

(1975) 07 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Appeal No. 734 of 1974

P.N. Balasubramanian

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 25-07-1975

Acts Referred:

Citation : AIR 1975 Delhi 258 : (1976) ILR Delhi 506

Hon'ble Judges : Yogeshwar Dayal, J; V.S. Deshpande, J

Bench : Division Bench

Advocate : R.K. Garg, V.J. Francis, B.N. Lokur, Harish Chandra and S.P. Nayar, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The question for consideration is whether the general rule of interpretation of statutes that a procedural enactment is presumed to be retrospective in its operation is affected by section 6 of the General Clauses Act and if so, to what extent. The statutory background of the question is as follows:

(2) The Foreign Exchange Regulation Act, 1947 (briefly called the repealed Act or the Act of 1947) was repealed by the Foreign Exchange Regulation Act, 1973 (briefly called the repealing Act or the Act of 1973). The petitioner had entered into certain foreign exchange transaction from 1959 to the end of 1973 when the repealed Act was in force. On 31st May 1974, after the repealing Act came into force on 1st January 1974, a notice was issued by the Deputy Director of the Enforcement Directorate to the petitioner u/s 33(2) of the repealing Act asking him to furnish certain information and documents from 1959 to the date of the notice in relation to the dealings of the petitioner in foreign exchange during that period.

(3) The validity of the notice is challenged by this writ petition. The grounds of challenge originally stated in the writ petition and summarised in the rejoinder were further reshaped by Shri R. K. Garg, learned counsel for the petitioner, in

the light of our observations. The grounds urged by him in the argument may be stated as follows:

(1) Section 6 of the General Clauses Act lays down that any investigation in respect of any liability for the contravention of any provisions of the Act of 1947 which may have been incurred by the petitioner may be instituted "as if the repealing Act had not been passed"- Section 33(2) enables the authorities empowered thereby to collect information and documents specified in the impugned notice of 31st May 1974. The power u/s 33(2) can be exercised only "for the purposes of this Act", namely, for the purposes of the Act of 1973. That is to say, action u/s 33(2) can be taken only in respect of contraventions of the Act of 1973. Section 81(3) of the Act 1973 also makes it clear that in view of section 6 of the General Clauses Act, investigation into transactions which have taken place when the Act of 1947 was in force is to be made according to the procedure laid down in the Act of 1947. Section 19(2) of the Act of 1947 would apply to such investigation into the past transactions. The expression "unless a different intention appears" used in section 6 of the General Clauses Act shows that the repealing Act may provide that notwithstanding section 6 of the General Clauses Act, the transactions which have taken place under the repealed Act would be governed by the repealing Act. But the repealing Act has been made applicable only to the specified past transactions by sub-section (2) of section 81 of the repealing Act. The other past transactions are to be governed by the provisions of the repealed Act. For, sub-section (3) of section 81 of the repealing Act expressly says so. u/s 19(2) of the repealed Act only the Central Government or the Reserve Bank was empowered to collect the information regarding contravention of any provisions of the repealed Act during the period when the repealed Act was in force. The power to collect information has been conferred by section 33(2) of the repealing Act for the first time on any officer of Enforcement not below the rank of a Chief Enforcement Officer in addition to the Central Government or the Reserve Bank. This is a change effected by the Act of 1973 and such a provision is not to be found in the Act of 1947. Since the procedure of investigation into the acts of the petitioner prior to 1st January, 1974 has to be governed by section 19(2) of the repealed Act, the impugned notice of 31st May 1974 issued u/s 33(2) of the repealing Act is ultra vires for the following reasons, namely : (a) Section 33(2) authorises action there under only for the purposes of the 1973 Act but not for the purposes of the 1947 Act; (b) The notice had to be issued u/s 19(2) of the repealed Act in view of section 31(3) of the repealing Act and section 6 of the General Clauses Act; and (c) The Deputy Director, even if he is assumed to be an officer not below the rank of a Chief Enforcement Officer, was not competent to issue such a notice u/s 19(2) of the repealed Act. His competency u/s 33(2) of the repealing Act to do so is irrelevant inasmuch as the procedure made by the repealing Act is not applicable to the acts done by the petitioner prior to 1st January, 1974. (2) Even if it is assumed that the procedure laid down by the repealing Act is applicable to the investigation into the pre-1974 acts of the petitioner, the application of such

