

(1970) 01 DEL CK 0009
In the Delhi High Court
Case No : L.P.A. No. 10 of 1969

Narinder Chand Ram Nath and Co.

APPELLANT

Vs

The Lt. Governor, Himachal Pradesh and Others

RESPONDENT

Date of Decision : 13-01-1970

Acts Referred:

Citation : AIR 1971 Delhi 123

Hon'ble Judges : Prakash Narain, J;P.S. Safeer, J

Bench : Division Bench

Advocate : Sibal M.G. Chitkara and S.P. Goel, for the Appellant; Bhagirath Dass and P. Raj, for the Respondent

Judgement

Pritam Singh Safeer, J

1. A very significant question arises on determination whereof would rest the ultimate fate of this Letters Patent appeal. The question is whether any equity calling for adequate relief would arise in favor of a citizen on the basis of representation made on behalf of the State (in this case the respondents to the appeal) which may not be based upon any legal sanction behind it.

2. The Letters Patent appeal has been substantially urged on the basis of the observations made by the Hon'ble the Supreme Court of India in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., . The appellants' counsel was allowed to argue as if he was once again urging the acceptance of his civil writ petition No. 131 of 1967. The writ petition was filed by M/s. Narinder Chand Hem Raj and Company, English Wine Contractor, the Mail, Simla through its partner named Shri Hem Raj. The respondents were the Lieutenant Governor, Administrator, of the Union Territory of Himachal Pradesh, the Exise and Taxation Commissioner, Himachal Pradesh Government, the Collector, Excise and Taxation of the same Government and last of all the Excise and Taxation Officer was added as respondent No. 4.

3. The main allegation, on which the pleas raised through that writ petition

rested, related to a specific announcement alleged to have been made on the 31st March 1967 when an action was held in respect of granting of the license for the sale of the Indian made foreign liquor. The appellants as petitioners, alleged that after reading the conditions of the auction to the prospective bidders, one of whom were the appellants an announcement was made that no sales tax would be livable on the sales of Indian made foreign liquor and beer and that the licensees in Forms L-3, L-4 and L-5 of Simla would purchase the liquor and beer from the license at Simla who may be granted the license in Form L-2. It was made clear that the licensees holding licenses in Forms L-3, L-4 and L-5 were bar licenses. The appellants alleged that they offered the bid in view of the said announcement made at the time of the auction held on the 31st March 1967. The argument at the Bar was framed in more emphatic phraseology than that used in the petition. It was to the effect that the petitioners, who are the appellants before this Court were defrauded into giving a higher bid because of the alleged announcement made by respondent No. 3. The learned counsel appearing for the appellants contended that the Court was bound to uphold the rule of law and he submitted that in view of the observations made by the Hon'ble the Supreme Court of India in the afore-mentioned case this Court being also a Court of equity must grant the reliefs for which the petition had been filed.

4. Before considering the merits of the contention raised it would be appropriate to notice some of the facts on which the present appellants have placed their reliance. It is alleged by the appellants that for the first month after the license was granted to them in Form L-2 no tax was charged from them but then subsequently the respondents started Realizing tax contrary to the announcement made at the time of the auction. The sales tax so realized after the end, of the month of April 1967 has been at the rate of 10% . Paragraph 7 of the petition is very significant. The present appellants alleged therein that when the levy of the sales tax started they approached not respondent No. 3 to the petition who had made the announcement but respondent No. 2 who is mentioned as the Excise and Taxation, Commissioner, Himachal Pradesh Government, Simla. It is alleged that it was represented to respondent No. 2 that contrary to the announcement sales tax was being levied and that he in turn assured the appellants that the case for the withdrawal of the levy of sales tax had been forwarded to the Central Government and the appellants would be refunded all the sales tax deposited by them after the approval of the Central Government would be received.

5. It must be stated here that it is an admitted case of the appellants that before the merger of Simla with Himachal Pradesh the disputed sales tax was livable under the law which then prevailed.

