

(1971) 02 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3517 of 1969

K. Balakrishnaiah

APPELLANT

Vs

Commercial Tax Officer and Others

RESPONDENT

Date of Decision : 23-02-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226

Citation : (1972) 29 STC 328

Hon'ble Judges : Venkateswara Rao, J;Obul Reddi, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; Government Pleader for sales tax cases, for the Respondent

Final Decision : Allowed

Judgement

Venkateswara Rao, J.—The validity of Section 21(6) of the Andhra Pradesh General Sales Tax Act, which will hereinafter be referred to as the "Act", is sought to be questioned in this petition filed under Article 226 of the Constitution of India.

2. The petitioner is a firm carrying on business as commission agents. This firm returned a gross turnover of Rs. 7,23,570.24 for the assessment year 1967-68 and claimed exemption in respect of Rs. 1,54,715.90 alleged to represent the value of goods sold and purchased on behalf of its principals, on the ground that the tax payable thereon had already been paid by the principals. This claim was rejected by the Commercial Tax Officer, Mahboobnagar, (R-1), who determined the total turnover at Rs. 10,94,238.74 and levied a tax of Rs. 27,332.23. Except for slight modification, the appeal filed by the petitioner against the order of the assessing authority was dismissed by the Assistant Commissioner of Commercial Taxes, Kurnool (R-2). A further appeal was thereafter preferred by the petitioner to the Sales Tax Appellate Tribunal (R-3). The petitioner applied to the Deputy Commissioner of Commercial Taxes for stay of collection of tax pending disposal of that appeal in vain and the Tribunal refused to entertain the appeal on the

ground that it was not accompanied by satisfactory proof of payment of tax, as required by Section 21(6) of the Act. Hence this petition to call for the records relating to Appeal No. 5/69-70 and to quash the order dated 30th April, 1969, of the second respondent by issuing a writ of certiorari or any other appropriate writ, order or direction ; and in the alternative to direct the Sales Tax Appellate Tribunal (R-3) to entertain the appeal without insisting on proof of payment of tax as, according to the petitioner, Section 21(6) of the Act is ultra vires the powers of the State Legislature besides being violative of the fundamental rights guaranteed by articles 14 and 19(1)(f) and (g) of the Constitution of India.

3. In the counter-affidavit filed on behalf of respondents 1 and 2, it is averred, among other things, that Section 21(6) is conceived in the interests of public revenue and also to discourage frivolous litigation, that it is well within the legislative competence of the State and is not open to attack even under articles 14 and 19(1)(f) and (g) as it does not suffer from the vice of any discrimination or unreasonable restriction and does not also interfere with the petitioner's right to carry on business.

4. Section 21(1) of the Act provides for appeals to the Appellate Tribunal from orders passed or proceedings recorded by the authorities specified in Clauses (a) and (b) of that sub-section, while Sub-section (6) lays down that "except in case where a stay is in operation as provided in Sub-section (2-C) of Section 19(1), no appeal shall be entertained under Sub-section (1) unless it is accompanied by a satisfactory proof of the payment of tax as determined in any appeal u/s 19(1) or revision u/s 20". As already stated what is sought to be challenged is the validity of this Sub-section (6) which enjoins upon the Tribunal not to entertain the appeal unless it is accompanied by satisfactory proof of payment of tax, except in cases where a stay of collection of tax is in force.

5. The first ground urged for the petitioner to assail the validity of Section 21(6) is that it is ultra vires the powers of the State Legislature. The contention of the learned counsel, Sri Dasaratharama Reddy, in this regard is that the State Legislature has power only to prescribe the jurisdiction and regulate the business of all courts except the High Court and the Supreme Court in exercise of the powers vested in it under entries 3 and 65 of List II of the Seventh Schedule to the Constitution but that it has no such power in the case of Tribunals and that the Parliament alone is competent to regulate the jurisdiction and powers of Tribunals by virtue of the residuary powers vested in it by entry 97 of List I of that Schedule. That a Tribunal is not a court, although it has all the trappings of a court, is now well established. The Income Tax Appellate Tribunal constituted under the Indian Income Tax Act, 1922, was held to be not a court by the composite Madras High Court in R.M. Seshadri Vs. Second Addl. Income Tax Officer, Salaries Circle, Madras and Another, . It was similarly held by a Division Bench of this High Court also in BH. SATYANARAYANAMURTHI Vs. Income Tax APPELLATE TRIBUNAL, MADRAS BENCH B., that "in either ordinary parlance or legal sense, the Income Tax Appellate Tribunal cannot be held to be a civil,

