

(1959) 03 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2231 of 1958

Firm Thakur Das Sunder Das

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 24-03-1959

Acts Referred:

Constitution of India, 1950 — Article 14, 212, 348
Industrial Disputes Act, 1947 — Section 10
Minimum Wages Act, 1948 — Section 27

Citation : (1959) 10 STC 432

Hon'ble Judges : M.L. Chaturvedi, J;J.N. Takru, J

Bench : Division Bench

Advocate : J. Swarup and Hari Swarup, for the Appellant; The Advocate-General and The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

The Judgment of the Court was delivered by

M.L. Chaturvedi, J.—This petition, some other similar petitions in which notices had been ordered to be issued, and a number of others in which notices had not been ordered to be issued, were put up together, as the learned counsel for the petitioners proposed to argue the same points in all these petitions. In the present petition as well as in some others, grounds have not been taken to the effect that the impugned Act was void, as it contained unauthorised delegation of power and was inconsistent with Article 14 of the Constitution. But in all the cases in which notices have not been issued, these two points have also been taken. The learned counsel for the petitioners, Mr. Jagdish Swarup, argued the above first two points and, after he had concluded his arguments, the learned Junior Standing Counsel raised an objection that, in the petitions in which the above two points had not been taken in the grounds, the learned counsel should not be permitted to argue the points. The objection was made at a late stage of the case and it was further clear that the points had to be considered in some of

the writ petitions in which they had been taken. There is the further fact that the learned counsel for the State could not be said to have been taken by surprise, because there was a break of nearly a month after the above two points had been argued by the learned counsel for the petitioners and the time when he started with the points that had actually been taken in the writ case. This break of a month was caused by the fact that one of the Judges, constituting the Bench, was on leave for a period of three weeks. In view of all these circumstances, we permitted the above two points to be argued even in the petitions in which they had not been taken in the grounds set forth in the petitions.

2. The petitioner is a dealer in cloth and carries on his business for the purchase and sale of cloth in Agra. He is registered as a dealer under the U.P. Sales Tax Act. The petitioner had been paying sales tax on the sales effected by him at a certain rate, but subsequently tax on some of the commodities was made payable at one point of sale and the rate of tax was fixed at one anna per rupee. In view of the change in the law, the Sales Tax Officer assessed a portion of the turnover of the petitioner at the enhanced rate by his assessment order dated 20th May, 1958, and also issued a notice of demand for the payment of the sum assessed. The present petition was filed on the 12th August, 1958, praying for the issue of a writ in the nature of certiorari quashing the assessment order dated 20th May, 1958, and the demand notice bearing the same date. It was also prayed that a writ in the nature of mandamus be issued commanding the Sales Tax Officer, Agra, not to give effect to the assessment order and not to enforce the notice of demand. The petition has been opposed on behalf of the State and, in order to appreciate the points in dispute between the parties, a short history of the legislation on the point may be given.

3. The U.P. Legislature passed an Act to provide for the levy of tax on the sale of goods called the U.P. Sales Tax Act, No. XV of 1948. It came into force from the 1st April, 1948. (It will hereinafter be referred to as the Principal Act). u/s 3(1) it is provided that every dealer shall in each assessment year pay tax at the rate of 3 pies per rupee on his turnover of the previous year which shall be determined in such manner as may be prescribed. A new Section 3A was added by the U.P. Sales Tax (Amendment) Act, No. XXV of 1948. Sub-section (1) of this section provided that notwithstanding any thing contained in Section 3, the State Government may, by notification in the official Gazette, declare that the turnover in respect of any goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify. Under Sub-section (2) the State Government is further authorised to declare that the turnover of the dealer in respect of such sale be taxed at such rate as might be specified not exceeding one anna per rupee, provided the sale related to goods specified in the sub-section. On the goods not specified in the sub-section the maximum tax was fixed at 9 pies per rupee.