Paragraph 10 of the petition is noteworthy because therein it is stated as under:-

"10 That the sales tax on the sales of Indian made foreign liquor and beer, was imposed by the erstwhile Punjab Government with effect from 30th of September 1966, vide notification Nos. S.O. 212/A 46/;46/S.O./56 dated the 30th

September 1966 and S. O. 213/P.A. 46/46/S.6/66, dated the 30th September, 1966, Copies of the said notifications are attached herewith as Annexure "F" , and "G" respectively. By virtue of the provisions of the Punjab State Reorganisation Act, 1966, the said tax continued to be enforced in the territories which were formerly part of the erstwhile Punjab State and now forming part of the Union Territory of Himachal Pradesh".

6. In Paragraph 11 of the petition the petitioners who are present appellants, proceeded to state that the Simla District being formerly part of the erstwhile Punjab State the sales-tax imposed under the said notification continued to be enforced in the state the sales-tax imposed under the said notification continued to be enforced in the said district after its merger with the present Union Territory of Himachal Pradesh.

7. The foregoing paragraphs contain admissions to the effect that it was well-known to the present appellants that the levying of the disputed sales-tax was lawfully invoked at the time of auction and the said levy was even thereafter to remain enforceable unless or until abrogated by law.

8. There was a law under which the sales-tax was being levied and collected. Only a legal amendment of that law could exonerate the present appellants from the levy of the "Sales-tax" in question. Ignorance of law is never an excuse and no announcement as the one having been allegedly made orally at the time of the auction could be equated with the amendment of the fiscal law. I may observe here that the fiscal statutes have a specific significance and are required to be strictly construed and enforced.

9. The petition preferred by the present appellants also contains the admission on their representation they were told by respondent No. 2 that the abolition of the levy of the sales tax was still under contemplation and the reference made in the behalf to the Government of India for achieving its approval was still under consideration. The clarification sought by the appellants which got them the assurance mentioned in paragraph 7 of the petition, to the effect that the matter was still under consideration with the Central Government was presumably sought immediately after the authorities started the collection of the sales tax from the appellants sometimes in May, 1967. That becomes obvious from a combined perusal of paragraphs 6 and 7 of the petition as also from the other facts borne out of the correspondent which has been persistently relied upon by the present appellants. The learned counsel for the appellants asserted that the state of affairs was different in Punjab and Harayana but it must be said that we was are not concerned in this appeal as to what has been happening there. After the merger of the concerned territory with Himachal Pradesh it has become Himachal Pradesh and the provisions of Art, 14 of the Constitution of India would not come in for consideration by assuming any paralled between the circumstances prevailing in the Union Territories of Himachal Pradesh and in the territories of the State of Punjab or Harayana. It must be recorded here that no argument was addressed on the bais of the provisions of Art, 14 of the

Constitution of India while this appeal was urged. The arguments as stated above, presented in various ways rested merely upon the plea that an actionable equity has arisen in favor of the appellants on account of the representation contained in the alleged announcement contained in the alleged announcement made on the 31st march 1967 which had, according to the learned counsel appearing for the appellants, trapped them into the situation of obtaining the license in Form L-2 by becoming the highest bidder at the time of the auction.

10. It is firmly established that if a law which is prevailing in one State is adopted by another State or in any way becomes applicable in another State it would remain in force therein even after it may be amended or abolished so far as its application may be concerned to the areas in the State of its origin. What happened in the State of Punjab Therefore or in the state of Harayana could not bear any relevance to the enforcement of the levy of the concerned sales-tax so far as the Union territory of Himachal Pradesh was concerned. In the present case it must be held to have been suspended by an announcement unless it can be shown to have lawfully withdrawn. The prevalence of the law maintaining the imposition of the said tax has not been contested. It is the consequence of the alleged announcement which is insisted upon as inviting the Court to grant the reliefs prayed for.

11. A submission was also made to the effect that the Himachal Pradesh Government was entitled to take a decision so as to add to or delete any items contained in Schedule A attached to the Punjab General Sales Tax Act without the concurrence of the Government of India. That argument deserves to be tested. It is significant that Himachal Pradesh is a Union territory. Article 239 of the Constitution of India deals with the administration of the Union territories. Sub-article (1) of that Article is as under:-

"239 (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the president acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify".

