 29,

1962 issued by the Commercial Tax Officer, Central Section, West Bengal (respondent No. 3) stating that the petitioner''s files under the said Act as also under the Central Sales Tax Act, 1956 had been transferred to the Central Section and that the said Officer had assumed jurisdiction for. all assessments and ancillary matters under both acts. The petitioner was also advised that all pending matters would be taken up by the said respondent on dates fixed unless otherwise directed.

3. On November 3, 1962 the petitioner received a notice in Form IX with a copy of report dated November 1, 1962 by the respondent No. 4, issued by the Assistant Commissioner of Commercial Taxes Central Section West Bengal, respondent No. 2. The notice is as follows:

No. 8764 d/- 2.11.62. Revision Case No. 98-4/ 1962-63.

Form IX. (See Rule 79)

To

Messrs. Itco Private Ltd., (Dealer).

4. Raja Woodmunt Street, Calcutta. (Address).

(R. C. No. CR/2342A.)

Whereas it is proposed to pass an order to the effect mentioned below you are hereby informed that if you wish to prefer any objection against such order you should attend either personally or by authorised agent for that purpose at the office of the undersigned at 10 A.M. on the 19th day of November, 1962.

K. C. Saha,

Assistant Commissioner, Commercial Taxes Central Section Bengal. (West).

Dated 2nd November, 1962.

Gist of the order proposed to be passed--

In view of the facts stated in the report dated 1.11.62 (copy enclosed) of the Commercial Tax Officer Central Section there are good and sufficient reasons to believe that the taxable turnover of the period of 4 quarters ended Chaitra 1364 B.S. was very such under assessed in the order of assessment dated 26.11.58 of the Commercial Tax Officer, Chinabazar Charge. Accordingly the taxable turnover in respect of the said period is proposed to be enhanced to Rs. 6,50,000)-. Also the penalty of Rs. 501- imposed the original Assessment is proposed to be enhanced to Rs. 1,000/-.

4. The report was described as an application under Rule 82 of the Bengal Sales Tax Rules, 1941 for revising the order of assessment passed by the Commercial Tax Officer, China Bazar Charge for 4 quarters ending with Chaitra 1364 B.S. The report stated that it appeared from some sources not disclosed the petitioner had

been adopting various ways since considerable time including change of constitution of the firm from partnership to Company for evading taxes. It prima facie appeared that the points of the information were true and all attempts for search of books of accounts for 1364 B.S. were unfruitful as books for years 1364 to 1367 B.S. were not to be found and notice u/s 14(1) was not'' complied with. It was further stated that the accounts submitted were discrepant and incorrect and the books at the time of assessment were test checked while the basis of assessment was not clear. The Commercial Tax Officer accordingly arrived at the conclusion that the dealer was under assessed. The information referred to avasion for a considerable period but as revision for any period before 1364 B.S. was barred by limitation, the application was made for 1364 B.S. only. The Commercial Tax Officer further stated that the order of assessment needed modification but as he was not competent to review the order of his predecessor in terms of rule 82 he was submitting the application for revision of the assessment in terms of section 20(3) of the Act read with its Rule 80(5).

5. The petitioner objected to the assumption of jurisdiction by the Assistant Commissioner to revise the assessment contending that the proposed action was. without any authority of law and was in violation of the fundamental right guaranteed by the Constitution. By further representations the petitioner submitted that the Commercial Tax Officer, Central Section had no authority to deal with its riles and the Commercial tax officer, China Bazar Charge who was the appropriate commercial officer had no authority to transfer the files and such transfer was illegal, void and ultra vires the act. In reply the petitioner was informed by the Assistant Commissioner of Commercial Taxes. Central Section, respondent No. 1, that he was competent to issue the notice under Form IX and the revision proceeding which was not bad or illegal, was fixed for hearing on November 19, 1962.