4. On 9th June, 1948, the State Government issued a notification u/s 3 fixing tax

on the sale of cloth manufactured by mills at 6 pies per rupee. It appears that this state of affairs continued for more than 7 years, and in March, 1956, the Government decided to enhance the tax to one anna per rupee even on articles which were not specified in Sub-section (2) of Section 3A. Ordinance No. IX of 1956, called the U. P. Sales Tax (Amendment) Ordinance, was published in the Government Gazette, U.P. Extraordinary, dated 31st March, 1956. By this Ordinance, Sub-section (2) of Section 3A of the Act was deleted and a new sub-section inserted. The amendment provided that if the State Government made a declaration under Sub-section (1), it might further declare that the turnover of the dealer, who was liable to pay tax on the sale of such goods, be taxed at such rate as might be specified not exceeding one anna per rupee. On the same date a notification was issued declaring that the turnover in respect of the goods specified in the list attached to the notification was liable to tax in some cases at the point of sale by the importer and in others at the point of sale by the manufacturer. It was further declared that the turnover with effect from the 1st April, 1956, was liable to be taxed at the rate of one anna per rupee. Item No. 5 of the list appended to the notification included cloth of all kinds. Section 1 (2) of the Ordinance further provided that the amendment to Section 3A of the Principal Act made by the Ordinance would have effect on and from the 1st day of April, 1956.

5. It would appear from what has been stated above that the Ordinance and the notification were issued on the 31st March, 1956, whereas the amendment made in Section 3A of the Principal Act was to have effect from the next day, that is 1st April, 1956. The validity of the notification was challenged in a writ petition filed in this Court, which was referred to a Full Bench. The Full Bench held that the notification having been issued before the amendment came into operation, it did not have the force of law. The decision of the Full Bench is reported in the case of Messrs Adarsh Bhandar v. Sales Tax Officer, Aligarh 1957 A.L.J. 654. A number of points were urged before the Full Bench, which had been dealt with in detail in the two separate but concurrent judgments, but they need not be mentioned. The Ordinance was substituted by U.P. Sales Tax (Amendment) Act, No. XIX of 1956.

6. After the decision of the above Full Bench, the U.P. Legislature amended the U.P. Sales Tax (Amendment) Act, No. XIX of 1956. The relevant portion of Section 2 of the U.P. Sales Tax (Amendment) Act, No. XXIV of 1957, is as follows :-

For Sub-section (2) of Section 1 of the U.P. Sales Tax (Amendment) Act, No. XIX of 1956, the following shall be and be deemed to have always been substituted :

(2) This section, so much of Section 3, as relates to the substitution of the second proviso to Sub-section (1) of Section 3 of the U.P. Sales Tax Act, 1948, (hereinafter called the Principal Act) and Section 4 shall have effect on and from the 31st day of March, 1956....

7. Concerning some other sections it was said that they would have effect from the 1st April, 1956; and Sections 10 and 16 were to have effect from such date as the State Government might appoint. A writ petition by another dealer, namely, Firm Bangali Mal Satish Chandra Jain was filed this time, again challenging the validity of the notification dated the 31st March, 1956, in spite of the coming into force of the U.P. Sales Tax (Amendment) Act, No. XXIV of 1957. The case was again referred to a Full Bench, and the Full Bench took the view that, though the Amendment Act, No. XIX of 1956, should be deemed to have come into operation on the 31st March, 1956, the date of the issue of the impugned notification, still the notification continued to be invalid, as it had not, in fact, been issued under the amended Section 3A. This Full Bench decision is reported in the case of Firm Bangali Mal Satish Chandra Jain v. Sales Tax Officer, Agra 1958 A.L.J. 228.

8. It was after this decision that the Amendment Act, now impugned before us, was enacted by the U.P. Legislature. It is styled as U.P. Sales Tax (Validation) Act, 1958, and it came into force on the 6th May, 1958. Sub-section (1) of Section 3 of this Validation Act is important and it is as follows:-

Notwithstanding any judgment, decree or order of any Court, the notifications specified in Part A, Part B and Part C of the Schedule shall be deemed to have been issued in exercise of the powers conferred respectively by Section 3, Section 3A and Section 4 of the U. P. Sales Tax Act, 1948, as if the said sections were in force on the date on which the notifications were issued in the form in which they were in force immediately before the commencement of this Act and all the said notifications shall be valid and shall be deemed always to have been valid and shall continue in force until amended, varied or rescinded by any notification issued under any of the said sections.