criminal or a revenue court." On the same parity of reasoning that is contained in the decisions cited, it must be said that the Sales Tax Appellate Tribunal is also not a court. Entries 3 and 65 of the State List no doubt deal only with constitution and organisation of all courts except the Supreme Court and the High Courts; administration of justice ; and jurisdiction and powers of all such courts except the Supreme Court and High Courts; but this by itself is not sufficient to warrant the inference that the State Legislature has no power to enact the impugned provision contained in Section 21(6) of the Act. Sri Dasaratharama Reddy discreetly refrained from questioning the power of the State Legislature to constitute the Sales Tax Appellate Tribunal. In fact, he expressed more than once before us that he should not be taken as questioning the power of the State Legislature to constitute the Tribunal. It is, therefore, difficult to understand how he could be heard to say that the authority that could validly constitute the Tribunal is not competent to control and regulate its jurisdiction and powers. If the State Legislature has power to provide for the establishment of an Appellate Tribunal, as has been enacted in Section 3 of the Act, it necessarily follows that it has also the power to regulate the business and jurisdiction of that Tribunal. This apart, entry 54 of the State List makes it impossible to countenance the contention that Section 21(6) of the Act is beyond the legislative competence of the State. This entry empowers the State Legislature to make laws in respect of "taxes" on the sale or purchase of goods other than newspapers subject to the provisions of entry 92A of List I. The power to make laws for the levy and collection of taxes on the sale or purchase of goods would necessarily take within its ambit the power to legislate for all ancillary and incidental matters as the entry simply specifies the field of legislation. Such matters would naturally include provisions for appeals and revisions by aggrieved parties from orders passed or proceedings recorded by the assessing and other authorities concerned with the levy and collection of tax. As pointed out by their Lordships of the Supreme Court in *Kalawati Devi Harlalka Vs. Commissioner of Income Tax, West Bengal and Others*, the word "assessment" can bear a very comprehensive meaning ; it can comprehend the whole procedure for ascertaining and imposing liability upon the taxpayer. It would therefore naturally include all such stages till it becomes final. Section 3 of the Act enjoins upon the State Government to constitute an Appellate Tribunal consisting of a chairman and two other members to exercise the functions conferred on the Tribunal by or under the Act. It can be gathered from Section 21, which deals, among other things, with the jurisdiction and powers of the Tribunal, that the purpose for which it is created is to hear appeals by aggrieved parties from orders passed by the authorities mentioned in Clauses (a) and (b) of Sub-section (1) of that section and to grant relief to dealers against incorrect and illegal assessments as well as to prevent evasion of taxes by correcting the orders rendered by inferior authorities wherever necessary. These functions undoubtedly form part of the proceedings for levy of tax on sale and purchase of goods in view of the comprehensive meaning which the term "assessment" is capable of bearing. It then follows that the creation of the Tribunal as well as the

provisions contained in Section 21 of the Act to regulate its jurisdiction and powers are well within the legislative competence of the State as it was already seen that entry 54 of List II is of sufficient amplitude as to empower that Legislature to make laws for all ancillary and incidental matters as well. Check *Post Officer v. K.P. Abdulla and Bros.* [1971] 27 S.T.C. 1 may, with advantage, be referred to in this connection. While dealing with a case arising u/s 42(3) of the Madras General Sales Tax Act, 1959, Shah, J., as he then was, speaking for the court in that case, pointed out at page 3 :

Entry 54 of List II of the Seventh Schedule to the Constitution authorises the State Legislature to legislate in respect of taxes on the sale or purchase of goods. A legislative entry does not merely enunciate powers ; it specifies a field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein....A taxing entry therefore confers power upon the Legislature to legislate for matters ancillary or incidental including provisions for preventing evasion of tax.