12. A clear interpretation of the foregoing sub-article would be that the Union territory of Himachal Pradesh is administrable by the President subject to the limitations contained in any law providing otherwise and which law may have been duly made by the Parliament. The limitations on the Presidential powers would be contained in that law. Subject to such limitations the President can act through an administrator only to the extent to which he may like to act through him. The appointment of such an administrator is also to be by the President. The presidential power as it may be residing with him or as it may have been delegated to any extent to the administrator would remain subject to any such law as may be otherwise providing under the sovereign legislative authority of the Parliament.

13. I may say here that on a bare, interpretation of the foregoing sub-article (1)

of Art, 239 the argument urged at the Bar that the Himachal Pradesh Government acting through its administrator could by itself make alternations in Schedule A as appended with the Punjab General Sales Tax Act loses merit. That is so because over the presidential power delegated or undelegated would prevail the supremacy of the law enacted by the Parliament. That protection to such a 'law' is enshrined in the opening words of Art, 239 of the Constitution of India.

14. It was in terms of the said opening part of Article 239 that the Parliament enacted the Government of the Union Territories Act 1963. There is a provision in the foregoing Act for causing legislative amendments. That provision calls for attention because the imposition of the sales-tax which is assailed results from the legislative enactment which is the Punjab General Sales Tax Act as it stands applied to the Union Territory of Himachal Pradesh. Any amendment to that Act or to the Schedule thereof could have been made only by resorting to the provisions of Section 23 Act, 1963 or to the "Rules of Business of the Government of Himachal Pradesh 1963" which will come in for consideration later on. Sub-section (1) of Section 23 is in the following terms:-

"23 (1) A bill or amendment shall not be introduced into or moved in the Legislative Assembly of a Union Territory except on recommendation of the administrator, if shall bill or amendment makes provisions for any of the following matters, namely :-

(a) the imposition, abolition, remission, alteration or regulation of any tax"

15. There are other clauses also contained in sub-section (1) of Section 23. But the matter under consideration is concerned with Clause (a) thereof which has been reproduced above in detail. As is visible if any abolition or alternation in respect of the sales-tax was to be made then it could have been done legislatively only in compliance with the provisions of sub-section (1) (a) of Section 23 mentioned above. That provision i.e. S. 23(1)(a) of the Government of Union Territories Act, 1963 is clearly protected by the provisions of Article 239(1) of the Constitution of India.

16. Another juridical principle which merits enumeration here is to the effect that when the law requires any act to be performed in particular way then it must be done in that way or not at all. A legislative imposition of the sales tax caused by the promulgation of the Punjab Act in the Union territory of Himachal Pradesh could only be legislatively amended by resorting to the provisions of Section 23(1)(a) reproduced above. It has never been the appellants' case that the Himachal Pradesh Government ever took recourse to the foregoing provisions. That being so it does not lie with the appellants to urge that the Himachal Pradesh Government could abrogate the imposition of the sales-tax by an administrative action. I say so, while bearing in mind that the rules referred to above have still to be examined. The concurrence sought from the Central Government to any administrative action could never be equated with the requisite compliance with the provisions of Section 23(1)(a) mentioned above

which provision exists in a validly enacted law by the Parliament in terms of Art. 239(1) of the Constitution of India. The presidential powers or such powers which may stand delegated by the president to the administrator of the Union territory cannot ensure for the accomplishment of any legal action when those powers are to be exercised subject to the operation of a validly enacted Parliamentary law. An abolition or alternation in respect of the imposition of the sales-tax could have only been caused through the due process the law envisaged in Section 23 referred to above. It is meritless to urge that the correspondence between the Government of Himachal Pradesh and the Central Government could achieve any effective result in spite of the existence of the law made by the Parliament and providing clearly as to how certain action was to be performed and as to how a certain allegation or abolition in respect of a tax law could be caused.

17. The legal situation being as above it would still be appropriate to notice the reliance which the learned counsel for the appellants placed upon the two letters which he referred to several times. The first letter is dated the 24th of June 1967. The same bears No. 7-27/66 E&T. It is addressed by Shri Prem Kumar I.A.S. Secretary Excise, to the Government of Himachal Pradesh to the Deputy Secretary to the Government of India, Ministry of Home affairs, New Delhi. The subject of that letter is as under:-

"Levy of sales tax on foreign liquor in Himachal Pradesh."

