

(1962) 12 CAL CK 0011
In the Calcutta High Court
Case No : Civil Revn. Case No. 2396 of 1961

Bibhash Chandra Gon and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 14-12-1962

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 16, 17, 22
Constitution of India, 1950 — Article 19(1), 19(5)

Citation : AIR 1963 Cal 578 : 67 CWN 510 : (1964) 15 STC 277

Hon'ble Judges : R.S. Bachawat, J;P. Chatterjee, J

Bench : Division Bench

Advocate : Jyotish Chandra Pal and Sib Kumar Majumdar, for the Appellant; Adv.-General, J. Majumdar, A.G.P. and P.K. Banerjee, for the Respondent

Judgement

Bachawat, J.—This revision case raises important questions as to the construction and validity of Section 17 of the Bengal Finance (Sales Tax) Act, 1941. One Jogesh Chandra Gon during his life time carried on a business in the name and style of "Messrs. Jogesh Chandra Gon" at 57 Clive Street, Calcutta. He was registered as a dealer under the Bengal Finance (Sales Tax) Act, 1941 and was granted a certificate of registration in Form IIA of the Bengal Sales Tax Rules. Jogesh died intestate on March 2, 1955 corresponding to the 18th Falgun, 1362 B.S. Upon his death the petitioners who are his three sons succeeded to the business. On July 5, 1956 petitioner Bibhas sent a letter to the Commercial Tax Officer intimating that Jogesh had died and upon his death the three petitioners had become the partners of the business. The Commercial Tax Officer received another letter dated November 6, 1956 signed by all the petitioners stating that as sons of Jogesh they were the only proprietors of the properties left by him. After necessary enquiries the change of ownership of the business was recorded by the Commercial Tax Officer on November 11, 1956 and the certificate of registration was amended accordingly. Before his death Jogesh in his business of Jogesh Chandra Gon became liable to pay sales tax for four quarters ending Chaitra 1361 B.S. He tiled returns after the expiry of the

prescribed time. After his death the petitioners filed a revised return. By his order dated September 25, 1957 the Commercial Tax Officer assessed the amount of tax due from the dealer Messrs. Jogesh Chandra Gon and also directed the dealer to pay a penalty of Rs. 750/- for non-submission of return within time. An appeal from this order was dismissed by the Assistant Commissioner of Commercial Taxes, Burabazar Circle, by his order dated July 9, 1950 and a petition of revision u/s 20 (3) was dismissed by the Additional Commissioner, "Commercial Taxes, West Bengal by his order dated July 17, 1959. The petitioners have moved this High Court against this order and have obtained this rule under Article 227 of the Constitution of India.

2. Mr. Pal appearing on behalf of the petitioners contended that the assessment was made upon a dead person and as such was a nullity. There is no substance in this contention. This point was not taken in the tribunals below and ought not to be allowed to be raised in this Court for the first time. The records of the assessment proceedings show that the petitioners in their firm name of Jogesh Chandra Gon filed a revised return of sales tax for the period of assessment, appeared before the Commercial Tax Officer, filed an appeal before the Assistant Commissioner and a revision petition before the Commissioner. The petitioners appeared at all stages of the proceedings in their business name and style of Messrs. Jogesh Chandra Gon. The assessment was made upon the petitioners in their business name and not upon the deceased Jogesh Chandra Gon.

3. The petitioners next contended that they are not liable to pay any sales tax or penalty in respect of the business for the year ending Chaitra 1361 B.S. during which their father Jogesh Chandra Gon alone carried on the business. The tribunals below have held that on true construction of Section 17 of the Bengal Finance (Sales Tax) Act, 1941 and the circumstances which have happened, the petitioners are liable to be assessed to the tax and penalty as if they were the registered dealer carrying on the business of Messrs. Jogesh Chandra Gon during the period in question.

4. Section 17 has been amended from time to time. The section as it stood at the relevant time was introduced by West Bengal Act 19 of 1954 and it reads thus:

"Where the ownership of the business of a registered dealer is transferred absolutely or transferred by way of lease and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered (in the case of a lease for so long as the lease subsists) as if the registration certificate of such dealer had initially been granted to the transferee or the lessee; and the transferee or the lessee shall on application to the Commissioner be entitled to have the registration certificate amended accordingly."