6. We must, therefore, conclude that the State Legislature has power under entry 54 of List II not only to provide for the constitution of the Tribunal contemplated by Section 3 of the Act but also to regulate and control its jurisdiction and powers in which case it follows that the contention put forth for the petitioner that Section 21(6) of the Act is beyond the legislative competence of the State is devoid of substance.

7. It was next urged that Sub-section (6) of Section 21 which insists on satisfactory proof of payment of tax as condition precedent for the entertainability of the appeals specified in Sub-section (1), offends the principle of equality before the law and equal protection of the laws enshrined in Article 14 of the Constitution besides being repugnant to Article 19(1)(f) and (g) for the reason that it renders the substantive right of appeal conferred by Sub-section (1) illusive if not nugatory. In order to appreciate this contention, it is necessary to read the provisions of the Act to the extent they are material for our purpose :

14. Assessment of tax....

(4) In any of the following events, namely, where the whole or any part of the turnover of business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after making such enquiry as he may consider necessary, by order, setting out the grounds therefore :-

(a) determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined;

(b) assess the correct amount of tax payable on the turnover that has been

under-assessed;

(c) assess at the correct rate the turnover that has been assessed at a lower rate ;

(d) levy the licence fee after determining to the best of his judgment the turnover on which such fee is payable ;

(e) levy the registration fee that has escaped levy ; or

(f) levy the correct amount of licence fee or registration fee in a case where such fee has been levied at a rate lower than the correct rate.

In addition to the tax assessed or fee levied under this sub-section, the assessing authority may also direct the dealer to pay a penalty as specified in Sub-section (8).... (4-C) The powers conferred by Sub-section (4) on the assessing authority may, subject to the same conditions as are applicable in the case of that authority, be exercised also by any of the authorities higher than the assessing authority including the Deputy Commissioner concerned.

19. Appeals.-(1) Any dealer objecting to any order passed or proceeding recorded by any authority under the provisions of this Act other than an order passed or proceeding recorded by a Deputy Commissioner under Sub-section (4-C) of Section 14, may, within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed....

(2-A) Where an appeal is admitted under Sub-section (1), the appellate authority may, on an application filed by the appellant and subject to such terms and conditions as he may think fit, order stay of collection of the tax under dispute pending disposal of the appeal.

(2-B) Against an order passed by the appellate authority refusing to order stay under Sub-section (2-A), the appellant may prefer a revision petition within thirty days from the date of the order of such refusal to the Deputy Commissioner who may, subject to such terms and conditions as he may think fit, order stay of collection of the tax under dispute pending the disposal of the appeal by the appellate authority.

(2-C) Notwithstanding anything in Sub-section (2-A) or Sub-section (2-B), where a dealer has preferred an appeal to the Appellate Tribunal u/s 21, the stay, if any ordered under Sub-section (2-B), shall be operative till the disposal of the appeal by such Tribunal, and the stay if any ordered under Sub-section (2-A) shall be operative till the disposal of the appeal by such Tribunal only in cases where the Deputy Commissioner on an application made to him by the dealer in prescribed manner, makes a specific order to that effect....

20. Revision by Board of Revenue and other prescribed authorities.- (1) The Board of Revenue may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including Sub-section (2) of this section, for

the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceeding and may pass such order in reference thereto as it thinks fit.

(2) Powers of the nature referred to in Sub-section (1) may also be exercised by the Deputy Commissioner and the Commercial Tax Officer in the case of orders passed or proceedings recorded by authorities, officers or persons subordinate to them....

21. Appeal to the Appellate Tribunal.-(1) Any dealer objecting to an order passed or proceeding recorded

(a) by any prescribed authority on appeal u/s 19, or

(b) by a Deputy Commissioner suo motu under Sub-section (4-C) of Section 14 or under Sub-section (2) of Section 20 may appeal to the Appellate Tribunal within sixty days from the date on which the order or proceeding was served on him....