procedure would be subject to the provisions of Article 20(1) of the Constitution. The petitioner cannot be subjected to a penalty greater than that which might have been inflicted on him under the law in force at the time of the commission of any offence by him. The expression "for the purposes of this Act" used in section 33(2) would include the imposition of penalties u/s 50 of the 1973 Act. These penalties are higher than the penalties which could be levied u/s 23(1A) of the 1947 Act. The application of section 50 of the repealing Act in place of section 23(1A) of the repealed Act would be contrary to Article 20(1) of the Constitution. The impugned notice is, Therefore, unconstitutional. (3) The meaning of the expression "Chief Enforcement Officer" used in section 33(2) of the 1973 Act would be the chief officer of the Directorate of Enforcement, that is to say, a Director of Enforcement. Sections 3, 4 and 5 refer to the classes of officers empowered to Act under the 1973 Act. From these sections it would be seen that all the officers from Director downwards are Enforcement Officers. The Deputy Director who issued the impugned notice cannot be regarded as the Chief Enforcement Officer. He could not, Therefore, validly issue the notice. (4) Section 33(2) of the repealing Act corresponding to section 19(2) of the repealed Act is contrary to Article 20(3) of the Constitution inasmuch as it compels a person accused of an offence to be a witness against himself. (5) Section 33(2) is also unconstitutional inasmuch as it delegates powers of investigation to the authorities mentioned therein without laying down any guidelines and thus suffers from the vice of excessive delegation. (6) The impugned notice is contrary to the requirements of section 33(2) itself inasmuch as it does not specify and particularise the information and documents wanted from the petitioner. It is vague and in the nature of a fishing expedition. It has been issued without the application of mind by the issuing authority. The information asked for is not relevant. (7) The issuing authority Shri T. S. Bedi (Respondent 2) is personally inimical and hostile to the petitioner and the notice is, Therefore, mala fide. The notice is issued on irrelevant considerations. (8) Originally Shri Garg wanted to argue that the 1973 Act was vocative of Articles 14, 19, 21 and 22 of the Constitution in addition to Article 20 reference to which has already been made above. Article 19 is, however, suspended automatically on the promulgation of the emergency firstly on the 3rd of December 1971 and secondly on the 25th of June 1975. By a proclamation issued by the President under Article 359 of the Constitution, enforcement of the rights conferred by Articles 14, 21 and 22 has also been suspended and all proceedings for the enforcement of such rights have been suspended for the period during which the proclamations of emergency made under Article 352 remain in force. We called upon Shri Garg to state whether he would like to press his objections against the constitutionality of the 1973 Act on the ground that it violates Articles 14, 21 and 22. We, however, made it clear that if the proceedings are to be so suspended, then we would have to reconsider the question of staying any longer the operation of the impugned order of 31st May 1974. In view of the probability of the stay being withdrawn. Shri Garg did not press his challenge before us to the constitutionality of the 1973 Act under Articles 14, 21 and 22 of the Constitution.

He did not argue that the said Act was contrary to Article 19 because Article 19 was suspended automatically by the proclamations of emergency. Lastly, he did not argue that the 1973 Act was contrary to Article 31 of the Constitution. This objection, Therefore, need not be considered and the proceedings need not be suspended.

(4) Both the respondents Union of India and Shri T S. Bedi filed counter affidavits, Shri B. N. Lokur learned counsel for the respondents also orally supplemented the counter affidavits on hearing the arguments of Shri Garg. The replies of the respondents to the contentions of the petitioner were as follows :

