(1976) 07 CAL CK 0014

In the Calcutta High Court

Case No : Appeal from Original Order No''s. 109 of 1972 and 726 of 1973

State of West Bengal and Others — APPELLANT

Vs

A.S. Narayana — RESPONDENT

Date of Decision : 06-07-1976

Acts Referred:

Constitution of India, 1950 — Article 162, 226

Citation : 80 CWN 901 : (1977) 40 STC 404

Hon'ble Judges : Sankar Prasad Mitra, C.J;Salil Kumar Datta, J

Bench : Division Bench

Advocate : Gouri Mitter, -General, Ganendra N. Roy and Pradipta Roy, in Appeal from Original Order No. 726 of 1973, D.K. Dey, in Appeal from Original Order No. 109 of 1972, for the Appellant;Arun Prakash Chatterjee and Samar Kumar Datta, in Appeal from Original Order No. 726 of 1973 and Ganendra N. Roy in Appeal from Original Order No. 109 of 1972, for the Respondent

Judgement

Salil Kumar Datta, J.—By a resolution dated 3rd February, 1970, the Governor of West Bengal constituted a Bureau of Investigation for purpose mentioned therein. The resolution is as follows :

Resolution No. 494-F.T. IE/-121/69-S.T., Calcutta, dated the 3rd February, 1970.

2. The Governor is pleased to constitute a ''Bureau of Investigation'' in the ''Finance Department'' for the purpose of investigation of cases of evasion of sales tax as well as malpractices connected therewith. The composition of the Bureau will be as follows:-

(i) A Special Officer, who will have thorough knowledge and understanding of the work of the Commercial Tax Directorate. To facilitate work he will have ex-officio status of Additional Commissioner of Commercial Taxes and will work in close liaison with the Commissioner of Commercial Taxes.

(ii) A Superintendent of Police having jurisdiction over the entire territory of West Bengal including City of Calcutta. He will work under the guidance of the Special

Officer and the overall control of the Finance Department.

(iii) Such number of officers and staff as may be considered necessary and sanctioned by the Governor from time to time to assist the Special Officer and the Superintendent of Police in the discharge of their duties.

3. The Headquarters of the Bureau will be in the Writers'' Buildings for the present.

4. The Bureau will start functioning immediately.

5. The necessary expenditure for the creation of the Bureau shall be met from the Budget under the head ''12-Sales Tax'' of the current financial year.

ORDER

6. Ordered that the Resolution be published in the ''Calcutta Gazette'' for general information.

7. Ordered also that copies of the Resolution be sent to all Departments of this Government, all District Magistrates, the Accountant-General, West Bengal, Calcutta and the Commissioner of Commercial Taxes, West Bengal.

8. It will be necessary to refer to some prior events relating the appointments of some officers of the Commercial Tax Directorate, who were since posted in the Bureau. These relate to the appointment of (i) Nikhllesh Chandra Biswas and on his retirement, Ashit Kumar Roy, (ii) Sanjib Bhusan Ghatak, (iii) Subodh Kumar Chatterjee, (iv) Tarak Nath De, which will be considered in seriatim.

9. By the following order dated 23rd February, 1970, Nikhilesh Chandra Biswas, who was confirmed as Additional Commissioner of Commercial Taxes with effect from 1st February, 1970, was appointed in the Bureau :

Notification, Calcutta, the 23rd February, 1970.

The Governor is pleased to appoint Shri Nikhilesh Chandra Biswas, Additional Commissioner of Commercial Taxes, West Bengal, to officiate in the post of Special Officer and ex-officio Additional Commissioner of Commercial Taxes in the newly constituted Bureau of Investigation in the Finance Department for a period of six months with effect from the date on which he assumes charge.

10. On 17th July, 1970, the following order was passed :

Notification, Calcutta, the 17th July, 1970.

The Governor is pleased to appoint Shri Nikhilesh Chandra Biswas, Additional Commissioner of Commercial Taxes, West Bengal, to act as Additional Commissioner of Commercial Taxes and Special Officer, Bureau of Investigation, in the newly constituted Bureau of Investigation under the Finance Department for a period of six months with effect from the date he actually assumed charge in terms of this Department Notification No. 776 dated the 23rd February, 1970...

