
(1985) 01 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 3736 of 1976

Mohamed Samiullah

APPELLANT

Vs

Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Sales Tax Act, 1957 — Section 18, 22 A, 24, 4, 40

Citation : (1985) ILR (Kar) 481 : (1986) 61 STC 107

Hon'ble Judges : S.R. Rajasekhara Murthy, J; S.A. Hakeem, J; K.S. Puttaswamy, J

Bench : Full Bench

Advocate : B.P. Gandhi, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Puttaswamy, J.—A Division Bench of this Court consisting of Srinivasa Iyengar and Rama Jois, JJ., has referred the following questions of law for the opinion of the Full Bench :

"(1) Whether section 22-A of the Karnataka Sales Tax Act, 1957, confers power on the Commissioner to interfere with an order made by an appellate authority u/s 20 of the Act ?

(2) If the answer to the first question is in the affirmative, whether section 22-A of the Act is void as offending article 14 of the Constitution ?"

In order to appreciate the questions referred to us, it is necessary to notice the facts of the case that are not in dispute in the first instance.

2. The petitioner who is engaged in the business of manufacture and sale of tobacco products is a registered dealer under the Karnataka Sales Tax Act of 1957 (Karnataka Act 25 of 1957) ("the Act"), on the file of the Commercial Tax Officer, Tiptur ("CTO").

3. For the assessment year 1972-73 the petitioner filed his return before the CTO

inter alia claiming exemption from payment of taxes under the Act, on sales turnover of Rs. 51,465 representing sales of manure during the said period. On 16th January, 1974, the CTO accepting the said claim of the petitioner, completed his assessment for the said year. But, later the CTO exercising the powers conferred on him by section 12-A of the Act, affording necessary opportunity to the assessee and overruling his objections, reopened the assessment and held that his sales turnover was taxable as sale of "organic manure" u/s 5(1) of the Act and accordingly brought the same to tax at the appropriate rate amounting to Rs. 1,800.28 (exhibit B). Against the said reassessment order, the petitioner filed an appeal u/s 20 of the Act in Appeal No. 152 of 1975-76 before the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore Division, Bangalore ("DC"), who by his order dated 5th January, 1976, allowed the petitioner's appeal and set aside the order of the CTO (exhibit C).

4. On 12th March, 1976, the Commissioner of Commercial Taxes in Karnataka, Bangalore ("Commissioner"), has issued a show cause notice to the petitioner u/s 22-A of the Act proposing to revise the order of the DC and restore the order of the CTO, on the ground that the said order was erroneous and prejudicial to the interests of revenue (exhibit A). In this petition under article 226 of the Constitution, the petitioner has challenged the constitutional validity of section 22-A of the Act and the show cause notice issued thereunder by the Commissioner as one without jurisdiction.

5. On 27th January, 1981, the Division Bench, which initially heard the case, doubting the correctness of the two earlier unreported rulings of this Court, on the scope and ambit of section 22-A of the Act, has referred the two questions of law stated earlier. We propose to examine them in that very order.

Re. Question No. (1)

6. Sri B. P. Gandhi, the learned counsel for the petitioner, has urged for answering question No. (1) in the negative on the very grounds urged before the referring Bench, which will be considered by us in due course.

7. Sri S. Rajendra Babu, the learned Government Advocate appearing for the respondent, has urged for answering question No. (1) in the affirmative.

8. The very first rule on the construction of statutes where the language is plain, has been succinctly set out by Maxwell on "The Interpretation of Statutes" (Eleventh Edition, Chapter V - "Preliminary Survey") in these words :

"A statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it". If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature."

In Controller of Estate Duty, Madras Vs. Alladi Kuppaswamy, the Supreme Court

dealing with the construction of a provision found in the Estate Duty Act of 1953 has expressed thus :

"The last plank of the argument of the respondent was that the Estate Duty Act being a fiscal statute should be construed strictly so as to give every benefit of doubt to the subject. There can be no quarrel with this proposition but when the phraseology of a particular section of the statute takes within its sweep the transaction which is taxable, it is not for the court to strain and stress the language of the section so as to enable the taxpayer to escape the tax."