9. The clear object of the above sub-section is to validate certain notifications including the one referred to above dated the 31st March, 1956. But the validity of the said notification, along with the validity of Section 3(1) of the Validation Act, 1958, was again challenged in certain writ petitions, five of which came up for hearing before a Division Bench of this Court, of which one of us was a member. This time the Division Bench said that the impugned notification had been successfully validated by the Validation Act of 1958, and the said Act was not bad for improper delegation of power or on account of any inconsistency with Article 14 of the Constitution. The writ petitions were accordingly dismissed and the judgment of the Division Bench is reported in Haji Lal Mohammad Biri Works v. Sales Tax Officer, Allahabad [1958] A.L.J. 719. These petitions were dismissed at the preliminary stage without issuing any notice. The present writ petition, along with some others, was also pending on the date of the decision of the Division Bench, and the learned counsel was permitted to take an additional point to the effect that the notification was not placed before the U.P. Legislative Assembly, as provided in Sub-section (3) of Section 3A of the Principal Act. This petition, with others subsequently filed, have come up before us for hearing and,

as one of us was not a member of the Division Bench, which decided the case of Haji Lal Mohammad Biri Works [1958] A.L.J. 719, the whole case was re-argued before us. If we had agreed with the contention of the learned counsel for the petitioners, we would have referred these petitions for decision by a larger Bench. But, after carefully considering the points urged by the learned counsel for the parties, both of us feel inclined to agree with the decision in the case of Haji Lal Mohammad Biri Works [1958] A.L.J. 719.

10. The learned counsel for the petitioner has urged four points in support of the petition. His first submission is that in Section 3(1) of the Validation Act of 1958 the words "in the form in which they were in force immediately before the commencement of this Act" refer to the notifications and not to the sections, with the consequence that the notifications should be taken to have been issued u/s 3A in the form in which it stood on the 31st March, 1956, and not as subsequently amended by Act No. XXIV of 1957. We are not at all impressed by the argument of the learned counsel. In the setting in which the clause occurs there can be no doubt that it applies to the said sections and not to the notifications. The object of the legislation clearly was to validate the notifications and this could only be done if Section 3A was read in the light of the amendment to it introduced by Act XXIV of 1957 ; otherwise Section 3A, as amended by Act XIX of 1956, would have to be taken to have come into force on the 1st April, 1956, whereas the notification had been issued on the 31st March, 1956. It is true that the purpose and intention of the Act have, in the first instance, to be gathered by the language used by the Legislature. But we think the language used is amply clear and the clause, quoted above, must refer to the sections and not to the notifications. The above clause is preceded by the words "if the said sections were in force on the date on which the notifications were issued" and then follow the words "in the form in which they were in force immediately before the commencement of the Act". The words "in force" previously used admittedly referred to the sections, and in the clause in question we again find the words "in force" which both must be referring to the same subject, namely, the sections. The first part qualifies the word "sections" by defining them as those which were in force on the date on which the notifications were issued, and the clause in question defines the same word again by referring to their form. We think both clauses quoted above refer to the same subject, namely, sections, and the effect of Section 3(1) of the Validation Act is to validate not only the notifications but also to introduce the fiction that the notification was issued u/s 3A as it stood on the date of the Validation Act.

11. The position is made further clear by reference to the Hindi version of the Act. The Hindi version has been discussed in some detail in the case of Haji Lal Mohammad Biri Works, Meeranji, Allahabad and Others Vs. The Sales Tax Officer, Allahabad, , and we need not repeat the same reasons in our judgment. We agree with the conclusion of the Division Bench in the above case as regards the interpretation of Section 3(1) of the Validation Act. Some argument was made that the English version must be treated as the authoritative text of the

Act, as provided by Article 348(3) of the Constitution. But the question whether the authoritative English text is to be preferred to the Hindi version of the Act in which the Legislature passed it, need not be decided in this case, because there is no inconsistency here between the English version and the Hindi text. There can be no doubt that if the authoritative text contains some vague expressions and the intention of the Legislature is not clear from the facts, reference may certainly be made to the text of the enactment passed in the regional language prevailing in the State. In order to clear the ambiguity in the English authoritative text, it is open to Courts at least to refer to the original text of the enactment.