11. On the same date another order was passed investing N.C. Biswas with all powers of the Commissioner of Commercial Taxes; the order is as follows:

Notification No. 4167-F.T. the 17th July, 1970.

In exercise of the power conferred by Sub-section (2) of Section 3A of the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act VI of 1941), the Governor is pleased hereby to direct that Shri Nikhilesh Chandra Biswas, Additional Commissioner of Commercial Taxes, West Bengal, appointed as Additional Commissioner of Commercial Taxes and Special Officer in the Bureau of Investigation in terms of Finance Department Order No. 4166-F.T. dated the 17th July, 1970, shall have all the powers and shall be entitled to exercise all the duties of the Commissioner of Commercial Taxes, West Bengal, which are vested in him under the said Act, excepting the power to sanction prosecution under Sub-section (2) of Section 22 of the said Act.

12. On 14th November, 1970, N. C. Biswas made the following delegation :

In exercise of the power conferred upon me by Notification No. 4167-F.T. dated 17th July, 1970, read with Section 15 of the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941), I hereby delegate to the officers specified under column (4) below the following powers u/s 14 of the said Act as described to be exercised in respect of dealers within the whole of State of West Bengal:

Serial Section Description of Designation of Officer power (1) (2) (3) (4) 1 14 To require production Commercial Tax of the accounts, registers Officers, Inspectors, and documents, of any who are placed in dealer and to require the Bureau of him to furnish any Investigation. information referred to in Sub-section (1) of section 14 of the Act. 2 14 To inspect the accounts, do. registers or documents of a dealer. 3 14 To enter and search any place do. of business of any dealer or any other place as referred to in Sub-section (4) of section 14, for the purposes of Sub-section (2) or sub-section (3) of the same section. 4 14 To seize accounts, registers do. or documents of any dealer and to exercise all powers under Sub-section (3) of section 14 of the Act. (Sd.) N. C. Biswas, 14th November, 1970. Additional Commissioner, Commercial Taxes.

13. By order of 19th April, 1972, A.K. Roy was appointed in place of N. C. Biswas ; the order is as follows:

Notification, Calcutta, the 19th April, 1972.

The Governor is pleased to appoint Shri Ashit Kumar Roy, Additional Commissioner of Commercial Taxes, West Bengal, to act as the Additional Commissioner of Commercial Taxes and Special Officer, Bureau of Investigation, under the Finance Department, with effect from the date he actually assumes charge and until further orders vice Shri N. C. Biswas, Additional Commissioner of Commercial Taxes and Special Officer, Bureau of Investigation, who has been granted earned leave preparatory to retirement with effect from 3rd April, 1972, in terms of this Department Notification No. 1329-F T. dated 22nd March, 1972.

14. The following notification was made on 21st April, 1972:

Notification, Calcutta, the 21st April, 1972.

In exercise of the power conferred by Sub-section (2) of Section 3A of the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act VI of 1941), the Governor is pleased hereby to direct that Shri Ashit Kumar Roy, Additional Commissioner of Commercial Taxes, West Bengal, appointed as Additional Commissioner of Commercial Taxes and Special Officer in the Bureau of Investigation in terms of Finance Department Order No. 1983-F.T. dated the 19th April, 1972, shall have all the powers and shall be entitled to exercise all the duties, of the Commissioner of Commercial Taxes, West Bengal, which are vested in him under the said Act, excepting the power to sanction prosecution under Sub-section (2) of Section 22 of the said Act.

(II) Sanjib Bhusan Ghatak, a permanent Inspector of Commercial Taxes, West Bengal, was appointed as Inspector-cum-Investigator in the Bureau by the following order :

Order, Calcutta, the 23rd April, 1971.

The Governor is pleased to appoint Shri Sanjib Bhusan Ghatak, a permanent Inspector of Commercial Taxes, West Bengal, as Inspector-cum-Investigator in the Bureau of Investigation and to post him there with effect from the date he assumes charge until further orders.

He will retain lien in the post of Inspector of Commercial Taxes.