18. Certain portions of that letter deserve to be reproduced here. A mere reading of those portions would show the exact situation in which the parties to this appeal stood. The letter opens up by saying that the Punjab Government had levied sales-tax at 10% on the sale of foreign liquor in 1965 just before the integration of the Punjab Hill areas with Himachal Pradesh and that the sales-tax continued to be levied in the merged areas while there was not such levying on the sale of foreign liquor in the old Himachal Pradesh areas. The letter further proceeds to state that towards the close of the last financial year i.e., in March, 1967 the Government of Himachal Pradesh with a view to augment its sources of revenues had taken a decision to follow suit and to levy sales-tax on foreign liquor at the same rate as in the old areas. Before the Himachal Pradesh Government could implement that decision, the letter proceeds, the Harayana Government took a decision to abolish the sales-tax on the foreign liquor with effect from the 1st of April, 1967. Then in paragraph 2 the letter enlists certain requests why the Government of Himachal Pradesh was dissuaded from resorting to what the Harayana Government had done. Paragraph 3 of the letter states that later on the Himachal Pradesh Government decided to follow the Harayana Government and then the actual language used in the latter part of the letter is to the following effect:-

"Accordingly this Government has taken a decision not only to introduce to sales-tax on Foreign liquor in the old Himachal Pradesh areas, but also to abolish the same in the merged areas. I am, Therefore, to make this reference for the

concurrence of the Government of India in this Government's decision and in our amending Schedule `A' to the Punjab General Sales Tax Act, 1948, still in force in the Hill areas merged in Himachal Pradesh, in respect of the item. I am to request that necessary approval of the Government of India may kindly be obtained and conveyed to this Government as early as possible"

19. It is very significant that the letter referred to above and vehemently relied upon by the learned counsel for the appellants makes it clear that the imposition of the disputed sales-tax was still in vogue on the 24th of June, 1967 long after the auction had taken place on the 31st of March, 1967 and that the Government of Himachal Pradesh was making the reference in order to achieve the concurrence to the abolition of the said sales-tax. It is also clear that no provision whatsoever was mentioned in the letter of reference under which the concurrence was being sought. It has already been held by me that the tax could not have been abolished in face of the provisions of Section 23(1) of the Government of Union Territories Act, 1963 which was an enactment made in exercise of the legislative powers of the Parliament of India in terms of Art, 239 of the Constitution of India.

20. The second letter which has been very much emphasised is the one bearing NO. D.O. 7-27/67E & T, dated the 16th of January 1968. That letter is from the Chief Secretary to the Himachal Pradesh Government and has been addressed to the Additional Secretary (U.T) to the Government of India, Ministry of Home Affairs, New Delhi. He said letter opens up by calling attention to the letter dated the 24th of June, 1967 which has been the subject to comment earlier. It is paragraph 2 of the said letter on which Mr. Sibal who argued the case with admirable eloquence relied. The said paragraph deserves to be reproduced here and is as under:

"2. In view of the Government's decision it was announced at the times of the auction for the year 1967-68 held in March 1967 that there was no proposal to levy sales-tax on Foreign Liquor in the old Himachal Pradesh areas and that in the merged areas, Government was considering to abolish the tax on the line of Harayana Government,. This announcement was made in pursuance of our policy to safeguard the revenues accruing from Indian made Foreign Liquor".

21. As paragraph 3 would show the said letter was written after the filing of the writ petition with which the learned single Judge who dismissed the same was concerned. The letter may have resulted from some persuasion emanating from the present appellants but this is a mere estimation of the situation. It may have also been written due to the peculiar circumstances which the Himachal Pradesh Government was facing. In Paragraph 3 the letter is couched in such language that it seeks to support the present appellants, to the extent that but for the alleged announcement they would not have given the higher bid. Before dealing with paragraph 2 of the letter it is appropriate to mention that the author of the said letter, the Chief Secretary to the Himachal Pradesh Government, ended the same with the following requests:-

"I am to request that the decision of this Government to abolish sales-tax on Indian made Foreign Spirit in the merged areas may kindly be considered early and approval of the Government of India conveyed to this Government as early as possible".

