

(1970) 04 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Appeal No. 273D of 1960

Express Newspaper (P) Ltd.

APPELLANT

Vs

Collector of Delhi and Others

RESPONDENT

Date of Decision : 03-04-1970

Acts Referred:

Citation : (1970) ILR Delhi 821

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : Soli J. Sorabjee, J.R. Gagrath, B.R. Aggarwal, Janendra Lal, K.N. Kataria, B.B. Kishore and J.P. Gupta, for the Appellant;

Judgement

T.V.R. 8Tatachari, J.

(1) The petitioner in this writ petition is Express Newspapers (Private) Limited, a company incorporated under the Indian Companies Act and having its registered office at Mount Road, Madras. The respondents are (1) Shri P. L. Bhargava, Naib Tehsildar, Tis Hazari Building, Delhi, (2) the Chief Commissioner, Delhi, and (3) the Collector of Bombay. The said company owned a publication called "Delhi Express".

(2) According to the petitioner, it promoted a cross-word prize competition called "Squarewords", and published the same in the "Delhi Express" since October, 1952. It was averred in the writ petition that the said prize competition was promoted, established and carried on in Delhi in the "Delhi Express", but entries for the same were received from various parts of India including the State of Bombay.

(3) On 15th November, 1948, the then Government of Bombay enacted an Act called the Bombay Lotteries and Prize Competitions Control and Tax Act No. Liv of 1948 to control and levy a tax on lotteries and prize competitions in the then Province of Bombay. The said Act came into force on 1st December, 1948. The said Act, as originally enacted, did not extend or apply to prize competitions

contained in a newspaper printed and published outside the then Province of Bombay. The Act was, however, amended by the Amending Act Xxx of 1952, on 2nd November, 1952. By the said Amending Act, the words "but does not include a prize competition contained in a newspaper printed and published outside the Province of Bombay" which occurred in the definition of the term "prize competition" in section 2(1)(c) of the original Act, were deleted. Thus, the effect of the Amending Act was that it extended the scope and application of the original Act to prize competitions contained in newspapers printed and published outside the State of Bombay.

(4) Section 3 of the Act provided that subject to the provisions of the Act, all lotteries and all prize competitions were unlawful. Section 7 of the Act provided that a prize competition was to be deemed to be an "un-lawful" prize competition unless a license in respect of such competition has been obtained by the promoter thereof. Sections 12, 12-A and 13 of the Act, as amended, were as follows:-

"SECTION 12 : (1) There shall be levied- (a) in respect of every lottery for which a license has been obtained u/s 5 or 6, a tax at the rate of 25 per cent of the total sum received or due in respect of such lottery; and (b) in respect of every prize competition for which a license has been obtained u/s 7, a tax at rate of 25 per cent of the total sum received in respect of such competition. The tax shall be collected from the promoter of such lottery or prize competition, as the case may be, (2) Notwithstanding anything contained in clause (b) of sub-section (1), the State Government may, by notification in the Official Gazette, direct that the tax to be levied in respect of a prize competition shall be at such rate not exceeding 50 per cent of the total sum received or due in respect of such prize competition as may be specified in the notification. Such rate may be different in the case of efferent prize competitions, having regard to the total sum received in respect of such competitions as disclosed from the statements submitted to the Collector u/s 15 for the period of twelve consecutive months immediately preceding the date of the notification under this sub-section. Section 12-A : Notwithstanding anything contained in section 12, there shall be levied in respect of every lottery or prize competition contained in a newspaper or publication printed and published outside the State, for which a license has been obtained .under sections 5, 6 or 7, a tax at such rate as may be specified by the State Government in a notification in the Official Gazette not exceeding the rates specified in section 12 on the sums specified in the declaration made u/s 15 by the promoter of the lottery or prize competition as having been received or due in respect of such lottery or prize competition or in a lump sum having regard to the circulation or distribution of the newspaper or publication in the State. Section 13: (1) The amount of tax to be levied in respect of a lottery or prize competition u/s 12 shall be calculated by the Collector on the total sum received or due in respect of the lottery or prize competition as disclosed in the accounts maintained and statements submitted to him (or a declaration made before him) u/s 15. (2) In cases where no such accounts are maintained, or no such

statements are submitted, or no such declaration is made, or were such accounts, statements or declaration are or is in the opinion of the Collector false or incorrect, the Collector shall make the calculation to the best of his judgment. (3) The tax livable u/s 12 shall in the case of "a prize competition be paid within 30 days of the end of each quarter and in the case of a lottery be paid within 30 days of the date on which such lottery is drawn. (4) If any tax payable u/s 12 is in arrear the Collector may, in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid or any smaller sum above the amount of the tax which the Collector may think it reasonable to recover."

(5) Section 14 of the Act provided that all sums payable as fees or taxes under this Act shall be recoverable as arrears of land revenue. Section 15 provided that every person promoting a lottery or prize competition of any kind shall keep and maintain accounts relating to such lottery or competition and shall submit to the Collector statements in such form and at such period as may be prescribed, and there was a proviso to section 15 which provided that in the case of a lottery or prize competition contained in a newspaper or publication printed and published outside the State every person promoting such lottery or prize competition shall make a declaration in such form and at such period as may be prescribed.

(6) As already stated, the petitioner printed and published the "Squarewords" in the "Delhi Express" since October, 1952. After the passing of the Amending Act Xxx of 1952, which came into force on 1st December, 1952, the petitioner did not take out any license u/s 7 or under any other section of the said Act, but filed a Misc. Application No. 4 of 1953, in the High Court of Bombay in January, 1953, challenging the validity and virus of the provisions of the said Act and the Rules framed there under as being vocative of the fundamental rights of the petitioner to carry on its occupation, trade and business. The State of Bombay was the sole respondent to the application. On 4th February, 1953, an interim consent order was passed by the High Court between the petitioner and the State of Bombay. The relevant portion of the said order was extracted in the writ petition as under:-

"XXXXXXXIT Is By And With Such Consent Ordered That the Petitioners by themselves and their agents undertake to submit returns within fifteen days of the close of each calendar month to the appropriate licensing officer showing the total sum received by the Petitioners from the State of Bombay during each calendar month commencing from 8th December. 1952 first of such returns to be made within a month from this day containing the following particulars : (a) Full name and address of the Promoter, (b) Nature and description of Prize Competition and fee charged for a ticket or coupon, (c) Total number of tickets/ coupons received for the competition from the State of Bombay, (d) Total receipts out of sale of tickets or coupons from the State of Bombay, and (c) Prize offered for the competition. And It Is By And With Such Consent Further Ordered that the respondent will notify the rate or rates of tax under the said Act in respect of such returns as provided in the said Act and It Is Hereby Declared that the Respondent undertakes not to enforce other provisions of the said Act

against the petitioners till the final disposal of this petition by the highest tribunal to which the parties may resort and that the petitioners by their Advocates give an undertaking to the Court that they will pay the "amount of tax within a month of the final disposal of this petition in the Respondent's favor by the highest Tribunal to which the parties may resort subject to any objection as to note or quantum as permitted by the Act And It Is Hereby Further Ordered that this order is without prejudice to the rights "and contentions of the parties."

