

(1976) 08 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3521 of 1972

Messrs Ganda Singh Askha Singh	Vs	APPELLANT
The State of Haryana and others		RESPONDENT

Date of Decision : 02-08-1976

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 5(2)(a)(ii)

Citation : (1976) 08 P&H CK 0027

Hon'ble Judges : Surinder Singh, J;O. Chinnappa Reddy, J;Bhopinder Singh Dhillon, J

Bench : Full Bench

Advocate : R.N. Narula, for the Appellant; C.D. Dewan, Advocate General (Haryana) and Mr. Naubat Singh, AAG (Haryana), for the Respondent

Final Decision : Allowed

Judgement

B.S. Dhillon, J.—This order will deal with Civil Writ Petitions Nos. 3264, 3265, 3521, 3791, 3848 and 3918 of 1972 and Civil Writ Petitions Nos 352, 353 and 354 of 1976(sic). In all these petitions following common question of law was referred by a Division Bench to a larger Bench:-

Whether the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1972 (Haryana Act No. 19 of 1972), is ultra vires of the Constitution of India in so far as it imposes retrospectively the sales tax to wheat-threshere, discs, pumping sets?

This is how these petitions have been placed before a Full Bench.

2. At the time of arguments, it was brought to our notice by the Learned Counsel for the Petitioners, Mr. R. N. Narula, that in the case of dealers, who were taxed for the sale of threshers and discs, the Government of Haryana issued instructions to the Excise and Taxation authorities vide Memo No. 2999-E.T(5)74, dated June 4, 1974, directing that the Government has decided to exempt from sales tax, for period prior to October 17, 1972 the date of passing/publication of

the Haryana General Sales Tax (Haryana Amendment and Validation) Act, 1972 (Haryana Act No. 19 of 197), the dealers who did not charge sales tax on sale of discs and threshers from the customers; considering these sales to be exempt from sales tax. The Learned Counsel for the Petitioners, therefore, has submitted that in view of this decision of the State Government, the Petitioners in all the writ petitions except Petitioner in Civil Writ Petition No. 3848 of 1972, who were being subjected to sales tax for the sale of threshers and discs and who claimed that they have not charged sales tax from the customers, will not be subject to sales tax and, therefore, the common question of law referred to Full Bench in all these writ petitions, except in Civil Writ Petition No 3848 of 1972, does not survive for determination. The learned Advocate General, Haryana, has conceded that in view of the above mentioned decision of the Government it the authorities come to the conclusion that a dealer has not charged sales tax from the customers, considering the sales of threshers and discs to be exempt from sales tax before October 17, 1972, no sales tax will be charged from such a dealer.

3. It was conceded by the Learned Counsel for the parties that as far as Civil Writ Petitions Nos. 3521 and 3264 of 1972 and Civil Writ Petitions Nos. 352, 353 and 354 of 1973, are concerned, no other point survives for determination and, therefore, these writ petitions have become infructuous and the same may be dismissed. We order accordingly with no order as to costs.

4 As far as Civil Writ Petitions Nos. 3265, 3791 and 3918 of 1972, are concerned, the Learned Counsel for the Petitioners has submitted that in addition to the point referred to the Full Bench, which point in these petitions also does not survive for determination in view of the decision of the State Government referred to above, another point which survives for determination in these petitions is whether the Petitioners who purchased raw material on the basis of the registration certificates and who manufactured the goods which were mentioned in the registration certificates though the said manufactured goods were tax free could be proceeded against u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948, and thus could they be charged with additional liability of tax on the ground of misuse of the registration certificates. It is contended by the Learned Counsel for the Petitioners that this point is covered in favour of the Petitioners by a Full Bench decision of this Court in Punjab Khandsari Udyog v. State (1972)30 STC 414. This contention is being raised to assail the view of the authorities that the raw material purchased on the strength of registration certificate for use in manufacture could be utilized only for manufacturing of taxable goods. Since the whole case has not been referred to the Full Bench and only a question of law, mentioned above, has been referred to, this Bench will not be in a position to examine the merits of the contention raised by the Learned Counsel for the Petitioners in the bunch of these three writ petitions. The said matter shall have to be gone into by the Division Bench and, therefore, these three writ petitions are referred back to the Division Bench for determination on merits.