15. It was further stated : "Necessary steps for releasing the officer may be taken at an early date.

16. There was another order in respect of Mr. Ghatak, which is as follows:

Notification, Calcutta, the 23rd My, 1971.

In exercise of the power conferred by Sub-section (1) of Section 3 of the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act VI of 1941), the Governor is pleased hereby to specify the whole of the State of West Bengal as the area over which Shri Sanjib Bhusan Ghatak, Inspector of Commercial Taxes, appointed as Inspector-cum-Investigator in terms of the Department Order No. 1450-F.T. dated 23rd April, 1971, shall exercise jurisdiction.

(III) Subodh Kumar Chatterjee, a Commercial Tax Officer, Grade I, was appointed in the Bureau by the following order :

Notification, Calcutta, the 5th June, 1970.

The Governor is pleased to appoint Shri Subodh Kumar Chatterjee, Commercial Tax Officer, Grade I, as Commercial Tax Officer-cum-Investigating Officer in the Bureau of Investigation and to post him there with effect from the date he assumes charge until further orders.

17. It was further stated that necessary steps for his release should be taken at an early date.

18. There was a similar order extending his jurisdiction to the whole of the State of West Bengal. The order is as follows :

Notification, Calcutta, the 17th July, 1970.

In exercise of the power conferred by Sub-section (1) of Section 3 of the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act VI of 1941), the Governor is pleased hereby to specify the whole of the State of West Bengal as the area over which Shri Subodh Kumar Chatterjee, Commercial Tax Officer, appointed as Commercial Tax Officer-cum-Investigating Officer In terms of this Department Notification No. 2417-F.T. dated the 5th June, 1970, shall exercise jurisdiction.

(IV) Tarak Nath De, a permanent Inspector of Commercial Taxes, West Bengal, was appointed in the Bureau by the following order:

"Order, Calcutta, the 13th August, 1970.

The Governor is pleased to appoint Shri Tarak Nath De, a permanent Inspector of Commercial Taxes, West Bengal, of Tulin Check Post as Inspector-cum-Investigator in the Bureau of Investigation and to post him there with effect from the date he assumes charge until further orders.

He will retain lien in the post of Inspector of Commercial Taxes, West Bengal.

19. There was another order extending his jurisdiction to the whole of the State of West Bengal; the order is as follows:

Notification, Calcutta, the 18th December, 1970.

In exercise of the power conferred by Sub-section (1) of Section 3 of the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act VI of 1941), the Governor is pleased hereby to specify the whole of the State of West Bengal as the area over which Shri Tarak Nath De, Inspector of Commercial Taxes, appointed as Inspector-cum-Investigator, in terms of this Department Order No. 4508-F.T. dated 13th August, 1970, shall exercise Jurisdiction.

20. The petitioner, respondent in F.M.A. No. 726 of 1973, claimed to be the proprietor of "Spares Corporation" has been carrying on business of suppliers of spare parts for heavy earth-moving equipments and machinery and automobiles since October, 1966. The petitioner is a registered dealer under the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as the said Act) and he had been duly submitting his quarterly returns in the prescribed manner under the said Act. S.K. Chatterjee, Commercial Tax Officer-cum-Investigating Officer of the Bureau, by order dated 3rd February, 1973, called upon the petitioner to produce all books of account for assessed periods. The petitioner produced some books of account before the said officer, who noticed some irregularities and some books were left for scrutiny at the office of the Bureau. On 13th February,

1973, when the petitioner appeared at the said office, S.B. Ghatak, Inspector-cum-Investigator of the Bureau, seized the books of account and a seizure receipt was given to the petitioner. The petitioner was informed by S.K. Chatterjee by a letter that he was carrying on business in clandestine manner at 9, Lal Bazar Street, Calcutta, although the registration certificate was granted to him in respect of a different place of business. As the documents were not returned even after 21 days, the petitioner moved an application under Article 226 of the Constitution praying for issue of a writ in the nature of mandamus directing the State of West Bengal and its concerned officers to return the books of account to the petitioner and also for a writ in the nature of certiorari quashing the investigation proceedings.