(7) According to the petitioner returns were duly submitted from time to time as contemplated by the consent order to the Collector of Bombay for the period commencing from 8th Dec., 1952, and ending in September, 1953 when the petitioner stopped promoting the said prize competitions in the "Delhi Express". The State of Bombay did not issue any notification notifying the rate or rates of tax in respect of the returns in terms of the aforesaid consent order, but issued "a general notification on 5th November, 1953, specifying the rate of tax. The notification was as follows:-

Notificationhome Department Bombay Castle, 5th November, 1953 Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. No. PZC1353:- In exercise of the powers conferred by Section 12-A of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 (Bom.LIV of 1948) (hereinafter referred to as the said Act) the Government of Bombay is pleased to specify the rate mentioned in the Schedule hereto annexed, as the rate at which the tax shall be levied in respect of every prize competition contained in a newspaper or publication printed and published outside the State for which a license has been obtained u/s 7 of the said Act: Schedule 25 percent of the sum specified in the declaration said under section, 15 of the said Act by the promoter of the prize competition as having been received or due in respect of such prize competition. By order and in the name of the Governor of Bombay. D. S. Joshi Secretary to Government."

(8) The challenge as to the virus of the Bombay Act went up to the Supreme Court of India, which, by its judgment, dated 9th April, 1957, upheld the validity of the provisions of the Act. In the meantime, on 1st April, 1956, the said Act was repealed and the Central Act of 1955 called "Prize Competitions Act. 1955", came into force.

(9) On 11th December, 1959, the State of Bombay through their Attorney, sent a letter "Annexure A", to the petitioner's office at New Delhi. It was as follows :-

"LITTLE& CO. Central Bank Building. Solicitors & Notaries Bombay, Bombay-1. 11th December, 1959 Our Ref. NV/SNW.29821. Messrs. Express Newspapers (Pvt.) Limited, Post Box No. 571, 9 & 10, Mathura Road, New Delhi. Dear Sirs, Recovery of Prize competition tax in respect of Squarewords. Competitions Nos. D. 1 to D. 17

Under instructions from our client, the State of Bombay, we have to address you as follows :-

2. We are instructed that during the period from 1952 to 1953 you were promoting a prize competition from Delhi in the name of Squarewords Competition and that during that period you promoted 17 competitions under the Nos. D.1 to D. 17. We are instructed that you are liable to pay prize competition tax on these competitions at 25% of the entry fees received by you from the State of Bombay for each competition. The tax due and payable by you on these competitions under the Bombay Lotteries and Prize Competitions Tax Control Act of 1948 has not yet been paid by you. 3. We are also instructed that you have failed to file returns in respect of the prize competitions promoted by you as required by the said Act except for the competitions Nos. D. 4 to D. 9 both inclusive. We are instructed that you have failed and neglected to file returns or furnish any information regarding the other competitions namely Nos. D. 1 to D. 3 and D. 10 to D. 17 though you were called upon to do so. 4. Consequently in exercise of the powers vested in the Collector of Bombay he has, u/s 13(2) of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, assessed the tax on "Square- words" competitions from D. 1 to D.3 and D. 10 to D. 17 on the basis of the average of the receipts by you of entry fees in respect of the competitions D. 4 to D. 9. On this basis, the tax due and payable by you in respect of each competition namely D.1 to D.3 and D. 10 to D. 17 is Rs. 5,299.08 np. and a total of Rs. 58,289.88 for all the said competitions Nos. D. I to D. 3 and D. 10 to D. 17. 5. Similarly you are liable to pay prize competition tax under the said Act as follows on Squarewords Competitions Nos. D. 4 to D. 9 :-
Competition No. Amount of Tax payable. D-4 Rs. 3,627.00 D-5 Rs. 5,277.75 D-6 Rs. 6,967.00 D-7 Rs. 8,149.00 D-8 Rs. 4,270.50 D-9 Rs. 3,503.25 Rs. 31,794.50
6. In the circumstances, we are instructed by our client to call upon you which we hereby do to pay to the Collector of Bombay within four days from the receipt of this letter the total sum of Rs. 90,084.38 np. being the amount payable by you as prize competition tax for the "Squarewords" competitions Nos. D. 1 to D. 17 failing which our client will be constrained to recover the said amount from you as arrears of land revenue. Yours faithfully, sd/-

(10) According to the above letter, the petitioner promoted 17 prize competitions (Squarewords) Nos. D. 1 to D. 17 from Delhi, during the period from 1952 to 1953, and the petitioner was liable to pay prize competition tax on the said competitions at 25 per cent of the entry fee received by the petitioner from the State of Bombay for each competition under the provisions of Bombay Lotteries and Prize Competition Tax Control Act, 1948, and the same had not been paid by the petitioner. It was alleged in the letter that the petitioner had failed to file the returns in respect of the said prize competitions as required by the Act except for the competitions Nos. D. 4 to D. 9 (both inclusive), that the petitioner had failed and neglected to file the returns or furnish any information regarding the said competitions, namely Nos. D. 1 to D. 3 and D. 10 to D. 17, though the petitioner was called upon to do so, that consequently, in exercise of the powers vested in the collector of Bombay he had u/s 13(2) of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, assessed the tax on Squarewords

competitions Nos. D. 1 to D. 3 and D. 10 to D. 17 on the basis of the average of the receipts by the petitioner of entry fees in respect of the competitions Nos. D. 4 to D. 9, and that on that basis, the tax due and payable by the petitioner in respect of each competition, namely D. 1 to D. 3 and D. 10 to D. 17, was Rs. 5,299.08 np., making a total of Rs 58,289.88 np for all the said competitions Nos. D. 1 to D. 3 and D, 10 to D. 17. It was further stated in the letter that the petitioner was also liable to pay prize competitions tax under the aforesaid Act on "Squarewords" Competitions Nos. D. 4 to D. 9 as stated in detail in the latter amounting to Rs. 31,794.50. The Attorney of the State of Bombay, by that letter called upon the petitioner to pay to the Collector of Bombay the total sum of Rs. 90,084.38 np being the amount payable by the petitioner as Prize Competition Tax for the Squarewords Competitions Nos. D.1 to D. 17. and stated that in case of default the State of Bombay would be constrained to recover the said amount from the petitioner as arrears of land revenue.