(1) Notwithstanding section 6 of the General Clauses Act and section 81(3) of the repealing Act, the procedure laid down by the repealing Act governs the investigation into the pre-1974 conduct of the petitioner according to the well established rule that a procedural enactment applies to past actions and no one have a vested right to the continuance of the procedural provisions of the repealed Act, Section 33(2) of the repealing Act and not section 19(2) of the repealed Act would, Therefore, apply to the investigation against the petitioner. (2) Section 33(2) itself does not impose any penalty on the petitioner which is higher than the penalty which could be imposed on him under the repealed Act. It does not, Therefore, contravene Article 20(1) of the Constitution. If after investigation there is any adjudication, then only the question would arise whether the penalty to be imposed in such adjudication can or cannot be higher than the one which was prescribed u/s 23(1A) of the repealed Act. This has nothing to do with the present writ petition. (3) Section 2A of the repealed Act itself enabled the Central Government to appoint a Director of Enforcement and as many Deputy Directors of Enforcement, Assistant Directors of Enforcement and such other officers as it thought fit to be officers of Enforcement for the purpose of enforcing the provisions of that Act. u/s 2B of the repealed Act, the Central Government could authorise any officer of Enforcement to exercise such of the powers and to discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under the Act as may be specified in the order. These sections themselves distinguished between the Director and the Enforcement officers. In exercise of the authority conferred by section 2A, the Central Government had already appointed Chief Enforcement Officer, Enforcement Officers and Assistant Enforcement Officers who were all below the rank of Assistant Directors of Enforcement. The Legislature while enacting 1973 Act was, Therefore, aware that a Chief Enforcement Officer was below the Directors, Deputy Directors and Assistant Directors of Enforcement. The expression "a Chief Enforcement Officer" in section 33(2), Therefore, described the then existing Chief Enforcement Officer who was below even an Assistant Director. Shri T. S. Bedi as a Deputy Director was, Therefore, an officer not below the rank of a Chief Enforcement Officer within the meaning of section 33(2)(4) On 31st May, 1974 when the impugned notice was issued, the petitioner was not accused of any offence, in fact, the very purpose of the notice is to collect information with a view to determine prima facie whether the petitioner has

committed any contravention of the provisions of the repealed Act. It is only then that it would be known whether any departmental adjudication proceedings should be taken against the petitioner. Even then the petitioner would not be an accused. It is only if it is decided to prosecute the petitioner that the petitioner would be an accused. It is only thereafter that the petitioner would not be compellable to be a witness against himself. On 31st May 1974 the petitioner not being an accused, the question of contravention of Article 20(3) of the Constitution did not arise. (5) Section 33(2) lays down the guidelines by stating that the information to be collected there under must be "for the purposes of this Act". It is not, Therefore, unconstitutional for excessive delegation. (6) Before the issue of the impugned notice, the Deputy Director Shri T. S. Bedi had applied his mind to materials in his possession which showed that it was necessary to inquire whether foreign exchange transactions entered into by the petitioner were legal under the repealed Act or not. The notice was issued after full consideration. The notice is also specific regarding the information asked for which is fully relevant to the acts committed by the petitioner according to the material in the possession of the respondents. The notice is not, Therefore, contrary to section 33(2)(7) The allegations of mala fides were denied by Shri T. S. Bedi on affidavit. (8) Did not arise as Shri Garg did not press his contentions regarding the unconstitutionality of the 1973 Act.

(5) The first contention raised by the petitioner is the most important. Shri Garg was right in pointing out that the information asked for in the impugned notice related to the acts of the petitioner committed prior to 1st January, 1974. According to Article 20(1) of the Constitution, the petitioner cannot be convicted except for an act which was an offence under the repealed Act and except for a penalty which is not greater than the one to which he was liable under the repealed Act. According to the common law principle, the repeal of an Act wipes out the Act totally and retrospectively as if the Act had never existed at all. After the repeal of the Act, Therefore, no one can be prosecuted or convicted for an act which amounted to an offence under the repealed Act. It is to counteract the effect of this common law principle that section 6 of Act I of 1868 was first enacted in India. As in other fields, this Indian legislation was ahead of legislation in England in correcting the common law. A similar provision was enacted in England in section 38 of the Interpretation Act, 1889. With regard to the objects and reasons of section 6 of the General Clauses Act, 1897, the Select Committee says that section 6 is modelled as closely as possible to the wording of section 38 of the English Interpretation Act, 1889. It is on the basis of this similarity of the legislation on this point in the two countries that English decisions have been considered persuasive in India.

(6) From before the enactment of the Interpretation Act, 1889 in England and the General Clauses Act of 1868 and 1897 in India, the settled rule of interpretation of statutes was that a procedural statute or the procedural provisions of a statute would apply equally to transactions taking place before the enactment as also to those taking place after the enactment. The procedural

enactment is retrospective in the sense that no one has a vested right in procedure. Therefore, when an existing statute is repealed by another statute the proceedings which arise out of acts committed when the repealed statute was in force is governed by the repealing statute. The effect of the enactment of section 6 of the Central Clauses Act, 1868 succeeded by section 6 of the General Clauses Act, 1897 on this state of common law has, Therefore, to be considered.