5. As regards Civil Writ Petition No. 3848 of 1972, the Petitioner-dealer in this case manufactured monoblock pumping sets and the sales thereof were assessed to sales tax. The concession of non-recovery of sales tax from the manufacturers of threshers and discs has not been extended by the State Government to the sale of monoblock pumping sets. Therefore, as far as this writ petition is concerned, the law point referred to the Full Bench still survives for determination. President of India in exercise of the powers conferred by Clause (1) of Article 359 of the Constitution of India issued proclamation dated January 8, 1976, in the following terms:-

In exercise of the powers conferred by Clause (1) of Article 359 of the Constitution, the President hereby declares that the right of any person to move any Court for the enforcement of the rights conferred by Article 19 of the Constitution and all proceedings pending in any Court for the enforcement of the above-mentioned rights shall remain suspended for the period during which the proclamations of Emergency made under Clause (1) of Article 352 of the Constitution on the 3rd December, 1971, and on the 25th June, 1975, are both in force.

2. This order shall extend to the whole of the territory of India.

6. Shri S. C. Dewan, the learned Advocate-General appearing for the State of Haryana. has contended before us that the Presidential Order referred to above, be construed so as to mean that the pending proceedings in which the enforcement of rights conferred by Article 19 of the Constitution is involved, shall be dismissed and be not kept pending. The learned. Advocate General in support of his contention has relied on a decision of Jammu and Kashmir High Court in Vijay Kumar v. B. K. Thaper AIR 1976 J&K 51. This contention of the learned Advocate General, in our view, is without any merit. The Presidential Order provides for two situations: Firstly, the suspension of the enforcement of the rights conferred by Article 19 of the Constitution is provided for in cases where the enforcement is sought after the issuance of the proclamation and secondly it provides for the suspension of the pending proceedings by which enforcement of such rights already stand initiated. As regards the first part of the Presidential Order, in cases where proceedings for enforcement of the rights conferred by Article 19 of the Constitution, have not yet been initiated, the said right has been directed to remain suspended so that no action is maintainable for the enforcement of the right. As regards the second part, in cases where the enforcement of the right conferred by Article 19 of the Constitution, has been initiated by way of proceedings and such proceedings are pending on the date of the enforcement of the Presidential Order, the said proceedings have been directed to remain suspended for the period during which proclamation of emergency made under Clause (1) of Article 352 of the Constitution on December 3, 1971 or on June 25, 1975, are both in force. This construction follows from the plain language of the Presidential Order. It is difficult to interpret the Order so as to mean that the proceedings which already stand initiated for

the enforcement of the rights conferred by Article 19 of the Constitution, which have been directed to remain suspended, should be dismissed as contended by the learned Advocate General. The word "suspended" has got definite meaning in legal parlance and means temporarily inactive or inoperative, held in abeyance, temporarily debarred, that is, temporary stop or stay as contrasted with complete extinguishment. It is idle to contend that if the interpretation as is being sought to be given, by us is given the word "suspended" would be given two different meanings in relation to two parts of the order. In case the enforcement of the right conferred by Article 19 of the Constitution has not been initiated by way of proceedings, the said right is suspended at that stage but where the enforcement of the said right has been initiated by the proceedings in that case the proceedings shall remain suspended. It would thus be seen that same meaning is being given to the word "suspended" in relation to both parts of the Order. If the proceedings are dismissed as contended by the learned Advocate General, the word "suspended" cannot be given its well recognized meaning in legal parlance. The distinction is between suspension of the right, the enforcement of which has not yet been initiated and the suspension of proceedings in case where enforcement of rights has been initiated by way of proceedings. Their Lordships of the Supreme Court, while interpreting the Presidential order issued under Article 359(1) of the Constitution suspending enforcement of rights under Articles 14, 21 and 22 of the Constitution, in *Makhan Singh Vs. State of Punjab* (and connected appeals), , at page 393, held as follow:-