In *C. Arunachalam v. Commissioner of Income Tax* ILR (1984) Kant 1387 (FB), a Full Bench of this Court, as late as on 26th October, 1984, reviewing all the earlier rulings and text books summarised some of the rules of construction of statutes as follows :

"11. We shall presently consider these decisions, but before we do so, it will help the exposition which follows, if we explain the court's functions with respect to statutes lumped under the single term "interpretation". We know of no statute, which merely declares a rule, with no purpose or objective behind. Every statute whether addressed to individuals or institutions, has an aim and purpose. That would be gathered only by a rational study of the law. The rational study of law is, to a large extent, the study of its history or the path of the law. History must be a part of the study because, without it, we cannot know the precise scope of rules. We cannot find out why a rule of law has taken its particular shape. Such a study should be the first step towards an enlightened scepticism.

In every country, and more so in a developing country, the old laws yield place to new and so too the creative powers of courts in the art of interpretation of statutes. The strict constructions which go by the letter of law dominated the legal scene in the 19th century. The strict constructionists stood by the "golden rule" laid down in *Grave v. Barrison* (1857) 6 HL 61. The Lord Chancellor said there, that courts should "adhere as rigidly as possible to the express words that are found and to give those words their natural and ordinary meaning". But the modern trend has been not all that way. The art of interpretation has undergone modification. The courts now look to the purpose or intent, scheme or design of the legislation and add its own contribution by filling in gaps."

"Professor Reed Dickerson in his book "The Interpretation and Application of Statutes" (at page 15) :

"..... Whether the statute is clear or obscure, whether or not it adequately resolves the current issue, and whether it can be applied as it came from the legislative oven or must be remoulded, the court should first examine it in its proper context to discover, if possible, what it most probably means. Then, after measuring the legislative contribution, the court, where necessary, may add its own contribution."

""A judge should not be a servant of the words" says Lord Denning (The

Discipline of Law, page 56) and he went on to add "The Judge should not be a mere mechanic in the power house of Semantics. He should be a man in charge of it." In his recent book "The Closing Chapter", Lord Denning had something more to state (at page 98) :

"Look at the spirit :

During the last 50 years the "golden rule" has been abandoned. The Judges always say that they look for the "intention" of the Legislature. That is the same thing as looking for its "purpose". They do it in this way; they go by the words of the section. If they are clear and cover the situation in hand, there is no need to go further. But, if they are unclear or ambiguous or doubtful, the Judges do not stop at the words of the section. They call for help in every direction open to them. They look at the statute as a whole. They look at the social conditions which gave rise to it. They look at the mischief which it was passed to remedy. They look at the "factual matrix". They use every legitimate aid. By this means they clear up many things which would be unclear or ambiguous or doubtful."

This is how the courts with their creative powers have recently responded to what we may call it a ground clearing exercise where the words of a statute are not so plain and unambiguous. To put it shortly, the Judges should not follow a blinkered way to lay down the law. They should use their hindsight as well.

So far as the fiscal statutes are concerned, we must remember one more principle. The provisions in a fiscal statute are not to be so construed as to furnish a chance of escape and a means of evasion. In case of doubt, the fiscal statute should be construed in favour of and beneficial to the subject."

With a brief back-drop of the legislation, we will first ascertain the scope and ambit of section 22-A of the Act without reference to the earlier rulings.

9. As on 1st November, 1956, when the new State of Mysore (now called "Karnataka") comprising the areas specified in section 7 of the States Reorganisation Act of 1956 (Central Act No. 37 of 1956) ("SRC Act"), came into being, there were in force different Sales Tax Laws enumerated in section 40 of the Act, which continued to be in force in the respective areas by virtue of section 119 of the SRC Act. The new State by virtue of the powers derived from article 246(2) of the Constitution and entry No. 54 of List II (State List) of the Seventh Schedule to the Constitution enacted the Uniform Act, thus repealing the corresponding laws in force in the different integrating areas. The Act came into force on 1st October, 1957.

10. Chapter III of the Act deals with the remedies of appeals and revisions under the Act before the authorities and this Court.