12. The next point argued by the learned counsel is that Sub-section (1) of Section 3A contains an improper delegation of authority on the State Government to declare that the turnover in respect of any goods shall not be liable to tax except at such single point as the State Government may specify, and in Sub-section (2) to the effect that the State Government may further declare that the turnover in respect of such goods shall be liable to tax at such rates not exceeding one anna per rupee as it may specify. The argument of the learned counsel is that the subject of taxation is essentially a legislative act, but in Sub-sections (1) and (2) of Section 3A authority has been conferred, on the State Government to select the commodities which would be made the subject-matter of taxation u/s 3A. The State Government may not only declare what goods shall be subject to taxation at single point in the series of sales by successive dealers, but also determine the amount of tax leviable on such goods. It is argued that the Legislature has permitted the State Government to legislate in respect of tax and to select certain commodities for the purpose and to impose sales tax on such commodities. We are not impressed by the argument of the learned counsel. It does not take account of the entire picture. u/s 3 of the Principal Act, the Legislature has laid down that, subject to the provisions of the Act, every dealer shall pay tax at the rate of 3 pies per rupee on his turnover of his previous year. This section had the effect of imposing the tax at the rate of 3 pies per rupee on each successive sale by the different dealers. If the commodity passed through the hands of 4 dealers, the aggregate of the tax would amount to one anna in the rupee; but if it passed through the hands of more than 4 dealers, the aggregate would have exceeded even one anna. If the commodity passed through the hands of lesser number, the aggregate of the tax would be correspondingly less. It appears subsequently to have been felt that it would be better to assess certain commodities at a single point of sale, and the Legislature authorised the State Government to select those commodities but prescribed the maximum of one anna in the rupee as the tax assessable at the sale at the single point. u/s 3A the Legislature was not authorising the State Government to select any commodity it liked and to impose tax on it. Every commodity had been made the subject-matter of tax at every point of sale u/s 3 (1) of the Principal Act. By Section 3A the Legislature only authorised the State Government to select the commodities which were not to be taxed u/s 3(1), but at a single point of sale u/

s 3A, laying down the maximum amount of tax as one anna in the rupee. The State Government has only been given the power, the exercise of which would determine under which section the tax was going to be imposed. The Legislature has taken care to lay down the maximum amount of tax on the commodities which the State Government decides to bring u/s 3A. By U. P. Act No. XIX of 1956 it amended Sub-section (2) of Section 3A of the Principal Act and added Sub-section (3) to the section. The amended Sub-sections (2) and (3) of Section 3A are as follows :-

(2) If the State Government makes a declaration under Sub-section (1), it may further declare that the turnover in respect of such goods shall be liable to tax at such rate not exceeding one anna per rupee as may be specified.

(3) Every notification made under this section shall be laid before the Legislative Assembly of the State as soon as may be after it is made and if a resolution amending or modifying it is passed by the Assembly within the session in which it is laid, it shall, from the date of passing of the resolution, be amended or modified accordingly but without prejudice to the validity of anything previously done or of any liability incurred or assessment made.

13. The further safeguard provided by Sub-section (3) is that every notification issued u/s 3A is to be laid before the Legislative Assembly as soon as possible and the Legislative Assembly naturally has been given the right to amend or modify the notification, though the notification has to be taken to be valid till it has been amended or modified.

14. The learned counsel for the petitioner argued that the safeguard provided by Sub-section (3) is a very weak type of safeguard. In this connection he referred to page 823 of Erskine May's Parliamentary Practice, 15th Edition. Under the heading "Parliamentary Control" this type of safeguard has been called as a negative one. There is no doubt that this type of safeguard is weaker than an affirmative one, in which the rule or regulation does not come into force till it has received the approval of the Legislature. But laying of rules, regulations and notifications before a Legislature is a well-recognised parliamentary practice. The members of the Legislature know or ought to know that the Government under its delegated authority has issued certain rules, regulations or notifications and, if they have any objection to the same, they might well move for the modification or alteration of the same. If they omit to do so, it is assumed that they have no objection to the action taken by the Government, which is a sort of negative approval of the action of the Government. The learned counsel argued that the members as a rule do not bother themselves about the papers placed on the table of the house ; but we can make no such presumption. Some of the political thinkers, including Benard Schwarts, have spoken or written against this practice and the Parliament appointed a Committee whose duty it was to scrutinise the papers laid by the Government in the Houses of Parliament. On going through the Rules of Procedure and Conduct of Business of the U.P. Legislative Assembly, 1958, we find that the said Rules also provide for the