22. It must be said at once that even on the 16th of January 1968 without specifying any provisions whatsoever the Government of Himachal Pradesh was still requesting the Central Government to give a concurrence to abolish the disputed sales-tax which in terms of the exact phraseology of the letter under consideration was still being lawfully levied.

23. It was urged by the learned counsel for the appellants that the words "Government was considering" as used in paragraph 2 were cautiously used, as a face saving device by the Government of Himachal Pradesh because they had already taken the decision and the matter was no longer under their consideration. The submission is not entirely insignificant. It is clear from the admissions contained in paragraph 2 of the letter dated the 16th January 1968 that there was some announcement on the 31st of March, was not an ambiguous announcement. It was presumably specific to the effect that either the Government of Himachal Pradesh had decided to abolish the sales-tax or that they were going to achieve its abolition in respect of the merged areas. It can be safely held that the announcement was certainly intended to achieve higher bids from the bidders. It did hold out to them that there may be no levy of the sales-tax in respect of the sales of Indian made foreign liquor during the year for which they were going to obtain license. It could be said in this case that the present appellants would have given the same bid if no announcement had at all been made.

24. The question still remains as to what exactly that announcement was? No affidavit has been filed by the present situation we have to see as to what would be the result of the alleged announcement and whether the appellants can obtain the relief which they are seeking? Before dealing with that aspect it must be said that the letter dated the 16th of January, 1968 although leading to the foregoing results does not show as to under what provisions of law the abolition of the said sales-tax was being sought through the magical performance of a concurrence by the Central Government. The concurrence could have no consequence in face of the provisions of Art, 239 of the Constitution of India which provide for the administration of Union territories. The contemplated concurrence could have any legal significance only subject to the impositions caused by a duly made law by the Parliament of India and the two letters mentioned above fall in the same category. The observations made in terms of the interpretation of the application of Section 23(1)(a) of the Government of Union Territories Act, 1963 apply to both the foregoing letters with equal force.

25. It would be appropriate at this stage to refer to the rules which are called the Rules of Business of the Government of the Himachal Pradesh, 1963. The said rules have been framed in exercise of the powers conferred by Art, 239 and the

proviso to Art, 309 of the Constitution of India read with Section 46 of the Government of Union Territories Act, 1963. The said rules expressly disclose that they are protected not only by the constitutional provisions contained in Art., 239 and 309 but also by Section 46 of the Government of Union Territories Act, 1963 which is a law made by the Parliament in terms of the opening part of Art, 239 itself. Their genesis is constitutional and legal. The rules are "the Rules of Business". Sub-rule (3) of Rule 4 is to the following effect:-

"(3) Notwithstanding anything contained the sub-rule (1) and sub-rule (2), prior reference in respect of the matters specified in Chapter V shall be made to the Central Government in accordance with the provision of that Chapter.

26. It is very significant that Rule 49 which is the first rule occurring under Chapter V is placed under the heading "References to the Government of India". The rule itself is as under:-

"49. The Administrator may refer to the Central Government draft Bill before it is introduced in the legislature of the Union territory. When a draft Bill is referred to the Central Government is referred to the Central Government under the rule, the advice of the Central Government shall be awaited before the Bill is introduced in the legislature of the Union territory".

27. I am inclined to hold that the word "may" occurring in this rule if read in terms of Section 23(1)(a) of Act 20 of 1963 would be seen in its true context and would mean "shall". An interpretation has to be adopted which would carry out the object and intent to Section 23(1)(a) referred to above.

28. A reference may also be made to Rule 56 occurring in Chapter V. That rule is imperative. All proposals for legislation covered by that rule have to be referred by the Administrator to the Central Government. It is stated there-in that he will have to do so in all matters specified in the concurrent list. Then there are several items of the State list in respect of which he has imperatively to make a reference if there is any proposal to carry out any legislation which may be related to them. Out of those items the items in point are 8, 26 and 51. Item 8 of the State list is in the following items:-

"8. Intoxicating liquors that is to say, the production, manufacture, possession, transport, purchase and also of intoxicating liquors".