11. Section 20 of the Act provides for the first appeal under the Act. Section 22 provides for a second appeal to a Tribunal constituted u/s 4 of the Act. Section 22 as originally enacted did not make provision for filing of an appeal by the State or revenue before the Tribunal.

12. Section 21 of the Act, as originally enacted, conferred power of revision on the Deputy Commissioner and Commissioner. Section 21(1) of the Act conferred power of revision on the Deputy Commissioner of Commercial Taxes of the area ("DC") over the officers subordinate to him, subject to the limitations placed therein. Section 21(2) conferred power of revision on the Commissioner in any proceeding or an order made by the DC u/s 21(1) of the Act which was also subject to the limitations and restrictions provided in the proviso to that very section and the other provisions that followed the same. Section 24 provided for an appeal against an order made by the Commissioner u/s 21(2) of the Act.

13. Section 23 deals with the power of revision to this Court. Section 25 only regulates the procedure in hearing the revisions and appeals filed under the Act before this Court.

14. The Karnataka Sales Tax (Amendment) Act, 1963 (Karnataka Act No. 9 of 1964) ("amending Act"), that made a number of amendments to the Act also made certain amendments to certain provisions found in Chapter VI of the Act. Section 15 of the amending Act substituted section 20 by a new section, virtually retaining the earlier scheme. Section 17 of the amending Act that effected amendments to section 22 of the Act also for the first time provided for an appeal by the State or revenue before the Tribunal and cross-objections by either of the parties before the Tribunal.

15. Sections 16 and 18 of the amending Act split section 21 into two independent provisions. Section 16 of the amending Act substituted section 21 of the original Act and conferred power of revision on the Assistant Commissioners and Deputy Commissioners of the areas against orders made by their subordinates specified therein.

16. Section 18 of the amending Act inserted section 22-A conferring power of revision on the Commissioner. Section 22-A, that is material, reads thus :

"22-A. Revision by the Commissioner or the Joint Commissioner of orders prejudicial to revenue. - (1) The Commissioner or the Joint Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any orders passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) The power under sub-section (1) shall be exercisable only within a period of four years from the date of the order sought to be revised was passed.

Explanation. - In computing the period of limitation for the purposes of sub-section (2), any period during which any proceeding under this section is stayed

by an order or injunction of any court shall be excluded."

Firstly, this section empowers the Commissioner to call for the record of any proceeding of his subordinate under the Act. Secondly, the section empowers the Commissioner to revise any order made by an officer who is subordinate to him in a proceeding under the Act subject to the limitations and restrictions placed therein only and no other. So far as the extent and the limitations subject to which that power can be exercised by the Commissioner, they do not call for our examination, for which reason, we do not propose to examine the same. That an officer holding the post of a Deputy Commissioner is subordinate to the Commissioner who is the head of the department is not disputed and indeed cannot be disputed by Sri Gandhi. When such an officer exercises his power under the Act, whatever be the nature of that power, be it original, appellate or revisional, the Commissioner is competent to revise that order. What is true of the Deputy Commissioner is also true of all other officers that are subordinate to the Commissioner exercising their powers under the Act. Section 22-A of the Act is self-contained and any limitation on the exercise of the power by Commissioner must necessarily be found in that very provision and no other. On this analysis, our answer to question No. (1) can only be in the negative.

17. We will now proceed to examine the earlier rulings of this Court and the contentions urged by Sri Gandhi to reconsider them.

18. In *Chandra Bhavan v. State of Mysore* (DB) (Sales Tax Appeal No. 1 of 1971 decided on 17th January, 1971) the facts were these : M/s. Chandra Bhavan, the appellant before this Court filed its return under the Act for the assessment year 1967-68 before the Commercial Tax Officer, who made an order on the same against it under the Act. Against that order, to the extent it was aggrieved, the appellant filed an appeal before the Deputy Commissioner who modified the original order and granted certain reliefs to the appellant. But, the Commissioner acting u/s 22-A of the Act, revised the order of the DC and restored the order of the CTO, the validity of which was challenged by the appellant before this Court u/s 24 of the Act, on the very grounds urged in this case. On 17th November, 1971, a Division Bench of this Court consisting of Govinda Bhat (as his Lordship then was) and Venkataswami, JJ., repelled the same in these words :