6. The petitioner contended that the purported proceeding taken by the Assistant Commissioner of Sales Tax Central Section, West Bengal was barred by limitation and the law did not authorise reassessment in the garb of revision, which was not of his own motion but was at the instance of the Commercial Tax Officer, Central Section. The alleged report was based on guess work and rules do not provide for making an application for revision by the State or any officer of the Directorate. Further there was no valid delegation of his powers by the Commissioner of West Bengal. It was also the contention that the transfer of the files was illegal, invalid and ultra vires and even the creation of Central section is ultra vires the Act and the Constitution of India.

7. On these allegations and contentions the petitioner moved this Court under Article 226(1) of the Constitution inter alia, for a writ in the nature of certiorari quashing the impugned notice in Form IX as also the proceeding based thereon and also for a writ in the nature of prohibition forbearing the respondents from proceeding further in the matter. There was also a prayer for a writ in the nature of mandamus forbearing the Commercial Tax Officer, Central Section from taking

charge of the petitioners files. On this application this Court issued a Rule on November 19, 1962 being Civil Rule No. 693W of 1962 in terms of the prayer.

8. The respondents contested the rule by filing two sets of affidavit-in-opposition on behalf of the Commercial Tax Officer, Central Section Respondent No. 3 and the Commercial Tax Officer China Bazar Charge respondent No. 5 urging similar contentions to the effect that all actions taken were in accordance with law. The respondent No. 5 stated that on the date of hearing on October 13, 1958, the petitioner produced some of the documents and he made the assessment on November 26, 1958. The deponents also craved leave to refer to the original order of assessment at the hearing.

9. The petitioner filed two affidavits in reply to the above affidavits reiterated his contentions made in his petition, denying in particular that the respondent No. 3 the Commercial Tax Officer Central Section was the "appropriate commercial tax officer" in respect of the petitioner. It was further denied that the said officer on that date had any competency or authority to assume charge of the petitioner''s files. It was also contenhed that the report, was to be treated as application for revision which was barred by time.

10. There was a supplementary affidavit-in-opposition on behalf of the Commercial Tax Officer Central Section stating further that be filed on November 1, 1962 an application under Rule 82 of the Bengal Sales Tax Rules to the Assistant Commissioner of Commercial Taxes for revising the assessment order dated November 26, 1958 u/s 20(3) of the Act whereon the impugned notice in Form IX was issued. The Assistant Commissioner, on vacation of the interim order, passed on November 24, 1962 an order revising the assessment order of November 26, 1958. This order was set aside by the Additional Commissioner on February 11, 1964. The petitioner preferred an appeal to the Board of Revenue against this order before the Board of Revenue which was pending but these authorities had not been made parties to the rule which accordingly became infructuous. In its affidavit-in-opposition the allegations were disputed by the petitioner but it appears that the said authorities were made parties to the rule.

11. The rule came up for hearing before D. Basu, J. who on hearing the parties came to the following conclusion :

(I) Section 20(3) confers on the Commissioner upon application or of its own motion the power to revise any assessment or order made under the Act or its rules by any person appointed to assist him. An application for revision can be made by a dealer as also by an inferior officer in the department itself, and there is no prohibition against an application being made by an inferior officer of the department. Sub-rule (3) of Rule 80 makes provisions only when the application for revision is to be made by a dealer. The provisions of sub-rules (1) and (2) of Rule 80 are general provisions and are applicable to an application made either by a dealer or any other person. Further it was obvious that the officer in question made his application under Rule 82 as he was not empowered to revise the order of his predecessor. The proceeding thus being initiated on application, sub-rule (2) of Rule 80 would be applicable which provides for a limitation of 60 days so that the impugned proceeding is clearly time barred. The position would have been otherwise if the proceeding was initiated by the Commissioner suo motu when sub-rule (5) would be applicable which provides for four years limitation and the connected proceeding in that event would suffer from no infirmity regarding limitation. The benefit of proviso to Rule 80(2) for condoning the delay in presenting the application for sufficient reason was neither claimed nor urged at. the hearing.

(II) The Court however held on the other branch of argument on limitation that in view of the second proviso to Section 11 (2a), it could not be said at that point of time that the fresh assessment is barred by limitation. Liberty was however given to the petitioner in case the final order of assessment was not eventually completed within the period of four years.