5. The petitioners argue that Section 17 on its true construction applies to

transfers of the business by act of the registered dealer and that it is not attracted to the case of an intestate succession to the business. We have come to the conclusion that this contention is unsound and should be rejected. There is a transfer by operation of law in the case of intestate succession. The expression "is transferred absolutely" is of wide import and is broad enough to include absolute transfers by operation of law including an absolute transfer on intestate succession. The section applies to all cases where the business "is transferred absolutely" and is purposely not limited to transfers by act of the owner. A transfer by way of lease is a transfer by an act of the owner and Mr. Pal therefore suggested that the general words "transferred absolutely" should receive an ejusdem generis construction and should be limited to transfers by the owner. But the mention of the specific case of a transfer by an act of the owner does not establish a genus and does not limit the generality of the preceding words. Moreover by repeating the word "transferred" after the word "or", the section places the two classes of absolute transfers and transfers by way of lease in separate categories.

6. Mr. Pal referred us to Section 16, but there is no thing in that section to show that Section 17 does not apply to cases of intestate succession. Section 16 requires the legal representative of the deceased dealer to report the change of ownership of the business on the death. If the successor to whom the business is transferred absolutely carries on the business, Section 17 applies with all its consequences and the certificate of registration may be amended accordingly, but if the business is discontinued the registration is liable to be cancelled u/s 7 (6) (a).

7. We have been referred to the legislative history of Section 17, to the section as it originally stood when the Act came into force and its successive amendments by West Bengal Act XLVIII of 1950 and West Bengal Act XIX of 1954 and West Bengal Act XIII of 1959. We find nothing in this history to suggest that the section as it stood before this amendment by West Bengal Act XIII of 1959 was limited to cases of transfers by the owner of the business. Mr. Pal contended that the object of the amending West Bengal Act 13 of 1959 was to effect a change of law and to extend the operation of the section to transfers "by sale, gift, bequest, inheritance or otherwise"; but the statement of objects and reasons of West Bengal Act 13 of 1959 suggests that the main purpose of the Act was to make the amendments in the Bengal Finance (Sales Tax) Act, 1941 consequential on the enactment of the Central Sales Tax Act, 1956 and to impose sales tax at uniform rate on certain luxury goods, and that a subsidiary purpose of the Act was to make a minor amendment in Section 17 of the main Act so as to make its meaning clearer.

8. The point, how far the provision of a later Act can be taken into account in construing an earlier Act was the subject matter of much discussion in *Kirkness v. John Hudson and Co. Ltd.* 1955 AC 697. In that case Lord Reid observed

"My Lords, this decision of this House appears to me to afford conclusive and

binding authority for the proposition that, in construing a provision of an earlier Act, the provisions of a later Act cannot be taken into account except in a limited class of case, and that that rule applies although the later Act contains a provision that it is to be read as one with the earlier Act. Of course, that does not apply where the later Act amends the earlier Act or purports to declare its meaning; in such cases the later Act operates directly by its own force. But where the provisions of the later Act could only operate indirectly as an aid to the construction of words in the earlier Act those provisions can only be used for that purpose if certain conditions apply to the earlier Act when it is considered by itself."

9. Now the West Bengal Act XIII of 1959 plainly shows the legislative intention that the expression "is transferred absolutely" covers transfers by sale, gift; bequest, inheritance or otherwise. The expression "is transferred absolutely" in the section as it stands after the amendment by West Bengal Act XIII of 1959 cannot receive the construction that it is limited to transfers by act of the owner. The amending Act is not retrospective; nevertheless if it is taken into account as an aid to the construction of the expression "is transferred absolutely" in the section as it stood before the amendment, it shows the legislative intention that the expression is broad enough to cover cases of transfers by inheritance or otherwise.