"Sub-section (1) of section 22-A confers the power of revision in the Commissioner of calling for and examining the record of any proceeding under the Act and to make such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment if he considers that any order passed in the said proceeding by any officer subordinate to him is erroneous in so far as it is prejudicial to the interests of the revenue. Sri S. P. Bhat relied on sub-section (1) of section 3-A in support of his argument that the Deputy Commissioner as an appellate authority is not an officer subordinate to the Commissioner. The said sub-section reads thus :

"All officers and persons employed in the execution of this Act shall observe and

follow the orders, instructions and directions of the State Government and the Commissioner :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions."

We are unable to see as to how the above provision has any bearing on the question in issue before us. All that the proviso to sub-section (1) of section 3-A provides is, that orders, instructions and directions of the State Government and the Commissioner shall not be given so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions under the Act. Section 22-A confers jurisdiction on the Commissioner to call for and examine the record of any proceeding under the Act. The proceeding before the Deputy Commissioner on appeal is a proceeding under the Act. On examination, the Commissioner can enhance or modify the assessment if he considers that any order passed in the said proceeding by any officer subordinate to him is erroneous in so far as it is prejudicial to the interests of the revenue. For example, the Commissioner cannot revise the order of the Appellate Tribunal since the Tribunal is not subordinate to the Commissioner; but the Deputy Commissioner is an officer subordinate to the Commissioner and, therefore, if the other conditions laid down in the sub-section are satisfied, the Commissioner has the jurisdiction to revise the order. Therefore, the first ground urged by the learned counsel for the appellant, in our opinion, is untenable."

In *F. S. Hunagund and Sons v. Commissioner of Commercial Taxes in Karnataka* (S.T.A. No. 1 of 1975 decided on 5th January, 1979), a Division Bench of this Court consisting of Venkataramiah, J. (as his Lordship then was), and Rama Jois, J., speaking through Rama Jois, J., again rejected a similar contention on similar facts as found in *Chandra Bhavan's* case (S.T.A. No. 1 of 1971 decided on 17th January, 1971) but without reference to the same, in these words :

"The third contention urged for the appellant is that u/s 22-A of the Act, the Commissioner of Commercial Taxes cannot interfere with the order of the appellate authority in view of the bar created by the proviso to section 3-A of the Act. Section 3 of the Act provides for appointment of Commissioner and other subordinate officers including the Deputy Commissioner of Commercial Taxes for purposes of performing various functions conferred on them by or under the Act. Section 3-A of the Act confers controlling powers on the State Government and the Commissioner. According to sub-section (1) of section 3-A of the Act, all officers and persons employed in the execution of the Act are obliged to follow any orders, instructions and directions issued by the State Government and the Commissioner. However, the proviso to the said section states that no such orders, instructions or directions shall be given so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions. Learned counsel for the appellant argued that exercise of power u/s 22-A of the Act would amount to interference with the discretion of the appellate authority in

the exercise of its appellate functions. We do not see any force in the contention urged for the appellant. The power conferred under sub-section (1) of section 3-A of the Act to pass orders or issue instructions or directions to subordinate officers is purely in respect of administrative matters. This is made clear by the proviso by stating that the power to issue directions under sub-section (1) of section 3-A of the Act shall not be exercised in a manner so as to interfere with the discretion of any appellate authority in exercise of its appellate functions. It is not and cannot be disputed that the Deputy Commissioner is the officer subordinate to the Commissioner. The only effect of the proviso is, while it is open for the Commissioner to issue directions to all his subordinate officers including the Deputy Commissioner, for the purpose of ensuring efficient enforcement of the provisions of the Act, as regards administrative matters, he cannot exercise control over quasi-judicial functions of the appellate authority by directing any appellate authority to decide any question while exercising his appellate powers, in any particular manner. Moreover, the occasion for the exercise of power u/s 22-A arises only after the appellate authority has already discharged its function by finally disposing of any appeal filed before it. u/s 22-A of the Act the Commissioner has undoubted powers to revise the orders passed by the Deputy Commissioner in exercise of his appellate jurisdiction.