(11) According to the petitioner, the returns for all the competitions bearing Nos. D.1 to D. 17 were duly submitted, and at no time between the date of the said consent order and the date of the letter viz. 11th December, 1959, did the Collector of Bombay or the State of Bombay ever complain of non-receipt of any return or of failure on the part of the petitioner to submit any return as provided in the consent order, and it was for the first time after about six years that the State of Bombay, by its Attorney's letter, dated 11th December, 1959, alleged that there was a failure to file returns in respect of prize competitions Nos. D. 1 to D. 3 and D. 10 to D. 17 on the part of the petitioner.

(12) In March, 1960, the respondent No. 1 served a recovery notice on the office of the petitioner at New Delhi regarding the amount mentioned above, and the petitioner informed respondent No. 1 that the recovery memo issued, against the New Delhi office was not correct, and that the head office at Madras should be contacted. But, respondent No. 1 again issued a fresh notice, dated 13th June, 1960, to the office of the petitioner at New Delhi calling upon the petitioner to pay the aforesaid amount of Rs. 90,084.38 np, and stating that if the amount was not paid legal proceedings would be taken against the petitioner. In answer thereto, the petitioner sent an application, dated 18th June, 1960, informing respondent No. 1 (1) that no particulars as to how the said amount was determined as payable by the petitioner were furnished, (2) that no particulars were given under what provision of law the said amount would be recovered from the petitioner and under whose instructions or directions, and (3) that the tax demanded was not due from the petitioner and was an illegal levy not authorised by the provisions of law, and Therefore there was no question of the petitioner paying the said amount or becoming a defaulter for non-payment or being liable to be proceeded against legally in respect thereof. The petitioner requested respondent No. 1 to cancel or withdraw the said notice. Copy of the notice, dated 13th June, 1960, and the reply of the petitioner, dated 8th June, 1960, have been filed collectively as Annexure "B" to the writ petition. It was stated in paragraphs 19 and 22 of the writ petition that acting at the instance of

the Collector of Bombay the first respondent was attempting to recover the said sue alleged to be due from the petitioner by threatening to take coercive measures or proceedings, and that respondent No. 1 had agreed to stay his hand only for a fortnight and to proceed further thereafter unless the petitioner invokes the aid of the Court in the meantime. The petitioner, Therefore, filed the present writ petition on 4th August, 1960, praying that the notice of demand, dated 13th June, 1960, issued by respondent No. 1 may be quashed, and that the respondents be directed to forbear from enforcing or taking any steps in enforcement or implementation of the said notice of demand for the various grounds set out in the writ petition.

(13) In opposition to the writ petition, a counter-affidavit of Shri P. L. Bhargava, Naib Tehsildar (respondent No. 1). was filed. One of the objections raised in the said counter-affidavit was that no writ could issue on the petition as framed in the absence of the Collector of Bombay as a party to the writ petition. It was averred in the counter-affidavit that a recovery certificate for Rs. 90,084.38 np against the petitioner was received by respondent No. 1 from the Collector of Bombay u/s 3 of the Revenue Recovery Act 1890 and accordingly a notice was issued by him to the petitioner to pay the said amount. A copy of the said certificate was filed as Annexure "R-1". It was further stated in the counter-affidavit that when the petitioner filed an application on 25th March, 1960, denying the liability of the Delhi Office to pay the tax. respondent 1 returned the recovery certificate (Annexure R-1) to the Collector of Bombay, that the Collector of Bombay, however, sent the said certificate back to him for the recovery of the amount in accordance with law, and that he thereupon issued again a notice to the petitioner on 19th June, 1960. He pleaded that u/s 3(2) of the Revenue Recovery Act, the recovery certificate was conclusive proof of the liability of the petitioner to pay the tax mentioned therein, and unless the levy was set aside in appropriate proceedings, the petitioner was not entitled to challenge the said certificate in the present writ petition, and that the steps taken by respondent 1 for the recovery of the tax after receipt of the recovery certificate from the Collector of Bombay were quite in accordance with law. and were not violative of any fundamental rights of the petitioner. He prayed that the writ petition may, Therefore, be dismissed.

(14) In reply to the counter-affidavit, the petitioner filed a rejoinder- affidavit in which he pleaded that it was the petitioner's case that the Collector of Bombay had no jurisdiction or authority to issue the certificate which was illegal and invalid, and as respondent No. 1 purported to act on the impugned certificate as the agent of or for and on behalf of the Collector of Bombay, it was his duty to satisfy himself whether the impugned certificate on which he was purporting to act was a legal and valid certificate, and that the respondent should have obtained the correct facts from the Collector of Bombay or should have applied to this Court for joining the Collector of Bombay as a party respondent to the writ petition. The petitioner reiterated his contentions in the writ petition regarding the invalidity of the levy of the tax, the certificate issued by the Collector, and

the notice issued by respondent No. 1. Subsequently, the petitioner, with the permission of this Court, imp led the Collector of Bombay as respondent No. 3 to the writ petition. He also filed an amended writ petition in which certain additional grounds were added, and an additional prayer was made for quashing the assessment order alleged to have been passed by respondent No 3 and the certificate (Annexure R. 1), dated 12th February, 1960, issued by the 3rd respondent. In opposition to the various contentions in the writ petition, as amended, a counter-affidavit of Shir Jalaluddin Siddiqui, Deputy Collector of Bombay, was filed on behalf of respondent No. 3. In answer to the said counter-affidavit, the petitioner filed a further rejoinder-affidavit of Shri N. M. Duggar, Manager of the petitioner-company at New Delhi.

(15) As stated above, one of the contentions raised in the counter affidavit of Shri Bhargava (respondent No. 1) was that the petitioner had, inter alia, challenged the legality and validity of the assessment made and the certificate issued by the Collector of Bombay, and that the petitioner could not be permitted to raise the contention as the Collector of Bombay was not made a party to the writ petition. However the Collector of Bombay has since been imp led as respondent No. 3, and he has filed his counter- affidavit in opposition to the writ petition. The aforesaid contention on behalf of the respondents does not, Therefore, subsist.