(7) The relationship between statute law and common law has been expressed by Professor W. M. Geldart as follows :

"THE most fundamental part of our law is still Common Law.....The statute assume the existence of the Common Law; they are the addenda and errata of the book of the Common Law: they would have no meaning except by reference to the Common Law." (Elements of English Law, page 9) . It is also a well known rule of construction of statutes that "the legislature does not intend to make any substantial alteration in the existing law beyond the immediate scope and the object of the statute."

[MAXWELL on Interpretation of Statutes, 12th Edition, page 116). To quote Justice Frankfurter, "the "policy" of a statute should be drawn out of its terms, as nourished by their proper environment, and not, like nitrogen, out of the air" [D.A. Schteul, Incorporated v. Cangi, 328 U.S. 108. The ecology of this statute like all others is that part of common law which has been received in India as rules of "justice, equity and good conscience" as suited to the genius of this country. This much of common law is in force in India in view of Article 372(1) of the Constitution as held by the nine Judges" Bench of the Supreme Court in Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, . As pointed out at page 187 of the report in this respect the decision did not differ from the previous decisions of the Court in Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, , and Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc., .

(8) The assumption behind Shri Garg's argument regarding the effect of the provisions of section 6 of the General Clauses Act is that the provisions of the repealed Act as such are continued in force even after the repeal and that the operation of the provisions of the repealing Act is barred. This is not borne out by the language of section 6. For, section 6 does not save the provisions of the repealed Act as such. It "only saves the rights and liabilities which have accrued there under. All it ensures is that these rights and liabilities would be enforced notwithstanding the repeal. For this limited purpose it is not necessary to invoke the aid of the repealed Act as such. For, the rights and liabilities may be such that they can be enforced under the repealing Act itself. Even when the repealing Act is inconsistent with the enforcement of these rights and liabilities, section 6 would save the operation of only those parts of the repealed Act the operation of which beyond the date of repeal is necessary to give effect to these rights and liabilities. In understanding section 6 of the General Clauses Act, Therefore, the

first distinction to be made is between the provisions of the repealed Act as such and the rights and liabilities which have accrued when that Act was in force, i.e., events or transactions or facts as distinguished from law or the provisions of the repealed statute."

(9) Another distinction to be observed is between clauses (b), (c) and (d) on the one hand and clause (e) on the other hand of section 6. The former deal with the past, that is, they save the rights and liabilities which had already accrued and thus become complete before the date of the repeal. The latter deals with pending and future investigations and legal proceedings. Thus while the former deal with substantive matters like rights and liabilities, the latter deals only with procedural matters such as the institution and continuation of investigations and proceedings. The object of section 6 is to save the rights and liabilities which have already accrued. The maxim of English law which is also accepted in India is that no one has a vested right in procedure. The only question for consideration, Therefore, is whether clause (c) of section 6 modifies this maxim. It would be noted that unlike clauses (b), (c) and (d), clause (c) of section 6 does not refer to acts completed in the past. On the other hand, it simply says that the repeal shall not affect any investigation or legal proceeding in respect of such past rights and liabilities. The investigation or the legal proceeding if already completed is irrelevant for the purpose of clause (c). For the concluding words of section 6 following clause (e) shows that its object is to enable such investigation or legal proceeding to be continued (if pending) or to be Instituted for the first time after the repealing Act has come into force. There is nothing in the language of clause (e) and the concluding words of section 6 to show that the procedure laid down in the repealed Act was continued in force even after the repeal, unless the continuation or institution of an investigation or a legal proceeding for the enforcement of past rights and liabilities would be contrary to the procedure laid down in the repealing Act.