Item 26 of the same list is to the following effect:-

"26 Trade and commerce within the State subject to the provisions of Entry 33 of List III."

29. List Iii is the concurrent list. A close examination of Entry 33 of that List shows that it does not provide for enacting law in respect of imposition of any sales-tax or excise duty in respect of the manufacture or sale of any liquors. Item 26 of the State list, Therefore, remains unfettered.

30. Item 51 of the State List is as under:-

"51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-

(a) alcoholic liquors for human consumption.

(b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (B) of this entry".

31. If Entry 8 reproduced above is referred to then the proposal to legislative in respect of the sale or purchase of intoxicating liquors is imperatively referable to the Central Government. The sale of any intoxicating liquor will include the sale at a particular price or according to schedule of prices and in any case subject to such sales tax which may be imposed. Reading this entry with the provisions of Section 23(1)(a) of the Government of Union Territories Act, 1963 would lead to the result that the abolition of the disputed sales-tax could only have been achieved through a legislation sanctioned by an interpretive prior reference to the Central Government seeking its advice and argument. The type of reference which becomes visible from two letters dated the 24th of June 1967 and the 16th of January, 1968 would not suffice for any purpose. Be that as it may be provisions of Rule 58 contained in Chapter V of the aforesaid rules conclude the matter.

32. It is the appellants' own case that a reference had been made to the Central Government in order to receive a decision as to whether the imposition of the sales-tax was to be abolished or not. Rule 58 is to the following effect:-

"58. When a matter has been referred by the Administrator to the Central Government or any other authority under these rules, further action thereon shall not be taken except in accordance with the decision of that Government or authority".

33. It was put to Mr. Sibal whether the Central Government has ever given the concurrence in respect of the abolition of the disputed sales-tax? He clearly conceded that the Central Government has made no such decision. In view of the imperative provisions contained in Rule 58, there was no legal sanction behind the announcement allegedly made on the 31st of March, 1967.

34. As has been said in the earlier part of the judgment no arguments have been addressed on the basis of the provisions contained in Art 14 of the Constitution of India and this appeal was started by referring to the judgment recorded in Air 1968 Sc 718 and in the course of the submission made by the learned counsel for the appellants while replying to the arguments advanced by the learned counsel for the respondents reliance was again placed on the same case. It must be said as I have done in another case that the afore-mentioned judgment at the Hon'ble the Supreme Court in India opens up a brilliant era in the domain of dispensation of justice much more firmly than did the majority view recorded in

Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, . If the circumstances of the Supreme Court case are borne in mind then it becomes visible that a scheme called the Export Promotion Scheme had been published by the Textile Commissioner on October 10, 1962 providing incentives to exporters of woolen goods. Paragraph 3 of that judgment starts by noticing the source which led to the publication of that scheme. It is observed therein that "the imports and Exports (Control) Act, 18 of 1947 was enacted on March 24, 1947 with the object of enabling the Central Government to continue to exercise the power to prohibit, restrict or otherwise control imports and exports which had till then been controlled by orders issued in exercise of the powers conferred by Rule 84 of the defense of India Rules, 1939, as extended by the Emergency Provisions (Continuance) Ordinance 20 of 1946". A perusal of the subsequent paragraphs establishes that the Export Promotion Scheme with which the Court was concerned and under which the goods had been exported had the legal sanction behind it. Its validity was never under challenge. It has been framed in accordance with law and it had been born out of a legal source. The controversy raised before the Hon"ble the Supreme Court was that while the union of India urged that the Scheme was administrative in character the opposing argument was that it was statutory for all purposes. Paragraph 9 of that judgment clearly discloses the stand which was adopted before the Hon"ble the Supreme Court on behalf of the union of India. The learned counsel appearing for the Union of India relied in support of his submission upon the doctrine of "executive necessity" and it were the observations of Rowlatt, J. made in 1921-3 Kb 500 Rederiaktiebolaget Amphitrite v. The King from which support was sought. Before Rowlatt, J. the applicants had claimed enforcement of a contract against the Crown. That judgment was considered by Denning, J in 1949 1 Kb 227 and the observation made at page 231 there were noticed by the Hon"ble the Supreme Court of India.