10. In the instant case upon the death of the registered dealer Jogesh Chandra Gom his business stood transferred absolutely to the petitioners by inheritance and intestate succession and the petitioners thereafter carried on the business in its old name. There is complete identity and continuity of the business originally carried on by Jogesh Chandra Gon and the business carried on by the petitioners after the transfer. The conditions of Section 17 are therefore satisfied, and the petitioners are deemed to be the registered dealer carrying on the business of Messrs. Jogesh Chandra Gon as if the certificate of registration of Jogesh had been initially issued to them. For all the purposes of the Act the petitioners are treated as if they have always been the registered dealer carrying on the business since the date of the issue of the certificate. They are liable to discharge the duties and liabilities imposed upon the registered dealer for the year ending Chaitra 1361 B.S. as if they were the registered dealer during that period and are liable to pay the tax for the period and to be assessed for the tax and to pay the penalty which may be imposed upon the dealer u/s 11(1) for non-submission of the return by the dealer in due time.

11. On behalf of the petitioners Mr. Pal attacked the constitutional validity of Section 17 as substituted by West Bengal Act XIX of 1954 on the ground that the section really imposes succession duty in the guise of sales tax and that as succession duty falls within entry 88 of the Union List, the State Legislature had no power to enact the section. There is no substance in this contention. " The successor is fixed with the liabilities of the deceased dealer only if he carries on the business. The liability of the successor does not arise on succession; it arises

on his carrying on the same business. Section 17 is not a law with respect to entry 88 of the Union List. The pith and substance of the Bengal Finance (Sales Tax) Act, 1941 is the imposition of tax on the sale of goods. Section 17 of the Act as introduced by West Bengal Act XIV of 1954 is a piece of legislation falling within entry 54 of the State List. The power to levy tax on the sale of goods includes power to legislate as to the person from whom the tax is to be collected and the manner in which such collection is to be made.

12. Mr. Pal next contended that Section 17 is an infringement of the fundamental rights of the petitioners guaranteed by Art, 19(1)(f) and (g) of the Constitution. The current view of the Supreme Court appears to be that a tax law may be challenged on these grounds, see *Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another*, . Now the liabilities imposed by Section 17 upon the petitioners are restrictions on the exercise of their right to carry on the business of Messrs. Jogesh Chandra Gon and to hold it The point in issue is whether the section imposes reasonable restrictions on the exercise of those rights in the interest of the general public and as such is saved by Article 19(5) of the Constitution. To determine this issue we must take into account the scheme of the Bengal Finance (Sales Tax) Act, 1941 the underlying policy and purpose of Section 17 of the Act and the nature and extent of the restrictions imposed by it. Broadly speaking the scheme of the Act is as follows. The dealer is liable to pay tax and to submit returns as required by Sections 4, 5 and 30 read with Rules 17 to 48, to assessment and levy of taxes and penalties u/s 11 read with Rules 49 to 58, to Keep accounts u/s 13 and to produce and give inspection of the accounts, registers and documents and to give inspection of and furnish information as to goods u/s 14 read with Rules 68 to 70. With a view to prevent evasion of the duties and liabilities imposed by the Act upon the dealer liable to tax, Section 7(1) requires that no dealer shall while being liable to pay tax u/s 4 of the Act carry on business as a dealer unless he has been registered and possesses a registration certificate. The registration is liable to be cancelled u/s 7 (6) (b) if the business in respect of which the certificate is granted is discontinued or if the dealer has ceased to be liable to pay tax. The registration confers valuable benefits on the registered dealer. By Section 5(2) (a) (ii) sales to the registered dealer are exempt from taxation provided the requisite declaration on the prescribed form is furnished by the registered dealer. The necessary declaration forms are obtainable by the registered dealer on application from the appropriate authority under Rule 27A. The declaration form can be lawfully utilized only by the dealer to whom it is issued. Rule 27A contains stringent provisions against misuse of the declaration forms. By Rule 27A(5) all unused forms must be surrendered immediately on the cancellation of the registration. In this background Section 17 has provided that where the ownership of the business of a registered dealer is transferred absolutely or by way of lease and the transferee carries on such business, the transferee shall for all the purposes of the Act be deemed to be and to have always been registered as if the registration certificate of such dealer had initially been granted to the