(10) Section 6 contains the expression "unless a different intention appears". "The effect of these words is that the repealing Act can make a provision which would be contrary to section 6 and to that extent can modify the operation of section 6. Unless, Therefore, the procedure laid down by the repealing Act is such that effect cannot be given there under to the rights and liabilities accrued under the repealed Act, the general rule that the new procedure would apply to the investigations and legal proceedings for the enforcement of old rights and liabilities would not be affected in any way by section 6. In the present case, the Act of 1973 does not lay down in section 33(2) any procedure which would affect the enforcement of the rights and liabilities which accrued under the Act of 1947. Except enabling certain officers of the Enforcement Directorate to exercise the power of collecting information in the course of investigation into contraventions of the 1973 Act, section 33(2) of the said Act is substantially the same as section 19(2) of the 1947 Act. If, Therefore, either the Central Government or the Reserve Bank were to collect information into contraventions which had taken place prior to 1-1-1974 when the repealed Act was in force, the procedure u/s

33(2) of the repealing Act would be precisely the same as the procedure u/s 19(2) of the repealed Act". Could it then be argued that they would have to act u/s 19(2) of the repealed Act and that they could not act u/s 33(2) of the repealing Act ?

(11) Such an argument would be untenable. Clause (e) of section 6 read with its concluding words would be satisfied if the investigations into the pre-1974 acts of the petitioner are continued or instituted after 1-1-1974 according to the procedure which was common to the repealed and the repealing Acts. Since only the repealing Act is in force after 1-1-1974 it would be natural to regard that the investigation after 1-1-1974 is governed by section 33(2) of the repealing Act. "There is nothing in section 6 of the General Clauses Act which goes beyond the saving of the continuance or the commencement of the investigation. The purpose of section 6 is achieved when this is done. It does not extend to the continuance or revival of the provisions of the repealed Act including section 19(2) thereof."

(12) It is, however, argued that the Deputy Director who issued the impugned notice would not have been authorised to do so u/s 19(2) of the repealed Act. Since he has purported to act u/s 33(2) of the repealing Act and could not do so u/s 19(2) of the repealed Act, his action is contrary to section 6 of the General Clauses Act and as such void. This argument ignores the point made above that "the general rule is that the procedure laid down in the repealing Act is applicable to the proceedings which arise out of transactions which took place under the repealed Act. This general rule has not been rebutted by anything contained in section 6 of the General Clauses Act. Nor is there anything in the provisions of the repealing Act which militates against it. The mere fact that the procedural provision of the repealing Act is different from the provisions of the repealed Act is no reason for not applying it to the investigation or legal proceeding which relates to pre-1974 transactions".

(13) The application of new procedural provisions introduced by an amending or a repealing Act to legal proceedings relating to pre-amendment or pre-repeal period is established by several Supreme Court decisions. In *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, the Court observed that a person accused of the commission of an offence has no vested right to be tried by a particular court or a particular procedure. In *Union of India (UOI) Vs. Sukumar Pyne*, the Act of 1947 was amended by Act 39 of 1957. Prior to the amendment, contraventions of the Act could only be the subject of a prosecution. But after the amendment, they could also be adjudicated upon and departmental penalties could be imposed after such adjudication. The application of this new provision introduced by amendment was objected to on the ground that this would be a retrospective application. The objection was negated by the Supreme Court by the following observation at pages 38-39 of the report :

"The general principle, however, seems to be that alterations in procedure are retrospective, unless there be some good reason against it (Maxwell on

Interpretation of Statutes, 11th Edition, p. 217).if this is a matter of procedure, then it is not necessary that there should be a special provision to indicate that the new procedural law is retrospective."

In Nani Gopal Mitra Vs. The State of Bihar , the Court reiterated that :

"IT is Therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz., that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force..... The same principle is embodied in section 6 of the General Clauses Act. . . . The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law."

The retrospective application of procedure was thus reaffirmed by the Supreme Court expressly in the context of section 6 of the General Clauses Act. This is an authority, Therefore, for the proposition that section 6 has not modified the said principle.

(14) Shri Garg then laid stress on the words "as if the repealing Act had not been passed" at the end of section 6 of the General Clauses Act. According to him, the effect of these words is that the repealed Act continued to be in force and the repealing Act has no application to the investigation which relates to acts committed prior to 1-1-1974. In Anant Gopal Sheorey v. The State of Bombay, Air 1958 S.C.R. 915, the Supreme Court had occasion to consider these words used in section 116(C) introduced by an amendment in the Code of Criminal Procedure. The argument was that the amending Act would not apply to pending proceedings in view of these words. The argument was negated by the following observation at page 917, paragraph (6) :

"If that is the interpretation to be put then it would be in conflict with the last portion of the section, i.e., "Save as aforesaid the provisions of this Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of this Act and also to all proceedings pending in any Criminal Court on the date of such commencement"."