35. The defense of executive necessity was negated by Denning J. not only in the above noted case but also in a subsequent case which also was relied upon by the appellants. It was equally repelled by the Hon"ble the Supreme Court of India. Paragraph 12 of the judgment of the Supreme Court once again notices that the Central Government had the authority under the imports and Exports (Control) Act to promulgate the Scheme and to hold out the assurances contained therein.

36. In the present case the announcement alleged to have been orally made at the time of the auction by respondent No. 3 the Collector of Excise and taxation, had no legal sanction behind it. It had no legal sanction behind it. It had not been made because of the authority derived from any provision in any enactment. It had not been made after receiving any decision of the Government of India in terms of R. 58 discussed above.

37. The Hon"ble the Supreme Court noticed the several cases in which it had been formerly ruled that where a person had acted upon representations made in

an Export Promotion Scheme the claim for export license for the maximum value permissible could not be arbitrarily rejected. Equity enured out of the inherent sanctity shining inside the provisions of a lawfully promulgated Export Promotion Scheme. A perusal of paragraphs 14 and 16 of the aforementioned judgment supports me in my view. If a notification, resolution or scheme emanating from a statutory sanction holds out any representation or assurance which causes the citizens to act in a particular way then the Courts of Law may step in to adjudicate upon the rights achieved by the citizens. Paragraph 19 of the Supreme Court judgment contains the following observations:-

"(19) We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favor as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents action upon that Government would carry out the representation made by it".

38. That finding clearly rests upon the view that the claim in that case was founded upon the Export Promotion Scheme which had been promulgated in due process of law.

39. While Mr. Sibal was emphasising that the respondents to the present appeal could not plead any doctrine of executive necessity, I very clearly told him that his insistence was causing in my mind the evolution of a doctrine which may be named the doctrine of "legal justification". I clarified that the answer to his arguments was that the respondents were under a compulsion to collect the sales-tax in order to carry out the rule of law and the legal jurisdiction for their continued collection of sales-tax was that in spite of whatever they may have proposed to do the imposition of the disputed sales-tax remained legally unaltered. If without achieving the change of law the respondents had in any way deferred from collecting the disputed sales-tax then they would have acted against law. They were required by the law of the land to collect the sales-tax and no equity could repeal what they were justified in doing as a matter of their legal duty.

40. I pointed out to him that the Air 1951 Sc case also could not be of any help to him. He was placing reliance upon the observations made by the Hon'ble Mr. Justice Chandra Sekhara Aiyar in paragraph 22 of the judgment reported as Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, . One of the significant aspects of that case was that on the 19th of December, 1965 the Government had lawfully passed the resolution pursuant to which the possession of the site was made over to the then Municipal Commissioner. I pointed out to Mr. Sibal that while in the case reported as Air 1968 Sc 718 the Export Promotion Scheme had its genesis in the provisions of a lawful enactment, the grant in the Bombay case was similarly born out of a resolution lawfully passed by the Government and it was because of the liabilities lawfully incurred that the Courts acting in equity sought to bind the Government to its assurance and declarations. The oral announcement made by the Collector

of Excise and Taxation on March 31, 1967 could neither be equated with the resolution passed by the Bombay Government, with the authority of law on the 19th of December, 1965, or with the Export Promotion Scheme which had been lawfully promulgated. The doctrine of legal justification, I told him, Therefore, remains very much available to the respondents.

41. It is noteworthy that the reasoning of a judgment is always based on some firm view the prevailing of which with the mind of the Judge takes place before the reasoning is sorted out.

42. The closing words of the judgment in paragraph 23 in Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, on the basis of the view taken by the author of paragraph 22 of that judgment. Those words are important and deserve to be reproduced:-

"here as pointed out already the Corporation became the full and absolute owner of the site on the lapse of 60 years from the date of the grant"

43. Justice Aiyar was enforcing equity because of his firm view that it was being enforced in favor of the Corporation which had become the full and absolute owner of the site which was the subject of dispute. No assessment could have been allowed to have been made afresh in respect of the site in the Bombay case after the Corporation according to Justice Aiyar had become the full and absolute owner thereof. It was because of his having formed that view in terms of the facts and circumstances of that case that he made the observations contained in paragraph 22 towards its end in column 2 on page 476 to the following effect:-

"Whether it is the equity recognised in Ramsden's case, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith as far as it lies in their power."