(16) The petitioner stated in paragraph 25 of the writ petition that the notice of demand was issued at Delhi by respondent No. 1 who had his office at Delhi, and the petitioner received the said notice in Delhi. Respondent No. 2 also is in Delhi. It was further stated that the whole cause of action had arisen in Delhi, and that this Court has, Therefore, jurisdiction to entertain and decide this writ petition, and issue the writ or direction prayed for. The said statements have not been controverted in the counter-affidavit of Shri Bhargava or in the counter-affidavit of Shri Jalaluddin Siddiqui.

(17) Shri S. J. Sarafjee, learned counsel for the petitioner, put forward three contentions. He contended firstly that the assessment made by the Collector of Bombay to the best of his judgment was illegal and invalid. As already stated, the petitioner had filed a writ petition No. 4 of 1953 in the High Court of Bombay challenging the virus of the Bombay Lotteries and Prize Competitions (Control and Tax) Act, 1948, as amended by the Amending Act Xxx of 1952. The said writ petition was admitted by the High Court of Bombay on 7th January, 1953. While "admitting the said petition, the High Court, upon the petitioner and its counsel undertaking to pay such sum as and by way of damages as the High Court might award as compensation in the event of either party affected sustaining prejudice by the immediate injunction, passed an interim order that pending the hearing and final disposal of the writ petition the State Governments and its officers were restrained from enforcing or taking any steps in enforcement, implementation, furtherance or pursuance of any of the provisions of the said Act or the Rules made there under, and that the State Government

and its officers were expressly enjoined to allow the petitioner to carry on the prize competition without a license and without collecting or recovering from the petitioner any tax under the said Act or under the Rules made there under. On 4th February, 1953, the High Court passed a consent order which has already been extracted above. Copies of the said orders, dated 7th January, 1953, and 4th February, 1953, have been filed collectively "as Exhibit 1 with the counter-affidavit of Shri Jalaluddin Siddiqui.

(18) According to the consent order, dated 4th February, 1953, the petitioner was to submit returns within 15 days of the close of each calendar month showing the total sum received by the petitioner from the State of Bombay during each calendar month commencing from 8th December, 1952. It is the case of the petitioner that he duly submitted from time to time the returns as contemplated by the said order to the Collector of Bombay for the period commencing from 8th December, 1952, and ending with September, 1953, when the petitioner stopped the prize competitions. On the other hand, Shri Jalaluddin Siddiqui averred in his counter affidavit that the petitioner submitted returns for, competitions Nos. D. 4 to D. 9 only, and did not file any returns in respect of competitions Nos. D. 1 to D. 4 and D. 10 to D. 17. There is thus an assertion by the petitioner and a denial by the respondents. The subsequent conduct of the parties, however, shows that the petitioner must have submitted the returns for the period commencing from 8th December, 1952, to September, 1953. The consent order was passed on 4th February, 1953. Admittedly, returns in respect of competitions Nos. D. 4 to D. 9 were submitted by the petitioner. It is improbable that the petitioner would have submitted returns only for D. 4 to D. 9 and not for the other competitions. If he had not done so, one would expect the Collector to have written to the petitioner enquiring about the same. No such enquiry was made. In fact, nothing further was done by the Collector or the Government till 16th December, 1957, when for the first time a letter (Exhibit 2 annexed to the counter-affidavit of Shri Siddiqui) was sent by the Collector of Bombay to the office of the petitioner at Delhi and to the office of the petitioner-company at Madras. Even in this letter, there was no reference to the failure of the petitioner to submit the returns in respect of some of the competitions. It was merely stated in the said letter as follows :-

"YOU are requested to forward a statement of account of the Prize Competition Square Words in the attached form in quadruplicate with the help of your account books and supporting vouchers, etc. In case the detailed information is not available, please state the total number of the competitions conducted by you. their Serial numbers and the total amount received by you from the Bombay State in respect thereof after 3-10-1952. Please treat this as immediate as Government is pressing in the matter."

(19) On 21st December, 1957, the Madras Office of the petitioner- company replied to the Collector stating that they were forwarding the Collector's letter to their Bombay Office for necessary action. On 27th January, 1958, the Manager of

the Delhi Office of the petitioner-company wrote to the Collector of Bombay in reply to the latter's letter, dated 16th December, 1957, stating that the square words competition was conducted by them for a very short period under the control and supervision of the then Managing Editor in charge, Competitions, that the last competition conducted was No. D-49 when the Managing Editor, left the service and joined Square Words Limited, Madras, from where he started the competitions under the name of Square Words Limited, that all the records relating to the competition were taken away by him for his reference and there were no records with them that no record of entry fees received was kept State-wise, and that they were not, Therefore, in a position to give any information about the fees received from Bombay State. On 22nd February, 1958, the Director of the Bombay Office of the petitioner-company wrote to the Collector of Bombay that the Square Words Competitions Nos. D.1 to D.17 were held from Delhi by Express Newspapers Limited, and their Branch Office at Delhi had sent a reply to the Collector's letter, dated 27th January, 1958, and that the competitions from No. D. 18 onwards were not held by their concern, but were held by M/s Square Words Limited. The Collector of Bombay thereupon wrote a letter to the Delhi Office of the petitioner-company on 4th September, 1958, stating that there was a discrepancy in the letters received from the Delhi Office and the Madras Office regarding the number of square words competitions conducted by them, and that the correct number of square words competitions conducted by each of the offices may be furnished. In reply thereto, the Delhi Office wrote a letter on 12th September, 1958, stating that on checking they found that there was a typing mistake in their letter, dated 27th January, 1958 (viz. D. 49 for D. 19), that the square words competitions conducted from Delhi were D.1 to D. 17 only, and that Square Words Limited, Madras, was altogether a separate company. The aforesaid letters, dated 21-12-1957, 27-1-1958, 22-2-1958, 4-9-1958 and 12-9-1958 have been filed as Exhibit 3 collectively with the counter-affidavit of Shri Siddiqui. Nothing further was done by the Collector or the Government till 9th July. 1959, when the Collector is stated to have assessed (Exhibit 4 annexed to the counter-affidavit) the tax due from the petitioner in respect Competitions Nos. D. 1 to D.17 partly on the basis of their returns regarding competitions Nos. D. 4 to D. 9, and partly to the best of his judgment regarding competitions Nos. D. 1 to D. 3 and D. 10 to D. 17. It has to be noted that in none of the letters written by the Collector of Bombay reference was made either to the receipt of the returns in respect of competitions Nos. D. 4 to D. 9 only or the failure to submit the returns in respect of competitions Nos. D. 1 to D. 3 and D. 10 to D. 19. It was submitted by the petitioner in the rejoinder that the correspondence suggests that the State Government and the Collector of Bombay had misplaced the relevant files and papers and were trying to reconstruct the game. That apart from asking for information regarding the number of the competitions and statement of accounts nothing further was done by them, that no intimation was given to the petitioner either before or immediately after the alleged assessment, and that it was only on 11th December. 1959, that the petitioner was informed about the assessment through