Constitution of such a Committee, which is known as "Committee on Delegated Legislation." It is to consist of not more than 15 members nominated by the Speaker, and its function is to scrutinise and report to the House whether the powers to make rules, regulations, sub-rules, bye-laws etc., conferred by the Constitution or delegated by any lawful authority are being properly exercised within such delegation. These rules came into force on the date of their publication, namely, 28th February, 1959. But we were not told that in the previous rules there was no such provision. In any case, assuming that no such Committee was appointed when this notification was laid before the Legislative Assembly, it makes no real difference, because the Constitution of such a Committee is not a condition precedent to the validity of the notification, nor does the provision contained in Sub-section (3) of Section 3A cease to be a safeguard, though it may be a negative one.

15. The nature of the power that has been conferred and the safeguard provided for the proper exercise of the power lead us to the conclusion that it cannot be said in the case that the delegation of authority contained in Section 3A is an improper delegation. In fact, the maximum amount of tax leviable and the fact that when a commodity is brought u/s 3A the taxation should be at a single point have all been laid down by the Legislature itself. What has been left to the State Government is only to determine the commodities which should come out of the provisions of Section 3 and fall within the provisions of Section 3A. The number of commodities, which are the subject-matter of sales, is so large and their incidences are so varied that the Legislature must have found it impossible to itself prepare a list of all such commodities for all time to come. The prices of commodities vary from time to time, by the impact of different economic forces. The Legislature may have found it impossible to decide which commodities should be made the subject-matter in single point taxation and which should be permitted to continue under multiple point taxation. The rate of tax might also have to be varied from time to time. The Legislature further provided for a negative type of control by directing that the notifications u/s 3A should be placed before the Legislative Assembly for such scrutiny as the members might like to exercise. The delegation of authority of this kind has been held to be valid in more cases than one.

16. In the case of *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, the validity of Sections 3, 4 and 6 of the Essential Supplies (Temporary Powers) Act, 1946, was challenged. This Court had upheld the validity of Sections 3 and 4 but declared Section 6 to be invalid. The Supreme Court agreed with this Court so far as the decision with respect to Sections 3 and 4 was concerned, but disagreed with it so far as its decision u/s 6 was concerned and upheld the validity of Section 6 also. Wide powers were conferred on the Central Government by Sections 3 and 4 of the Essential Supplies (Temporary Powers) Act. Their Lordships referred to the decision of the Privy Council in *Shannon's* case and quoted certain observations from the judgment. The purport of the quotation is that the Provincial Legislature was authorised to delegate so-called

legislative powers to the Lt.-Governor in Council. The objection to the power of delegation was called subversive of the rights which the Provincial Legislature enjoyed, while dealing with matters falling within the classes of subjects in relation to which the Constitution had granted legislative powers to the Provincial Legislature. Their Lordships of the Privy Council then observed:-

Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which Legislatures, Provincial, Dominion and Imperial, have entrusted various persons and bodies with similar powers to those contained in this Act.

17. It is true that it was held by the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , that the Legislature could not delegate its function of laying down legislative policy in respect of a measure and that it must declare the policy of the law and the legal principles which were to control any given cases. The principles enumerated in the Essential Supplies Act were the regard for maintenance or increase in supply of essential commodities and of ensuring an even distribution and availability of the commodity at a fair price. With the enunciation of the above policy, widest possible powers were conferred on the Central Government. In the case before us the Legislature had laid down the policy that sales of commodities were to be taxed at every point of sale at the rate of 3 pies per rupee, but with respect to others the tax could be levied at single point and the maximum rate of sales tax was not to exceed one anna. It is obvious that in preparing the list of commodities u/s 3A the Government would have to keep in view the fact of the prevailing prices and numerous other considerations which the Legislature did not consider it necessary to detail. It could have laid down only the general principles governing rules of taxation which every State Government is expected to know.