7. Learned counsel for the appellant lastly submitted that the Commissioner could only direct the department to present an appeal u/s 22 of the Act, but he cannot exercise his power u/s 22-A of the Act. In this behalf, it may be seen that the revisional powers conferred on the Commissioner u/s 22-A of the Act empowering him to interfere with the orders passed by all the subordinate officers if he is of the opinion that the order is erroneous and it is prejudicial to the interests of the revenue, is an independent provision to safeguard the revenue and this power can be exercised even if the limitation for presenting the appeal is over, provided the time prescribed u/s 22-A of the Act for exercising the power under that section. Hence, there is no force in this submission."

The enunciation in these cases is in accord with what we have independently expressed earlier.

19. But, Sri Gandhi has urged that an "appellate authority" under the Act was different from the Deputy Commissioner that is subordinate to the Commissioner and the former was not subordinate to the latter.

20. The Assistant Commissioner of Commercial Taxes is the appellate authority against the orders of an Assistant Commercial Tax Officer. The Deputy Commissioner is the appellate authority against the orders of a Commercial Tax Officer (vide section 21 of the Act).

21. An "appellate authority" under the Act cannot exist without an officer holding that post. The officer holding the post of an appellate authority cannot be treated as different from the appellate authority itself. If the officer is subordinate then, that officer holding the post, whether it be appellate or original, must necessarily

be subordinate to the Commissioner. In this context, the appellate authority has to be interpreted as the officer holding the appellate authority under the Act, as subordinate to the Commissioner. We are of the view that the distinction sought to be made between an office holding the post, the post or the appellate authority, is without a difference and is devoid of any merit.

22. Sri Gandhi has next contended that an order of the appellate authority made final u/s 22(6) of the Act without expressly making it subject to section 22-A of the Act is not revisable by the Commissioner under the latter provision.

23. Section 20(6) of the Act on which strong reliance is placed by Sri Gandhi reads thus :

"20. (6) Every order passed on appeal under this section shall subject to the provisions of sections 22 to 24 and section 25-A be final."

This section makes an order made u/s 20 of the Act, subject to sections 22 to 24 and section 25-A, final. Section 20(6) does not specifically refer to section 22-A of the Act obviously meaning that it is impliedly included within sections 22 to 25-A as referred to therein. The inclusion of section 22-A in section 20(6) thus being implicit, the mere non-mentioning of the same cannot and does not necessarily lead to the inference that the order made u/s 20 is not subject to the provisions of section 22-A of the Act. We are, therefore, of the view that an order made u/s 20 of the Act is also subject to section 22-A of the Act notwithstanding that it is not specifically mentioned in section 20(6) of the Act.

24. The finality attached to orders made u/s 20 of the Act was for the purpose of that section only and not for all other purposes. The power conferred by section 22-A on the Commissioner is an independent and exclusive power and is not dependent on what is provided in section 20(6) of the Act. The finality contemplated u/s 20(6) of the Act cannot be read as restricting or curtailing the specific and exclusive power conferred on the Commissioner by section 22-A of the Act. We must read them in such a way as to give effect to both of them. When so read, which is in accord with the well-settled rules of construction, we find no merit in this contention of Sri Gandhi.

25. Sri Gandhi has lastly urged that the amending act which simultaneously introduced section 22-A also provided for an appeal by the revenue before the Tribunal and, therefore, the legislature did not intend to confer power of revision against an appellate order of the DC to the Commissioner at all.

26. We have earlier noticed the effect of the amendments made by the amending Act.

27. The provision for an appeal by the revenue before the Tribunal is independent of the exclusive power conferred on the Commissioner by section 22-A of the Act. The provision for an appeal by the revenue cannot also be read as restricting the power of the Commissioner conferred by section 22-A of the Act. Every one of the amendments made by the amending Act, in particular, the

introduction of section 22-A in the place of section 21(2) of the Act, did not provide for curtailing the exclusive and special power of revision conferred on the Commissioner. We are of the view that the power conferred by section 22-A is in no way controlled by the provisions made for an appeal by the revenue. We see no merit in this contention of Sri Gandhi and we reject the same.