The consequence of the Presidential order may be that any proceedings which may be pending at the date of order remains suspended during the time that the order is in operation and may be revived when the said order ceased to be operative and fresh proceedings cannot be taken by a citizen after the order has been issued, because the order takes away the right to move any court and during the operation of the order, the said right cannot, be exercised by instituting a fresh proceeding contrary to the order. If a fresh proceeding falling within the mischief of Article 359(1) and The Presidential Order issued under it is instituted after the order has been issued at will have to be dismissed as being incompetent. In other words Article 359(1) and the Presidential Order issued under it may constitute a sort of moratorium or a blanket ban against the institution or continuance of any legal action subject to two important conditions (with these conditions were are not concerned here)..... The ban operates either for the period of proclamation or for such shorter period as may be specified in the order.

7. The said observations of their Lordships support the interpretations, which we have sought to put on the Presidential Order. It has to be noticed that the right under Article 19 of the Constitution, has not been extinguished but only the remedy to enforce the right has been taken away during the operation of the Presidential Order.

8. The decision of the Jammu and Kashmir High Court relied upon by the learned Advocate General, Haryana, is clearly distinguishable. The facts of the said case are that in a civil suit filed by the Plaintiff for the ejectment of the Defendant, the Defendant took the plea that Section 1(3) (iii) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, was violative of Article 14 of the Constitution. The question before the Full Bench was as follows:-

What is the effect of the Presidential Order dated June 27, 1975, issued under Article 359 (1) on the pending actions, particularly suits, writ petitions and appeals involving please based on any Article mentioned in the order as a ground of claim or defence, alone or in conjunction with other grounds?

Mian Jalal ud-Din, J. considered the provisions of the Presidential Order dated June 27, 1975. issued under Article 359 of the Constitution, debarring the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the Constitution. His Lordship interpreted the Presidential Order to mean that the pending proceedings in which the enforcement of rights conferred by Article 14 of the Constitution is involved whether on the side of the Plaintiff or the defence, the proceedings shall remain suspended and accordingly answered the question referred to Full Bench, Mufti J. propounded the view that the pending proceedings in which the enforcement of right conferred by Article 14 of the Constitution, was involved in defence, will proceed minus the plea raised by the defence against the constitutionality of section 1(3)(iii) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, and such plea must be dismissed as incompetent as the right conferred by Article 14 of the Constitution could not be enforced. The third learned Judge, Anand J. came to the conclusion that the words in the second part of the Presidential Order that "all proceedings pending in any Court for the enforcement of the rights so mentioned shall remain suspended" only relate to the proceedings instituted in exercise of the said rights conferred by Part III of the Constitution and do not relate to such proceedings by which the enforcement of the specified fundamental rights is resisted and nor do they relate to proceedings in which the enforcement of the specified rights is not involved but some consideration of the specified articles of the Constitution only is involved. The learned Judge is fact on the main proposition appears to have agreed with the view taken by Mian Jalal-ud-Din J. holding that in case the proceedings are pending in a Court in which the enforcement of the fundamental right of a citizen is involved, these proceedings shall have to remain suspended during the period of emergency and may be revived after the Presidential Order expired or is revoked. It would thus be found that Anand J. did not agree with the view taken by Mufti J on the interpretation of the second part of the Presidential Order regarding pending proceedings but keeping in view the facts of the case, his Lordship came to the conclusion that the enforcement of the right set up in-defense is not covered by the second part of the Presidential Order and, therefore, on the facts of that case be agreed with Mufti J that the defense taken in the written statement regarding the vires of Section 1(3)(iii) of the Jammu and Kashmir and Shops Rent Control Act 1966, being violative of Article 14 of the

Constitution, should be struck down and the case should proceed further. This is how the majority judgment answered the the question referred to the Full Bench. With due respect, we are not inclined to agree with the interpretation put by Mufti J as the said interpretation, in our opinion, violates the very language and intention of the Presidential Order. In our considered opinion, in view of the provisions of Presidential Order the proceedings pending in any Court for the enforcement of Article 19 of the Constitution, shall remain suspended in accordance with the terms of the Presidential Order. Therefore, C.W.P. No. 3848 of 1972 shall have to be kept pending and cannot be dismissed at this stage.