(III) After discussing the relevant provisions the Court was of opinion that the validity of the creation of the Central Section having jurisdiction over the whole of Bengal could not be questioned. The transfer of the petitioner''s case from Chinabazar to the Central section by order of October 1962 was validated by the Amendment Act 1962 which was given retrospective effect. The Court however found accepting the contention of the petitioner that there was in fact no such order passed by the Commissioner nor there appeared any delegation of the power to the Commercial Tax Officer. There could be no such transfer merely by creation by Government notification the concurrent jurisdiction of the Commercial Tax Officer, Central Section and the observation in Madanlal Mahawar and Others Vs. The Commercial Tax Officer, Central Section and Others, that no order of transfer was necessary was merely an obiter. This proposition is supported by the Amendment Act of 1962 itself which was made retrospective. Accordingly the transfer purported by the C.T.O. China Bazar as well as the assumption of jurisdiction by the C.T.O. Central Section over the petitioner''s case was ultra vires.

(IV) In regard to the contention that the order of assessment by C.T.O. China Bazar Charge was to be deemed to be the order the Commissioner, on the established proposition of law that the order of the delegatee is to be deemed to be the order of the principal, it was held that in the instant case, the legislature by providing a hierarchy of authorities in the Act, has expressly overriden the said general proposition.

(V) On the petitioner''s contention that the power of revision cannot be utilised for enhancing the taxable turn-over by bringing into account alleged escaped turnover as sought to have been done the Court held that where there is express or special provision in a statute to deal with escapement of income such power can only be exercised by such special provision but not by general power of revision or appeal. There is however no such provision in the Bengal Act with which we are concerned and accordingly, particularly in view of the widest possible words that "the Commissioner may any assessment made" there is no warrant for imposing any limitation save those expressly made in the statute. Since legislature has not circumscribed revisional or appellate powers, the power conferred by Section 20(3) is not subject to -any limitation save the procedural limitation under the provisos. This view is strengthened by Rule 80A of the Bengal Sales Tax Rules which empower the revising and appellate authority "to make such enquiry.......as it may think fit." The Court further held that a provisional order before hearing the petitioner common in administrative proceeding did not show that the authority foreclosed its mind and there was no substance in the contention that there was thereby a failure of natural justice.

(VI) The Court also rejected the contention of the revenue that the alternative remedy operated as a bar.

12. The-rule accordingly, on ground of jurisdiction and limitation, was made absolute and the impugned order of the Additional Commissioner of Commercial Taxes dated November 3, 1962 was quashed and the respondents Nos. 1 to 4 were prohibited from proceeding further in pursuance of that order.

The propriety of this decision has been challenged in this appeal.

13. The contention of the Revenue that alternative remedy was a bar to the initiation of the proceeding under Article 226(1) does not merit consideration, particularly when a question of jurisdiction of the authority to issue the impugned order is involved. In fact it has not been and cannot be seriously contended that the application was not maintainable in law.

14. Mr. Provat Kumar Sen Gupta appearing with Mr. S. N. Dutta learned Advocates on behalf of the appellants produced before us the entire record of the case. It appears therefrom that there was in fact an order of the Commissioner dated October 24, 1962 transferring the files to the petitioner from the jurisdiction of the Commercial Tax Officer Chinabazar Charge to the Central Section under the Taxes Directorate West Bengal and an application for production of this order as an additional evidence in the appeal was filed by the appellants which was seriously objected to by the petitioner. The order impugned in this Rule foundered on the finding that no such order was in existence. We felt that the copy of the said order should be on record to enable us to pronounce judgment in the appeal. Accordingly we allowed the application: and further directed that photostat of the said order of the Commissioner should be filed in view of the allegations of interpolations. In pursuance thereof the appellants filed a photostat copy of the said order. The petitioner was also given opportunity to examine the original records of the case in Court and the records were examined by Mr. N. C. Chakravarty and Mr. Paritosh Mukherjee. Though there is no such allegations in the affidavit-in-opposition on behalf of the petitioner, an allegation was made on its behalf that there were interpolations in respect of the Memo No. 14342|1|CT dated October 24, 1962 in that by hand and also in type writing it was? written that steps should be taken so that the proceeding initiated to revise

the assessment be not time-barred. According to Mr. Chakravarty there was at that point of time no proceedings initiated against the petitioner. This allegation appears to be without basis, as the records indicated, which were before us in terms of the Rule, that the proceeding was initiated much earlier and as the records indicated, there was in fact no interpolation as alleged.