(6) Except in case where a stay is in operation as provided in Sub-section (2-C) of Section 19, no appeal shall be entertained under Sub-section (1) unless it is accompanied by a satisfactory proof of the payment of tax as determined in any appeal u/s 19 or revision u/s 20....

23. Appeal to High Court.-(1) Any dealer objecting to an order relating to assessment passed by the Board of Revenue suo motu under Sub-section (1) of Section 20, may appeal to the High Court within sixty days from the date on which the order was communicated to him....

8. It would be seen from what has been extracted above that the Act provides for an appeal (1) from an order passed or proceeding recorded by the assessing authority other than those made by a Deputy Commissioner u/s 14(4-C) to the prescribed authority, (2) from an order passed or proceeding recorded by the prescribed authority on appeal u/s 19 or by a Deputy Commissioner suo motu under Sub-section (4-C) of Section 14 or under Sub-section (2) of Section 20 to the Appellate Tribunal, and (3) from an order relating to assessment passed by the Board of Revenue suo motu under Sub-section (1) of Section 20 to the High Court; and also for revision by the Deputy Commissioner against an order passed by the appellate authority refusing to grant stay under Sub-section (2-A) of Section 19 and to the High Court against an order passed by the Tribunal on the grounds mentioned in Section 22(1). In none of the aforesaid cases, except appeals envisaged by Sub-section (1)(a) and (b) of Section 21 is proof of payment of tax insisted upon as a condition precedent for the appeals being entertained by the Tribunal. Sri Dasaratharama Reddy therefore contends that Section 21(6) of the Act singles out dealers wishing to prefer appeals from orders passed or proceedings recorded by an Assistant Commissioner u/s 19 for differential treatment and hostile discrimination when it provides for satisfactory proof of payment of tax only in such cases as a condition precedent for the

appeals being entertained by the Tribunal. It is also pointed out by him that the impugned provision suffers from the vice of further discrimination within the same class of appeals inasmuch as proof of payment of tax is not insisted upon in the case of dealers who are fortunate enough to obtain orders of the Deputy Commissioner staying collection of tax u/s 19(2-C) while it is made a pre-condition in the case of those who fail to obtain such orders even though there is no justification whatsoever for such a further classification. He has also invited our attention in this context to the decision of this court in *Suryalakshmi Cotton Mills Ltd. v. Deputy Commissioner* [1969] 23 S.T.C. 178, striking down Section 21(6) of the Act to the extent it places a fetter on an appeal against the order of the Deputy Commissioner u/s 20(2) on the ground that it is discriminatory and violative of Article 14 of the Constitution. The result of this decision is that in the case of an appeal to the Tribunal from an order passed by the Deputy Commissioner in exercise of the powers conferred on him by Sub-section (2) of Section 20, the restraint imposed by Section 21(6) is no longer in operation and such appeals could be entertained by the Tribunal without proof of payment of tax. Learned Government Pleader for sales tax cases tried to counter the aforesaid contentions of Sri Dasaratharama Reddy by stating that the Act confers on all dealers a uniform right of appeal from orders made by the original or assessing authorities and that a restraint in the shape of proof of payment of tax is imposed only at the stage of appeals from orders or proceedings of the appellate authorities. According to him, appeals are broadly classified under the Act into two categories, viz., appeals from orders or proceedings of the assessing authorities which may be termed first appeals for the sake of convenience and appeals from orders made or proceedings recorded by appellate authorities or second appeals ; and proof of payment of tax is made a pre-condition for entertaining appeals coming under the latter category alone. He adds that this classification between appeals from original orders and appeals from appellate orders, besides being quite intelligible, is conceived in the interests of public revenue and to discourage frivolous and vexatious appeals and the restraint imposed by Sub-section (6) of Section 21 is, therefore, neither unreasonable nor arbitrary. It is also urged by him that the petitioner is not entitled to question the validity of Section 21 (6) for the reason that the right of appeal is only a creature of the statute and not a fundamental right and the Legislature can therefore impose restrictions on the exercise of such right.