the Attorney's letter (Annexure "A" to the writ petition). The circumstances set out above appear to bear out the submission of the petitioner in the rejoinder. In view of the absence of any mention of the failure of the petitioner to submit returns in any of the letters of the Collector of Bombay for a long period of nearly six years till the date of the assessment order, I am inclined to accept the version of the petitioner that the returns for the prize competitions for the period from. 8th December 1952, to September 1963, were duly submitted pursuant to the consent order, and as suggested by the petitioner, they might have been lost or misplaced by the Collector of Bombay or the State Government.

(20) Coming now to the first contention of Shri Sarafjee regarding the legality and validity of the assessment, Shri Sarafjee urged three grounds in support of the said contention. The first was that according to the consent order, dated 4th February. 1953, the Government of Bombay was to notify the rate or rates of tax under the Bombay Lotteries and Prize Competitions Control and Tax Act No. Liv of 1948 in respect of the returns submitted by the petitioner, but failed and neglected to do so, that the Government merely published a general notification on 5th November, 1953, after the competitions in the Delhi Express had been closed and were no longer promoted by the petitioner, that the said notification had only a prospective operation and not retrospective operation, that the notification applied only to other licensed promoters, and since the petitioner had never take any license in respect of the competitions published in the Delhi Express u/s 7 or any other provision of the said Act. the said notification had no application so the case of the petitioner, and that inasmuch as no rate had thus been fixed by the Government as provided in .the consent order, and no rate was applicable to the petitioner in respect of the competitions in question, the petitioner was not liable to pay any tax at all. These contentions were mentioned by the petitioner in paragraph 17 of the amended writ petition. Shri Siddiqui merely denied the said contentions in his counter-affidavit. In answer to the said denial, it was stated in paragraph 9 of the rejoinder affidavit of Shri N. M, Dugar that in fact. the State Government had been issuing specific notifications, and an instance was referred to, viz. in the case of the Loksatta Marathi Crossword Prize Competition promoted by the petitioner in which a specific and separate Notification, dated 15th July, 1950, was issued, although there was in existence a general Notification, dated 24th December. 1948.

(21) It is clear from the consent order, dated 4th February, 1953. that the Government of Bombay had agreed by and under the said order to notify the rate or rates of tax in respect of the returns which the petitioner had agreed to submit. Admittedly, the Government did not notify the rate or rates in respect of the said returns. The publication of the competitions in the Delhi Express was closed in September, 1953. The notification, dated 5th November, 1953, relied upon by the respondents was published on 5th November, 1953. along after the said closure of the competitions. The said notification did not refer to the petitioner or the competitions published by the petitioner in the Delhi Express or to the consent order. It merely stated that in exercise of the powers conferred by

section 12A of the Bombay Act Liv of 1948, the "Government of Bombay was pleased to specify the rate mentioned in the Schedule hereto annexed, as the rate at which the tax shall be levied in respect of every prize competition contained in a newspaper or publication printed and published outside the State for which a license has been obtained u/s 7 of the said Act". The notification thus referred only to other licensed promoters and not to the petitioner. The petitioner had not taken any license in respect of the competitions published in the Delhi Express u/s 7 or any other provision of the Act. The notification was not, Therefore, one which was contemplated in or by the consent order. The provisions of section 12 and 12A of the Bombay Act No. Liv of 1948 which have been extracted above apply only to prize competitions for which a license had been obtained under sections 5, 6 or 7 of the Act. A perusal of the provisions in the Act shows that tax can be levied only if a license had been obtained. If no license has been obtained, there may be a penalty imposed u/s 8, but no power appears to have been given to levy tax under the Act, as the Act does not contain any specific provision for levy of tax on unlicensed and unlawful prize competitions. The petitioner did not obtain such a license for the competitions published in the Delhi Express. That was why provision was specially made in the consent order that the Government of Bombay should notify the rate or rates in respect of the returns filed by the petitioner for the competitions in question. Since the notification. dated 5th November, 1953, cannot be said to specifically relate to the competitions published by the petitioner in the Delhi Express, the rate or rates for the returns submitted by the petitioner cannot be said to have been notified by the Government of Bombay as stipulated in the consent order. Further, a plain reading of the notification shows that it was prospective in operation "and not retrospective. The rate of 25% of the total sum received in respect of a prize competition for the purpose of levying tax was provided in section 12. But, as already pointed out, the provision in section 12 applies only to prize competitions for which a license has been obtained. Since the petitioner had not obtained any license in the competition in question, the rate mentioned in section 12 is not applicable. Similarly, in the case of competitions contained in a newspaper or publication printed and published outside the State of Bombay and for which a license had been obtained under sections 5, 6 or 7 of the Act, section 12A provides for the levy of tax at such rates as may be specified by the State Government in a notification in the Official Gazette not exceeding the rates specified in section 12, This provision also is not applicable to the competitions published by the petitioner in the Delhi Express as it applies only to competitions for which a license had been obtained. It is true that the petitioner had undertaken in or by the consent order to pay the amount of tax after the final disposal of the writ application. But, the undertaking was subject to the notification by the Government of the rate or rates in respect of the returns submitted by the petitioner, The Government of Bombay did not notify any rates in respect of the competitions in question as provided in the consent order. Thus, the result was that there was not rate applicable to the petitioner in respect of the competitions published in the Delhi Express, and there could, Therefore, be

no valid levy of tax in respect of the said competitions even u/s 13(2) of the Act. The assessment made by the Collector of Bombay on 9th July, 1959 (Exhibit 4 annexed to the counter-affidavit of Shri Jalaluddin Siddiqui). purports to be at the rate of 25% of the entry fee received from Bombay State as estimated by the Collector to the best of his judgment u/s 13(2) of the Act. But, the said rate was not one legally fixed by the Government of Bombay by an appropriate notification. The said assessment has. Therefore, to be held to be illegal and invalid.