The relevant order of October 24, 1962 is as follows :

As it is considered necessary to have a through investigation in respect of the dealer, M/s. Itco Private Ltd. of 4, Raja Woodmunt Street, Calcutta. I do, hereby, transfer the files of the aforesaid dealer under both Bengal Finance (Sales Tax) Act,.1941 Registration Certificate No. CR/2343A) and the Central Sales Tax Act, 1956 (R. C. No. 55A(CR) Central) from the jurisdiction of the Commercial Tax Officer, China-bazar Charge to the Central Section under the Commercial Taxes Directorate, West Bengal for taking all necessary action under the aforesaid Acts.

Sd/- S. K. Bose, Commissioner, 24.10.62.

15. It is unfortunate and indicates in excusable carelessness on the part of the legal advisers of the department in not producing the order of the hearing of the Rule. It is thus obvious that the first ground that there was no valid order of transfer is not tenable in view of the existence of the said order quoted above.

16. There can now be no dispute that in view of the provisions of subsection 2A to Section 3 of the Bengal Act, which was inserted with retrospective effect by the West Bengal Amendment Act XVII of 1962 bought into force on December 15, 1962 preceded by Ordinance promulgated on September 22, 1962, the Commissioner has been duly empowered to pass the order of transfer of any case from one person appointed under sub-section. (1) to another so appointed. This act also validated any action taken earlier as such, order as was-noticed in Madanlal Mahawar and Others Vs. The Commercial Tax Officer, Central Section and Others, , was to be deemed to be and to have always been validly made as if that Act were in force at the time the order was made.

17. A point was made by Mr. Chakravarty contending that the power delegated u/s 15 of the Act read with Rule 71 by the Commissioner to the Assistant Commissioner to revise an order passed by the Commercial Tax Officer became in fructuous or nonest as the then Commissioner M. M.Basu had long vacated the office before the impugned notice or even the order of transfer was issued. This contention is without any substance. A similar contention was raised in Gayadin-ram v. A. H. Khan (1951) 55 C.W.N. 667, wherein it was held that the delegation was not made in personal capacity but in official capacity. It v further observed that individuals may go and come but the statutory office remains unless the Corporation itself uses to exist. In absence of revocation which could be done, the successor-in-office must be deemed to have accepted and approved of the delegation made by the predecessor. This decision was followed in Sambhudas Pyne v. Corporation of Calcutta, 1972 Gal. 273, in which I was a party. It is not the case that the delegation has been revoked or the office of the Commissioner

has ceased to exist. We respectfully agree with the view in Gaya-dinram''s case and are of the opinion that all actions taken by an erstwhile Commissioner in his official capacity are valid and continue as if the same are the own acts of his successor-in-office under the authority, of law unless revoked or otherwise modified or abrogated.

18. While supporting the judgment under appeal Mr. Chakravarti contended that unlike, the other similar statutes in other States, the Bengal Sales Tax Act does not contain any" provision for assessment of turnover which had escaped assessment. Our attention was; drawn to relevant sections of the statutes of other States, in particular to section 11A of the Sales Tax law under Delhi Amendment of the Bengal Act, the provisions whereof were extended to Delhi, which provides express and specific provisions for assessment of escaped turnover. There is no similar provision in the Bengal Act as those contained in the said section 11A. It was accordingly contended with great force that under the Sales tax law in West Bengal there is no legal warrant for assessment of escaped turnover, though it is also the case that there was no turn over in respect of the petitioner which had escaped assessment.