9. There is no gainsaying that right of appeal, not being an inherent right that could be implied, has to be conferred by an express enactment as has been pointed out in *SRI MAHANT HARIHAR GIR Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA.*, and it is also true that it is open to the Legislature to impose limitations on the right of appeal created by it but this could be done if only the restrictions imposed are reasonable and not if they are arbitrary and discriminatory. It cannot, for a moment, be contended that the Legislature is free to impose any restrictions or conditions of its choice even if the effect thereof is to discriminate between persons who are similarly circumstanced and that,

without any reasonable basis therefor, as Article 14 enjoins upon the State not to deny to any person equality before the law or the equal protection of the laws within the territory of India. The question, therefore, is whether the provision contained in Section 21(6) is violative of the principle of equality envisaged by Article 14. It is now well settled that a classification, in order to be valid and pass the vice of Article 14, should "not only be founded on an intelligible differentia which distinguishes persons and things that are grouped together from others left out of the group but that differentia must have a reasonable relation to the object sought to be achieved". The two tests of permissible classification under Article 14 of the Constitution, as pointed out by the Supreme Court, in *Balaji Vs. Income Tax Officer, Special Investigation Circle*, are : (1) it must be founded on an intelligible differentia, and (2) the differentia must be reasonably connected with the object of the legislation. We will now proceed to examine if the impugned provision contained in Section 21(6) would pass the aforesaid tests.

10. As already stated, the stand taken by the learned Government Pleader is that the appeals provided in the Act are broadly classified into two categories, viz., appeals from original orders or proceedings and appeals from appellate orders or proceedings and Section 21(6) is attracted only in the case of the latter category of appeals. In the first place, this contention that appeals are classified into two categories, as stated above, and that Section 21 (6) places a fetter .only in the case of appeals falling under the second category does not seem to be wholly correct. The authority to whom appeals lie u/s 19 of the Act has inter alia the power to enhance the assessment or penalty or both, u/s 19(3)(a). If, in exercise of these powers, the appellate authority should enhance the assessment, an appeal from such an order to the Tribunal u/s 21 is, in substance, a first appeal. But even such appeals cannot be entertained by the Tribunal unless they are accompanied by satisfactory proof of payment of tax. Similarly, till the decision in *Suryalakshmi Cotton Mills Ltd. v. Deputy Commissioner* [1969] 23 S.T.C. 178 was rendered, appeals u/s 21(1)(b) from orders passed or proceedings recorded by a Deputy Commissioner u/s 20(2) could not also be entertained without proof of payment of tax though they too were in the nature of first appeals. It is not in dispute that appeals from orders passed or proceedings recorded by an appellate authority u/s 19 in relation to imposition of penalty or confiscation of goods can be entertained by the Appellate Tribunal u/s 21(1)(a) without insisting on proof of payment of taxes even though they come within the second category of appeals. It is, therefore, not correct to say that appeals are broadly divided into two classes in the Act for the purpose of Section 21(6). It is true that what is prohibited by Article 14 of the Constitution is class legislation and not reasonable classification; but the instances cited above would make it impossible to accept the contention that appeals are classified in the manner stated by the learned Government Pleader and not indiscriminately or that the said classification, if any, is founded on any intelligible differentia.

11. Even if it is assumed" for the sake of argument that the appeals provided by the Act are classified for the purpose of Section 21(6) in the manner stated by

the learned Government Pleader, it is still difficult to find any justification for such a classification. It is not as if there is any difference between the functions and powers that, could be exercised by an appellate authority u/s 19 and the Appellate Tribunal u/s 21 in the matter of hearing and disposing of appeals as they are identical as can be seen from Sub-sections (3) and (4) of Section 19 and Sub-sections (3) to (5) of Section 21 except for the fact that the Appellate Tribunal is allowed to defer the hearing of an appeal before it if it involves a question of law, a decision on which is pending in any proceeding in the High Court or the Supreme Court, till such proceeding is disposed of. The appellate authority as well as the Tribunal go into both questions of fact and law for the purpose of deciding the matters coming before them and appeals to the Tribunal are not limited to matters involving questions of law alone as in the case of second appeals to the High Court u/s 100, Civil Procedure Code. If there is any difference between the powers and functions of the appellate authority and the Tribunal in the matter of appeals, classification of those appeals in the manner stated by the learned Government Pleader might be intelligible but this is not the case.