28. In this case, the question whether the Commissioner can exercise his revisional power even after the revenue had availed the remedy of an appeal before the Tribunal or after the Tribunal had made its order one way or the other on such an appeal or also on an appeal of the assessee u/s 22 of the Act, has not arisen. What we have said earlier, should not be understood as expressing our view on that question.

29. On the above discussion, it follows that our answer to question No. (1) has to be in the affirmative.

Re. Question No. (2)

30. Sri Gandhi has urged that section 22-A of the Act is violative of article 14 of the Constitution on the very grounds urged before the referring Bench.

31. Sri Babu has urged that section 22-A is not violative of article 14 of the Constitution.

32. The true scope and ambit of article 14 of the Constitution has been explained by the Supreme Court in a large number of cases. In one of the latest cases in *In re The Special Courts Bill, 1978* In *Re: The Special Courts Bill, 1978*, a Bench of seven learned Judges speaking through Chandrachud, C.J., on a review of the earlier cases has restated its true scope and ambit, observing that the avalanche of cases on that article had even made it platitudinous. We do not, therefore, consider it necessary to notice all of them and unnecessarily burden our opinion. But in all of them, the question whether the very State within its own State and not against the Union of India or against another State, with which aspect, we are not concerned, was a person within the meaning of that term occurring in article 14 of the Constitution and was bound by a law made by it as against another person, has not been set at rest by the Supreme Court. On this question eminent authors and jurists on Constitutional law are not unanimous [vide (i) *Commentary on Constitution of India* by Dr. Durga Das Basu, 6th Edition, Vol. B, at pages 264 to 266 under the heading "Discrimination in favour of the State itself"; (ii) *Constitutional Law of India* by H. M. Seervai, Third Edition, Vol. I, paras 9.21 and 9.22, pages 283 and 284; and (iii) *Constitutional Law of India*, Vol. I, published by the Bar Council of India Trust, pages 252 to 254 under the headings "The Equality between the State and the Citizens" and "State v. The Individual under Article 14" of Chapter "Equality" written by Dr. Pam Rajput]. We, therefore, propose to examine the same independently.

33. Article 14 is an injunction to the State. Article 14 commands the State to ensure to all persons equality before law and equal treatment to all in similar

circumstances. But, from this it does not follow that the very State that enacts a law, that too a taxation law, should also place itself in the same position with all other persons or assesseees and subject itself to the very same procedures and incidents. We are of the view that the same would even lead to very strange and astonishing results. We are, therefore, of the view that the very State within its own State, more so in a taxation measure is not a person and is not subject to the requirements of article 14 of the Constitution as against other persons in that very State.

34. In *Shiv Parshad Vs. Punjab State*, a Division Bench of the Punjab High Court examining the validity of section 44 of the Insolvency Act that safeguarded the debts due to the State in insolvency proceedings and the true legal position of the State vis-a-vis article 14 of the Constitution has expressed thus :

"..... The natural and obvious meaning of the expression "person" is a living human being, a man, woman or child, an individual of the human race. As used in law the word includes natural persons and artificial persons like corporations and joint stock companies, but it does not include a State or Government, for although a State is in the language of Vattel "a moral person, having an understanding and a will, capable of possessing and acquiring rights and of directing and fulfilling obligations" the State in its political organisation is entirely different and distinct from the inhabitants who may happen to reside there.

Similarly a Government cannot fall within the ambit of the expression "person", for although in common parlance Government is synonymous with "State", in actual fact the State is a country or assemblage of people while the Government is the political agency through which it acts. It is true that the State is capable of suing and being sued but that is so not because the State is a person, but because article 300 of the Constitution has made an express provision in that behalf.