19. Mr. Sen Gupta submitted that the petitioner not having filed any cross-objection against the judgment under appeal should not be granted leave to urge this point. It is to remembered that a respondent is competent to urge other grounds in support of the judgment under appeal, and even grounds against it provided that such contention if succeeds will not in any way affect the order or decree under appeal. In this present case, if Mr. Chakravarti succeeds in his contention, such success will not alter or modify the order impugned before us and at the highest it may be another piller supporting the order accordingly we do not think there is any legal impediment in Mr. Chakravarti''s objection and Mr. Sen Gupta''s contention is accordingly overruled.

20. There is no dispute that under the Bengal Act, there is no express provision for assessment of escaped turnover as in the Acts of other states. Absence of such provision in the basis of Mr. Chakravarti''s contention that power of revision does not warrant an enhancement of the turnover as is sought to be done in this case. If there is any provision for assessment of escaped turnover, such provision, it is needless to mention, will have to be followed for the purpose. When there is no such provision, as in this case, and "a power of revision is conferred on the authority, it is to be seen if the power of revision so conferred is circumscribed for particular purposes or in any way restricts assessment of escaped turnover. If there is no restriction, there should be no reason to think that even then the appropriate authority is incompetent or has no jurisdiction to assess any escaped turnover. The question was elaborately considered by the reference bench of this Court in the decision in Ram Kanai Jamini Ranjan Pal Private Ltd. v. Member. Board of Revenue, West Bengal (1970) 26 S.T.C 489 and it was observed by P. B. Mukherjee C.J., assuming as contended that under laws of other States specific provisions have been made for escaped turnover as

follows :

This reference must be governed by the Bengal Act and the rules made thereunder. The language of the statute here and the rules here are the governing factors. Section 20(3) of the Bengal Act makes it clear that the Commissioner in revision can revise any assessment or order passed. There will be no justification to qualify this power by saying that he cannot revise to bring in escaped assessment. This will be more than a very logical conclusion specially in the context of the Bengal Sales Tax Act because under this Act no right of appeal or revision is given to the revenue but such rights are given only to the dealer or the assessee. The language of section 20 saying "any dealer may be in the prescribed manner appeal to the prescribed authority" etc. makes it plain. Even u/s 21 of the Bengal Act the revenue cannot call for a reference either. What happens then where obviously an assessment or an order has been made which is prejudicial to the revenue ? Who can correct it ? The compelling answer is, the power of revision is in the Commissioner u/s 20(3) to revise any assessment made or order made.

21. Even apart from the conclusion therein that the Revenue has no power to apply for revision of an order of assessment, on which elaborate arguments were made which we shall presently consider, we are in respectful agreement with the above proposition of law in regard to the powers of revision. Under the Bengal Act, even though there is no provision for assessing escaped turnover, the power of revision conferred on the Commissioner is of widest amplitude, as also held by in the judgment under appeal, and such power cannot be circumscribed or limited so as to exclude assessment of escaped turnover which will be contrary to the clear and unambiguous provisions of section 20(3) of the Bengal Act set out hereunder :

Sec. 20(3) : Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act, or the rules thereunder by a person appointed u/s 3 to assist him, and subject to as aforesaid, the Board of Revenue may, in like manner, revise any assessment made or order passed by the Commissioner......

22. The other incidental and necessary steps for enforcing the provisions quoted above are provided in section 14 of the Act and various steps mentioned therein are "for the purpose of the Act" which includes action u/s 20(3).

23. Mr. Chakravarti has contended that an opinion given by the Court on a reference u/s 21 on a question is at large before us for examination by us. We have already indicated that we are in complete agreement with the view in Ram Kanai''s case as indicated above. We also do not find any warrant for the contention that the opinion of the Court on reference has not that conclusiveness on questions of law answered by it as the judgments in other cases. In fact under sub-section 5 of Section 21 the High Court is required to deliver judgments

containing grounds on which the judgment is based while deciding the question of law. This contention raised by the respondent is thus clearly untenable.