44. The question arises as to whether the Court will be promoting and upholding the rule of law by granting any relief to the present appellants? The rule of law as it prevails is that the imposition of the disputed sales-tax is being carried out in compliance with a living statute and if it is not upheld that would amount to a total negation of law. If it is not upheld then by granting the relief under Art 226 of the Constitution of India this Court will be hitting in the face the provisions contained in Art 239 of the same Constitution of India. The Union Territory is being administered under constitutional authority. It is nobody's case that the Punjab General Sales-tax Act is not holding the field in the territory concerned. The validity of its application is not been questioned. How can we cause the negation of law by exercising our powers which are so sacred as the provisions of Art 336 of the Constitution of India clearly show? Before I venture to say anything regarding the scope of the said provisions I must mention that it was put to the counsel for the appellants whether any equity could be allowed to travel into the field of a fiscal enactment?

45. The State in this case is collecting the disputed sales-tax under the

compulsion of law and in such a matter of collection of tax equity will not walk in. It is remarkable that the Hon^{ble} the Supreme Court of India in the case of Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, remarked as under:-

"Equity is out of place in tax law, a particular income is either exigible to tax under the taxing statute or it is not."

46. We derive support from the foregoing observations. In terms of the two letters relied upon by the learned counsel for the appellants the respondents have made efforts to obtain a decision from the Central Government in terms of Rule 58 referred to above. They have till now received no concurrence to abolish the disputed sales-tax. That being so they are under a duty enjoined by law to collect the sales-tax.

47. There is an observation in 1953 Ac 461 which deserves to be noticed and which is to the following effect.

"Further a public officer has not by reason of the fact that he is in the service of the Crown the right to act for and on behalf of the Crown in all matters which concern the Crown; his right to act for the Crown in any particular matter must be established by reference to statute or otherwise."

48. If a detailed study is made of the above cited case then it will become very much visible that in order to bind the respondents the Excise Collector must be shown to have had some authority emanating from some statutory source to make the alleged announcement.

49. Mr. Sibal asserted and vehemently enough, that the respondents were holding back important evidence in their possession which would have disclosed that they had taken a firm decision by about 19th of March, 1967 on the basis of which the Excise Collector had been specifically authorised to make the alleged announcement. We told him that the appellants had resorted to be wrongly remedy. It is clear that the jurisdiction conferred by Art 226 is of a limited and extraordinary nature. The Hon^{ble} the Supreme Court has held in many cases that in case an efficacious remedy is available to the litigant he should not be allowed to invoke the jurisdiction conferred by Art 226 of the Constitution of India. That jurisdiction is, in a way, summary in nature. No issues can be framed, no rules of production of evidence can become available to the parties.

50. The real dispute is one based upon the allegation that in case no such announcement as alleged had been made the appellants would not have given such a high bid and would not also be befouled into paying the sales-tax later on. There is a demand to the effect that the Government should be directed to refund to the appellants the sales-tax which has been collected. It would not be appropriate to make any observations which may prejudice the appellants if they seek to file a civil suit against the respondents for the recovery of any amount to which they may make their claim by way of damages or otherwise. It has been

held in an earlier part of this judgment that on the 31st July 1967, there was some specific announcement which made the appellants to give the bid which they did. This judgment may in itself provide to the appellants, subject to any pleas which may be open to the respondents a fresh point from which limitation may start for any suit which they may like to file. The appellants have certainly been involved into exceptional circumstances but we are of the view that they could not have achieved any relief by moving the Court under Art 226 of the Constitution of India because it would be only in a civil suit that the parties would achieve a trial on specific issues and utilize the various provisions of the Civil P.C. for collecting evidence from whatever source it may be available.

51. We do not propose to interfere and dismiss this letter patent appeal. There will be no order as to costs.

52. Appeal dismissed.