It has prescribed the method by which the Indian Exchequer might itself institute proceedings and might be made the subject of proceedings for the purpose of determining the rights between the State and the subjects of the State. A suit against the State cannot be regarded as being against any person or any real body corporate : *Doya Narain v. Secretary of State for India* in Council ILR (1887) Cal 256 at page 273. It has been held repeatedly that the expression "person" does not include the State : *Simla Hills Transport Service v. Punjab State* [C.W. No. 545 of 1950 (Punj)] and *The Kapur Textile Finishing Mills Vs. Province of East Punjab*, and that the expression "reside" appearing in section 19 of the CPC refers only to natural persons and not to legal entities such as limited companies or Governments : *Govindarajulu Naidu v. Secretary of State for India* in Council ILR (1927) Mad 449 : AIR 1927 Mad 689."

In *State Vs. Shanker and Others*, a Division Bench of the Allahabad High Court in sustaining a provision for appeal by the State only in the Criminal Procedure

Code against acquittals has followed the above statement of law. We are in respectful agreement with these views. From this it follows that the contention of the petitioner that section 22-A is violative of article 14 of the Constitution is ill-conceived.

35. We well also assume that the State is a person and is subject to the very law made by it within its own state. But, in such a case the State cannot be compared to other persons and has necessarily to be treated as belonging to a different and distinct class as unanimously expressed by all the learned authors in the treaties referred to by us earlier. Article 14 guarantees equality among equals. The State and the other person cannot be treated as equals. In this view also we cannot hold that section 22-A is violative of article 14 of the Constitution.

36. In *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, on which strong reliance has been placed by Sri Gandhi before us as also before the referring Bench, the Supreme Court was examining the validity of an enactment called the Taxation on Income (Investigation Commission) Act, 1947, providing for a special procedure to a certain class of tax-evaders by a Special Investigation Commission, to which cases could be referred by Government, as against the normal procedure provided in the then Income Tax Act in force for detecting tax-evasion of others. In those circumstances, the Court took exception to the former as violative of article 14 of the Constitution. But, that is not the position in the instant case. What is in issue here is whether the State must place itself in the position of another person in a taxation measure. We are of the view that the ratio in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, does not really bear on the point.

37. We will also assume that section 22-A provides for a special procedure or a power only on the State, denying the same to assesseees under the Act. In such an event also, in the light of the principles enunciated by the Supreme Court in *Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others*, and *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, the same does not contravene article 14 of the Constitution.

38. Sri Gandhi has urged that section 22-A confers unguided, uncanalised, uncontrolled and arbitrary power on the Commissioner and the same, therefore, violates article 14 of the Constitution.

39. We have earlier set out section 22-A in its entirety. Section 22-A has conferred power of revision on the Commissioner who is the head of the department to safeguard the revenues of the State. The circumstances in which that power must be exercised, viz., that the order should be erroneous and prejudicial to the interests of revenue, are the well-accepted grounds for revising orders of subordinate authorities in taxation measures. Without any doubt, these are clear guidelines for the exercise of revisional power. The power has to be exercised in conformity with the principles of natural justice. Lastly, the power

has to be exercised within the period specified in the Act and not at all time. Every one of these provisions and principles clearly control the power conferred on the Commissioner. With all these safeguards and guidelines, it is not possible to hold that the power conferred on the Commissioner u/s 22-A of the Act is unguided, uncontrolled, uncanalised or arbitrary or that the same is violative of article 14 of the Constitution.

40. An order made by the Commissioner u/s 22-A is appealable to this Court u/s 24 of the Act which has to be heard by a Bench of not less than two Judges. The appellate powers conferred on this Court u/s 24 are very wide and empowers this Court to affirm, set aside and remand, as the circumstances justify. As ruled by the Supreme Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, a provision for an appeal itself, is a sufficient safeguard to sustain the provision and cannot on any principle be held to be arbitrary.

41. On the above discussion, it follows that our answer to question No. (2) has to be in the negative.

42. In the light of our above discussion, we answer the questions referred to us as hereunder :

Questions Answers (1) Whether section 22-A of the Karnataka Sales Tax Act, 1957, confers power on the Commissioner Affirmative. to interfere with an order made by an appellate authority u/s 20 of the Act ? (2) If the answer to the first question is in the affirmative, whether section 22-A of the Act is Negative. void as offending article 14 of the Constitution ? 43. We direct the Registrar to place the papers before the Honourable Chief Justice for posting the case before a Division Bench for final disposal.