18. The learned counsel for the State strongly relied upon the case of *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, , We agree with the learned counsel that the case strongly supports his contention. One of the points raised in the case was concerning the validity of Section 27 of the Minimum Wages Act of 1948. The above Act was passed for the purpose of authorising the fixation of minimum wages and a schedule was attached to it, which gave a list of the employments to which the Act was to apply in the first instance. Section 27 then authorised the Government to add to the schedule any employment in respect of which the Government was of the opinion that minimum wages should be fixed. The Government was to issue a notification in the manner prescribed and then the schedule in the Act was deemed to have contained the additional employments also. The section or the Act nowhere formulated any particular legislative policy according to which particular employment was to be chosen for being included in the schedule, and the whole matter was left to the discretion of the Government to amend the schedule in the manner it liked. It was argued before the Supreme Court that such delegation of power virtually amounted to a surrender by the Legislature of

its essential legislative functions and could not be upheld. Their Lordships held in paragraph 17 of the Report that there was undoubtedly an element of delegation implied in the provisions of Section 27 in a sense that it authorised another body to do something which it itself might have done.

But such delegation, if it can be so called at all, does not, in the circumstances of the present case, appear to us to be unwarranted and unconstitutional.

19. After referring to other cases in which such delegation had been upheld, their Lordships dealt with the argument that no legislative policy was discernible anywhere in the provisions of the Minimum Wages Act. This argument was repelled with the observation,

We do not think that this is the correct view to take. The legislative policy is apparent on the face of the present enactment. What it aims at is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour.

Later they say,

Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State.

20. It is to carry out effectively the purpose of this enactment that power has been given to the "appropriate Government" to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to a particular trade or industry which is not already included in the list. We do not think that in enacting Section 27 the Legislature has in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act".

21. The above principles apply with full force to the provisions of Section 3A of the U. P. Sales Tax Act. It must, therefore, be held that there is no improper delegation of authority but only an accessory or subordinate power has been conferred on the State Government to select the commodities and the object of the conferment of the power was to carry out the purpose and policy of the Sales Tax Act.

22. The third point argued by the learned counsel is the Sub-sections (1) and (2) of Section 3A of the Act are inconsistent with Article 14 of the Constitution. The arguments are practically the same which were advanced in connection with the alleged improper delegation of authority on the State Government. It was argued that no guiding principle for the selection of the commodities having been laid down by the Legislature, it was open to the State Government to select one commodity for the application of Section 3A and leave out another with similar

incidence with the consequence that sales tax at only 3 pies per rupee would be payable u/s 3 of the Act. The absence of any directions or guiding principles leaves it open to the State Government to discriminate between dealers in different commodities, and this is said to render the legislation to be inconsistent with Article 14 of the Constitution. The scope and the implications of the above Article have been considered by the Supreme Court in a number of cases. They were comprehensively dealt with in the case of *Budhan Choudhry and Others Vs. The State of Bihar*, , and need not be mentioned her.

23. The learned counsel for the petitioner laid stress only on one case reported in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . In the above case, in paragraph 12 of the Report, their Lordships mentioned 5 kinds of statutes the validity of which might have to be considered with reference to Article 14 of the Constitution. The learned counsel contended that this legislation fell within the third class which consisted of statutes in which the Legislature itself had not made any classification of persons or things but left it to the discretion of the Government to select and classify persons or things to whom its provisions were to apply. The Courts were to strike down the statute if it did not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the Statute provided for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situated and, therefore, the discrimination is inherent in the statute itself. As instances of this kind are mentioned the cases of *The State of West Bengal Vs. Anwar Ali Sarkar*, , *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , and *Dhirendra Kumar Mandal v. Superintendent and Remembrancer of Legal Affairs AIR 1954 S.C. 424*.

24. The learned counsel argued that u/s 3A no guiding principles were laid down by the Legislature and, therefore, Section 3A must be held to be inconsistent with Article 14 of the Constitution. The argument was plausible and prima facie it appeared that it was correct and the impugned section fell within the third class enumerated by their Lordships. But, on further consideration, we have come to the conclusion that the observations were not meant to apply to statutes where it was not possible to lay down any guiding principles in view of the nature of power that was conferred on the Government. The power was for making selection out of innumerable commodities, which are for sale in the State, and circumstances of most of them vary, sometimes permanently and sometimes from month to month and day to day. The selection was to depend upon a variety of facts which were by no means uniform and which could best be ascertained by the persons who were placed in charge of the administration of the State. We think the case before us falls within the principles laid down in the cases of *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, , *Pannalal Binjraj Vs. Union of India (UOI)*, , and *Niemla Textile Finishing Mills Ltd. v. The Second Punjab Tribunal AIR 1957 S.C. 329*. We have already referred to the facts of the case of *The Edward Mills Co. Ltd., Beawar and*

Others Vs. The State of Ajmer and Another, , in which Section 27 of the Minimum Wages Act authorised the appropriate Government to add to the schedule the industries which it thought should be brought within the ambit of the Act. No guiding principles were laid down by the statute, but the validity of Section 27 was upheld.