21. On this application a rule nisi was issued by this court, which was opposed by the State of West Bengal and its concerned officers. Pal, J., accepting the contentions of the petitioner, held that the State Government in exercise of its executive power, which under Article 162 Is coextensive with legislative power, was competent to constitute the Bureau by notification and such power need not be circumscribed by specific legislation. It was further held that the Commissioner under the said Act has the overall administrative power of superintendence. over all the statutory authorities appointed to assist him including the Additional Commissioner, who, as Special Officer of the Bureau, was independent of any control by the Commissioner. It was further held that by their appointment in the Bureau, the concerned officers referred to above had ceased to be officers of that designation under the said Act and, as such, they were incompetent to exercise any power or perform any duty as were invested on them u/s 14 of the said Act. The seizure was accordingly illegal and without jurisdiction. Even assuming that such officers had the requisite power of seizure, the retention of the books beyond 21 days in the absence of communication of the sanction of the Additional Commissioner to the petitioner was, in any event, without jurisdiction. The writ of mandamus was accordingly issued, directing the State and its officers to return the seized books of account and records to the petitioner.

22. This appeal has been preferred against this decision by the State and its officers, who were the respondents in the rule.

23. The other appeal arises from an order of Sabyasachi Mukharji, J., discharging the rule obtained by the petitioner-appellants on their application under Article 226(1) of the Constitution. The relevant facts, according to the petitioners, are that an agreement was entered into on 6th December, 1968, between Metalo Chemical Works, petitioner No. 2, a partnership firm, whereof petitioner No. 1 is one of the partners and Esemen Metalo Chemical (P.) Ltd., for the sale of the assets and liabilities of the said firm to the company as on 31st December, 1968. In pursuance of the agreement, the assets and liabilities of the firm were taken over by the company. The firm had been a registered dealer under the said Act and had filed its returns under the said Act and was duly assessed up to 1966,

while the company was also granted registration under the said Act.

24. The firm had made a voluntary disclosure before the Income Tax authorities under the Finance Act, 1965 and, u/s 68 of the Act, such declaration was to be confidential not to be disclosed by any public servant or produced before any court. The Investigating Officers of the Bureau demanded of the partners the production of papers and documents relevant to the said disclosure. On the failure of the partners of the firm to comply with the requisition, the Investigating Officer of the Bureau on 17th April, 1971, seized the accounts and records of the firm purporting to take action u/s 14(3) of the said Act and a receipt was granted therefore. The petitioners challenged the search and seizure as being illegal as the Bureau was not validly constituted nor the officers were validly empowered to search and seize; further the petitioners were not bound to disclose the relevant books of account relating to the disclosure and all actions taken were mala fide without reasonable satisfaction of the authorities to direct search and seizure.

25. At the hearing of the rule, which was opposed by the State and its concerned officers, the learned Judge held that constitution of the Bureau was legal as the Government was entitled in the discharge of its executive functions to evolve administrative machinery not inconsistent with existing law, as would subserve its purpose. On interpretation of Clause (8) of Section 68 of the Finance Act, 1965, it was held that there was no embargo on officers under other statute to call for particulars of the disclosure if they were otherwise authorised to do so. It was further held that the actions taken by the officers were not mala fide as they had reasons to suspect that the dealer was evading tax and keeping its books where search was directed. The rule was accordingly discharged. This appeal is by the petitioners against this decision which was made on 17th February, 1972.

26. Both the appeals have been heard one after the other and as common questions of law and facts relating the constitution of the Bureau and appointments of its officers are involved in the appeals, this judgment accordingly will govern both the appeals.

27. On 23rd September, 1973, the Governor promulgated the Bengal Finance (Sales Tax) (Amendment) Ordinance (5 of 1973) amending certain provisions of the original Act and making provisions for constitution of the Bureau of Investigation and matters incidental thereto. The material provisions of the Ordinance were to be deemed always to have been inserted in the original Act. All appointments of officers in the Bureau and any declaration or actions and proceeding taken or order or notification issued were to be deemed as taken in accordance with the said Act as amended by the Ordinance and were thereby sought to be validated notwithstanding any judgment, decree or order of any court.