transferee. By virtue of Section 17 such a transferee is retrospectively made liable to discharge the duties imposed upon the registered dealer and to submit returns, pay the tax and penalties, to submit their assessment and levy, to keep, produce and give inspection of accounts, registers, and documents, to give inspection of and to furnish information as to the goods relating to the business in respect of which the certificate of registration had been issued, for the entire period since the issue of the certificate during which the original dealer carried on the business. This liability of the transferee is personal and is not limited to the assets of the business transferred to him. But it is to be observed that by Section 11 (2a) no assessment can be made after the expiry of four years from the end of the year in respect of which the assessment is made. Besides Section 10 read with Rules 17 to 48 requires submission of returns and payment of tax monthly, quarterly, half-yearly and annually as the case may be. An honest dealer would presumably file correct returns and pay the tax due within the prescribed period. Moreover the transfer of itself does not impose any liability on the transferee u/s 17. He is saddled with liability u/s 17 only if he carries on the business after the transfer. If he does not desire to be saddled with the liabilities of the original dealer, he may discontinue the business. It is also to be observed that Section 17 not only imposes liabilities but also confers valuable rights upon the transferee who carries on the business after the transfer. He is treated for all the purposes of the Act as if the registration certificate in respect of the business had initially been granted to him and he is entitled to have the registration certificate amended accordingly. Consequently such a transferee is entitled to carry on the business as if he is a registered dealer, to obtain forms of declaration on application under Rule 27A and to obtain exemption of tax on sales to him, as if he is a registered dealer. He is entitled to be treated as if the certificate of registration had initially been granted to him, and on that footing to utilise the forms of declaration issued to the original dealer, to obtain exemption of tax on the strength of such declaration forms, to claim and receive refund u/s 12 and to prefer and continue u/s 20 any proceeding by way of appeal, revision and review which might have been preferred or continued by the original dealer. If the transferee discontinues the business after the transfer he will not be entitled to these benefits. In case of discontinuance of the business the registration would be cancelled u/s 7 (6) (a) and all unused declaration forms must forthwith be surrendered under Rule 27A(5). In the absence of a provision like Section 17 an unscrupulous transferee, though not subject to the liabilities imposed on the original dealer would be in a position to obtain exemption of tax on sales to him by utilising declaration forms issued to the original dealer as also declaration forms issued after the transfer on the strength of the subsisting certificate of registration. It is difficult and well nigh impossible to detect and prevent such unscrupulous dealings and misuse of declaration forms by a transferee continuing the business. Consequently the legislature in its wisdom has by Section 17 provided that such a transferee shall be treated for all the purposes of the Act as if the registration certificate of the dealer had been initially granted to him. In our opinion Section 17 imposes reasonable restrictions in the interests of

the general public on the exercise of the right of the transferee to carry on the business transferred to him and to hold it. In this connection we are satisfied that Section 17 on its true construction does not render the transferee punishable u/s 22 for the acts and omissions of the original dealer. By Section 22 whoever does or omits to do any of the acts mentioned therein commits an offence and is punishable. A person who by Section 17 is deemed to be and to have always been registered as if the certificate of registration of the original dealer had been issued to him cannot for purposes of Section 22 be said to do or omit to do what the original dealer did or omitted to do. We reject the contention on behalf of the petitioners that the restrictions imposed by Section 17 are unreasonable because that section renders the transferee punishable for the acts and omissions of the original dealer. We have therefore come to the conclusion that Section 17 is not an infraction of the fundamental rights guaranteed by Article 19(1) (f) and (g) of the Constitution and "that the law is saved by Article 19(5) of the Constitution.

13. No other contentions were advanced before us.

14. As we have come to a clear conclusion that there has been no infringement of the fundamental rights guaranteed by Article 19, no question of staying the proceedings in view of the Proclamation of Emergency under Article 352 of the Constitution and the Presidential orders passed under Article 359 of the Constitution arise. It may be noted that the Proclamation of Emergency was made after the conclusion of the arguments on September 20, 1962 and that neither party applied for stay of the proceedings.

15. The petitioners have made out no grounds for quashing and setting aside the order complained of.

16. The rule is discharged. There will be no order as to costs.

Chatterjee, J.

17. I entirely agree with the observations and findings of my Lord and add a few words.

18. Mere we have to interpret the meaning of the word "transfer" and construe it with reference to the context of Section 17 of the Bengal Finance (Sales Tax) Act of 1941 as amended in 1954.