In our view, "the general rule as to the retrospective application of a procedural statute has the same effect as the concluding words of section 116(c) of the Code of Criminal Procedure quoted by the Supreme Court. The words "as if the repealing Act had not been passed" used in section 6 of the General Clauses Act do not, Therefore, preclude the application of the procedure of the repealing Act. These words have a limited purpose, namely, to secure the enforcement of the rights and liabilities arising prior to the repeal by a proceeding instituted after the repeal. They do not prevent the coming into force of the repealing Act".

(15) "THE distinction between the saving of the substantive rights and liabilities

prior to the repeal and allowing the full application of the procedure introduced by the repealing Act is also supported by the analogy of Article 13 of the Constitution to the repeal of a statute". In *Keshavan Madhava Menon Vs. The State of Bombay*, , the Supreme Court held that the prosecution of the petitioner for acts committed prior to the commencement of the Constitution and becoming an offence under the then existing law could continue even after the commencement of the Constitution inasmuch as Article 13 of the Constitution did not apply to pre-Constitution transactions. But the applicability of this decision was confined to substantive rights and liabilities only by the decision of the Supreme Court in *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, , in which the post-Constitution procedure was held to apply to the trial of the appellant which had continued from before the commencement of the Constitution but became invalid on the commencement of the constitution.

(16) "EVEN in regard to substantive matters, the provisions of the repealed Act are to continue in force only if this is necessary to save the rights and liabilities accrued there under. The principle is the same as is embodied in Article 20(1) of the Constitution. Therefore, if the rights and liabilities arising under the repealed Act are not inconsistent with the provisions of the repealing Act, it is immaterial if their enforcement is effected under the repealed Act or the repealing Act so long as they are enforced. If due to the difference in the provisions of the repealed Act and the repealing Act it is necessary to deem the action purported to be taken under the repealing Act as being taken under the repealed Act, the Court has power to do so". In *State of Punjab v. Mohar Singh*, Air 1955 S.C. 84, paragraph (5) this was the legal position stated by the Supreme Court.

(17) The principle is that if the power to do a thing is given by a statute, then the exercise of the power will be deemed to be under that statute even if the power is purported to be exercised under a different statute. When purporting to exercise the power under a statute the application of the mind of the authority would naturally be attracted to the statute under which he purports to act. Nevertheless, if the power to act is derived by him not from that statute but under a different statute, then his act would be deemed to be committed under the statute under which he had the power to act. This is established by the Supreme Court decision in *Roshan Lal Gautham v. State of Uttar Pradesh*. Air 1965 S. C. at 994 towards the end of paragraph (3).

(18) The words "the .repeal shall not affect the previous operation of any enactment so repealed" in section 6(b) of the General Clauses Act arc also relied on for the proposition that the provision of the repealed Act and not those of the repealing Act should apply to the enforcement of the rights and liabilities accruing before the repeal In *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, , it was emphasised in paragraph (13) that the words "previous operation of the repealed law" cannot be taken to mean "the future operation of the previous law". Though this observation was made regarding section 58(3) of the Administration of Evacuee Property Act, 1950, it is applicable to section 6 of

the General Clauses Act as construed in the light of the principle that the procedural provisions of the repealing Act would apply retrospectively.

(19) The question whether the investigation is for the purpose of the 1947 Act or is for the purposes of 1973 Act depends on the substantive nature of the contraventions of the Act of 1947 which may be disclosed ultimately as a result of the investigation. If in the context of Article 20(1) of the Constitution, the offence committed by the petitioner and the penalty to be imposed on him is such that they are covered by the provisions of the new Act, then the investigation could well be said to be for the purposes of the new Act inasmuch as there was no difference between these purposes and the purposes of the old Act. On the other hand, if the offence and the penalty attracted by the acts of the petitioner are such as could be covered only by the provisions of the old Act then the investigation could be for the purposes of the old Act. In that event, the impugned notice would be regarded as having been issued by the Deputy Director for the purposes of the old Act inasmuch as the power to try the offence and impose the penalty would be derived only from the provisions of the old Act. But as observed by the Supreme Court in the Mohar Singh and Roshan Lal Gautham decisions cited above, the reference to section 33(2) of the repealing Act can be deemed to be reference to section 19(2) of the repealed Act by the Court and the impugned notice would still be not vitiated.