12. Even granting for a moment that the aforesaid classification is not unreasonable and is based on some real difference between the two categories of appeals, there is still no warrant for a further inter se classification of the appeals specified in Sub-section (1) of Section 21. It was already seen that Section 21(1) (a) provides for appeals to the Appellate Tribunal by any dealer objecting to an order passed or proceeding recorded by any prescribed authority on appeal u/s 19. But there is a further classification of these appeals for the purpose of Section 21 (6) as the condition relating to production of satisfactory proof of payment of tax is not attracted in the case of appeals from orders passed or proceedings recorded by the appellate authority u/s 19 if stay of collection of tax, granted by the Deputy Commissioner under Sub-section (2-C) of Section 19, is in operation, whereas compliance with the requirements of Section 21(6) is insisted upon in cases where there is no such "stay". It is difficult to understand the rationale behind this further classification of appeals belonging to the same category, viz., those by dealers objecting to an order passed or proceeding recorded by the prescribed authority on appeal u/s 19. There are no guidelines in the Act for regulating the exercise of the discretion vested in the Deputy Commissioner u/s 19(2-B) or 19(2-C) and so, if he should arbitrarily refuse to grant stay or to direct that the stay already granted shall be operative till the disposal of the appeal by the Tribunal, a dealer, who is unable to find the wherewithal for paying the tax as determined in an appeal u/s 19, would be left without a remedy even if he has a strong case for appeal before the Tribunal. The right of appeal to the Tribunal is altogether denied, if not destroyed, in cases where" the appellate authority, without ordering stay of collection of tax for some reason or other, happens to enhance the assessment or penalty in exercise of its powers u/s 19(3)(a), as neither Sub-section (2-B) nor Sub-section (2-C) of Section 19 provides for stay of collection of tax being ordered by the Deputy

Commissioner in such cases. It is also possible to visualise the case of an appeal being disposed of post-haste by the Assistant Commissioner without granting stay of payment of tax and without caring to apply the correct law due to ignorance or other reasons. The aggrieved dealer would have no right of appeal to the Tribunal in such cases too as there is no provision for his going before the Deputy Commissioner in revision u/s 19(2-B) or obtaining orders u/s 19(2-C). It is, therefore, clear that the classification of appeals in the manner stated by the learned Government Pleader, assuming that there is one such, has the effect of meeting out different kinds of treatment to different dealers belonging to the same group by denying the right of appeal to the Tribunal to some alone of them and is therefore wholly unreasonable.

13. Apart from the discriminatory treatment of appeals by dealers belonging to the same class, as pointed out above, if the right of appeal to the Tribunal should depend simply upon the mere chance of the Deputy Commissioner granting or refusing to grant stay of collection of tax, the restriction imposed by Section 21(6) can certainly not be considered reasonable when there is nothing to prevent the Deputy Commissioner acting arbitrarily, if he should choose to do so, in the matter of granting stay since no guiding principles are laid down to regulate the exercise of the discretion by him. There is no provision anywhere in the Act for revision or appeals against an order of the Deputy Commissioner refusing to grant stay of collection of tax even if he should do so in a capricious manner, with a view to compel the dealer to pay the tax even in cases where the assessments are likely to be set aside or modified if they are allowed to approach the Tribunal without being fettered by the condition of having to prove prior payment of taxes. It is significant that the Tribunal should have no power to stay collection of tax and entertain the appeal even in cases where it is of opinion that the dealer has a prima facie strong case although such power is conferred by the Act on the Deputy Commissioner from whose orders, appeals are provided to the Tribunal.