24. The last question relates to the question of limitation and it is connected with the further question if under the law the Revenue is entitled to make application for revision. If the Assistant Commissioner in this case is held to have taken action suo moto for revision of assessment sub-rule (5) of Rule 80 will be applicable. This sub-rule provides a limitation for four years from the date of assessment for revision of such assessment and clearly the impugned notice in Form IX dated November 2, 1962, when the assment order was completed on November 26, 1958 is within time. If however it is held that the Revenue has no right to apply for revision of the order at all the impugned proceeding can only be, and, as the terms of the notice also indicate, must be held to have been initiated suo moto. In Ram Kauai''s case there is an observation that the Revenue has no right to apply for revision which was an additional ground for holding that the power of revision conferred by the statute is without limitation. While Mr. Sen Gupta has contended on reference to the relevant rules that no right is conferred on the Revenue to apply for revision, Mr. Chakravarti has contended on the other hand relying on the reasonings in the judgment under appeal that such power is conferred on the Revenue also. The learned Judge was of the view that sub-rule (1) and (2) of Rule 80 provide the general provisions applicable to applications either by the dealer and the Revenue, while the sub-rule (3) provides the form and procedure in respect of applications by the dealer. This view appears to us to be untenable, as the special provisions in, sub-rule (3) is confined to application by a dealer for revision of an order passed on appeal against an order of essment or penalty or both and not applicable against original assessment or orders. Rule 80(1) provides that provisions of Rules 76 and 77 shall apply mutatis mutandis to application for revision and review. The proviso thereto contains further provision that sub clause (a) of clause (III) of Rule 76 shall apply only to orders of assessment made under section, 11 of the Act. There is no other provision in respect of this sub-clause so that if it was the intention that right to apply for revision was available to the Revenue, there would have been appropriate provision in respect of application for revision by the Revenue. Rule 80B which provides for stay of recovery of taxes not admitted by the assessee to be due from him pending a review applicaion would also be inapplicable if the Revenue is the applicant. Strong emphasis was however put by Mr. Chakravarti on the provision of Rule 82 which is to the following effect:

82. No officer below the rank of Commissioner shall review any order which has been passed by any of his predecescors-in-office; if it is considered necessary to modify any any such order applicat: revision is to be made to the next higher authority.

25. It was contended that the provision clearly indicates that the right of revision is conferred on the Revenue. Mr. Sen Gupta contended that this Rule is a special provision and is confined only to the orders passed by the Commissioner. In our

opinion also this rule is a special provision which is confined to the orders of the Commissioner and as its terms indicate it cannot be extended to any order which is not passed by the Commissioner. Further the power to modify the order under Rule 82 is connected with the power to review an order of the Commissioner and application for revision has been provided only in connection therewith.

26. Mr. Chakravarti has drawn our attention to the application annexed to the impugned notice, also described by the Assistant Commissioner as the report of the Commercial Tax Officer Central Section, West Bengal. This officer described his report as an application under Rule 82 which is obviously misconceived, as the said Rule as we have seen relates to orders passed by the Commissioner himself. The statements made in his report that the assessment order needs modification which he is not empowered to do are based on misconception of Rule 82 and the assertions by a Government Officer of his interpretation of a rule will not alter the basic position in law. Further upon careful consideration of the provisions of the Act and its rules we are of the opinion in disagreement with the view of the learned Judge that no right to apply for revision as contemplated in section 20(3) of the Act is conferred on the Revenue and accordingly the initiation of the proceeding is being suo mato is not barred by limitation.

27. As to the observations made by the learned Judge aganist the "final" order of assessment if made, we do not think that we need express any opinion. If the petitioner has any grievance table in law against the order of "final" assessment, no liberty to move against the same is required to be given by Court. In the view we have taken the appeal succeeds and is allowed and the judgment and order under appeal are set aside and the Rule is discharged. There will be no order for costs in the circumstances and all interim orders are vacated.

As prayed for by Mr. Mukherjee, learned Advocate for the opposite party, let the operation of this order be stayed for eight weeks from date.

B.C. Ray, J.

I agree.