25. In the case of Pannalal Binjraj Vs. Union of India (UOI), , one of the sections challenged was Section 5(7) of the Income Tax Act on the ground that the sub-section was inconsistent with Article 14 of the Constitution. Their Lordships have dealt with the matter in paragraph 26 of the Report. The argument of the learned counsel for Panna Lal Binjraj was that a naked and arbitrary power to transfer cases from one Income Tax Officer to another was conferred on the Commissioner of Income Tax and the Central Board of Revenue, without laying down any guiding principle or controlling rules. There was nothing in the rules or the Act which could ensure a proper execution of the power or operate as a check upon the injustice that might result from the improper execution of the power. Their Lordships then remarked that the purpose of the Act was clear, which was to levy Income Tax, to assess it and to collect it. It followed all the provisions contained in the Act had been designed with the object of achieving that purpose, and after considering the powers conferred on the different officers, the learned Judges observed that there was considerable force in the contention of the respondent that Section 5(7A) was a provision for administrative convenience. They then went on to consider how far the power was discriminatory and observed (para 28):-

The cases of the assesseees which come for assessment before the Income Tax authorities are of various types and no one case is similar to another. There are complications introduced by the very nature of the business which is carried on by the assesseees and there may be, in particular cases, such widespread activities and large ramifications or inter, related transactions as might require for the convenient and efficient assessment of Income Tax the transfer of such cases from one Income Tax Officer to another.

26. In the end they observed that such discretion was necessarily to be vested in the authority concerned.

Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the piece of legislation.

27. They then noticed the fact that the power was not vested in minor officials but in top ranking authorities of the department. The power was thus discretionary and not necessarily discriminatory.

28. In the case of Niemla Textile Finishing Mills AIR 1957 S.C. 329, the validity of Section 10 of the Industrial Disputes Act of 1947 came up for review. Section 10 conferred on the appropriate Government full authority to refer the industrial dispute to a Board for promoting a settlement of dispute or to "refer any matter

appearing to be connected with or relevant to the dispute to a Court for enquiry or to refer the dispute or any matter connected with it to a Tribunal for adjudication. We are not concerned with the proviso. The validity of this section was challenged on the ground that it was inconsistent with Article 14 of the Constitution. Their Lordships upheld the validity of the section and one of the grounds was that the steps to be taken by the appropriate Government were to be determined by the surrounding circumstances, and the discretion for setting up one or the other of the authorities for the purpose of investigation or settlement of industrial disputes would be exercised by it having regard to the exigencies of the situation and the objects to be achieved.

No hard and fast rule can be laid down as to the setting up of one or the other of the authorities for the purpose of bringing about the desired end which is the settlement of industrial disputes and promotion of industrial peace and it is hardly legitimate to say that such discretion as is vested in the appropriate Government will be exercised with an evil eye and an unequal hand.

29. Similarly the selection of particular commodities, for the application of the provisions of Section 3A of the U. P. Sales Tax Act to them depends on the exigencies of tax collection, and no hard and fast rule could be laid down for the selection of particular commodities. It is really a matter of detail which had to be left to the authority best suited to decide which commodity should be exempted from the operation of Section 3 and brought within the ambit of Section 3A of the Act.

30. We consequently hold that Section 3A of the Principal Act is not inconsistent with Article 14 of the Constitution.

31. Both the above points appear to us to be only of an academic interest, because by the impugned Amendment Act the Legislature itself has validated the notification and has in effect itself legislated with respect to the notification. The language used certainly is that the notification shall be deemed to have been always valid but there can be no doubt that the Legislature accepted what was contained in the notification. Admittedly it could legislate with respect to this particular matter, and the validation of the notification is equivalent to the Legislature itself enacting whatever is contained in the notification. The questions of improper delegation of authority and of inconsistency with Article 14 of the Constitution, on the ground that no guiding principles have been laid down, thus seem to have no force.