19. The purpose of the Bengal Finance (Sales Tax) Act of 1941 was "to impose a general tax on the sale of goods in Bengal" as "it was necessary to make an addition to the revenues of Bengal". Section I gives the short title; Section 2 deals with the definitions; Sections 3-3A relate to taxing authorities. Section 4 relates to incidence of taxation. Sections 5 and 6 relate to "rate of tax" and "tax-free goods". We are concerned with Section 7 which says,

"No dealer shall, while being liable to pay tax, carry on business as a dealer unless he has been registered and possesses a registration certificate".

Section 7 (4) is as follows:

"The Commissioner may from time to time amend any certificate of registration in accordance with information furnished u/s 16 or otherwise received."

Section 10, Sub-section (2) which is relevant is

"..... every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed."

Section 11 says,

"If no returns are furnished by a registered dealer or if the Commissioner is not satisfied the Commissioner shall proceed in such manner as may be prescribed."

Sections 10 and 11 deal with the payments of tax, returns and assessment of tax. Section 13 relates to accounts and Section 14 to production and inspection. Section 15 deals with delegation of Commissioners powers. The next two sections are important for us. Section 16 says,

"If any dealer to whom the provisions of Sub-section (2) of Section 10 apply, - (a) sells or otherwise disposes of his business he shall within the prescribed time inform the prescribed authority - accordingly; and if any such dealer dies, his legal representative shall in like manner inform the said authority."

The position, therefore, u/s 16 read with Section 10 (2) is that every registered dealer, who is required to furnish returns, shall within the prescribed time inform the authorities if the dealer "sells or otherwise disposes of his business". In the event of death the legal representatives are to inform.

20. The next question is: what the authorities are expected to do on such information? The answer is in Section 7 (4). The Commissioner on getting such information may from time to time

"amend any certificate of registration in accordance with the information furnished u/s 16 or otherwise received."

21. Because of such amendment of the certificate under the provisions of Section 7 (4), the persons whose names are introduced by amendment in the registration certificate become liable u/s 10 (2) to furnish returns by such date to such authority as may be prescribed. The position, therefore, is that the "dealers who sell or otherwise dispose of their business" or the legal representatives of the deceased will give the information u/s 16 whereon their names would be included in the certificate of registration u/s 7 (4) and they would thus be liable u/s 10 (2) as registered dealers as also if they fail, they would be liable u/s 11. The next question is: what would be the extent of th3 liability of the persons whose names are so recorded in the certificate of registration? It may be that the liability would accrue with effect from the date of the amendment or from the

date of the transfer or devolution as the case may be or they may be liable in the same manner as the original dealer. This question is answered in Section 17. Section 17 says,

"where the ownership of the business of a registered dealer is transferred absolutely or transferred by way of lease and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the losses shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered as if the registration certificate of such dealer had initially been granted to the transferee or to lessee; and the transferee or the lessee shall on application to the Commissioner be entitled to have the registration certificate amended accordingly."

Section 17 (2) serves two purposes; it defines the liability of the transferee and of the lessee. It further enables the transferee or the lessee to file an application to the Commissioner for amendment of the registration certificate. Section 16 directs the transferor or the legal representative to inform, but Section 16 does not provide for any application by the transferee or the lessee. Section 17 provides for the same. It defines the liability of the transferee and enables the transferee to apply for amendment of the certificate.

22. The context, therefore, is that, in case a dealer registered u/s 7 (1), liable to furnish returns u/s 10 (2) and liable to be assessed u/s 11 "sells or otherwise disposes of his business", he shall in terms of Section 16 inform the prescribe authority about such transfer and in case of death of the registered dealer, the legal representatives would so inform of such death. After that, the registration certificate would be amended and the names of the transferee of the dealers would be included u/s 7 (4) and because of such amendment, those transferees or the legal representatives would be liable to furnish returns u/s 10 (2) and would also be liable to be assessed and penalised u/s 11 and by Section 17 the liability of the "transferee and the lessee" will be the same as if the registration certificate had been initially granted to the "transferee or the lessee". But what would be the liability of the legal representatives? Does "transfer" in Section 17 include transfer by operation of law?