28. The Ordinance was shortly followed by the publication on 1st March, 1974, of the Bengal Finance (Sales Tax) (Third Amendment) Bill, 1974, the objects and

reasons whereof are as follows :

The object of the present Bill is to continue the provisions of the Bengal Finance (Sales Tax) (Amendment) Ordinance, 1973, promulgated on 23rd September, 1973, to provide for the constitution of a Bureau of Investigation for detecting sales tax offences and other measures ancillary to it.

In order to set at rest all doubts on the question of the validity of the constitution of the Bureau and as a measure of abundant caution, the Governor promulgated the Bengal Finance (Sales Tax) (Amendment) Ordinance, 1973 (West Bengal Ordinance V of 1973).

29. In pursuance thereof the Bengal Finance (Sales Tax) (Third Amendment) Act, 1974, was brought into force on 23rd March, 1974. The material provisions thereof are as follows :

Section 3.-After Section 19 of the said Act, the following section shall be and shall be deemed always to have been, inserted, namely :-

''19A. (1) The State Government may constitute a Bureau of Investigation for discharging the functions referred to in Sub-section (3).

(2) The Bureau of Investigation (hereinafter referred to as the Bureau) shall consist of an Additional Commissioner of Commercial Taxes (hereinafter referred to as the Special Officer) and such number of other persons appointed under Sub-section (1) of Section 3 to assist the Commissioner of Commercial Taxes as the State Government may deem fit to appoint.

(3) The Bureau may, on information or of its own motion, or when the State Government so directs, carry out investigation or hold inquiry into any case of alleged or suspected evasion of sales tax as well as malpractices connected therewith and send a report in respect thereof to the Commissioner.

(4) The Bureau may, for the purpose of holding investigation or inquiry referred to in Sub-section (3), exercise all the powers referred to in Sections 14 and 14A.

(5) The Bureau may, after a case has been investigated or inquired into by it, by order, assess, reassess, collect or enforce payment of sales tax in the case, under this Act.

(6) The Special Officer shall assign such functions of the Bureau to such of the officers referred to in Sub-section (2) as the Special Officer may think fit.

(7) The Bureau shall have, for carrying out the purposes of this Act, the same powers as are referred to in Section 21A.

(8) For the removal of doubts it is hereby declared that, subject to the other provisions contained in this Act, the Special Officer shall be competent to exercise all the powers which are exercisable under this Act by an Additional Commissioner of Commercial Taxes, appointed u/s 3A and any person, appointed under Sub-section (1) of Section 3, when appointed in the Bureau, shall be

competent to exercise all the powers which are exercisable by such person under this Act.

(9) Notwithstanding anything contained in Sub-section (1) of Section 3, the Special Officer and the other persons appointed in the Bureau under Sub-section (2) shall have the jurisdiction over the whole of West Bengal.

Section 5.-Notwithstanding any judgment, decree or order of any court-

(a) any appointment of an Additional Commissioner of Commercial Taxes and Special Officer, Commercial Tax Officer-cum-Investigating Officer and Inspector-cum-Investigator made in the Bureau of Investigation constituted under the Finance Department Resolution No. 494-F.T./ IE-121/69-S.T. dated the 3rd February, 1970, as subsequently amended, notwithstanding the official designations of such appointees or terms and conditions of their service and matters ancillary thereto including retention of lien in service and release from a post, referred to and mentioned in the Government orders, notifications and in the directions issued by the Government while endorsing copies of the said Government orders or notifications to different persons and authorities in connection with such appointment, or

(b) any declaration, search or seizure made, anything done, any action or proceeding taken, any instruction, notification or order issued, any direction given or any authority, power or jurisdiction exercised by the persons referred to in Clause (a) before the commencement of this Act,

shall, for all purposes, be deemed to be and to have always been made, done, taken, issued, given or exercised in accordance with the provisions of the said Act as amended by this Act and shall not be called in question in any civil or criminal court on any ground whatsoever.

Section 6.-(1) The Bengal Finance (Sales Tax) (Amendment) Ordinance, 1973, is hereby repealed.