(20) For these reasons, we negate the first contention of the petitioner and hold "that" the procedure of section 33(2) of the Act of 1973 is applicable to the investigation against the petitioner whether the investigation is for the purposes of the Act of 1973 or the Act of 1947. that the Deputy Director was competent to issue the impugned notice and that section 6 of the general Clauses Act does not stand in the way.

(21) The second contention is misconceived. It presupposes that the more issue of notice u/s 33(2) would mean that a penalty higher than the one contemplated by the repealed Act would be intended to be imposed on the petitioner. As already stated above, the notice would be deemed as being for the purposes of the 1947 Act only if the offence and the penalty attracted by the investigation are such as being covered only by the 1947 Act. The notice is only the initiation of the proceedings. It does not determine whether the ultimate result would be to make the offence triable under the 1947 Act and a penalty imposeable only under the said Act or whether both would be under the 1973 Act. The investigation is, therefore, valid.

(22) As to the third contention prima facie. the expression "Chief Enforcement Officer" used in section 33(2) would have meant the Chief of the Enforcement Directorate, that is, the Director himself. But this expression has to be understood in the previous legislative context. u/s 2A of the 1947 Act the Central Government was empowered to appoint a Director, Deputy Directors and Assistant Directors of Enforcement and also such other officers of Enforcement as it thought fit. A distinction was, Therefore, made between a Director, Deputy

Director and Assistant Director on the one hand and the other officers of Enforcement on the other hand. In exercise of this power, the Central Government actually appointed Chief Enforcement and Assistant Enforcement Officers. The expression " Chief Enforcement Officer" was already, Therefore, used when the power u/s 2A of the repealed Act was exercised. The Legislature enacting the repealing Act was supposed to be aware of the exercise of this power. It Therefore, knew that a Chief Enforcement Officer was an officer other than the Director, Deputy Director or Assistant Director of Enforcement. With this legislative background it is not possible to construe the words "Chief Enforcement Officer" used in section 33(2) to mean the Director of Enforcement. The Deputy Director was, Therefore, an officer not below the rank of a Chief Enforcement Officer and was, Therefore, competent to issue the impugned notice.

(23) The fourth contention is based on Article 20(3) of the Constitution which applies only when a person is accused of an offence. The issue of the notice u/s 33(2) was the mere beginning of the investigation. Whether the petitioner would be accused of an offence or not was not known at that stage. The issue of the notice was not, Therefore, contrary to Article 20(3).

(24) The fifth contention regarding excessive delegation is also untenable inasmuch as the words "for the purposes of this Act" used in section 33(2) confine the discretion in the issue of the notice to the purposes of the Act and thus lay down sufficient guidelines within which the discretion is to be exercised. Section 33(2) is not bad for excessive delegation.

(25) Section 19(2) of the repealed Act was construed by the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, . The Court laid down that the information and the documents which are asked for must be specified in the notice. This presupposes that the notice was issued after consideration was given to the matter and it was determined what information and documents would be necessary for the purpose of the investigation. Whether the information and the documents asked for in the notice are relevant and necessary for the purpose of the investigation is to be determined in the light of the averments made in the counter affidavit. A perusal of the averments in the counter affidavit along with Annexures R2 to R6 shows that the petitioner had an account with the Bank of Scotland from before 1964, that another concern of the petitioner had asked the petitioner's collaborators for a share in the commission payable in foreign exchange to the petitioner in 1961 and that the petitioner had done transactions in foreign exchange abroad during those years. The information and documents which the petitioner is asked to supply are strictly related to these matters. The impugned notice is, Therefore, well within the power conferred by section 33(2) corresponding to section 19(2) as construed by the Supreme Court. The sixth contention, Therefore, fails.

(26) As to the mala fides of Shri Bedi, the allegations made by the petitioner are denied by Shri Bedi. A persual of the allegations in the light of the denial shows that no case of mala fides is made out at all.

(27) As all the contentions advanced on behalf of the petitioner are negated, the writ petition is dismissed without any order as to costs.