14. We have already adverted to the fact that appeals to the Tribunal from orders of the appellate authority in the matter of penalty and confiscation of goods are also not subject to the restraint imposed by Section 21(6). It is also worthy of note that this restraint is not made applicable to revisions and appeals to the High Court under Sections 22 and 23 of the Act though they too stand on a par with second appeals for all practical purposes. It is, therefore, clear that appeals from orders passed or proceedings recorded by the prescribed authority on appeal u/s 19 alone are now singled out for the purpose of insisting on satisfactory proof of payment of tax as a condition precedent for those appeals being entertained by the Tribunal. Thus, there is neither consistency nor any logical basis for the discrimination made by the Act between appeals arising or preferred under similar circumstances by dealers who are similarly situated.

15. Further, the fetter imposed by Section 21(6) has undoubtedly the effect of rendering the substantive right of appeal conferred by Section 21(1) illusive if

not nugatory in the case of dealers who are unable to pay the tax even if they happen to have a very strong case for appeal either on question of fact or on question of law or both.

16. We are also convinced that the classification of appeals for the purpose of Section 21(6) does not satisfy the other test either laid down in *Balaji Vs. Income Tax Officer, Special Investigation Circle*, as it has no nexus with the object sought to be achieved by the Act. Learned counsel for the respondents no doubt argued that the object of Section 21(6) is to facilitate collection of tax and discourage frivolous appeals but this contention does not bear scrutiny. We cannot accede to the proposition that the conferment of an unfettered right of appeal to the Tribunal would in a way impede or hamper the collection of taxes. It is only in cases where no stay is granted by the Deputy Commissioner that Section 21(6) is attracted. When there is no order of stay, the department is free to collect the taxes by adopting any one of the several methods open to it under the Act even though an appeal is preferred to the Tribunal by the dealer. This apart, if the object is to make collection of tax easy, the Legislature would have treated all appeals alike by incorporating similar restrictions as are found in Section 21 (6) in the case of appeals and revisions contemplated by Sections 19, 22 and 23 also, but this is not so. It is, therefore, difficult to accept the contention that one of the objects with which Section 21(6) is placed on the statute book is to facilitate collection of taxes. The plea that it is designed to discourage frivolous appeals is equally untenable. If we should accept this contention, it would mean that the power to decide whether or not a dealer should be allowed to go before the Tribunal in appeal u/s 21 rests entirely with the Deputy Commissioner as it is he that is empowered to grant stay of collection of tax to ensure for the duration of the pendency of the appeal before the Tribunal and as no such appeal could be entertained if he should refuse to grant stay. But it is too much to say that the Deputy Commissioner is more competent than the Tribunal itself to determine whether or not a dealer should be permitted to prefer an appeal. When a substantive right of appeal is provided by Section 21(1), it is for that Tribunal to decide Whether the appeal deserves to be entertained or not and not for the Deputy Commissioner. There is no wonder if the Tribunal is precluded from entertaining appeals from several dealers even in really deserving cases on account of the power to grant or refuse to grant stay of collection of tax being vested with the Deputy Commissioner who would naturally be inclined to assist the department, to which he belongs, in the collection of taxes in every possible way even if it should involve an element of coercion. Section 21(6) is, therefore, more likely to deprive dealers of their right of appeal to the Tribunal even when they have a strong and tenable case rather than to discourage frivolous appeals. We have, therefore, no hesitation in concluding that the impugned classification, besides being unreasonable and discriminatory, has absolutely no connection with the object sought to be achieved by the Act. Section 21(6) is accordingly struck down being violative of the provisions of Article 14 of the Constitution.

17. In the view we have taken, it is not necessary to examine if and how far the contention that Section 21(6) is repugnant to the provisions of Article 19(1) (f) and (g) is well-founded.

18. In the result, the petition is allowed with costs and a direction to entertain the petitioner's appeal A.R. No. 859/69 without insisting on proof of payment of tax will issue to the 3rd respondent. Advocate's fee Rs. 100.