(2) Anything done or any action taken under the said Act as amended by the Bengal Finance (Sales Tax) (Amendment) Ordinance, 1973, shall be deemed to have been validly done or taken under the said Act as amended by this Act as if this Act had commenced on the 24th day of September, 1973.

30. The learned Advocate-General and Mr. Ganendra Narayan Roy took great pains to establish that even without the Ordinance and the Act following it, the constitution of the Bureau and the appointment of the officers therein and the actions taken by them were validly made and the judgment of Pal, J., was unsustainable. In view of the promulgation of the Ordinance and later on in its place the Act, both with retrospective effect from the date of inception of the original Act, we have refrained from considering the position as suggested as it would mean an academic discussion ending in futility. We shall consider the position in law with reference to the said Act as amended by the Ordinance and later on by the Amendment Act referred to above.

31. Mr. Arun Prakash Chatterjee, the learned Advocate appearing for the respondent submitted that the Bureau of Investigation was not made a part of the Commercial Tax Directorate, but an independent and separate establishment. The appointment of officers were new appointments in new establishment and, as the terms of appointment indicated, lien of such officers in the Commercial Tax Directorate who were released to the Bureau was retained. All these officers in the Bureau ceased to be the officers of the Directorate when they were appointed in the Bureau. They were thus no longer officers in the Directorate to assist the Commissioner who only had been invested with the power to seize and search and could delegate such powers to the officers of the Directorate only. The search and seizure made by these officers were accordingly illegal and unwarranted in law.

32. Section 19A was inserted and is to be deemed always to have been inserted in the said Act. This section contemplates that the State Government may constitute a Bureau of Investigation for discharging functions referred to in Sub-section (3). The functions of the Bureau under the sub-section, inter alia, is to carry out investigation or hold enquiry into any case of alleged or suspected evasion of sales tax and malpractices connected therewith.

33. The object of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter also referred to as the original Act), is to impose a general tax on the sale of goods in Bengal (now West Bengal). Collection and recovery of sales tax are matters incidental to the objects of the said Act and elaborate machinery has been provided in the Act by the creation of Commercial Tax Directorate comprising a hierarchy of officers and authorities for assessment, recovery and prevention of evasion of sales tax. It was also felt expedient to provide for a machinery to carry on investigation or hold inquiry into any case of alleged or suspected evasion of sales tax as well as malpractices connected therewith and send a report in respect thereof to the Commissioner. The Government by a resolution of 3rd February, 1970, constituted a Bureau of Investigation for the purpose of investigation of cases of evasion of sales tax as well as malpractices connected therewith. Though it is within the competence of the State Government to constitute such Bureau in discharge of executive functions as held by the learned Judges, it was noticed by Pal, J., that the Bureau was then without statutory authority. By the Ordinance and the amending Act repealing the Ordinance, certain provisions thereof were made retrospective since the date of inception of the original Act. Section 19A provides for the constitution of the Bureau of Investigation and this section was made retrospective. As a result the constitution of the Bureau by the Government is to be deemed in discharge of the functions in pursuance of the specific provisions of Section 19A of the original Act, which, as we have seen, is to be deemed always to be in the said Act. The Bureau so constituted has thus the statutory authority as its basis and is an integral part of the organisation of the Commercial Tax Directorate constituted under the same Act for the purpose for which the said Act was enacted.

34. The next contention raised on behalf of the respondent, who has to support the judgment in view of the Ordinance and the amending Act, is that the officers of the Commercial Tax Directorate as soon as they were appointed in the Bureau were denuded of their powers of search and seizure which they might have as officers under the said Act, as they ceased to be such officers of the Directorate. In the context of the Ordinance and the amending Act, the Bureau is to be considered as a section or department within the Commercial Tax Directorate and all the orders of appointments, delegations of powers and extension of jurisdiction of the officers are always to be deemed as being made under the provisions of the said Act. It is true that words have been used in the various appointment orders of the officers like "appointed in the Bureau", "retention of lien in service" and "release from a post", which might convey the implication that the Bureau was a different organisation outside the Directorate as also the ambit of the said Act. In the Ordinance and the Act in Section 5 thereof it has been specifically provided that notwithstanding the use of the words referred to above in Government orders as indicated and notwithstanding any judgment, decree or order of court, all appointments of officers of the Commercial Tax Directorate are deemed to be and to have always been made in accordance with the provisions of the said Act as amended. These words accordingly lose their significance though they had great weight in the decision of Pal, J., under appeal before us.