32. The last point urged by the learned counsel for the petitioner was that the safeguard provided in Sub-section (3) of Section 3A of the Act was not followed and the notification was not placed before the Legislative Assembly of the State, as required by Sub-section (3). In fact, this is the only ground which was not urged before the Bench which decided the case of Haji Lal Mohammed Biri Works [1957] 10 S.T.C. 424(All). This is a pure question of fact and reference may be made to the averments on the point contained in the affidavits filed by the

petitioner and the counter-affidavit filed on behalf of the State.

33. In paragraph No. 11 of the affidavit, filed along with the application dated 29th September, 1958, it has been stated by Kalayan Das, the deponent, that the impugned notification was never laid before the Legislative Assembly of the State in accordance with the provisions of Sub-section (3) of Section 3A of the U. P. Sales Tax Act. In subsequent paragraphs it is averred that on the 9th May, 1956, Sri Dharam Singh, the Parliamentary Secretary to the Finance Minister, wanted the permission of the Speaker to place the impugned notification on the table of the Assembly along with some other notifications. The Speaker, however, said that the notification had been placed on the table of the Assembly on the 2nd April, 1956, but added that no announcement of the fact was made on that date. To a question by a Member whether the notifications sought to be placed on the table on the 9th May, 1956, were the same which had been printed in the Schedule of the U. P. Sales Tax (Amendment) Ordinance, the Finance Minister said that they were connected with the Ordinance. It is then stated that the Session of the Legislative Assembly lasted from 2nd April, 1956, to 22nd May, 1956, but the notification in question was never placed on the Assembly table. This information was said to have been gathered from the proceedings of the U. P. Legislative Assembly.

34. The counter-affidavit filed on behalf of the State has been sworn to by Shripati Sahai, who was posted as Superintendent, Parliamentary Department, Legislative Assembly Secretariat, U. P., Lucknow. He says that he was present in the Legislative Assembly on 2nd April, and 9th May, 1956. According to him, the correct facts are that a copy of the U. P. Sales Tax (Amendment) Ordinance, along with the impugned notification and other notifications, which were all printed in the Gazette Extraordinary dated 31st March, 1956, and were stitched with the Ordinance, was placed on the table of the Legislative Assembly on 2nd April, 1956 but by some oversight specific mention of the fact that the notifications were placed on the table was not made by the Revenue Minister. The formal motion for placing the said notifications on the table of the Assembly was made by the Parliamentary Secretary on 9th May, 1956. The proceedings of the Legislative Assembly, dated 4th April, 1956, show that the Ordinance and the rates of tax sought to be imposed on different commodities by the notification were discussed. He states that copies of the notifications in question were supplied to the Members of the Legislative Assembly on 2nd April, 1956. In fact, a portion of the notification in question is printed on the reverse of the last page of the Hindi text of the U. P. Sales Tax (Amendment) Ordinance. Copies of the Ordinance and the notification as printed have been filed along with the counter-affidavit. No rejoinder affidavit has been filed to this counter-affidavit.

35. The facts which emerge from a reading of the two affidavits are that copies of the notification in question were placed on the table of the House and supplied to the Members on the 2nd April, 1956. But no announcement of the fact that the notifications were placed on the table was made, though an announcement

regarding the placing of the Amendment Ordinance was duly made by the Finance Minister. A formal motion to place the notification on the table of the House was made on 9th May, 1956, and the Speaker said that the notification had already been placed on the table on 2nd April, 1956, though an announcement of the placing of the notification on the table was not made on that date. The Assembly then continued to be in Session till 22nd May, 1956. In spite of the formal motion of the placing of the notification on the table, no Member appears to have raised any objection to the contents of the notification after 9th May, 1956, though on the 4th April, 1956, discussion did take place as regards the propriety of the rates of tax imposed by the notification on some of the commodities. The copies of the notifications were, in fact, placed on the table on 2nd April, 1956. Every Member had been supplied with the copies on that date. Even if the notification be taken to have been placed on the table, when the formal motion was made on 9th May, 1956, the requirement of placing it on the table was fully complied with.

36. We consequently hold that proper proceedings under Sub-section (3) of section 3A of the Act were duly taken, and the objection of the petitioner on this score must be rejected. In view of the above decision, it is not necessary to consider whether such an objection could be raised on behalf of the petitioner, because of the provisions of Article 212 of the Constitution.

37. The petition is dismissed with costs. We assess the counsel's fee for the State at Rs. 400.