23. In such context we are to interpret the meaning of the word "transfer" in the aforesaid Section 17. The word "transfer" is a word of general import. We are aware that transfers may be by act of parties as also by operation of law and "transfer" may sometimes mean merely transfer by act of parties. The context here is not the context of any particular type of transfer but the context is that of a changing over from one dealer to another. Section 17 defines the rights and liabilities of the transferee, the right is to have his name registered in the, registration certificate to carry on the same business and the liability is to the same extent as if his name was initially registered. Should we interpret the word "transfer" in a broad sense or in a restricted sense?

24. If we accept the meaning of the word "transfer" as suggested by Mr. Pal to denote transfer by act of parties only the result would be, the liability of transferees by operation of law would remain undefined and uncertain. The purpose of the Act was to get revenue and if the transferees by operation of law would escape the provisions there, then the avowed object of gathering revenue will partially fail and so such a construction should not be made.

25. The Supreme Court in a case reported in *The Collector of Customs, Baroda Vs. Digvijaysinhji Spinning and Weaving Mills Ltd.*, , observed as follows :

"There are two well established rules of construction, namely, (1) where the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature and (2) where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."

26. This was also with reference to tax; it was customs duties. In this case if we interpret the word "transfer" to mean transfer by act of parties and exclude transfer by operation of law, even then the information regarding transfer by operation of law would still have to be furnished u/s 16 (2) and on such information the authority will amend the registration certificate u/s 7 (d) and consequently the legal representatives will be liable u/s 10 (2) and Section 11. But the extent of the liability of the legal representative would remain undefined and uncertain. Such a construction will thus introduce uncertainty, friction or confusion into the working of the system. Transferees by act of parties will be bound as if their names had been initially registered whereas with regard to the legal representatives, transferees by operation of law, their liability would be unquestioned; but the extent of the liability would remain questioned and thus there will be confusion. In that view of the matter, the word "transfer" should not be understood in the restricted sense of transfer by act of parties but should include transfer by operation of law as well.

27. Applying again the first test laid down by the Supreme Court, the natural and ordinary sense of the words "to transfer" is to convey from one person to another. The word "transfer" without any further qualification does not refer to the manner in which the transfer takes place but to the fact of changing over. The phrase "transfer absolutely or by way of lease" refers to the quantum of transfer but does not refer to the manner of transfer i.e. whether the transfer takes place by act of parties or whether transfer takes place by the provision of law. The intention of the legislature is not to restrict the word "transfer" to those act of parties; we have no doubt that the word "transfer" in the context of Section 17 of the Bengal Finance Act includes transfer by operation of law because of death.

28. The next point that has been urged is that the section itself offends the provisions of Articles 19(1)(f) and 19(1)(g) of the Constitution and it is, therefore, void. It has been urged that the transferee would be liable as if his name had been initially registered. It is suggested that he would, therefore, be liable to be punished u/s 22 of the Bengal Finance Act. That section says :

"Whoever,--

(a) "carries on a business in contravention of Sub-section (1) of Section 7,

... .. (e) fails, when required so to do u/s 13, to keep prescribed accounts,

... .. (g) knowingly produces incorrect accounts, shall be punishable with simple imprisonment"

It has been stated that on the transfer the transferee will be deemed as if his name was initially registered. Therefore, the transferee would be liable for false returns furnished by the transferor. The learned Advocate General has argued that there is no question of liability of the transferee for the offences of the transferor. The section begins by saying "whoever carries on or whoever refuses or whoever knowingly produces". There is no scope of saying "whether is deemed to have carried on." The section clearly means whoever actually commits any of the acts referred to in Sub-clauses (a) to (i), would be liable. But if the transferee does not commit any of the acts, there is no provision that the transferee would be liable u/s 22. This is, in our opinion, the correct interpretation of Section 22 and, therefore, the question of liability u/s 22 of the transferee for faults of the transferor does not come in for consideration.

29. The next argument is that the transferee is liable u/s 11 for penalty for the acts and defaults of the transferor. The learned Advocate General accepts that to be the legal position. But according to the learned Advocate General, if a man takes a bad business, he takes a risk; he faces the liability and he is not liable simply because of the transfer but the two things must combine. There must be a transfer and the transferee must intend to carry on the same business. If the transferee takes the business and sells only assets and does not carry on the business, there is no question of his liability u/s 11.