35. By Notification No. 4167-F.T. dated 17th July, 1970 (which has been quoted above), the State Government in exercise of powers u/s 3A(2) of the said Act, conferred all the powers of the Commissioner of Commercial Taxes, excepting powers u/s 22(2), on N.C. Biswas, Additional Commissioner of Commercial Taxes. As such Additional Commissioner he was. appointed in the Bureau to be referred as the "Special Officer" in terms of the provisions of Sub-section (2) of Section 19A of the said Act and all other appointments of officers were to be deemed as made in pursuance of the said provision, as indicated above. It will be further seen that by order dated 14th November, 1970, N.C. Biswas, Additional Commissioner of Commercial Taxes, delegated various powers of search and seizure on the Commercial Tax Officers and Inspectors of the Directorate who had been posted in the Bureau of Investigation. All these orders were thus to be considered as made under the provisions of the said Act as amended. Further, any person appointed u/s 3(1), when appointed in the Bureau, shall be competent to exercise all the powers which are exercisable by such person under this Act, as provided in Sub-section (8) of Section 19A. Accordingly, the officers concerned, namely, the Commercial Tax Officer and Inspector of the Directorate, posted in the Bureau and designated respectively as Investigating Officer and Inspector-cum-Investigator in view of the delegation and amendments in the said Act had and must be deemed to have the powers of search and seizure under the said Act in respect of the books of account and records of the dealers concerned. The contention of the petitioners in the connected rule to the contrary is thus not sustainable.

36. It was held in the judgment under appeal that the officers of the Bureau are outside the administrative control of the Commissioner of Commercial Taxes, West Bengal. The reason of the finding was that the Bureau was outside the Commercial Tax Directorate, constituted as it was by the Government Resolution without statutory basis, so that the officers in the Bureau ceased to be officers of the Tax Directorate, which officers only were conferred with the powers of search and seizure. Whatever may be the position before the Ordinance, the Bureau is and always is to be deemed a part of the Commercial Tax Directorate with a statutory basis under the Bengal Finance (Sales Tax) Act, 1941, as amended with retrospective effect since its inception. The Additional Commissioner, as we have seen, has been invested with all the powers of the Commissioner, excepting those u/s 22(2) by Government Order No. 4167-F.T. of 17th July, 1970. He, in his turn, delegated the powers of search and seizure u/s 14 to the officers posted in the Bureau. All these actions are to be deemed as made under the provisions of the said Act as amended in the context of the change in law. We, accordingly, hold that the officers posted in the Bureau are within the Tax Directorate and have been duly conferred the powers of search and seizure. In view of the above position, it is obvious that the search and seizure made by the officers concerned were warranted by law and there was no illegality at any stage of the proceedings.

37. It is suggested that under the provisions of the said Act for carrying out the purposes of the Act the Commissioner alone has been appointed the authority to exercise all powers under the Act with such other persons to assist him as may be specified. The Bureau is not one of such authorities and is thus an independent and separate organisation apart from the Commercial Tax Directorate. It will, however, be seen that there is no legal impediment for the legislature to set up any organisation under the said Act for achieving the object thereunder and confer it with such powers as may be thought fit. Further, the function of the Bureau is to carry out investigation or hold inquiry into cases of alleged or suspected evasion of sales tax as well as malpractices connected therewith and to send a report in respect thereof to the Commissioner. It is further provided that the Special Officer shall exercise all powers exercisable under the said Act by an Additional Commissioner of Commercial Taxes appointed u/s 3A, who, in his turn, is conferred with the powers of the Commissioner. It is further provided that any person appointed under Sub-section (1) of Section 3 to assist the Commissioner, when appointed in the Bureau, shall be competent to exercise all the powers which are exercisable by such person under the Act. All these provisions clearly indicate that the Bureau has been made a part and parcel of the organisation or the Directorate with the Commissioner as the principal authority for carrying out the purposes of the Act.