9. It was submitted by Mr. C. D. Dewan, learned Advocate General Haryana, that the state(sic) granted by this Court in Civil Writ Petition No. 3848 of 1972, be vacated. We have heard the Learned Counsel for the parties on this point and are of the opinion that this is a fit case where the stay order granted by this Court on December 7, 1972, and confirmed on January 8, 1973, should be vacated It was contended by Mr. R. N. Narula, the Learned Counsel for the Petitioners, that in view of the second part of the Presidential Order, this Court has no jurisdiction to vacate the stay order as the petition shall remain pending and the same cannot be dealt with by the Bench. The Learned Counsel has relied on a Single Bench decision of the Calcutta High Court in Jagadish Ch. Agarwal Vs. Union of India (UOI) and Others, . in which it was held as follows:-

In view of the aforesaid proclamation it was contended that in as much as in this case the enforcement of the rights conferred under Article 14 of the Constitution was involved, the proceeding should remain suspended and in the premises the interim order must necessarily continue. The position seems to be rather unfortunate because in this case there was an interim order and the effect would be that the interim order would continue so long as the emergency continues or until the proclamation is revoked, though the examination of the question which was possible because the matter is ready for hearing, might have revealed that the proceedings under the notice were valid. In numerous cases (sic) under Article 14 are involved and while new applications or cases where Article 14 is resorted to are no longer possible during the continuance of the emergency, the persons who have obtained Rules or Orders of injunction prior to the 27th of June, 1976 would continue to enjoy those injunctions without the Courts having the opportunity to examine the validity of the propriety of the said orders simply because the questions under Article 14 are involved in those applications. My attention was drawn to the observations of the Supreme Court in the case of Makhan Singh Vs. State of Punjab (and connected appeals), . In this view of the matter I direct that the application will remain adjourned sine die with liberty to the parties to mention for hearing after the aforesaid proclamation is revoked.

With due respect to the learned Judge we are not inclined to interpret the second part of the Presidential Order to mean that the Courts will have no jurisdiction to examine whether the stay order already i sued should be vacated/modified or not. By vacating or modifying the stay order, the Court is neither enforcing the

right as conferred by Article 19 of the Constitution, nor the Court is in any way touching any part of the pending proceedings for the enforcement of the right conferred by Article 19 of the Constitution. It would thus be seen that by vacating or modifying the stay order, which order was passed by the Courts in its discretion keeping in view the totality of facts and circumstances, the Court is not violating any part of the Presidential Order. Moreover the interim orders are discretionary orders and the same flow from the inherent powers of the Courts if there is no specific power given by the Statute: As would be clear from the contents of Civil Writ Petition No. 3848 of 1972 itself, that in addition, to the provisions of Article 19 of the Constitution, which have been invoked, many other law points have been raised in the body of the petition. It is no doubt true that this petition has to be kept pending in view of the fact that the right to enforce Article 19 of the Constitution is sought to be invoked in addition to other rights but at the same time if the enforcement of the said right is waived off, the petition can be finally dealt with and the other grounds of attack can be adjudicated upon. When the stay order was granted, it was granted keeping in view the totality of the circumstances as they then existed. It would, therefore, not be correct to say that the Bench will have no jurisdiction to alter or revoke * the stay order in view of the provisions of the second part of the Presidential Order. The grant, modification or revocation of stay order is discretionary relief which flows from the inherent powers of the Courts, We are therefore, of the considered opinion that the Courts will always have jurisdiction to modify or revoke the stay order in the pending proceedings. It is a different matter that keeping in view the facts and circumstances of a particular case, the Court may exercise discretion in not modifying its earlier orders.

10. Coming to the facts and circumstances of the present case, we find that the stay order was granted on December 7, 1972, which was subsequently confirmed on January 8, 1973, and is still in operation. The continuation of the stay order further does not appear to be in the interest of justice. The Petitioner, if he succeeds, will be entitled to recover all the amount paid by him and no irreparable loss will be caused to him. He has already availed of the benefit of the stay order for more than three years. In this view of the matter, we vacate the stay order and direct that it will be open to the authorities to effect the recovery from the Petitioner in accordance with law.