(22) The second ground urged by Shri Sarafjee was that the assessment by the Collector in respect of competitions Nos. D. 1 to D. 3 and D. 10 to D. 17 was made by the Collector to the best of his judgment u/s 13(2) of the Act, that section 13(2) applies only to cases where no accounts were maintained, or no statements (returns) were submitted, or no declaration was made as provided in section 15 of the Act, or where such accounts, statements or declarations were or were in the opinion of the Collector false or incorrect, that none of the said requirements of the section exist in the present case, as the petitioner had submitted his returns or statements and it was not the case of the Collector that the statements submitted by the petitioner were false or incorrect, and that consequently section 13(2) was not applicable and the assessment purported to have been made there under .was illegal and invalid. Section 15 provides as follows :

"EVERY person promoting a lottery or prize competition of any kind shall keep and maintain accounts relating to such lottery and competition and shall submit to the Collector statements in such form and at such period as may be prescribed. Provided that in the case of a lottery or prize competition contained in a newspaper or publication printed and published outside the State, every person promoting such lottery or prize competition shall make a declaration in such form and at such period as may be prescribed."

(23) Section 13(2) which has been already extracted above, empowers the Collector to make a calculation of the tax to the best of his judgment in cases where no accounts were maintained or no statements were submitted or no declaration was made as provided in section 14, or where such accounts, statements or declaration were or were in the opinion of the Collector false or incorrect. In the present case, the petitioner submitted his returns. It is not the case of the respondents that the said returns were false or incorrect. It is a case in which the Collector proceeded on the basis that the returns in respect of competitions Nos. D. 1 to D. 3 and D. 10 to D. 17 were not filed and hence not available and on the basis of the average of the receipts in competitions Nos. D. 4 to D. 9 for which, according to him, information was available from the returns filed by the petitioner. The respondents' case also is not that any statement or return made u/s 15 was found by the Collector to be false or incorrect. On the finding that the petitioner did submit his returns, section 13(2) was not clearly applicable. The ground urged by the learned counsel for the petitioner has,

Therefore, to be accepted as correct. The failure to file the returns (statements), or the falsity or incorrectness of such returns or statements is the foundation on which the assessment based on best judgment of the Collector could be made, and when the said foundation is not present, the assessment made u/s 13(2) has to be held to be illegal and invalid.

(24) The third ground urged by Shri Sarafjee was that the Collector of Bombay while purporting to act u/s 13(2) who was bound to act in a judicial or quasi-judicial manner, and to observe all rules of natural justice, and that since no notice was given to the petitioner before the Collector made the assessment u/s 13(2). the assessment was vocative of principles of natural justice and should be quashed on that ground. On the other hand, it was "asserted in the counter-affidavit of Shri Jalaluddin Siddiqui that the Collector was not bound to act in a judicial or quasi-judicial manner or to observe the rules of natural justice while exercising the power u/s 13(2) of the Bombay Act No. Liv of 1948. Whether the assessment of the tax .under section 13(2) is a judicial or quasi-judicial function or not, it cannot be disputed that the assessment and levy of tax has civil consequences. It is now settled by the decisions of the Supreme Court that even an administrative order which has civil consequences has to be passed in accordance with principles of natural justice. The assessment which imposes a financial liability on the petitioner should have been made after giving an opportunity to the petitioner to represent his case regarding the proposed assessment u/s 13(2) on the basis of the best judgment of the Collector as regards competitions Nos. D. 1 to D. 3 and D. 10 to D. 17. Even as regards the assessment in respect of competitions Nos. D. 4 to D. 9, the position is the same, as the said assessment also, which imposes a financial liability upon the petitioner, should have been made after giving an opportunity to the petitioner to represent his case regarding the same. Admittedly. no such opportunity was given to the petitioner. The assessment is, Therefore, liable to be quashed on the ground that it was vocative of principles of natural justice.

(25) Shri Sarafjee also advanced an argument that the competitions Nos. D. 1 to D. 3 were published prior to 2nd November, 1952. i.e. before the Amending Act Xxx of 1952 was enacted, and, Therefore, the assessment in respect of the said three competitions has to be held to be invalid in any case. But, this averment was made for the first time in the rejoinder affidavit, and it was not so alleged by the petitioner at any earlier stage. This argument cannot, Therefore, be accepted.

(26) The second contention of Shri Sarafjee was that even if the assessment by the Collector was legal and valid, his action in sending a certificate to respondent No. 1 for recovery of the amount was illegal and invalid. In support of the said contention, Shri Sarafjee advanced two arguments. Both the arguments were based on the interpretation of section 3 of the Revenue Recovery Act, 1890, which runs as follows :-

"3(1) Where an arrear of land revenue, or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter being or having property in a

District other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other District a certificate in the form as nearly as may be of the Schedule, stating- (a) the name of the defaulter and such other particulars as may be necessary for his identification; and (b) the amount payable by him and the account on which it is due. (2) The certificate shall be signed by the Collector making it or by any officer to whom such Collector may, by order in writing, delegate this duty, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated. (3) The Collector of the other District shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own District."

(27) The term "defaulter" has been defined in section 2(3) of the said Act as meaning-

"A person from whom an arrear of land revenue, or a sum recoverable as an arrear of land revenue is due, and includes a person who is responsible as surety for the payment of any such arrear or sum."

(28) The first argument advanced by the learned counsel was that on a true construction of section 3(1) of the Revenue Recovery Act, 1890, if the alleged defaulter has property or in any event sufficient property in the District of the Collector wherein arrears of land revenue or a sum recoverable as arrears of land revenue has become payable, it is not open to the Collector of the District in such a case to send a certificate u/s 3(1) of the said Act to a Collector of another District. The learned counsel argued that the power of sending a certificate by a Collector of a District to the Collector of another District can be exercised only where there is no property of the defaulter in the District of the Collector where the arrear of land revenue or a sum recoverable as arrear of land revenue has become payable, and the alleged defaulter has property in the District of the other Collector to which the certificate is sent. The learned counsel submitted that in the present case the petitioner had considerable property, and in any event sufficient property, in the District of the Collector of Bombay city to meet the claim against the petitioner, and, Therefore, the action of the Collector of Bombay in sending a certificate to the Collector of Delhi was without jurisdiction and illegal and invalid. Shri Sarafjee further argued that if section 3(1) of the Revenue Recovery Act is not construed in the above manner, it would mean that the said provision gives an absolute, unguided and uncanalised power to the Collector of a District either to recover the land revenue or a sum recoverable as arrears of land revenue in his own District or to send a certificate to the Collector of any other District, that the provision thus enables the Collector of a District to pick and choose between persons similarly situated without there being any guiding principle in that behalf, that the proceedings under the Revenue Recovery Act, 1890, are more onerous and prejudicial than similar proceedings under the Bombay City Land Revenue Act, 1876, and that the provisions of Section 3(1) of the Revenue Recovery Act, 1890, are, Therefore, violative of Article 14 of the

Constitution.