30. Mr. Pal says that this liability of the transferee is unreasonable and, therefore, offends Article 19(1)(f) and Article 19(1)(g) of the Constitution.

31. It has been urged that Articles 19(1)(f) and 19(1)(g) have no application so far as the taxing statutes are concerned. By taxation no fundamental rights are affected. Therefore, Articles 19(1)(f) and 19(1)(g) of the Constitution would not come in. This argument may be supported by the decision in the case of *Ramjilal Vs. Income Tax Officer, Mohindargarh*, . All that was decided in that case is that there was no deprivation of property and Article 31 will have no application to such a case and the Supreme Court refused to interfere under Article 32. No question of Article 19(1)(f) or 19(1)(g) was considered. In several other cases

the Supreme Court refused to interfere on the same ground. We have been referred to a case reported in *Balaji Vs. Income Tax Officer, Special Investigation Circle, , between Balaji v. Income Tax Officer*. In that case it was stated that the broad proposition submitted, by the Additional Solicitor General that a tax law cannot be questioned on the ground that it infringes Article 19 of the Constitution could not be accepted. Their Lordships were of opinion that that broad proposition was rejected, in the case *Moopil Nair v. State of Kerala* in AIR 1951 SC 552. In the case from Kerala it was found that the assessee, the tax payer, had no opportunity to contest the levying of the tax and it was, therefore, considered that principles of natural justice were violated and, therefore, it was considered, there would be infringement of Article 19(1)(f). In *Balaji Vs. Income Tax Officer, Special Investigation Circle, ,* the principle was accepted but on a consideration of the restriction their lordships in the Supreme Court were pleased to find that the restrictions were reasonable. In the two aforesaid cases *Ramjilal Vs. Income Tax Officer, Mohindargarh, ,* was not considered but in *Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, ,* all those cases were considered and the majority of the Supreme Court held that the broad proposition that no law imposing tax can be impugned on the ground of violation of Part III of the Constitution in general and in particular Articles 19(1)(f) or 31 and that the validity of such law is governed by Article 265 cannot be accepted as correct law. Their Lordships referred to all the earlier cases of the Supreme Court. Their Lordships considered whether there was unreasonable restriction on the fundamental rights within the meaning of Article 19 and they found there was none. We must, therefore, accept the proposition laid down by the Supreme Court. Tax law is not free from being challenged as being repugnant to the fundamental rights under the Constitution. But the question would be whether the tax law concerned is reasonable or unreasonable, (sic) is to be decided with reference to the rights of the assessee, namely, whether the tax-payer had an opportunity to challenge the levying of the tax and whether principles of natural justice were violated so far as the actual assessment is concerned and realisation of tax is concerned. If the assessment is to be made by a process which violates the principle of natural justice, that has been considered by the Supreme Court to be unreasonable. If a tax is imposed by adopting unreasonable procedure, the imposition may be bad because of such procedure.

32. Keeping all these things in mind we find no principle of natural justice has been violated by the provision of the Bengal Finance Act. The assessee the transferee has actually come up to this (sic) case up to this High Court against the order of assessment and during the course of assessment he was heard at every stage except at the stage of the Board of Revenue where he filed his petition which was considered by the Board, But he was not heard nor his lawyer was heard. But this is not because of any special provision in the Bengal Finance Act but because of a procedure before the Board of Revenue. The Member of the Board of Revenue has power to reject a petition after having read and considered it without hearing the parties. Whether that procedure is good or bad, is another

matter; but there is no provision in the Sales Tax Act that any authority would decide without hearing the assessee. The assessee under the Bengal Finance Act is entitled to be heard and is actually heard and he is allowed to adduce such evidence as he thinks fit and proper. No principles of natural justice has been violated, I cannot also say that the rate of tax is so unreasonable as to restrict business itself. It may be that a Legislature may pass a law of taxation at such a high rate that it would be impossible for a person to carry on the business. It was not with the object of stopping business that the Act was passed. On the other hand, the basis of the Act is that the business may be continued so that tax may be realised. In my view, therefore, the Act is not ultra vires.