38. Mr. Chatterjee next submitted that the impugned amendment seeks impliedly or expressly to nullify the judgment as is obvious from the objects and provisions of the amending Act. He referred to the decision in The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd.

etc. etc., , where the court was considering the provisions in Section 152A inserted by the Gujarat Amendment Act, 1968, to the Bombay Provincial Municipal Corporation Act, 1949. By the said section the Corporation was given power to refuse refund of the amount illegally collected as property tax despite the orders of the High Court and the Supreme Court and to adjust the same against tax as would be assessed later and in the meantime to treat such amount as loan carrying interest. The court quoted with approval the following observation in Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, :

A court''s decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily a court holds a tax to be invalidly imposed because the power to tax is wanting or the Statutes or the Rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law.

39. It was held that on the above principle Section 152A was repugnant to the Constitution as the amendment destroyed the binding force of a court''s decision.

40. In the case before us, amending Act does not nullify the judgment but modified the basis of judgment by re-enacting the relevant provisions retrospectively. The provisions for the constitution of the Bureau of Investigation, with conferment of requisite powers of search and seizure on the officers appointed therein, were made in the amending Act and those provisions were made retrospective and by further provision the actions taken were validated as being done under the provisions of the original Act as amended. This is a far cry from nullifying the decision of the court by a subsequent legislation. In the decisions in Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, and State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others, , attempts were made to validate invalid acts without changing the law retrospectively and, as such, the said decisions have no application to the facts of this case. It was conceded that if the legislature makes an amendment which is such that if it was in force at the time the judgment was delivered, the judgment could not have been so, such amendment would be a proper legislative Act. This is precisely what has happened in this case.

41. Mr. Dey, the learned Advocate appearing for the appellants in the other appeal, adopted the contentions of Mr. Chatterjee in support of his appeal which have been dealt with by us earlier. He, however, made an additional submission contending that the authorities had no jurisdiction to call for production of the particulars of the voluntary disclosure made by the petitioners under the scheme

evolved under the Finance Act, 1965. Reliance was placed on Clause (8) of Section 68 of the Act, which is as follows :

(a) All particulars contained in any declaration made under this section or record of any proceeding under this section shall be treated as confidential and, notwithstanding anything contained in any law for the time being in force, no court shall be entitled to require any public servant to produce before it any such declaration or record or any part thereof or to give evidence before it in respect thereof.

(b) No public servant shall disclose any particulars contained in any such declaration or record except to any officer employed in the execution of any of the Acts mentioned in Sub-section (5) or to any officer appointed by the Comptroller and Auditor-General of India or the Board to audit Income Tax receipts or refunds.

42. In agreement with the learned Judge, we are also of the opinion that the embargo is upon the public officers or to whom the declaration is made. It does not prevent the authorities under other Acts to call for requisite particulars from the assessee if they are otherwise authorised under the law. The Commissioner u/s 14 may require the dealer to produce before him any accounts, registers or documents, furnish any information relating to sales and purchases of goods and all such accounts and documents shall be open to inspection. Such powers, as we have seen, have been duly delegated to the officers concerned, who called for production of relevant records and there was nothing illegal in the course of action adopted by them. The petitioners acted under a misconception of the legal position and their non-compliance led to the search and seizure of the books of account and documents which were warranted by law.

43. We understand that the books of account and documents seized had been since returned to the petitioner pursuant to the order of Pal, J. and, accordingly, we do not express any opinion as to the question of retention of documents over the statutory period.

44. As all the contentions raised fail, the Appeal from Original Order No. 726 of 1973, State of West Bengal and Ors. v. A.S. Narayana (Appellate Side), is allowed, the judgment under appeal is set aside and the rule is discharged. All interim orders, if any, are vacated. There will be no order as to costs.

45. Appeal No. 109 of 1972, S. M. Zaki and Anr. v. Investigating Officer, Bureau of Investigation and Ors. (Original Side), is dismissed and all interim orders, if any, are vacated. There will be no order as to costs.

Sankar Prasad Mitra, C.J.

46. I agree.