(29) On the other hand, Shri Brij Bans Kishore, learned counsel for the respondents, argued that no such limitation could be read from the language of section 3(1) of the Revenue Recovery Act, that on a true construction of the said sub-section, it was open to the Collector of Bombay to send the certificate to respondent No. I as the amounts due from the petitioner could be collected as arrears of land revenue, and that it was open to the Collector to do so even if the petitioner had properties in Bombay which fact, however, was not admitted by the respondents. He submitted that the recovery proceedings were taken in Delhi, as the square words competitions were conducted from Delhi, and that in any event, the taking of recovery proceedings in Delhi had caused no prejudice whatever to the petitioner. He further submitted that it cannot be said that the provision in section 3(1) of the Revenue Recovery Act gives unguided power or that it enables the Collector to pick and choose between persons similarly situated or that the said provisions are more onerous than the provisions in the Bombay City Land Revenue Act, 1876, and that there is no question of there being any discrimination or picking and choosing, as the Collector would naturally proceed against the properties of a A defaulter, who is in the position of a debtor, from which it would be the easiest to realise the amount, just as any other creditor under the ordinary law is entitled to do.

(30) Before considering the above arguments, it is convenient to decide first as to whether the petitioner had properties in Bombay. The petitioner stated in paragraph 17(j) of the amended writ petition that the petitioner-company had considerable property and in any event sufficient property, in the District of the Collector of Bombay City to meet the claim against the petitioner. This averment was merely denied by Jalaluddin Siddiqui. The petitioner reiterated in the rejoinder affidavit that the petitioner had property in Bombay during the relevant period i.e. November, 1952, to April, 1960, and continued to own assets in the said city which were far in excess of the value of the tax demanded. It was averred that the petitioner owned the Express Building at Church Gate in Bombay, the written down value of which, as on 31-3-1968, was Rs. 5,47,579.00, and that the petitioner also owned Sassoon House property in Bombay, the written down value which, as on 31-3-1968, was Rs. 59,152.00. There is no reason to doubt the correctness of the said averments in the affidavits filed on behalf of the petitioner. It has, Therefore, to be presumed for the purpose of this case that the petitioner had and continued to have property at the relevant time at Bombay sufficient for the payment of the tax levied. The question, however, is as to whether the Collector had to proceed against the petitioner's property at Bombay in the first instance, and whether he had no jurisdiction at all to proceed against the property at Delhi before proceeding against the property at Bombay. Section 3(1) of the Revenue Recovery Act 1890 does not contain any such limitation. The sub-section merely provides that where an arrear of land revenue or a sum recoverable as an arrear of land revenue is payable to a collector by a defaulter being or having a property an a District

other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other District a certificate for the recovery of the amount. Reference was made by Shri Sarafjee in this connection to the decision in *Manohar Lal v. State of Pepsu*, Air 1956 Pepsu 14, in which

(31) Passey, C.J. and Chopra, J. observed that neither of the provisions in" sections 3 and 4 of the Revenue Recovery Act, 1890. applies to a case where a sum recoverable as an arrear of land revenue is payable to a Collector by a defaulter residing or holding property in the Collector's own District. The said observation, no doubt, supports the contention of the petitioner, but, it was just an observation without any detailed discussion of the point in question. In that case, certain arrears of land revenue were sought to be recovered under the provision of Patiala Recovery of State Dues Act, and an argument was advanced that the said State Act stood repealed when the Revenue Recovery Act, 1890, was extended in its application to the Pepsu State, and that the recovery could only be made under the Revenue A Recovery Act, 1890. The learned Judges repelled the said contention by making the above observation and holding that the Revenue Recovery Act, 1890, had no application to the case before them and, Therefore, the question of repeal of any corresponding law in the State did not arise. The question as to whether the action of a Collector in sending a certificate to the Collector of another District even though the defaulter had property in his own District is illegal and without jurisdiction did not arise for consideration in that case. The defaulter in that case had property within the District of the Collector, and the Collector was proceeding against that property under the said Act. It was in that situation that the learned Judges observed that the provisions of the Revenue Recovery Act were not applicable to that a case. The said decision cannot, Therefore, be of any assistance to the petitioner in the present case in which the Collector was proceeding against the property of the petitioner in Delhi i.e. in a District other than his own.

(32) However, I am of the view that in the absence of any limitation in section 3(1), a Collector of a District has jurisdiction to send a certificate to the Collector of another District in which the defaulter is or has property, even when the defaulter has property in the District of the Collector who sends the certificate. To accept the argument of Shri Sarafjee that the power sending a certificate by a Collector of a District to the Collector of another District can be exercised only when there is no property or sufficient property of the defaulter in the District of the Collector where the arrear of land revenue has become payable would be to read additional words into the section which are not in the section. As regards the argument of the learned counsel that section 3(1) gives an absolute, unguided and uncanalised power to the Collector of a District either to recover the land revenue or a sum recoverable as arrears of land revenue in his own District or to send a certificate to the Collector of another District in a case where the defaulter has property in both the Districts it cannot be said that the power given to the Collector by section 3(1) is an absolute, unguided and uncanalised power. It is now settled by the decisions of the Supreme Court that it is not

necessary that the section itself should contain the criteria or guidelines, and such guidelines or criteria can be gathered from the preamble, the policy and the provisions of the Act (vide *Kansari Haldar v. State of West Bengal*, Air 1960 S.C. 4570 and *Kedar Nath Bajoria Vs. The State of West Bengal*,). The Preamble to the Revenue Recovery Act states that the said Act was enacted as it was expedient to make better provision for recovering certain public demands. The scheme of the Act and the provisions therein show that the purpose of the Act is to provide a summary procedure for a speedy recovery of public demands. The Collector who desires to send a certificate

(33) A u/s 3(1) has to bear in mind the said purpose and act in a manner which subserves the said purpose. In a given case, if the defaulter has property not only in his District but also in some other District, the Collector to whom the arrear of land revenue is payable has to decide against which property he would proceed first having regard to the circumstances of the case and the "aforesaid purpose of the Act. viz. a speedy recovery of the arrear of land revenue. In other words, the Collector may send a certificate to the Collector of the other District in which the defaulter has property if, in his opinion, it would ensure a speedy recovery of the amount due. In that view, the provision in section 3(1) of the Revenue Recovery Act, 1890, cannot be said to have given an absolute, unguided and uncanalised power to the Collector of a District either to recover the land revenue from the property of the defaulter in his own District or to send a certificate to the Collector of another District in which the defaulter has property. Shri Sarafjee pointed out that the procedure under the provisions of the Revenue Recovery Act is more onerous and harsh when compared with the procedure under the Bombay City Land Revenue Act, 1876. It may be stated here that the Bombay City Land Revenue Act was repealed by the Maharashtra Land Revenue Code, 1966, which came into force on 15th August, 1967. But, it is the old Act that governs the present case. Shri Sarafjee pointed out that section 17 of the Bombay City Land Revenue Act provides an appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, while u/s 4(1) of the Revenue Recovery Act, 1890, the remedy available to the defaulter is only by way of a suit after paying the amount alleged to be due. He referred in this connection to the decision in *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, , in which Mahajan, C.J. observed at page 406 that the remedy provided by the C.P. & Berar Sales tax Act was of an onerous and burdensome character as the assessed before he can avail of it had to deposit the whole amount of the tax. The learned counsel also referred to the decision in *S.K. Dutt, Income Tax Officer and Another Vs. Anglo-India Jute Mills Co. Ltd.*, , *Calcutta Chemical Co. Ltd. Vs. The Assistant Collector of Customs and Others*, , *S.V.M. Syed Cassim Vs. Collector of Central Excise, Madras*, and *M.G. Abrol Vs. Shantilal Chhotalal and Co.*, . But, even if the procedure under the Revenue Recovery Act, 1890, is more onerous than the procedure under the Bombay City Land Revenue Act, 1876, as contended by the learned counsel for the petitioner, he cannot derive any assistance from the same since, as pointed out by me "above, the

provision in section 3(1) of the Revenue recovery Act does not confer an absolute and unguided and uncanalised power on the Collector. Under that sub-section the Collector has to bear in mind the policy and the purpose of the Act, and proceed against the property of the defaulter in his own District or against the property of the defaulter in another District according as the former course or the latter subserves the said policy and purpose. The argument advanced by Shri Sarafjee on the basis of section 3(1) of the Revenue Recovery Act has, Therefore, to be rejected.

(34) The second argument advanced by Shri Sarafjee was that the conclusiveness of a certificate u/s 3(2) of the Revenue Recovery Act cannot and does not prevent this Court, in exercising jurisdiction under Article 226 of the Constitution, from going into the question as to whether the assessment or levy of tax for the recovery of which the certificate has been issued was valid in law and was in accordance with the provisions of Bombay Act No. Liv of 1948. The learned counsel urged that the conclusiveness of a certificate u/s 3(2) of the Revenue Recovery Act, 1880, can arise only if a valid certificate in conformity with section 3(1) of the said Act has been issued, that the certificate u/s 3(1) can be validly issued only if the two conditions precedent in section 3(1) are fulfilled, viz. (1) that the amount in question is recoverable as an arrear of land revenue, and (2) that the same is lawfully payable to the Collector who sends the certificate as arrear of land revenue by a defaulter as defined in the said Act, and that the conclusiveness or finality of the certificate u/s 3(2) of the Revenue Recovery Act does not prevent this Court under Article 226 of the Constitution from going into the question as to whether the aforesaid conditions precedent have been fulfilled in a given case, and for that purpose considering the question as to whether the provisions of the Bombay Act Liv of 1948 have been complied with. The argument of the learned counsel was that section 3 of the- Revenue Recovery Act postulates that the "arrears are lawfully payable, and the same is a condition precedent for the issue of a certificate, that it is, Therefore, a jurisdictional fact, and that the conclusiveness mentioned in sub-section (2) does not attach to the said jurisdictional fact. and the same can be considered by this Court under Article 226. The object of this second argument was only to maintain that this Court has jurisdiction to go into the question as to whether the alleged arrears were lawfully payable to the Collector. and that the finality and conclusiveness of the certificate mentioned in sup-section (2) of section 3 is not a bar There cannot be any doubt about the correctness of this second argument. Sub-section (2) of section 3 provides only that the certificate shall be conclusive proof of the matters stated therein. But, the certificate is conclusive proof of the matters stated therein only in the proceedings under the Revenue Recovery Act, and not in independent proceedings like "a suit in a civil Court or a petition under Article 226 of the Constitution in which the legality of the matters stated in the certificate can always be challenged by the aggrieved party (vide Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, Lilavati Bai Vs. The State of Bombay, and Annamma Kunjamma and Others Vs. State of Travancore-Cochin

and Another,) Thus, while the first argument of the learned counsel that it was not open to the Collector of Bombay to send the certificate to Delhi as the petitioner had property in Bombay, cannot be accepted, the second argument that this Court has jurisdiction under Article 226 to go into the questions as to whether the sum in question was recoverable as an arrear of and revenue and whether the same is lawfully payable to the Collector of Bombay who sent the certificate, and that the conclusiveness mentioned in sub-section (2) of section 3 is not a bar, has to be accepted. It follows from the above discussion that the second contention of Shri Sarafjee that even if the assessment by the Collector was legal and valid, his action in sending a certificate to respondent No. 1 for recovery of the amount was illegal and invalid on the ground that the petitioner had property in Bombay, cannot be accepted.

(35) However, in the view taken by me that the assessment and levy by the Collector of Bombay was illegal and invalid and liable to be quashed it has to be held that the certificate based on the said illegal assessment and levy has also to be quashed.

(36) The third contention of Shri Sarafjee was that the recovery notice sent by respondent No. 1 to the petitioner was also invalid. This follows from the above finding that the assessment and the certificate were illegal and invalid.

(37) For the above reasons, I allow the writ petition and quash the assessment order (Exhibit 4 annexed to the affidavit of Jalaluddin Siddiqui) dated 9th July 1959, in respect of cross words. Nos. D. 1 to D. 17, the certificate annexed to the counter-affidavit of Shri P. L. Bhargava) dated 12th July 1960, and the notice of demand, dated 13th June, 1960, issued by Shri P. L. Bhargava, in the circumstances, I direct the parties to bear their own costs in this writ petition.